W. T. M. Kennedy

A

Complete Collection

OF

STATE-TRIALS,

AND

PROCEEDINGS

UPON

HIGH-TREASON,

AND OTHER

CRIMES and MISDEMEANOURS;

FROM

The Reign of King *RICHARD* II.

TO

The End of the Reign of King *GEORGE* I.

The SIXTH VOLUME.

With an ALPHABETICAL TABLE *to the two* Supplemental Volumes.

LONDON:

Printed in the Year M.DCC.XXX.

B41

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A Complete

A Complete

COLLECTION OF TRIALS, &c.

CLXXXII.

Proceedings in PARLIAMENT *againſt* James *Earl of* Derwentwater, William *Lord* Widdrington, William *Earl of* Nithiſdale, Robert *Earl of* Carnwath, William *Viſcount* Kenmure, *and* William *Lord* Nairn, *upon an Impeachment for* High-Treaſon, Febr. 9. 1715. 2 GEO. I.

THE above-named Lords having excited a Rebellion, and levied War againſt his Majeſty, and being taken Priſoners, whilſt in actual Hoſtilities, the Parliament at that time ſitting, it was moved in the Houſe of Commons, *January* 9. that they ſhould not be left to the ordinary method of Proſecutions, but be proceeded againſt by way of Impeachment: Upon which Occaſion Mr. *Lechmere* ſpake as follows,

After the general Aſſurances this Houſe has given to his Majeſty, one Moment ought not to be loſt without taking ſome effectual Step towards making them good. The firſt and great Concern is to put an End to this *Rebellion*, not only to quiet the preſent Commotions, but to extinguiſh the very poſſibility of their being renewed: For theſe Ends every Gentleman will agree to ſtrengthen the Hands of the King, in ſuch manner as will enable him ſpeedily and effectually to complete this Work: You will do this with abſolute Cheerfulneſs, from the certain Knowledge and Experience we have had of the Wiſdom and Juſtice of his Majeſty, who will make no other Uſe of any Confidence his Parliament ſhall repoſe in him, than to promote the common Welfare of his People; and whatever extraordinary Aſſiſtance the preſent Juncture of Affairs ſhall require, will be continu'd no longer than the publick Neceſſity calls for. The next uſeful and neceſſary Step is the *National Juſtice*, which is incumbent on this Houſe, in Duty to the King, as well as in Juſtice to the People; and as ungrateful and diſagreeable a Part as this muſt be, yet when the Deſign of the Enemy is become ſo deſperate and ſo avowed, as to ſtrike at the Crown upon the King's Head, and to involve the Nation in the Calamities of a *Civil War*, the Houſe cannot exert themſelves too early, nor with too much Vigour; and as the Houſe ſhall acquit themſelves on this Occaſion, I dare promiſe my ſelf the Effect will be anſwerable. The Spirit which ſhall be ſhewn in this Inſtance, will animate the Friends of the Government both at Home and Abroad; and the Terror it muſt ſtrike on our Enemies, will be equal at leaſt, and contribute as much to the Common Safety, as any other Preparation that has or can be made. I wiſh I could ſay or think that this

Rebellion is the Project of thoſe only, who appear to head it; or that it is the Reſult of the weak or raſh Counſels of thoſe who publickly avow it; I wiſh I could ſay, that it is the Work of *Papiſts* only, or of thoſe few *Proteſtants*, who are wicked or weak enough openly to join in it. I wiſh I could ſay, that it was a *Plot* but of Yeſterday, and that it has taken no deeper Root, than ordinary Appearance will lead to ſuſpect: But I think it plain, that it is the Effect of many Years Labour, of the joint and united Labour of great Numbers both Proteſtants and Papiſts, the plain and neceſſary Conſequence of the Meaſures which have been carrying on for ſome Years laſt: To frame a right Judgment of the Nature of this Rebellion, I think it neceſſary for us to look back and conſider, the natural Tendency of the Publick Proceedings of late Years, and the Connection they bear with the preſent unfortunate State of Things; when Men in ſacred Functions ſuffer'd themſelves to become *State Inſtruments*, and the great Merit of ſuch Men was under the Pretence of aſſerting the Doctrines of the Church of *England*, to condemn the Revolution, I could never underſtand any other Deſign or Tendency from thoſe Practices, than to undermine the Foundation of the Proteſtant Succeſſion. I remember 'twas ſaid upon a very ſolemn Occaſion, by a very honourable Gentleman, *That the condemning the late happy Revolution, could have no other Meaning than to make Way for another.* However wicked and dangerous theſe Practices were, they made too great an Impreſſion, and contributed a great deal to the preſent Calamity; for as the Deſigns of the Enemy grew more avow'd, State Principles of another Kind were advanc'd, which ſtill conduced to the ſame End. 'Twas well known what Induſtry was uſed to inculcate the Notions of *Hereditary Right* to the Crown, in Oppoſition to the Settlement which had been made of it in the Houſe of *Hanover* by the Authority of Parliament, and with no other View than to weaken that Settlement: Every one remembers what extraordinary Pains were taken to poiſon the People with this dangerous Notion; and that thoſe who made the beſt Court to Men in Power, were ſuch who eſpouſed this Opinion in the moſt notorious manner. I cannot forget with what Tenderneſs a certain Divine * of the Church of *England* was treated below Stairs, whilſt under Proſecution, for the moſt impudent [a] Libel that ever was publiſhed againſt any Government, that had either Will or Power to maintain it ſelf. I think the Puniſhment that was inflicted on that Gentleman light enough, but I cannot avoid taking Notice of a remarkable Paſſage, which then alarm'd every thinking Man, and will, one time or other, deſerve the Conſideration of this Houſe, *viz.* The Order from the Government, counterſign'd by a Secretary of State, to the Judges of the *Queen's-Bench*, after the Judgment paſs'd, to ſuperſede the ignominious Part of the Puniſhment, by Reaſon of the *Sacred Function* of the Criminal: By which the moſt *unexampled and dangerous Diſtinction* was introduced; and which Proceeding could bear no other Conſtruction, than as a Licenſe and Protection, even from the Government, to Men in Holy Orders, to propagate that *deſtructive Poſition* with *Impunity*; and the Character of the Perſon, which ought in Juſtice to have aggravated his Guilt and heightned the Puniſhment, became his Indemnity againſt the Reproach of it, even by the Authority of the Government it ſelf. I remember very well in what Manner every Thing of that Nature was treated in *Weſtminſter-Hall*; what Severities were exerciſed againſt thoſe Perſons who had Courage enough to aſſert the Intereſt of their Country, and of the Proteſtant Succeſſion, at the ſame Time that the *Patrons* of *Hereditary Right* enjoy'd all *Indulgences*. I mention theſe Things on no Uncertainties, having been an Eye-witneſs of them my ſelf, and it having fallen to my Share to bear ſome Part in them: This was one of the moſt ſucceſsful Parts of the Scheme of thoſe who had fix'd their Eyes on the Pretender: The Houſe need not be told how far it has operated, to the Prejudice of the Proteſtant Succeſſion. I could give many other Inſtances of this Kind, all which promoted the ſame End: The groſs Diſtinctions that were coin'd to elude the Oaths that had been made for the Security of the Government: The Endeavours that were uſed to poſſeſs the People with *falſe Fears of the Danger of the Church*; and the little Care that was taken, to ſay no worſe of it, to inſtill into the Youth of the Kingdom, ſuch Principles as were conſiſtent with the true Intereſt either of *Church* or *State*. I look upon theſe Things to be *the Foundation of the Scheme* that is now, by this *Rebellion*, carrying on into Execution; and I own that in this Reſpect the Authors of it were *wiſe in their Generation*, for by theſe Arts the very *Principle* on which the Proteſtant Succeſſion is founded, was *ſhaken*; and tho' the Methods of doing it were baſe and vile, yet the Diſſatisfaction and Uneaſineſs that was created by them *in* the Minds of *the People*, *made Way for the Change* that was *deſired*. I muſt crave leave to put you in Mind of other Parts of this *Scheme* that were carrying on at the ſame Time. The Enemies to the preſent Government judging aright for their own Purpoſe, by all Methods to attack the Conſciences of the People, as to the *Legality* and *Juſtice* of the Settlement of the Crown in the Houſe of *Hanover*, thought it neceſſary at the ſame time to diſable, as far as they could, thoſe Perſons who had been moſt remarkable for their Services in the Support of it: The great Effort was made at that great [b] Man, who is not only the Honour and Ornament of his Country, but the Glory of the Age he lives in. I think I ſhall not be ſuſpected of Flattery at this Time, nor, I believe, at any Time, with Reſpect to that Great Man. Many who now hear me, remember the Part I took in Vindication of that Great Man, whilſt his Character was under Debate in this Houſe. I cannot forget the Rage and Inveteracy with which he was purſued; nor how much Streſs was laid upon obtaining the Cenſures of Parliament upon him: The Aſperſions then thrown upon him, did not hurt that Great Man; and whatever Endeavours may at any Time be uſed to leſſen him, will hurt none but thoſe that ſhall promote them: But yet thoſe vain Endeavours were a very uſeful Part of the *Scheme* then carrying on. 'Twas a neceſſary Step for thoſe Men to put him out of the Way, whoſe very *Name* and *Appearance*, at that Time, would have been ſufficient to raiſe Armies in Favour of the Proteſtant Succeſſion and the Liberties of his

* *Mr.* Bedford. [a] *The Hereditary Right aſſerted, &c.* [b] *The Duke of* Marlborough.

Country:

Country: But I cannot but obſerve, That as ſerviceable as it was for the Meaſures of thoſe Men to wound his Character, it is now a Reproach to the Kingdom, that thoſe *groundleſs Aſperſions*, which have been caſt upon him, ſhould remain upon the Journals of Parliament. Another great [c] Lord fell under the Violence of thoſe Times, (I mean the Lord who was Miniſter in the *Low-Countries*, and was chiefly inſtrumental in procuring the *Treaty of Barrier and Succeſſion*) whoſe Proſecution was attended with uncommon Fury. My ſelf had ſome Share in juſtifying that Great Man in this Houſe, when he was voted *an Enemy to his Country*. I obſerved at that Time, and the Event has made it evident, that the *Barrier* was but the *Pretence*, and that the great Services he had done to the *Proteſtant Succeſſion* was the *true Provocation*, which drew that Rage upon him. Two other honourable [d] Gentlemen, now ſitting near me, felt the Severity of thoſe Times: They had diſtinguiſhed themſelves by their Zeal and Firmneſs to the true Intereſt of their Country, and were too conſiderable to eſcape the Malice of thoſe who had other Views. Thoſe Proceedings, how uncertain ſoever the Deſign of them might appear while they were tranſacting, have been ſufficiently explain'd by what has follow'd. The Name of that General, [e] for whoſe immediate Service the Great Man firſt mentioned was blemiſhed, and for whom there was Vanity enough to make him his Rival, is now become the *Reproach* of his Family and Country; he avows the Service of the *Pretender*, and e'er long we may hear of him at the Head of an Expedition for eſtabliſhing *Popery* and *Arbitrary Power*. The Secretary of State, [f] who diſtinguiſhed himſelf in the Purſuit of the other great Lord, has ſufficiently explain'd his Deſigns to the whole World; and the next Tidings that we may expect from abroad is, that he has taken upon him the Character of a Miniſter to the *Pretender*. I look upon this (namely the diſabling the great Aſſertors of the Proteſtant Intereſt) to be a ſecond, and no ſmall Part of the Scheme; and while theſe things were carrying on, their little Engines and Tools were carrying on their Work [g] below-ſtairs. Every Man who favour'd the *Hanoverian* Succeſſion was to be worried, and all open and ſcandalous Aſſertors of contrary Principles were treated with all the Care and Tenderneſs of Friends. Charters of Corporations were attack'd in a more unprecedented and dangerous manner than in any former Times, when Practices of that kind were moſt juſtly complain'd of; and no Stone was left unturn'd, to ſtrengthen themſelves in that Reſpect. I will not now trouble you any more upon that Head, having ſome Thoughts e'er long to preſent you with a ſmall Collection of Things of that kind for your ſerious Conſideration. The *Maſter Strokes* of this grand Scheme are yet behind: The ſureſt Way to deſtroy the Government has been always thought to be by its own Hands; that is, by the Authority and Power of Parliament. For this Purpoſe, a *Confederacy*, by which the Liberties of *Europe* had been ſo long ſuſtained againſt the Power of *France*, was *broke to Pieces*, by *Votes* that were obtained *in this Houſe, in the moſt extraordinary Manner*. The Honour of the Nation, the Ballance of Power, and the Proteſtant Intereſt in *Europe*, were effectually given up in the Negotiations and Concluſion of the Peace, by which *France* was reſtored to its ancient and formidable State: And every Body remembers how near we were by the ſame Influences, to have given up the whole Trade of the Nation to the Intereſt of the *French* King, who after that had no ſuitable Return left for him to make for ſuch Services, but to beſtow upon us a *Pretender* bred up in his own *Faith*, and in his own *Politicks*. Nothing could have obſtructed this, but the many miraculous Providences that immediately followed, when his Power throughout *Europe* was unconteſtable; and, by the Meaſures that had been taken, the Proteſtant Succeſſion had ſcarce a Friend left in the World. The *King's Acceſſion* to the Throne, accompanied by ſo many providential Circumſtances, as it *diſappointed* the *immediate* Execution of the *Scheme*, ſo it quieted the Spirit of thoſe Men for ſome time. If we would make a right Judgment of the preſent Rebellion, we muſt compare the Steps that immediately preceded, with thoſe which were taken in the laſt Reign, when the Hope was to have brought about the ſame End without a Stroke. The ſame Endeavours ſoon appear'd to propagate the ſame Principles both in Church and State: And thoſe Endeavours, tho' at firſt not ſo open, were yet as reſtleſs to create Diſſatisfaction againſt his Majeſty's Government, as they had been before to prevent its taking place. As the Encouragement grew ſtronger, *Tumults* and *Riots* were univerſally fomented; and 'tis well known from what Quarter they roſe, and againſt whom they were levelled: But yet no one Inſtance has been aſſign'd throughout his Adminiſtration, that could offend or provoke any but a *Jacobite* Spirit. His Majeſty has done more for the Honour of the *Church*, and the true Intereſt of his Kingdom, than any of his Predeceſſors in three times the Number of Years. His *Perſonal Virtues*, and the *Wiſdom* and *Steddineſs* of his Government, have retrieved the Honour and Reputation of his Kingdoms, which had been ſo ſhamefully loſt: His *Weight* and *Influence* Abroad, and the *Credit* he has obtain'd in all the known Parts of the World, has already procured the Settlement of the Matters in Difference between the two chief Powers of *Europe*, from whom alone we can expect Aſſiſtance in Times of Danger. No ſingle Inſtance can be aſſign'd of Hardſhip or Oppreſſion to any one of his Subjects, or that can give a juſt Reaſon of Diſſatisfaction; but on the contrary, thoſe who have ſhewn the *greateſt Averſion* to his Government, have received the kindeſt Invitations, and enjoy'd the higheſt Indulgencies from him. If any *Errors* may have been committed in any Parts of the Adminiſtration, during the preſent Diſorders, every honeſt Man ought to judge of them by this one Rule, that is, *the plain Deſign for which all Meaſures are calculated*, which every Body muſt admit to be, the *Preſervation of the Proteſtant Succeſſion:* All Incidents of ſuch an Adminiſtration, ought to be covered or juſtified by the Intereſt that ſhall appear to be carrying on throughout the whole; by the ſame Rule of Juſtice, *when the Deſtruction of the Common Intereſt was the plain Intention of the late Adminiſtration*, the greateſt Weight ought to be laid on every little Circumſtance that attended, in order to obtain a *publick Satisfaction:* By taking in all theſe

[c] *The Lord Viſcount* Townſhend. [d] *Mr.* Stanhope *and Mr.* Walpole. [e] *The late Duke of* Ormond.
[f] *The late Lord Viſcount* Bolingbroke. [g] Weſtminſter-Hall.

Conſiderations, I think we ſhall make a full and right Judgment of the Nature of this Rebellion; from whence it took its *Riſe*; how deep it has taken *Root*; to what *Influences* it is owing, and how far it extends. The Part the Lord *Derwentwater*, and others, have taken in it, are to be conſider'd as the firſt Symptoms of that general Diſorder, for which ſo much Foundation was laid; for which Reaſon I think, that we cannot conſider this otherwiſe than as the *Cauſe of the Nation*, in the ſtrongeſt manner. In *Juſtice to the King*, as well as to the *People*, *we ought to take this into our own Hands*, and not to entruſt the Proſecution of it with any Body but our ſelves. Every Body knows to what *Hazards Proſecutions in the ordinary Courſe of Juſtice* are liable, though they are never ſo well concerted by thoſe, whoſe Buſineſs it is to carry them on; but how ſure ſoever the Succeſs may be, in a Caſe ſo notorious as this, yet it is obvious to every Body, of what different Weight and Influence the Proſecutions of Parliament are from thoſe in the *ordinary Forms*. I own I am ſurprized, that any Meaſures have been taken of that kind, againſt the Peers who have been *taken in open Rebellion*, during the ſitting of a Parliament which has ſhewn ſo much Zeal, and has contributed ſo much to the Preſervation of the Government, eſpecially at a time when *the Crown on the King's Head is fighting for*. I very well know, that tho' the *Houſe of Commons Right of Impeaching Criminals is unlimited*, yet they will exerciſe that Power by the Rules of *Wiſdom* and *Diſcretion*, and not engage in trivial Matters, but in ſuch only where the Offenders are not within the reach of the Ordinary Juſtice; or the Nature of their Crimes ſuch, as are not fit to be meddled with by the *Ordinary Juriſdictions:* The Caſe of the Lords taken in Rebellion is indeed notorious, and of which the Proof will be eaſy, but tho' not from the Difficulty of the *Proſecution*, but from the *Weight* and *Conſequence* of it, I think I need ſay little more to convince you, and make it our *Proſecution*, by which we engage every Commoner in *Great-Britain*, as an immediate Party, againſt thoſe who have carried a War into the Bowels of the Kingdom. No Inſtance ever has riſen in the *Engliſh* Hiſtory, where our Anceſtors have permitted a Proſecution againſt the chief Actors, to be carried any where but in full Parliament. The five *Popiſh* Lords were purſued by the loud Voice and Weight of the Commons of *England:* And tho' at that time the Nation was in Peace, they would not permit the Fate of thoſe Proſecutions to depend on the Care or Skill of thoſe who are verſed in the *ordinary Forms of Juſtice*, and their Succeſs was anſwerable. I own my *Deſire* upon all Occaſions to *raiſe the Honour and Authority of Parliaments*, which I think the *greateſt Support of the Honour and the Prerogatives of the Crown*. For which Reaſon, I take this Occaſion to ſpeak more fully to the Nature of Impeachments, and the rather, becauſe I apprehend ſome Gentlemen have miſtaken Notions concerning them. The Power of *Impeachments is the moſt valuable and uſeful Privilege that belongs to the Body of the Commons*, at leaſt, *equal to that of giving Money*, which belongs ſolely to them. Gentlemen need not be apprehenſive of any *Intricacies* in thoſe Proceedings, eſpecially at a Time and upon an Occaſion, when there is no Doubt of the Concurrence of both Houſes. *Impeachments* are in themſelves more plain, regular, and diſintangled, than any other Forms of Juſtice: They are particularly *excepted out of the late Statute of Treaſons*, which has very much fetter'd *the ordinary courſe of Proceedings*. *Impeachments* were never made *difficult*, but when they were carried on *againſt the Inclination of the Crown*, or at a Time *when there was no good Underſtanding between the two Houſes*; when little Occaſions might be ſought to raiſe Diſputes, and interrupt them; or elſe when they are undertaken before they are well conſidered, which cannot be the preſent caſe. There is another Reaſon, which upon this Occaſion ſhould determine Gentlemen into this Method; I mean the Conſequences of the Judgment that ſhall be obtain'd againſt theſe Lords: 'Tis my clear Opinion, and what I think I can maintain, That *no Pardon under the Great Seal can diſcharge a Judgment obtain'd upon the Impeachment of the Commons:* This Opinion has been ſtrenuouſly aſſerted in this Houſe in former Reigns; and I think it not weaken'd by the *Declaration* in the *Act of Settlement of the Crown* upon the Houſe of *Hanover*. I have heard of a very *low Diſtinction* that has been coin'd *without Doors*, to avoid this Opinion, *viz.* That the *Pardon is not pleadable in bar of the Impeachment, to prevent the Commons from examining into the Offence; but that it is pleadable after Judgment, and in bar of Execution.* Whenever that Queſtion ſhall come properly before you, I will undertake to ſhew the Idleneſs and Abſurdity of *that* Diſtinction: If that Diſtinction be framed to make Court to the Prerogative, I think it the moſt *falſe* and *deſtructive* Piece of *Flattery* of the kind that ever has been raiſed. It is *the greateſt Eaſe, Security, and Support of the Crown*, in my Opinion, *inſtead of any Diminution of it, that no ſuch Power ſhould be lodg'd there*, to be exerciſed on any Occaſion, to prevent the Poſſibility of the Crown's being wrought upon by any Influences to defeat the Judgment given in full Parliament, with the Concurrence of both Houſes, againſt the higheſt Offenders, *which muſt* inevitably *create the greateſt Jealouſy*, and *cauſe the higheſt Diſſatisfactions between the Crown and the People:* For this Reaſon, I take it to be the greateſt Advantage to the Crown, that the Conſtitution of the Kingdom has not, as I think, inveſted it with any ſuch Power: And on t'other ſide, it will clearly appear, that *ſuch a Power is utterly inconſiſtent with the fundamental Rights of Parliament*. I own I am ſurpriz'd to hear, that any ſuch Diſtinction ſhould be ſtarted at this time: But if the Law be, as I apprehend it is, it is the ſtrongeſt Reaſon for the Commons to interpoſe in this *Proſecution to defend the Crown from the many Importunities* to which it will be ſubject, in the ordinary Courſe of Juſtice: The Weight of this *Proſecution*, and the *Conſequences of it, will be borne by the Commons*, as it ought to be *in a Caſe ſo National* as this. If Gentlemen want any other Motives, to induce them to make this Proſecution their own, I have a *Paper* in my Hand which will fire the Thoughts of every Gentleman here, it is the *Pretender's Declaration*, which no Body can read without the utmoſt Indignation; conſidering the *perſonal Indignities* which are therein caſt upon the beſt of Princes, whoſe Title to the Crown we are bound by all the Ties of Duty, Affection, and Intereſt, to maintain. We can do no leſs than reſent this ſo far, as to make our ſelves the Proſecutors of thoſe who avow this Cauſe of the *Pretender*, and ſet themſelves at the Head of Armies,

in

in the Heart of the King's Dominions. In this Paper we ſhall ſee how we are treated ourſelves: *We are repreſented as the moſt illegal and infamous Aſſembly of Men that ever met together.* Theſe Conſiderations ought, in Juſtice, to animate and invigorate our Proceedings in every Reſpect, till the *Inveteracy and Inſolence of the Enemy are entirely ſubdued:* I do not think that the Proceedings of this Houſe ought in any Caſe to be govern'd by *Vindictive Conſiderations*, but by ſuch Circumſtances only as from their real Weight and Conſequence call'd for the Interpoſition of the Commons. I am ſenſible that the Commons have a great Work upon their Hands, from other *Impeachments*, which they have thought fit to enter upon, and which are ſtill depending; I know alſo what Situation theſe *Impeachments* are in; and hope they will be reſum'd and carried on, in due Seaſon, with the ſame Vigour with which they were undertaken. I likewiſe believe, that the Nation *expects*, that our Inquiries upon this Head ſhall be extended and appear to be *impartial*, it not being poſſible, that a greater Diſhonour can be brought, or an heavier Imputation caſt upon our Proceedings, than that of Partiality, which cannot fail to ſink our Credit, and to prevent all the good Effects that are hoped and expected from them: However, every Gentleman will agree with me, that the preſent Situation and Conjuncture of Affairs make it neceſſary to give the Preference to thoſe Lords who have been taken in open Rebellion. And therefore I now *Impeach James* Earl of *Derwentwater* of *High-Treaſon*; which *Impeachment* I undertake to make Good.

The Conſequence of this Speech was, that the Houſe came to a Reſolution to impeach *James* Earl of *Derwentwater* of *High-Treaſon*. Upon the like Motions they reſolved the ſame with regard to *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*; accordingly they were impeached at the Bar of the Houſe of Lords, and the ſame Night the Articles of Impeachment were carried up to the Lords; and the next Day the impeached Lords were brought to the Bar of the Houſe, and charged with the ſaid Articles, and order'd to put in their Anſwer by the 16th, and that not only Counſel, but any other Perſons, whom they ſhould name, ſhould have Liberty to aſſiſt them. They had afterwards Leave till the 19th to put in their Anſwers, when they ſeverally pleaded *Guilty* (except the Earl of *Wintoun*, who had further Time allowed him) and the 9th of *February* was appointed to paſs Sentence on them.

On *Thurſday February* the 9th, about one o' Clock, the Lords came from their own Houſe into the Court erected in *Weſtminſter-Hall*, to paſs Sentence upon *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, in the Manner following.

The Lord High-Stward's Gentlemen Attendants, two and two.

The Clerks Aſſiſtant to the Houſe of Lords, and the Clerk of the Parliament, with the Clerk of the Crown in the Court of Chancery; the Clerk of the Parliament bearing the King's Commiſſion to the Lord High-Steward.

The Maſters in Chancery, two and two.

Then the Judges.

The Peers Eldeſt Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeoman Uſhers of the Houſe.

Then the Peers, two and two, beginning with the youngeſt Barons.

Then four Serjeants at Arms with their Maces.

The Serjeant at Arms attending the Great-Seal, and Purſe-Bearer.

Then Garter King at Arms; and the Gentleman-Uſher of the Black Rod, carrying the White Staff before the Lord High-Steward.

The Lord High-Steward alone, his Train borne. *William* Lord *Cowper.*

When the Lords were placed in their proper Seats, and the Lord High-Steward upon the Wool-Pack.

The Clerk of the Crown, in the Court of Chancery, ſtanding before the Clerk's Table, with his Face towards the State, having his Majeſty's Commiſſion to the Lord High-Steward in his Hand, made three Reverences towards the Lord High-Steward; and, on his Knee, preſented the Commiſſion to the Lord High-Steward; after which, and uſual Reverences, the ſame was carried down to the Table: And then Proclamation for Silence was made in this manner:

O Yes, O Yes, O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then the Lord High-Steward ſtood up, and ſpoke to the Peers.

Lord High-Steward. His Majeſty's Commiſſion is going to be read; your Lordſhips are deſired to attend.

All the Peers uncovered themſelves, and they and all others ſtood up uncovered while the Commiſſion was reading.

GEORGIUS R.

GEORGIUS, Dei Gratia, Magnæ Britanniæ, Franciæ & Hiberniæ Rex, Fidei Defenſor, &c. Prædilecto & Fideli Conſiliario noſtro Willielmo Domino Cowper, Cancellario noſtro Magnæ Britanniæ, Salutem. Cum Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithiſdale, Georgius Comes de Winton, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, coram Nobis in præſenti Parliamento, per Milites, Cives & Burgenſes in Parliamento noſtro Aſſemblat' de alta Proditione per ipſos Jacobum Comitem de Derwentwater, Willielmum Dominum Widdrington, Willielmum Comitem de Nithiſdale, Georgium Comitem de Winton, Robertum Comitem de Carnwath, Willielmum Vicecomitem Kenmure, & Willielmum Dominum Nairn, commiſſ' & perpetrat' in nomine ipſorum Militum, Civium & Burgenſium, & nomine omnium Communium Regni noſtri Magnæ Britanniæ impetiti & accuſati exiſtunt; & ipſi prædict' Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithiſdale, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, coram Nobis in præſenti Parliamento de Proditione prædict' ſe eſſe culpabiles ſeparatim cognoverunt:

Nos

Nos conſiderantes quod Juſtitia eſt Virtus excellens & altiſſimo complacens, Volenteſque quod prædict' Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithiſdale, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, de & pro Proditione unde ipſi ut præfertur impetit' accuſat' & convict' exiſtunt coram Nobis in præſenti Parliamento noſtro, ſecundum Legem & Conſuetudinem hujus Regni noſtri Magnæ Britanniæ, & ſecundum Conſuetudinem Parliamenti audiantur, ſententientur & adjudicentur, cæteraque omnia quæ in hac parte pertinent debito modo exerceantur & exequantur, ac pro eo quod Proceres & Magnates in præſenti Parliamento noſtro aſſemblat' Nobis humilime ſupplicaverunt ut Seneſcallum Magnæ Britanniæ pro hac vice conſtituere dignaremur. Nos de fidelitate, prudentia, provida circumſpectione, & induſtria veſtris plurimum confidentes, Ordinavimus & Conſtituimus vos ex hac Cauſa Seneſcallum Magnæ Britanniæ ad Officium illud, cum omnibus eidem Officio in hac parte debit' & pertinen' (hac vice) gerend' occupand' & exercend'. Et ideo vobis Mandamus quod circa præmiſſa diligenter intendatis, & omnia quæ in hac parte ad Officium Seneſcalli Magnæ Britanniæ pertin' & requiruntur hac vice faciatis, exerceatis, & exequamini cum effectu. In cujus rei Teſtimonium has Literas noſtras fieri fecimus Patentes, Teſte me ipſo apud Weſtm' Nono Die Februarii, Anno Regni noſtri Secundo.

Per ipſum Regem propria Manu Signat'
Wrighte.

Serjeant at Arms. God ſave the King.

Then the Herald and Gentleman Uſher, of the Black Rod, after three Reverences, kneeling, preſented the White Staff to his Grace; and then his Grace, attended by the Herald, Black Rod and Seal-Bearer (making his proper Reverences towards the Throne) removed from the Wool-Pack to an armed Chair, which was placed on the uppermoſt Step but one of the Throne, as it was prepared for that purpoſe, and then ſeated himſelf in the Chair, and delivered the Staff to the Gentleman Uſher of the Black Rod on his Right Hand, the Seal-Bearer holding the Purſe on the Left.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made, as follows.

O Yes, O Yes, O Yes! Lieutenant of the Tower of *London* bring forth your Priſoners to the Bar, according to the Order of the Houſe of Lords to you directed.

Then *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, were all brought to the Bar by the Deputy Governour of the Tower, having the Ax carried before them by the Gentleman Jaylor, who ſtood with it on the Left Hand of the Priſoners, with the Edge turned from him. The Priſoners when they approached the Bar (after kneeling) bowed to his Grace the Lord High-Steward, and to the Houſe of Peers; which Complement was returned them by his Grace, and the Houſe of Peers.

Lord High-Steward. Read the Articles of Impeachment.

ARTICLES *of Impeachment of High-Treaſon exhibited againſt* James *Earl of* Derwentwater, William *Lord* Widdrington, William *Earl of* Nithiſdale, George *Earl of* Wintoun, Robert *Earl of* Carnwath, William *Viſcount* Kenmure, *and* William *Lord* Nairn.

WHEREAS for many Years laſt a moſt wicked Deſign and Contrivance has been formed and carried on, to ſubvert the ancient and eſtabliſhed Government, and the good Laws of theſe Kingdoms, to extirpate the true Proteſtant Religion therein eſtabliſhed, and to deſtroy its Profeſſors; and inſtead thereof, to introduce and ſettle Popery and Arbitrary Power; in which unnatural and horrid Conſpiracy great Numbers of Perſons of different Degrees and Qualities have concerned themſelves and acted; and many Proteſtants, pretending an uncommon Zeal for the Church of *England*, have joined themſelves with profeſſed Papiſts, uniting their Endeavours to accompliſh and execute the aforeſaid wicked and traiterous Deſigns:

And whereas it pleaſed Almighty God in his good Providence, and in his great Mercy and Goodneſs to theſe Nations, to crown the unwearied Endeavours of his late Majeſty King *William* the Third of ever-glorious Memory, by making him the Inſtrument to procure the Settlement of the Crown of theſe Realms in the Illuſtrious Houſe of *Hanover*, as the only Means under God to preſerve our Religion, Laws and Liberties, and to ſecure the Proteſtant Intereſt of *Europe*; ſince which happy Eſtabliſhment the ſaid Conſpirators have been indefatigable in their Endeavours to deſtroy the ſame, and to make Way for the vain and groundleſs Hopes of a ſpurious Impoſtor and Popiſh Pretender to the Imperial Crown of theſe Realms.

And to accompliſh theſe Ends, the moſt immoral, irreligious and unchriſtian-like Methods have been taken, but more particularly in the laſt Years of the Reign of the late Queen *Anne*, during which Time all imaginable Endeavours were uſed by the ſaid Conſpirators to prejudice the Minds of the Subjects of this Realm againſt the Legality and Juſtice of the ſaid Settlement of the Crown: And for that purpoſe the Holy Scriptures were wreſted, and the moſt wholſome Doctrines of the Church of *England* perverted and abuſed by Men in Holy Orders, in the moſt publick and ſcandalous Manner, in order to condemn the Juſtice of the late happy Revolution; and thereby to ſap and undermine the Foundation of the ſaid happy Eſtabliſhment; and the moſt notorious Inſtruments of theſe wicked Purpoſes were countenanced by particular Marks of publick Favour and Diſtinction; falſe and dangerous Notions of a ſole Hereditary Right to the Imperial Crown of theſe Realms were propagated and encouraged by Perſons in the higheſt Truſt and Employments, contrary to the ancient, undoubted and eſtabliſhed Laws of theſe Kingdoms; jeſuitical and ſcandalous Diſtinctions were invented and publickly inculcated, to enervate the Force and Obligation of thoſe Oaths which had been

contrived in the plaineſt and ſtrongeſt Terms by the Wiſdom of Parliament for the Security of the ſaid Eſtabliſhment; and to conceal their Deſigns, and thereby the better to enable them to carry on the ſame, great Numbers of the ſaid Conſpirators of all Ranks and Conditions, pretending a Zeal for the Proteſtant Succeſſion, openly and voluntarily took the ſaid Oaths; groundleſs Fears of the Danger of the Church of *England* were fomented throughout theſe Kingdoms, to diſorder the Minds of well-diſpoſed Proteſtants.

By all which and many other ſuch ungodly Practices of the ſaid Conſpirators, the moſt cauſeleſs and dangerous Jealouſies and Diſſatisfactions were created in the Minds of the good People of this Kingdom, and great Numbers of well-meaning, but deluded Proteſtants were much diſquieted.

But nevertheleſs theſe diſhoneſt Methods were purſued by the ſaid Conſpirators with indefatigable Induſtry, as the only Means to weaken the Foundations of the ſaid happy Eſtabliſhment.

And whereas the Diſſolution of the late glorious Confederacy againſt *France*, and the Loſs of the Ballance of Power in *Europe*, were further Steps neceſſary to compleat the Deſigns of the ſaid Conſpirators; and the ſame being effected by the late ignominious Peace with *France*, the *French* King was render'd formidable, and the Proteſtant Succeſſion was thereby brought into the moſt imminent Danger; and by theſe and other pernicious Meaſures, the Deſtruction ſo long intended by the ſaid Conſpirators, for theſe poor Nations, ſeemed near at Hand.

At which Time, and under which moſt deplorable Circumſtances, it pleaſed Almighty God in his infinite Wiſdom to call to himſelf the late Queen *Anne*, and by a Concurrence of many moſt wonderful Providences to give a quiet and peaceable Acceſſion to his preſent moſt Gracious Majeſty to the Throne of his Anceſtors, to which he was received with one full Voice and Conſent of Tongue and Heart, and the united Joy of every good Subject and good Proteſtant, as their only lawful and rightful Liege Lord; and altho' from the Moment his Majeſty aſcended the Throne to this Day, his Reign has been one Series of Wiſdom, Juſtice and Clemency; his Labours conſtant, unwearied and ſucceſsful to retrieve the Honour and Reputation of theſe Nations; to re-eſtabliſh the Trade and recover the Wealth of his Kingdoms; and although all imaginable Encouragement has been given to the Church of *England*, and all Tenderneſs ſhewn even to his Popiſh Subjects, and his conſtant Care has been to procure the univerſal Good of his People; nevertheleſs the ſaid Conſpirators have, by the moſt vile and impious Methods, renewed their Endeavours to throw theſe Kingdoms into the utmoſt Confuſion, and to entail endleſs Miſeries on us and our Poſterities: For theſe Ends many of the abovementioned moſt wicked and dangerous Practices have been repeated with the utmoſt Induſtry and Inveteracy, to delude, diſorder and corrupt the Minds of his Majeſty's good Subjects; the moſt groundleſs Jealouſies have been fomented againſt his wiſe and happy Adminiſtration, and in many Parts of his Kingdoms the moſt unnatural, unexampled Riots and Tumults, by the ſecret and malicious Endeavours of the ſaid Conſpirators, have been procured, ſtirred up, and encouraged againſt his peaceable Proteſtant Subjects, under falſe Pretences of Zeal for the Church of *England*, and thereby more effectually to delude his good Subjects, and ſeduce them from their Allegiance, and prepare them for an open Rebellion.

And the ſaid Conſpirators having at length reſolved to deprive theſe Nations of the invaluable Bleſſings which they now enjoy under the wiſe and gentle Reign of his preſent moſt gracious Majeſty King *George*, and of the certain Proſpect of Happineſs which they have for their Poſterity, in a Succeſſion of Princes derived from himſelf; did contrive, confederate, and reſolve to put their moſt malicious, wicked, and traiterous Deſigns into immediate Execution; for which purpoſe, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, together with *Thomas Forſter*, Jun. the Lord *Charles Murray*, *Edward Howard*, *Thomas Errington*, *John Clavering*, *William Shaftoe*, Sir *Francis Anderton*, *Ralph Standiſh*, *Richard Townly*, *Thomas Butler*, *Thomas Walton*, *Gabriel Haſkel*, *Richard Gaſcoigne*, and divers other Perſons, as falſe Traitors to his preſent moſt ſacred Majeſty King *George*, the only lawful and undoubted Sovereign of theſe Kingdoms, having withdrawn their Allegiance, and cordial Love, and true and due Obedience, which they as good and faithful Subjects owed to his ſaid Majeſty, did, in or about the Months of *September*, *October*, or *November*, 1715. moſt wickedly, maliciouſly, falſely and traiterouſly imagine and compaſs the Death of his ſaid moſt ſacred Majeſty.

And for the accompliſhing and executing their ſaid traiterous Purpoſe, they the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, did, in or about the ſaid Months, or ſome of them, and at divers other Times, and in divers Places within this Kingdom, wickedly and traiterouſly agree, confederate, conſpire, and reſolve, together with many other evil-diſpoſed Perſons, to raiſe, excite, and levy within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and the County *Palatine* of *Lancaſter*, and elſewhere within this Kingdom, a moſt cruel, bloody, and deſtructive War, againſt his Majeſty, in order to depoſe and murther his ſacred Majeſty, and to deprive him of his Royal State, Crown and Dignity.

And the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, their Accomplices and Confederates, in or about the Months aforeſaid, in the Counties aforeſaid, or ſome of them, did gather together great Numbers of his Majeſty's Subjects, and with them did aſſemble in a warlike and traiterous Manner, in order to raiſe Tumults and Rebellion within this Kingdom, and having procured great Quantities of Arms, Ammunition and warlike Inſtruments, at the Times and Places aforeſaid, or ſome of them, did form and compoſe, or did aſſiſt in the forming and compoſing an Army of Men, conſiſting of his Majeſty's Liege Subjects, in order to wage War againſt his ſaid Majeſty, for and in behalf and in favour of the ſaid Pre-

tender to the Crown of theſe Realms; and the ſaid laſt mentioned Conſpirators, their Accomplices and Confederates, at the Time and Times and Places aforeſaid, and at divers other Times and Places within this Kingdom, did maliciouſly and traiterouſly make, levy, and raiſe War and Rebellion againſt his moſt ſacred Majeſty, and in a warlike and hoſtile Manner did march thro' and invade ſeveral Parts of this Kingdom, and did unlawfully take and ſeize the Horſes and other the Goods and Chattels of many of the peaceable and good Subjects of his Majeſty, and in other Places did take and ſeize, from his Majeſty's faithful Subjects, Guns, and other warlike Inſtruments, for the carrying on their traiterous Purpoſes.

And the ſaid laſt mentioned Conſpirators, their Complices and Confederates, during their March and Invaſion aforeſaid, in open Defiance of his moſt ſacred Majeſty's juſt and undoubted Title to the Imperial Crown of theſe Realms, did wickedly and traiterouſly cauſe and procure the ſaid Pretender to be proclaimed, in the moſt publick and ſolemn Manner, as King of theſe Realms; and in ſeveral Places in the Counties aforeſaid, or ſome of them, did unlawfully take and ſeize from his Majeſty's Officers of the Revenue the publick Money, for the Uſe and Service of the ſaid Pretender; and tho' many of the Conſpirators are avowed Profeſſors of the Popiſh Religion, yet the more effectually to cover and diſguiſe their moſt wicked and traiterous Deſigns, and to delude his Majeſty's Subjects, they did prevail on and procure ſeveral Men in Holy Orders, Miniſters of the Church of *England*, and who had before that Time abjured the ſaid Pretender, to accompany, countenance and abet the ſaid moſt traiterous Enterprize, and in ſeveral Places in the Counties aforeſaid, where the ſaid Conſpirators, their Complices and Confederates then were, to pray for the ſaid Pretender in the publick Churches, as King of theſe Realms.

That the ſaid laſt mentioned Conſpirators, their Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth or Thirteenth of *November* aforeſaid, traiterouſly ſeize and poſſeſs themſelves of the Town of *Preſton* in the County *Palatine* of *Lancaſter* againſt his Majeſty, and did then and there in a warlike and hoſtile Manner levy War, oppoſe, engage, and fight againſt his Majeſty's Forces; and did then and there cauſe and procure a miſerable and horrid Slaughter and Murther of many of his Majeſty's faithful Subjects.

All which Treaſons and Crimes abovementioned were contrived, committed, perpetrated, acted and done, by the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, and other the Conſpirators aforeſaid, againſt our Sovereign Lord the King, his Crown and Dignity; and contrary to the Duty of their Allegiance, and againſt the Laws and Statutes of this Kingdom.

Of all which Treaſons and Crimes, the Knights, Citizens and Burgeſſes in Parliament aſſembled, do, in the Name of themſelves and of all the Commons of *Great Britain*, impeach the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, and every of them.

And the ſaid Commons by Proteſtation ſaving to themſelves the Liberty of exhibiting at any time hereafter any other Accuſations or Impeachments againſt the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, or any of them; and alſo of replying to the Anſwers which the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, or any of them, ſhall make to the Premiſſes, or any of them, or to any Impeachment or Accuſation that ſhall be by them exhibited according to the Courſe and Proceedings of Parliament; and do pray, that the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, be put to anſwer all and every the Premiſſes: And that ſuch Proceedings, Examinations, Trials and Judgments may be upon them and every of them had and uſed as ſhall be agreeable to Law and Juſtice.

Lord High-Steward. Clerk of the Parliament, read the Record of the Anſwers and Pleas of the Lords the Priſoners at the Bar to the Impeachments.

Die Jovis 19 Januarii, 1715.

THE Order of the Day being read, for bringing *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, to this Houſe, in order to their putting in their ſeveral Anſwers to the Articles of Impeachment of High-Treaſon exhibited againſt them by the Houſe of Commons.

The ſaid Earl of *Derwentwater* was brought to the Bar by the Gentleman Uſher of the Black Rod, where he kneeled until the Lord Chancellor directed him to riſe; and his Lordſhip acquainted him with the abovementioned Order, and demanded of him if he was ready to put in his Anſwer, which he ſaid he was, and deliver'd the ſame at the Bar.

Which Anſwer of the ſaid Earl of *Derwentwater*, was read, and is as follows.

The Anſwer of James *Earl of* Derwentwater, *to the Articles of Impeachment of High-Treaſon exhibited againſt him by the Honourable the Knights, Citizens, and Burgeſſes of* Great Britain *in Parliament Aſſembled.*

TO a Charge of ſo high and heinous a Nature the ſaid Earl cannot Anſwer without the deepeſt Concern and Affliction, which becomes more weighty from the Share the Honourable Houſe of Commons have been pleaſed to take in the Accuſation: He aſſures himſelf however, that Great Aſſembly doth not engage in the Proſecution of an Offence, ſo open to Conviction in the

ordinary Courſe of Law, with deſign to intercept that Mercy which the Earl, from the Report of his Majeſty's natural Goodneſs, had reaſon to expect. It would be a Thought unworthy any Member of that Auguſt Body, to imagine he could have the leaſt deſire of ſpilling the Blood of any of his Fellow-Subjects, whom his Majeſty's great Wiſdom ſhould think a fit Object of his Mercy; the ſaid Earl therefore hopes that his Proſecution is taken out of the common Courſe of Juſtice, with Intention, that if in his particular Caſe there ſhall appear any Circumſtances inducing Favour or Compaſſion, both your Lordſhips and the Commons may be Interceſſors with his Majeſty for Grace towards him; whereby the Exerciſe of the Royal Mercy, upon which the Earl depended (which amongſt all the Virtues of the Crown moſt endears a Monarch to the Love and Affection of his People) may be extended in ſuch Manner as may demonſtrate that Clemency for which his Majeſty is ſo greatly renowned, and not encourage any to offend upon the Preſumption of it for the future. The ſaid Earl acknowledges, with a real Sorrow, that at the time in the Articles mentioned he was in Arms, and with others did march through and invade ſeveral Parts of this Kingdom; and confeſſes *he is thereby guilty of the Offence wherewith he is charged in the ſaid Articles.* But if any Offence of that kind was ever attended with Circumſtances which might move Compaſſion, the ſaid Earl hopes he may be intitled to it: He begs Leave to inform your Lordſhips, That his Temper and Inclination diſpoſed him to live peaceably under his Majeſty's Government, and he never had the leaſt Prejudice or Malice againſt his Perſon, nor was he ever heretofore concerned in or privy to any Deſign or Contrivance to ſubvert or diſturb the eſtabliſhed Government, the Laws or Religion of this Kingdom; and if any Methods were taken by others to accompliſh any of thoſe Ends, he was abſolutely a Stranger to them; nor did he now ingage in this unhappy Undertaking upon any previous Concert or Contrivance for any ſuch purpoſe; but being young and unexperienc'd, he raſhly, and without any Deliberation, engaged himſelf to meet at *Plainfield* in *Northumberland*, on Aſſurance that many of his Relations and Acquaintance would appear there; that his Undertaking was ſudden, appears in that he engaged in it without any previous Preparation of Men, Horſes, Arms, or other Warlike Accoutrements; and as the ſaid Earl cannot be juſtly reproached with any cruel, ſevere, or harſh Action during the Continuance in Arms, ſo he took the firſt Opportunity that offered of ſubmitting to the King's Mercy. After the ſudden Skirmiſhes at *Preſton*, the ſaid Earl, with others, was ſollicitous to prevent any farther Deſtruction of the Lives of his Majeſty's Subjects, and inſtrumental to induce all in Arms to ſubmit themſelves to the King, provided they might be ſecured of their Lives. One of his Majeſty's Officers, ſent from the General, gave them Encouragement to believe, that the Surrender of themſelves would be the ready way to obtain the King's Mercy: In Confidence whereof, when a Ceſſation was agreed on, the ſaid Earl offer'd himſelf to become one of the Hoſtages for them till the next Morning, in which time he received further Aſſurances from the Officers, that the King was a Prince of known Clemency; that this was a diſtinguiſhing part of his Character, and that the free Surrender to Mercy would be the moſt proper means to obtain it. The ſaid Earl believes his Majeſty's Officers were very ſenſible, and will be ſo juſt as to acknowledge, that it had not been impracticable for many of thoſe at *Preſton* to make their way through his Majeſty's Forces; but this Attempt muſt have occaſioned the loſs of many Lives, and might have been productive of ill Conſequences to the Government, which the ſaid Earl was deſirous to prevent; and when the time agreed on for the Ceſſation was near expired, and General *Wills* ſeemed uneaſy in not having received any Meſſage from thoſe in the Town, the ſaid Earl writ a Letter to exhort them to ſurrender to the King's Mercy; and at the ſame time declared to the ſaid General, and other Officers, that whatever happened, he was determined to continue with them, and rely entirely on his Majeſty's Clemency and Goodneſs, which he had Encouragement to expect; and in ſuch Circumſtances the ſaid Earl cannot diſtruſt your Lordſhips or the Commons readineſs, to uſe their Mediation for Mercy on his Behalf, which will lay him under the higheſt Obligations of Duty and Affection to his Majeſty, and perpetual Gratitude to both Houſes of Parliament.

Derwentwater.

The material Words of which Anſwer appearing not to be ſufficiently expreſs and clear, the Lord Chancellor aſked the ſaid Earl if he meant by the ſaid Anſwer to plead guilty to the High-Treaſon in the ſaid Articles of Impeachment contain'd.

He ſaid he did, and ſubmitted to the King's Mercy, and humbly deſir'd their Lordſhip's Interceſſion to his Majeſty; and his ſaid Anſwer and Plea was recorded accordingly.

And he withdrew.

Then the Lord *Widdrington* was brought to the Bar, and having there alſo kneeled, was acquainted by the Lord Chancellor with the aforementioned Order, and aſk'd the ſame Queſtion as the Earl of *Derwentwater*; and he likewiſe delivered in his Anſwer, which was read as follows:

The Anſwer of William *Lord* Widdrington *to the Articles of Impeachment of High-Treaſon Exhibited againſt him by the Honourable the Knights, Citizens, and Burgeſſes of* Great Britain *in Parliament aſſembled.*

IT is with inexpreſſible Concern and Affliction the ſaid Lord appears before this Auguſt Aſſembly charged with Crimes of the moſt heinous Nature; and though it is natural to Mankind to endeavour to conceal their Guilt, and make uſe of all manner of Defence, eſpecially in the caſe of Life, yet as he ſurrendred himſelf at *Preſton*, intirely relying on his Majeſty's Mercy, ſo he is now reſolved not to take any Meaſures which may argue the leaſt Diffidence of that Mercy, or of your Lordſhip's Goodneſs; and therefore the ſaid Lord confeſſes he is guilty of the Treaſon wherewith he is charged in the ſaid Articles; and after having thus freely acknowledged his Offence, he begs leave to lay his Caſe before your Lordſhips, and humbly hopes, when the particular Circumſtances are conſidered, it will not be thought

to merit the moſt rigorous Puniſhment, but that both your Lordſhips, and the Honourable Houſe of Commons, will look upon him as a proper Object of his Majeſty's Clemency; and he humbly hopes he may not be thought the leſs unworthy of Favour, in that he never before offended, nor was at any time privy to, or acquainted with any Deſign or Contrivance to deſtroy or diſturb the eſtabliſhed Government, the Laws or Religion of this Kingdom, but came unawares into this ſudden and unpremeditated Action; for although he had met with publick Rumours and Reports of intended Invaſions from Abroad, and Inſurrections at Home, yet he never knew, or any other way heard of any formed Deſign againſt the Government, till he was told the Night before of a Meeting intended at *Plainfield* in *Northumberland* on the ſixth of *October* laſt; and being ſoon after informed, that almoſt all his Neighbours and Acquaintance had there met in Arms, he took a haſty and inconſiderate Reſolution of joining them; nor was he in any ſort prepared for ſuch an Undertaking, having only ſome of his own Family with him, no Arms but his common Fowling-Pieces and wearing Swords, and fewer Horſes than he had conſtantly kept for ſeveral Years before; and nothing but the Report of ſo many of his Friends being engaged could have hurried him on to an Enterprize ſo unaccountably raſh and unjuſtifiable; and he is willing to hope your Lordſhips will eſteem it ſome Alleviation of his Crime, that in a Commotion of that Nature there was ſo little Violation of the Rights and Properties of thoſe who oppoſed them; for he believes few Inſtances can be found, where ſuch a Multitude continued ſo long in Arms without doing greater Acts of Violence and Injuſtice. The ſaid Lord cannot charge himſelf with any injurious Acts to the Property of his Fellow-Subjects, and endeavoured to prevent them in others; and hopes it was thence owing in ſome Meaſure, that there was ſhewn all along greater Marks of Moderation and Humanity, than is common in ſuch a warlike and hoſtile Proceeding. The Suddenneſs of the Attack at *Preſton*, without any previous Summons, admitted no time for mediating a Submiſſion before the loſs of that Blood which was there unfortunately ſpilt; but after the Heat and Surprize of the firſt Action was over, a Ceſſation of Arms was deſired, and upon the mutual Meſſages which then paſſed, the Officers ſent from the General encouraged them to believe the ſurrendring themſelves would be the ready way to obtain the King's Mercy, and gave them repeated Aſſurances, that they ſubmitted to a Prince of the greateſt Clemency in the World: Upon theſe Hopes and Aſſurances they made a general Surrender of themſelves to the King; and the ſaid Lord may juſtly take notice to your Lordſhips, that as he was the laſt who took up Arms, ſo he was the firſt who procured a Meeting of the chief Perſons among them, in order to lay them down; and cannot doubt but your Lordſhips, and the Honourable Houſe of Commons, will think it equitable to make ſome Diſtinction between an obſtinate Reſiſtance and an early and humble Submiſſion, whereby the Peace and Tranquillity of this part of his Majeſty's Dominions was intirely reſtored. Nature muſt have ſtarted at yielding themſelves up to a certain and ignominious Death, when it muſt be acknowledged that it was not impracticable for many of them to have eſcaped; and it was poſſible ſo great a Number grown deſperate might have obtained further Succeſs, and thereby prevented the ſo ſpeedy ſuppreſſing that Inſurrection; but the ſaid Lord, and the reſt, having with the utmoſt Confidence relied on the Aſſurances of his Majeſty's great Clemency, and the hopes of Mercy, which had been given them from the Officers who commanded the Royal Forces, he is encouraged with great Earneſtneſs to implore the Interceſſion of your Lordſhips, and the Honourable Houſe of Commons, with his Majeſty, for that Mercy on which they wholly depended; and as he doth not know where Mercy was refuſed to thoſe who ſo early and with ſo much Reſignation ſubmitted to it, ſo he humbly hopes your Lordſhips may be induced to think, that the Exerciſe of this Divine Virtue by his Majeſty towards thoſe who caſt themſelves at his Royal Feet upon the ſole Proſpect and Expectation of it, will appear no leſs glorious to his Majeſty, and prove no leſs advantageous to the future Quiet and Tranquillity of his Government, than any Examples of Juſtice in ſuch a Caſe can be likely to do: And whatever Marks of Goodneſs and Favour his Majeſty ſhall vouchſafe to the ſaid Lord, will not fail to engage him by the ſtrongeſt Tyes of Gratitude, to demonſtrate in the future Courſe of his Life the moſt conſtant inviolable Duty to his Majeſty, and the moſt real Eſteem and Veneration for your Lordſhips and the Honourable Houſe of Commons.

Widdrington.

And the ſaid Lord *Widdrington* being aſked if he had any thing farther to ſay, he begg'd to be excuſed all Imperfections in his ſaid Anſwer, ſaid he had been indiſpoſed with the Gout in his Stomach, and was not able to employ himſelf in preparing his Anſwer till laſt Night, and finiſhed it but this Morning, and humbly implored their Lordſhips Interceſſion to his Majeſty for Favour and Mercy; and his Anſwer and Plea was recorded accordingly.

And he withdrew.

Then the Earl of *Nithiſdale* was brought to the Bar, and having there likewiſe kneeled, was acquainted with the forementioned Order, and aſked the ſame Queſtion as the Earl of *Derwentwater*, and he alſo delivered in his Anſwer, which was read as follows.

The Anſwer of William *Earl of* Nithiſdale, *to the Articles of Impeachment of High-Treaſon Exhibited againſt him by the Honourable the Knights, Citizens, and Burgeſſes of* Great Britain *in Parliament Aſſembled.*

IT is with the utmoſt Confuſion the ſaid Earl appears at your Lordſhip's Bar, under the Weight of an Impeachment by the Commons of *Great Britain* for High-Treaſon; he humbly begs Leave, in Extenuation of his Crime, to aſſure your Lordſhips, that he was always a zealous Aſſerter of the Liberties of his Country, and never engaged in forming or carrying on any Deſign to ſubvert the ancient eſtabliſhed Government, and the good Laws of this Kingdom; but being Summoned by thoſe entruſted with the Adminiſtration of the Government in *Scotland*

land to appear at *Edinburgh*, and being aſſured if he went thither he ſhould be made cloſe Priſoner, he did not obey the Summons; but in all humble Manner applied for their Indulgence in diſpenſing with his being committed to Goal, offering to give any Bail for his peaceable and quiet Behaviour; which being refus'd, and being at that time in ſo ill a State of Health, that a Confinement in *Edinburgh* Caſtle would have endangered his Life, he was forced to abſcond, and kept private till ſeveral of the Perſons mentioned in the ſaid Impeachment, with many other of his Neighbours, appeared in Arms very near the Place where the ſaid Earl lay concealed; and then he inconſiderately and unfortunately (with four of his Domeſticks, and no other Perſon whatſoever) joined them, and proceeded in their Company to the Places in the ſaid Articles of Impeachment mentioned; but he knew nothing of the intended Inſurrection till they were actually in Arms. The ſaid Earl is deeply ſenſible of his great Offence, and not affecting Delay, nor being willing to give your Lordſhips, or the Honourable Houſe of Commons, any unneceſſary Trouble; he does with a Sorrow, equal to his Crime, confeſs that he is guilty of the Treaſon in the ſaid Articles of Impeachment contained, and throws himſelf at his Majeſty's Feet, imploring his Royal Mercy; and to incline his Majeſty thereto, and induce your Lordſhips to recommend him as an Object thereof, he begs Leave to inform your Lordſhips, that when he, and the reſt that were with him at *Preſton*, had engaged in a Battle, a Ceſſation of Arms being agreed to, they had Intimations from his Majeſty's Officers, that if they ſubmitted, they might expect the King's Mercy; and Hiſtory abounding with Inſtances of Conditions ſtipulated with Generals, even with Rebels, and afterwards agreed to, and confirmed by their Sovereigns, they were prevailed on by ſuch Encouragement, together with the Conſideration of his Majeſty's known Clemency, to ſurrender themſelves Priſoners, whereby the Lives of great Numbers of his Majeſty's good Subjects were ſaved, which by an obſtinate Reſiſtance would inevitably have been deſtroyed; and therefore he moſt humbly begs your Lordſhips would be pleaſed to repreſent his Caſe to his Majeſty in the moſt favourable Manner; not doubting but by your Lordſhips powerful Interceſſion, he ſhall find, that as he performed the Duty of a good Chriſtian, in concurring to prevent the Effuſion of Blood; ſo he acted the Part of a wiſe Man in relying upon a Mercy ſo extenſive as that of his Majeſty: And he preſumes, when the Honourable Houſe of Commons are apprized of the Nature of his Caſe, they will not interpoſe to prevent him from having a Share in the Benefit of that Mercy.

Nithiſdale.

And the ſaid Earl of *Nithiſdale* being aſk'd if he had any thing further to ſay, he ſaid he had nothing, but to implore the King's Mercy; and his Anſwer and Plea was recorded accordingly.

And he withdrew.

Then the Earl of *Carnwath* was brought to the Bar, and having there likewiſe kneeled, was acquainted by the Lord Chancellor with the forementioned Order, and aſked the ſame Queſtion as the Earl of *Derwentwater*.

He ſaid he had no Anſwer in Writing, but deſired to throw himſelf on the King's Mercy, and humbly implored their Lordſhip's Interceſſion to his Majeſty on his behalf; and aſſured the Houſe, if the ſame were granted, he ſhould think himſelf obliged to live under the ſtricteſt Tyes of Loyalty to his Majeſty; and as to the ſaid Articles, he ſaid he was guilty of the High-Treaſon contained in the ſaid Articles of Impeachment againſt him; and the ſaid Plea was recorded accordingly.

And he withdrew.

Then the Viſcount *Kenmure* was brought to the Bar, and having there kneeled alſo, was acquainted by the Lord Chancellor with the forementioned Order, and aſked the ſame Queſtion as the Earl of *Derwentwater*.

He ſaid he had no Anſwer in Writing, but was guilty of the Charge of High-Treaſon contained in the Articles of Impeachment againſt him, and begged the Houſe would intercede with his Majeſty for Mercy; and his Plea was recorded accordingly.

And he withdrew.

Then the Lord *Nairn* was brought to the Bar, and having there alſo kneeled, was acquainted by the Lord Chancellor with the forementioned Order, and aſk'd the ſame Queſtion as the Earl of *Derwentwater*.

He ſaid he threw himſelf upon the King's Mercy, and begged the Interceſſion of this Houſe to his Majeſty; and as to the Articles of Impeachment exhibited againſt him, he ſaid he was guilty of the High-Treaſon contained in the ſaid Articles; and his Plea was recorded accordingly.

Then he delivered in a Petition at the Bar, and the ſame was read as follows.

To the Right Honourable the Lords Spiritual and Temporal in Parliament Aſſembled.

The humble Petition of William *Lord* Nairn,

Sheweth,

THAT your Petitioner was educated, and hath always continued a Proteſtant, according to the Diſcipline of the Church of *England*; and tho', by reaſon of ſome miſtaken Principles he unwarily imbibed in his tender Years, he did not in all reſpects conform to the late Revolution, lying under the leſs Neceſſity, for that he had married an Heireſs, in whom all the Right of your Petitioners Eſtate is inveſted; and tho he never took the Oaths, yet he always peaceably ſubmitted to, and lived quietly under the Government as by Law Eſtabliſhed, until the breaking out of this Rebellion, in which your Petitioner was inadvertently involv'd, but not before the Lord *Mar*, and his Adherents, had for a conſiderable time made themſelves Maſters of *Perth* and *Dunkeld*, and thereby ſurrounded your Petitioner's whole Eſtate, and came to your Petitioner's Houſe, lying in the middle between thoſe places.

Your Petitioner heartily repents of this raſh Undertaking, and ſolemnly declares he knew

nothing of any previous Conſultations, or Conſpiracies, in Favour of the Pretender, before he actually appear'd in Arms; not knew any thing about croſſing the *Forth*, until the Morning he was ſent over under *Macintoch*'s Command; and then was ſo far from approving of that Expedition, that tho' to avoid the Imputation of Cowardice he wou'd hazard his own Perſon therein, your Petitioner ordered back all his Dependants, and was only attended by his Son, and four Servants, who wou'd not leave him in a Time of Danger, tho' often deſired; nor was your Petitioner privy to any Deſigns of marching into *England*, for having been bred a Seaman, he had no Pretenſions to Knowledge in the Land Service.

Your Petitioner being now ſenſible of his Errors, hath pleaded guilty to the Articles of Impeachment of High-Treaſon exhibited againſt him by the Honourable Houſe of Commons, and thrown himſelf at his Majeſty's Feet; humbly beſeeching your Lordſhips, in Commiſeration of the deplorable Circumſtances of your Petitioner, and his twelve Children, to recommend him to his Majeſty for that Mercy, which at the Time of his Surrender he was made to believe he might reaſonably expect.

This will lay your Petitioner and his Poſterity under the greateſt Obligations of Duty and Gratitude to his Majeſty, and bind them for ever to bleſs your Lordſhips as the merciful Inſtruments of procuring ſuch a gracious Deliverance.

And your Petitioner ſhall ever pray, &c.

NAIRN.

And being asked if he had any thing further to ſay, he ſaid he had not, and withdrew.

Lord High-Steward. My Lords that are the Priſoners at the Bar, I am to acquaint your Lordſhips, that upon any Occaſion which ſhall be offered you to ſpeak for yourſelves, you are to direct your Speech to the Lords in general; and ſo is any other Perſon that ſhall have occaſion to ſpeak to this Court.

Lord High-Steward. *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, You ſtand impeached of High-Treaſon by the Commons of *Great Britain* in Parliament aſſembled; which Treaſon is contain'd in the Articles that have been lately read; to this you have ſeverally pleaded guilty, and are thereby convicted. What ſay you, *James* Earl of *Derwentwater*, why Judgment ſhould not paſs upon you according to Law?

Earl of Derwentwater. I Only humbly beg leave of my Noble Peers to repeat a few Circumſtances mentioned in my Anſwer to the Articles of Impeachment exhibited againſt me by the honourable Houſe of Commons.

But the Terrors of your Lordſhips juſt Sentence, which at once deprive me of my Life and Eſtate, and compleat the Misfortunes of my Wife and innocent Children, are ſo heavy upon my Mind, together with my Unexperience, that I am ſcarce able to alledge what may extenuate my Offence, if any thing can do it. I have confeſs'd myſelf guilty; but, my Lords, that Guilt was raſhly incurred without any Premeditation, as I hope your Lordſhips will be convinced by one Particular: I beg leave to obſerve, I was wholly unprovided with Men, Horſes, Arms, and other Neceſſaries, which in my Situation I could not have wanted, had I been privy to any formed Deſign: As my Offence was ſudden, ſo my Submiſſion was early; when his Majeſty's Generals thought fit to demand Hoſtages for ſecuring the Terms of the Ceſſation, I voluntarily offered myſelf, without which the Ceſſation might poſſibly have proved ineffectual: And whilſt I continued Hoſtage, the great Character of his Majeſty's Clemency, and the repeated Encouragement I had to hope for Mercy, by ſurrendering to it, ſoon determined me; and I accordingly declared my Reſolution to remain with his Majeſty's Forces, and from that Time ſubmitted myſelf to his Goodneſs, on which I ſtill entirely depend. I humbly hope to obtain the Mediation of your Lordſhips, and of the Honourable Houſe of Commons, in my behalf; ſolemnly proteſting my future Conduct ſhall ſhew me not altogether unworthy your generous Compaſſion for my Life, which is all I can beg of his Majeſty.

Lord High-Steward. My Lord *Derwentwater*, your Lordſhip's Voice hath not been perfectly heard to this end of the Court, therefore I ask you whether you have pleaded any thing in Arreſt of Judgment.

Lord Derwentwater. No, my Lords.

Lord High-Steward. Lord *Widdrington*, what have you to ſay for your ſelf why Judgment ſhould not paſs upon you according to Law?

Lord Widdrington. MY Lords, I have abandoned all manner of Defence ever ſince I firſt ſurrendered my ſelf to his Majeſty's Royal Clemency, and only now beg leave to repeat to your Lordſhips ſome Circumſtances of my unhappy Caſe, which I have already ſet forth in my Anſwer.

Your Lordſhips ſee before you an unfortunate Man, who after leading a private and retired Life for many Years, has by one raſh and inconſiderate Action expoſed himſelf and his Family to the greateſt Calamities and Miſery, and is now upon the Point of receiving the ſevereſt Sentence directed by any of our *Engliſh* Laws.

I do proteſt to your Lordſhips, that I was never privy to any concerted Meaſures againſt his Majeſty's Royal Perſon, or the eſtabliſhed Government: As to the Inſurrection in *Northumberland*, I only heard of it accidentally the Night before it happen'd, and being ſoon after informed that all my Neighbours and Acquaintance had met in Arms, a crowd of confuſed and miſtaken Notions hurried me at once into a precipitate Reſolution of joining them; a Reſolution, which, I muſt own, I could never ſince calmly reflect upon without part of that Confuſion I find my ſelf under in the publick Acknowledgment of ſo much Raſhneſs and Folly. After thus plunging out of my Depth, as unprepared for ſuch an Enterprize as the Action was unpremeditated, I cannot, for my own Particular, upon the ſtricteſt Recollection, charge myſelf with any Violation of the Properties of my Fellow-Subjects: But on the contrary, I always endeavour'd to encourage Humanity and Moderation during the whole courſe

courſe of our miſerable Expedition; and in order to make the beſt Atonement in my Power for the great Fault I had been guilty of, I can juſtly ſay, that I was in no ſmall Degree inſtrumental in procuring a general Submiſſion to his Majeſty. But, my Lords, however willing or deſirous, either I or any others might be to put a ſpeedy End to thoſe unfortunate Troubles; Self-preſervation, the firſt and moſt powerful Law of Nature, would have render'd the Propoſal vain and fruitleſs, had not the Officers who commanded the Royal Forces given us Hopes of Mercy, and aſſured us we ſubmitted to a Prince of the greateſt Clemency in the World. Theſe Hopes, and this Aſſurance, anſwered the ſtrongeſt Objections, overcame all remaining Difficulties, and gave the finiſhing Stroke to a general Surrender, whereby the further Effuſion of *Britiſh* Blood was prevented, and a perfect Tranquillity reſtored to theſe Parts of his Majeſty's Dominions.

My Lords, as this my firſt Attempt was raſh and unpremeditated, as I always uſed and promoted Moderation and Humanity towards my Fellow-Subjects, and as I did not obſtinately perſiſt in my Fault, but was the firſt who propoſed an early Submiſſion to his Majeſty, I humbly hope my unhappy Caſe, and the deplorable Condition of my unfortunate Children, already deprived of their tender Mother, will raiſe a generous Compaſſion in your Lordſhips, and the Honourable Houſe of Commons; and I moſt earneſtly entreat both your Lordſhips, and that Honourable Houſe, to become Interceſſors with his Majeſty in my behalf, for that Mercy which I was encouraged to hope for when I firſt ſurrendered, and which I have ever ſince with the utmoſt Confidence relied on.

I have only to add my moſt ſolemn Aſſurance before this Auguſt Aſſembly, that no future Time ſhall ever find me wanting in the moſt inviolable Duty and Gratitude to that merciful Prince who gives me my Life, and reſtores a Father to five miſerable and diſtreſſed Orphans; and I ſhall always retain the higheſt Eſteem and Veneration for your Lordſhips and the Honourable Houſe of Commons.

Lord High-Steward. Lord *Widdrington*, for greater certainty I ask your Lordſhip whether you have pleaded any thing in Arreſt of Judgment.

Lord Widdrington. No, my Lords, I have not.

Lord High-Steward. William Earl of *Nithiſdale*, what hath your Lordſhip to ſay for your ſelf why Judgment ſhould not paſs upon you according to Law?

Lord Nithiſdale. MY Lords, I have confeſſed myſelf guilty, relying on his Majeſty's Mercy; and I beg leave to aſſure your Lordſhips I was never privy to any Plot or Deſign againſt his Majeſty's Perſon or Government, and was unprovided with any Neceſſaries for ſuch a Purpoſe; but raſhly and inconſiderately, with only four of my Servants, joined thoſe who appeared in Arms in my Neighbourhood, and was one of the laſt who went unto them.

At *Preſton*, my Lords, his Majeſty's Generals gave great Hopes and Encouragement to believe that ſurrendring to his Majeſty's Mercy was the ready way to obtain it, with repeated Aſſurances that his Majeſty was a Prince of the greateſt Clemency.

Upon thoſe Hopes and Aſſurances I ſubmitted myſelf, and ſtill entirely depend on his Majeſty's Goodneſs, earneſtly beſeeching your Lordſhips and the Honourable Houſe of Commons, to intercede with his Majeſty on my behalf.

And I ſolemnly promiſe your Lordſhips I ſhall, during the Remainder of my Life, pay the utmoſt Duty and Gratitude to his moſt gracious Majeſty, and the higheſt Veneration and Reſpect to your Lordſhips and the Honourable Houſe of Commons.

Lord High-Steward. I muſt alſo ask your Lordſhip (your Lordſhip's Voice not reaching thus far) whether you have pleaded any thing in Arreſt of Judgment.

Lord Nithiſdale. No, my Lords, I have not.

Lord High-Steward, Lord *Carnwath*, what have you to ſay for yourſelf why Judgment ſhould not paſs upon you according to Law?

Lord Carnwath. MY Lords, I ſhall not trouble this Great Aſſembly with a Repetition of what I ſaid, when formerly before your Lordſhips and his Majeſty's Council.

I hope theſe Noble Lords entertain that favourable Opinion of my ſincere Dealing then, as to believe that want of Experience and Knowledge of the Laws was the great Inducement of engaging me in this fatal and unhappy Undertaking.

The only thing which I can hope or wiſh for is his Majeſty's Mercy; he has the Character of a merciful Prince: Should it pleaſe him to think me a proper Object for it (tho' I muſt confeſs my ſelf a very unworthy one) all I can ſay, my Lords, is, that the Remainder of my Life ſhall convince his Majeſty, and all the World, of my true Penitence and Gratitude.

My Lords, I am yet an unworthy Member of this great Body, the Peerage, now expecting your Lordſhips Judgment as to Life or Death: Should it be for Life, my Demeanour and Carriage for the future will be ſuch, as none of your Lordſhips ſhall be aſham'd of having ſhew'd me Compaſſion; but ſhould it be for Death, God's Will be done; to my laſt Hour I ſhall pray for the Nation's and your Lordſhips Proſperity; having this Comfort in my preſent Diſtreſs, that your Lordſhips are my Judges at this Tribunal: And yet a greater Comfort have I, that I am ſoon to appear before a greater, where I can't deſpair of finding Mercy and Forgiveneſs for all my Sins.

I beg God Almighty's Pardon for them: I have already ask'd his Majeſty's, and I do it now; and I do humbly beg leave, once more, and perhaps the laſt Occaſion that ever I ſhall have, to deſire that your Grace, this noble Houſe, and the Honourable Houſe of Commons of *Great Britain*, who are now here, would intercede with his Majeſty for me.

I take my Leave of your Lordſhips, and wiſh you all Happineſs.

Lord High-Steward. Does your Lordſhip offer any thing in Arreſt of Judgment?

Lord Carnwath. No, my Lords.

Lord High-Steward. Lord *Kenmure*, what have you to ſay for yourſelf why Judgment ſhould not paſs upon you according to Law?

Lord Kenmure. MY Lords, I am truly ſenſible of my Crime, and want Words to expreſs my Repentance. God knows I never had any perſonal Prejudice againſt his Majeſty, nor was I ever acceſſary to any previous Deſign againſt him. I humbly beg my noble Peers and the Honourable Houſe of Commons to intercede with the King for Mercy to me, that I may live to ſhew myſelf the dutifulleſt of his Subjects, and to be the Means to keep my Wife and four ſmall Children from ſtarving; the Thoughts of which, with my Crime, makes me the moſt unfortunate of all Gentlemen.

Lord High-Steward. My Lord, your Voice not being heard to this End of the Court, I would know whether in what you have ſaid you have offered any thing in Arreſt of Judgment.

Lord Kenmure. No, my Lords.

Lord High-Steward. Lord *Nairn*, what have you to ſay for yourſelf why Judgment ſhould not paſs upon you according to Law?

Lord Nairn. I Am very ſenſible how unfit I am to plead my own Cauſe before your Grace (my Lord High-Steward) and this Auguſt Aſſembly; and therefore, tho' I could ſay much to extenuate the Crime for which I ſtand impeached, yet I chuſe rather to lay my whole Streſs upon the King's Mercy, for which he is ſo renowned, and which I was put in hopes of at the Time of my Surrender. In Conſideration whereof, and in Compaſſion to an afflicted Wife and twelve Children, I ſtill hope, by the Mediation of your Grace, my Noble Lords, and the Honourable Houſe of Commons, I may obtain it; ſolemnly proteſting, that in Gratitude for ſo ſignal a Deliverance, I will, to the End of my Life, remain a dutiful and obedient Subject to his moſt gracious and ſacred Majeſty King *George*.

Lord High-Steward. My Lord, for greater certainty, I ask your Lordſhip whether you have offered any thing in Arreſt of Judgment.

Lord Nairn. No, my Lords.

Serjeant at Arms. O Yes, O Yes, O Yes! Our ſovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence upon Pain of Impriſonment.

Lord High-Steward. JAMES Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*;

You ſtand impeached, by the Commons of *Great Britain* in Parliament aſſembled, of High Treaſon, in traiterouſly imagining, and compaſſing the Death of his moſt ſacred Majeſty, and in conſpiring for that end to levy a bloody and deſtructive War againſt his Majeſty, in order to depoſe and murder him; and in levying War accordingly, and proclaiming a Pretender to his Crown to be King of theſe Realms.

Which Impeachment, though one of your Lordſhips, in the Introduction to his Plea, ſuppoſes to be out of the ordinary and common Courſe of the Law and Juſtice, is yet as much a Courſe of Proceeding according to the Common Law, as any other whatſoever.

If you had been indicted, the Indictment muſt have been removed and brought before the Houſe of Lords (the Parliament ſitting.) In that caſe you had ('tis true) been accuſed only by the Grand Jury of one County; in the preſent, the whole Body of the Commons of *Great Britain*, by their Repreſentatives, are your Accuſers.

And this Circumſtance is very obſervable, (to exclude all poſſible Suppoſition of Hardſhip as to the Method of proceeding againſt you) That however all great Aſſemblies amongſt us are apt to differ on other Points, You were impeached by the unanimous Opinion of the Houſe of Commons (not one contradicting.)

They found themſelves, it ſeems, ſo much concern'd in the Preſervation of his moſt truly ſacred Majeſty, and the Proteſtant Succeſſion (the very Life and Soul of theſe Kingdoms) that they could not omit the firſt Opportunity of taking their proper Part, in order to ſo ſignal and neceſſary an Act of his Majeſty's Juſtice.

And thus the whole Body Politick of this free Kingdom has in a manner roſe up in its own Defence, for the Puniſhment of thoſe Crimes, which, 'twas rightly apprehended, had a direct Tendency to the everlaſting Diſſolution of it.

To this Impeachment you have ſeverally pleaded, and acknowledged yourſelves guilty of the High-Treaſon therein contained.

Your Pleas are accompanied with ſome Variety of Matter, to mitigate your Offences, and to obtain Mercy.

Part of which, as ſome of the Circumſtances ſaid to have attended your Surrender (ſeeming to be offer'd rather as Arguments only for Mercy, than any thing in Mitigation of your preceding Guilt) is not proper for me to take notice of.

But as to the other Part, which is meant to extenuate the Crimes of which you are convicted, it is fit I ſhould take this Occaſion to make ſome Obſervations to your Lordſhips upon it; to the end that the Judgment to be given againſt you may clearly appear to be Juſt and Righteous, as well as Legal; and that you may not remain under any fatal Error in reſpect of a greater Judicature, by reflecting with leſs Horror and Remorſe on the Guilt you have contracted than it really deſerves.

It is alledg'd by ſome of your Lordſhips, that you engaged in this Rebellion without previous Concert or Deliberation, and without ſuitable Preparations of Men, Horſes and Arms.

If this ſhould be ſuppoſed true, on ſome of your Lordſhips averring it, I deſire you to conſider, that as it exempts you from the Circumſtance of contriving this Treaſon, ſo it very much aggravates your Guilt in that Part you have undoubtedly born in the Execution of it.

For it ſhews, That your Inclinations to rebel were ſo well known (which cou'd only be from a continued Series of your Words and Actions) that the Contrivers of that horrid Deſign depended upon you, and therein judg'd rightly: That your Zeal to engage in this Treaſon was ſo ſtrong, as

to carry you into it on the leaſt Warning, and the very firſt Invitation: That you would not excuſe yourſelves by want of Preparation, as you might have done; and that rather than not have a Share in the Rebellion, you would plunge yourſelves into it, almoſt naked and unprovided for ſuch an Enterprize: In ſhort, that your Men, Horſes, and Arms were not ſo well prepared, as they might, and would have been on longer Warning; but your Minds were.

It is alledg'd alſo as an Extenuation of your Crime, that no cruel or harſh Action (I ſuppoſe is meant no Rapine or Plunder, or worſe) has been committed by you.

This may, in part only, be true. But then your Lordſhips will at the ſame time conſider, that the laying waſte a Tract of Land bears but a little proportion in point of Guilt, compared with that Crime of which you ſtand convicted; an open Attempt to deſtroy the beſt of Kings, to ruin the whole Fabrick, and raze the very Foundations of a Government, the beſt ſuited of any in the World, to perfect the Happineſs, and ſupport the Dignity of Human Nature: The former Offence cauſes but a Miſchief that is ſoon recover'd, and is uſually pretty much confin'd; the latter, had it ſucceeded, muſt have brought a laſting and univerſal Deſtruction on the whole Kingdom.

Beſides, much of this was owing to Accident; your March was ſo haſty, partly to avoid the King's Troops, and partly from a vain Hope to ſtir up Inſurrections in all the Counties you paſſed through, that you had not time to ſpread Devaſtation, without deviating from your main, and, as I have obſerv'd, much worſe Deſign.

Farther, 'tis very ſurprizing that any concern'd in this Rebellion ſhould lay their ingaging in it on the Government's doing a neceſſary and uſual Act in like caſes for its Preſervation; the giving Orders to confine ſuch as were moſt likely to join in that Treaſon: 'Tis hard to believe that any one ſhould rebel, merely to avoid being reſtrain'd from rebelling; or that a gentle Confinement would not much better have ſuited a crazy State of Health, than the Fatigues and Inconveniencies of ſuch long and haſty Marches in the depth of Winter.

Your Lordſhips riſing in Arms therefore, has much more juſtify'd the Prudence and Fitneſs of thoſe Orders, than thoſe Orders will in any wiſe ſerve to mitigate your Treaſon. Alas! happy had it been for all your Lordſhips had you fallen under ſo indulgent a Reſtraint!

When your Lordſhips ſhall in good earneſt apply your ſelves to think impartially on your Caſe, ſurely you will not your ſelves believe, that 'tis poſſible, in the nature of the thing, to be engaged, and continue ſo long engaged, in ſuch a difficult and laborious Enterprize, through Raſhneſs, Surprize, or Inadvertency: Or that, had the Attack at *Preſton* been leſs ſudden, (and conſequently the Rebels better prepared to receive it) your Lordſhips had been reduced the ſooner, and with leſs, if not without any Bloodſhed.

No, my Lords; theſe, and ſuch like, art artful Colourings proceeding from Minds fill'd with Expectation of continuing in this World; and not from ſuch as are preparing for their Defence before a Tribunal, where the Thoughts of the Heart, and the true Springs and Cauſes of Actions, muſt be laid open.

And now, my Lords, having thus removed ſome falſe Colours you have uſed; to aſſiſt you yet farther in that neceſſary Work of thinking on your great Offence as you ought, I proceed to touch upon ſeveral Circumſtances that ſeem greatly to aggravate your Crime, and which will deſerve your moſt ſerious Conſideration.

The Divine Virtues ('tis one of your Lordſhips own Epithets) which all the World as well as your Lordſhips acknowledge to be in his Majeſty, and which you now lay claim to, ought certainly to have with-held your Hands from endeavouring to depoſe, to deſtroy, to murder that moſt Excellent Prince; ſo the Impeachment ſpeaks, and ſo the Law conſtrues your Actions; and this is not only true in the Notion of Law, but almoſt always ſo in Deed and Reality: 'Tis a trite, but very true Remark, that there are but few Hours between Kings being reduced under the Power of Pretenders to their Crown, and their Graves. Had you ſucceeded, his Majeſty's Caſe would, I fear, have hardly been an Exception to that general Rule, ſince 'tis highly improbable, that Flight ſhould have ſaved any of that Illuſtrious and Valiant Family.

'Tis a farther Aggravation of your Crime, that his Majeſty, whom your Lordſhips would have dethron'd, affected not the Crown by Force, or by the Arts of Ambition, but ſucceeded peaceably and legally to it; and on the Deceaſe of her late Majeſty without Iſſue, became undoubtedly the next in courſe of Deſcent capable of ſucceeding to the Crown, by the Law and Conſtitution of this Kingdom; as it ſtood declared ſome Years before the Crown was expreſly limited to the Houſe of *Hanover*. This Right was acknowledg'd, and the Deſcent of the Crown limited or confirmed accordingly, by the whole Legiſlature in two ſucceſſive Reigns; and more than once in the later, which your Lordſhips Accomplices are very far from allowing, would biaſs the Nation to that ſide.

How could it then enter into the Heart of Men, to think that private Perſons might with a good Conſcience endeavour to ſubvert ſuch a Settlement, by running to tumultuary Arms; and by intoxicating the dreggs of the People with contradictory Opinions, and groundleſs Slanders; or that God's Providence would ever proſper ſuch wicked, ſuch ruinous Attempts?

Eſpecially if in the next place it be conſider'd, that the moſt fertile Inventions on the ſide of the Rebellion, have not been able to aſſign the leaſt ſhadow of a Grievance as the Cauſe of it: To ſuch poor Shifts have they been reduced on this Head, that for want of better Colours, it has been objected, in a ſolemn manner, by your Lordſhips Aſſociates, to his Majeſty's Government; that his People do not enjoy the Fruits of Peace as our Neighbours have done ſince the laſt War: Thus they firſt rob us of our Peace, and then upbraid us that we have it not. 'Tis a monſtrous Rebellion that can find no fault with the Government it invades, but what is the Effect of the Rebellion it ſelf.

Your Lordſhips will likewiſe do well to conſider what an additional Burthen your Treaſon has made neceſſary on the People of this Kingdom; who wanted, and were about to enjoy ſome Reſpite: To this end, 'tis well known, that all new, or encreaſe of Taxes, were the laſt Year carefully avoided,

avoided, and his Majeſty was contented to have no more Forces than were juſt ſufficient to attend his Perſon, and ſhut the Gates of a few Garriſons.

But what his Majeſty thus did for the Eaſe and Quiet of his People, you moſt ungratefully turn'd to his Diſadvantage, by taking Encouragement from thence, to endanger his and his Kingdoms Safety, and to bring Oppreſſion on your Fellow-Subjects.

Your Lordſhips obſerve I avoid expatiating on the Miſeries of a Civil War, a very large and copious Subject; I ſhall but barely ſuggeſt to you on that Head, that whatever thoſe Calamities may happen to be in the preſent Caſe, all who are at any Time or in any Place Partakers in the Rebellion (eſpecially Perſons of Figure and Diſtinction) are in ſome degree reſponſible for 'em: And therefore your Lordſhips muſt not hold your ſelves quite clear from the Guilt of thoſe Barbarities which have been lately committed, by ſuch as are engaged in the ſame Treaſon with you, and not yet perfectly reduced, in burning the Habitations of their Countrymen, and thereby expoſing many Thouſands to Cold and Hunger in this rigorous Seaſon.

I muſt be ſo juſt to ſuch of your Lordſhips, as profeſs the Religion of the Church of *Rome*, that you had one Temptation, and that a great one, to engage you in this Treaſon, which the others had not; in that 'twas evident, Succeſs on your part muſt for ever have eſtabliſh'd Popery in this Kingdom, and that probably you could never have again ſo fair an Opportunity.

But then, good God! how muſt thoſe Proteſtants be cover'd with Confuſion, who enter'd into the ſame Meaſures, without ſo much as capitulating for their Religion (that ever I could find from any Examination I have ſeen or heard) or ſo much as requiring, much leſs obtaining a frail Promiſe, that it ſhould be preſerv'd, or even tolerated.

It is my Duty to exhort your Lordſhips thus, to think of the Aggravations as well as the Mitigations (if there be any) of your Offences; and if I could have the leaſt Hopes, that the Prejudices of Habit and Education would not be too ſtrong for the moſt earneſt and charitable Entreaties; I would beg you not to rely any longer on thoſe Directors of your Conſciences, by whoſe Conduct you have, very probably, been led into this miſerable Condition; but that your Lordſhips would be aſſiſted by ſome of thoſe pious and learned Divines of the Church of *England*, who have conſtantly bore that infallible Mark of ſincere Chriſtians, univerſal Charity.

And now, my Lords, nothing remains, but that I pronounce upon you, (and ſorry I am that it falls to my Lot to do it) that terrible Sentence of the Law, which muſt be the ſame that is uſually given againſt the meaneſt Offender in the like Kind.

The moſt ignominious and painful Parts of it are uſually remitted by the Grace of the Crown to Perſons of your Quality; but the Law in this Caſe being deaf to all Diſtinctions of Perſons, requires I ſhould pronounce, and accordingly it is adjudg'd by this Court,

" That you, *James* Earl of *Derwentwater*,
" *William* Lord *Widdrington*, *William* Earl
" of *Nithiſdale*, *Robert* Earl of *Carnwath*,
" *William* Viſcount *Kenmure*, and *William*
" Lord *Nairn*, and every of you, return to
" the Priſon of the *Tower* from whence you
" came; from thence you muſt be drawn
" to the Place of Execution; when you
" come there, you muſt be hang'd by the
" Neck, but not till you be Dead; for you
" muſt be cut down alive, then your Bowels
" muſt be taken out, and burnt before your
" Faces; then your Heads muſt be ſever'd
" from your Bodies, and your Bodies di-
" vided each into four Quarters; and theſe
" muſt be at the King's diſpoſal.

And God Almighty be merciful to your Souls!

Serjeant at Arms. O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then the Lord High Steward ſtood up uncover'd, and declaring there was nothing more to be done by vertue of the preſent Commiſſion, broke the Staff, and pronounced it diſſolv'd: And then leaving the Chair, came down to the Woolpack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Houſe of Lords?

Lords. Ay, ay.

And then the Houſe adjourn'd to the Houſe above, and the Lords and others returned in the ſame Order they came down.

After Sentence paſt great Intereſt was made on their behalf for Mercy; inſomuch that the Houſe of Lords preſented an Addreſs to the King, *To Reprieve ſuch of them as ſhould deſerve his Mercy*; to which the King only anſwer'd, *That on this and all other Occaſions, he would do what he thought moſt conſiſtent with the Dignity of his Crown, and the Safety of his People.* However, Lord *Widdrington*, Lord *Carnwath*, and Lord *Nairn* were reprieved, and afterwards pardoned; but the other three, Lord *Derwentwater*, Lord *Nithiſdale*, and Lord *Kenmure* were order'd for Execution on *Febr.* 24.

The Earl of *Nithiſdale* eſcap'd the Blow, having found means of getting out of the *Tower* in Diſguiſe, the very Night before the Execution.

Early the next Morning the Scaffold on *Tower-Hill* was ſurrounded with the Guards, and a little before ten o'th' Clock the Earl of *Derwentwater* and the Lord Viſcount *Kenmure* were carried in an Hackney Coach from the *Tower* to the *Tranſport-Office* on *Tower-Hill*, where there was a Room hung with Black for their Reception, and there was a Paſſage or Gallery rail'd in, which led from thence to the Scaffold, which was alſo cover'd with Black.

The Earl of *Derwentwater* was firſt led to the Scaffold, where having ſpent ſome time in praying with a Book, he then addreſs'd himſelf to the Sheriff, and deſir'd the Liberty to read a Paper, which he had drawn up: This Requeſt being readily granted, he went to the Rails of the Scaffold and read as follows:

BEING in a few Minutes to appear before the Tribunal of God, where, tho' moſt unworthy, I hope to find Mercy, which I have not found from Men now in Power, I have endeavour'd to make my Peace with his Divine Majeſty, by moſt humbly begging Pardon for all the Sins of my Life; and I doubt

doubt not of a merciful Forgiveneſs, thro' the Merits of the Paſſion and Death of my Saviour Jeſus Chriſt; *for which End, I earneſtly deſire the Prayers of all good Chriſtians.*

After this, I am to aſk Pardon of thoſe whom I might have ſcandaliz'd by pleading guilty at my Trial. Such as were permitted to come to me, told me, that having been undeniably in Arms, pleading guilty was but the Conſequence of having ſubmitted to Mercy; and many Arguments were us'd to prove there was nothing of moment in ſo doing; among others, the univerſal Practice of ſigning Leaſes, whereof the Preambles run in the Name of the Perſon in Poſſeſſion.

But I am ſenſible that in this I have made bold with my Loyalty, having never own'd any other but King James *the Third for my rightful and lawful Sovereign; him I had an Inclination to ſerve from my Infancy, and was mov'd thereto by a natural Love I had to his Perſon, knowing him to be capable of making his People happy; and tho' he had been of a different Religion from mine, I ſhould have done for him all that lay in my Power, as my Anceſtors have done for his Predeceſſors, being thereto bound by the Laws of God and Man.*

Wherefore, if in this Affair I have acted raſhly, it ought not to affect the Innocent; I intended to wrong no Body, but to ſerve my King and Country, and that without Self-intereſt; hoping, by the Example I gave, to have induc'd others to their Duty; and God, who ſees the Secrets of my Heart, knows I ſpeak Truth. Some Means have been propos'd to me for ſaving my Life, which I look'd upon as inconſiſtent with Honour and Conſcience, and therefore I rejected them; for, with God's Aſſiſtance, I ſhall prefer any Death, to the doing a baſe unworthy Action. I only wiſh now, that the laying down my Life, might contribute to the Service of my King and Country, and the Re-eſtabliſhment of the ancient and fundamental Conſtitution of theſe Kingdoms; without which, no laſting Peace, or true Happineſs, can attend them; then I ſhould, indeed, part with Life even with Pleaſure: As it is, I can only pray, that theſe Bleſſings may be beſtow'd upon my dear Country; and ſince I can do no more, I beſeech God to accept of my Life, as a ſmall Sacrifice towards it.

I die a Roman Catholick; *I am in perfect Charity with all the World, I thank God for it, even with thoſe of the preſent Government, who are moſt inſtrumental in my Death. I freely forgive ſuch as ungenerouſly reported falſe Things of me; and I hope to be forgiven the Treſpaſſes of my Youth, by the Father of infinite Mercy; into whoſe Hand I commend my Soul.*

JA. DERWENTWATER.

P. S. *If that Prince who now governs, had given me my Life, I ſhould have thought my ſelf oblig'd never more to have taken up Arms againſt him.*

After the reading this Paper he deliver'd it to the Sheriff to do with it as he pleas'd. Then turning to the Block he view'd it cloſe, and finding in it a rough place, which might offend his Neck, he bid the Executioner chip it off. Having prepar'd himſelf for the Blow by pulling off his Coat and Waſtcoat, he lay down to fit his Head to the Block, telling the Executioner that the Sign he ſhould give him was, *Lord Jeſu receive my Soul*, and at the third time of repeating it he was to do his Office; which accordingly he did at one Blow.

Immediately after the Earl of *Derwentwater* was executed as above, the Lord *Kenmure* was brought to the Scaffold, accompany'd by his Son and ſome Friends, and attended by two Clergymen of the Church of *England*, which was the Religion he profeſs'd. He made no formal Speech, but teſtify'd his Sorrow for having pleaded guilty. Then laying down his Head on the Block, he rais'd it up again, and ſtill continuing on his Knees, gave the Executioner ſome Money, and told him, he would give him no Sign, but that when he laid down his Head again, he might perform his Office as he ſaw good. Then having lifted up his Hands a ſhort time in Prayer, he reſolutely laid down his Head, which at two Blows was ſever'd from his Body.

After his Execution a Letter was found which he wrote to the Pretender (by the Style of King *James*) in which he declar'd, *That he died for his faithful Services to his Majeſty, but hoped the Cauſe he died for would flouriſh after his Death: And as he ſuffered for his Service, he hop'd his Majeſty would provide for his Wife and Children.*

CLXXXIII. *The Trial of* George *Earl of* Wintoun, *upon an Impeachment for* High-Treaſon, March 15, 16, 19. 1715. 2 GEO. I.

Die Lunæ 9 Januarii, 1715.

THE Earl of *Wintoun* was impeach'd of High-Treaſon; and the Articles were brought up againſt him and read the ſame Day in the Houſe of Lords: And it was order'd that the ſaid Earl, with the other impeach'd Lords, ſhould be brought to the Bar of the Houſe of Lords the next Day, to hear the ſaid Articles read, and to abide ſuch further Order as the Houſe ſhould think fit to make concerning them.

Die Martis 10 Januarii, 1715.

The Earl of *Wintoun* and the other impeach'd Lords were brought to the Bar in the uſual Form; then the ſaid Articles of Impeachment were read unto them; after which the Lord Chancellor asked them ſeverally what they had to ſay thereunto, and acquainted them, that if they had any thing to requeſt of the Houſe this was their proper Time.

Thereupon the Earl of *Wintoun* acquainted the Houſe he was unprepared, and very ignorant of

the Forms of their Lordſhips Judicature, and deſired he might have a Copy of the ſaid Articles, and ſuch Time to anſwer as the Houſe ſhould think fit, and that Council might be aſſign'd to aſſiſt him. He was directed to withdraw; and being accordingly withdrawn, the Houſe took his Requeſts into Conſideration, and thereupon

Ordered, That his Lordſhip ſhould be allowed a Copy of the ſaid Articles of Impeachment, and Time till *Saturday* next to put in his Anſwer thereunto; and that Council ſhould be aſſign'd him in order to aſſiſt him in preparing his Anſwer, and likewiſe in his Defence in Matters of Law.

Then his Lordſhip was called in again, and the Lord Chancellor acquainted him with the ſaid Order, and that the Houſe expected he ſhould name ſuch Council as he deſired to have.

To which he anſwered, that no body was allow'd to come to him, he was a Stranger and unprepared, and deſired to be allowed Time to name his Council.

Then his Lordſhip being again withdrawn,

After ſome time he was again called in, and the Lord Chancellor, by Order of the Houſe, acquainted him, That the Houſe was pleaſed, beſides Council, to allow him a Sollicitor, and to give him leave to name whom he deſired to come to him this Evening or to-morrow Morning, in order to adviſe him in the naming of Council and Sollicitor.

To which purpoſe the Earl of *Wintoun* named Mr. *Hereot* a Clergyman, Mr. *Menzies*, Major *Sinclair*, and Mr. *George Leſly*, a Lawyer.

And then he again withdrew.

And the Names of the ſeveral Perſons mentioned by the Earl of *Wintoun* being read to him,

Ordered, That they have leave to repair to the ſaid Earl at any convenient Hour, any time before the ſitting of the Houſe to-morrow, in order to adviſe him in the naming of Council, and a Sollicitor to aſſiſt him in his Defence.

Ordered, That the ſeveral Lords impeached, or any of them, have Liberty to cauſe Search to be made, and Copies of Records and Journals to be taken out, in order to their Defence; and that the ſaid Lords ſhall have Summons iſſued for ſuch Witneſſes as they ſhall reſpectively ſend in the Names of, to be by them made uſe of at their Trials; which Witneſſes ſhall have the Protection of this Houſe for their ſafe coming and going, during the Time of the ſaid Trials.

Die Jovis 12 *Januarii*, 1715.

A Petition of *George* Earl of *Wintoun* was preſented to the Houſe and read, praying that he may have ſome further Time for nominating Council, and a Sollicitor to act for him, and in the mean time to allow his Friends formerly named to have acceſs to him; he having cauſed Application to be made to Sir *Thomas Powis*, and Mr. *Mead*, to have appeared for him, but they both excuſed themſelves.

Ordered, That the ſame Perſons before allow'd to go to the Petitioner, have leave to reſort to him at any ſeaſonable Time, before Eleven of the Clock to-morrow in the Forenoon, in order to the adviſing him in naming other Council, inſtead of thoſe who have refuſed.

Whereas by Order of this Houſe on *Tueſday* laſt, the Lords impeached were to put in their reſpective Anſwers to the Articles of Impeachment of High-Treaſon exhibited againſt them by the Houſe of Commons on *Saturday* laſt: The Houſe being this Day moved at the Requeſt of the Earl of *Derwentwater* and Lord *Widdrington*, to grant them further Time to put in their Anſwers to the ſaid Articles of Impeachment: It is Ordered, that all the ſaid Lords have hereby further Time allowed to put in their reſpective Anſwers to the ſaid Articles till *Monday* next at one of the Clock.

Die Lunæ 16 *Januarii*, 1715.

Whereas by Order of this Houſe on *Thurſday* laſt, the Lords impeached were allowed Time to put in their Anſwers till this Day to the Articles of Impeachment exhibited againſt them, the Houſe being this Day moved, in regard the Council aſſign'd ſome of the ſaid Lords refuſed to be concerned for them, that *Thurſday* next may be appointed peremptorily for them to put in their ſeveral Anſwers to the ſaid Articles: It is Ordered, That the ſeveral Lords do peremptorily put in their ſeveral Anſwers to the ſaid Articles on *Thurſday* next at one of the Clock; and that the Lieutenant of his Majeſty's Tower of *London* do bring to this Houſe, on that Day, by that Time, the ſaid ſeveral Lords for the Purpoſes aforeſaid; and that Notice be forthwith given them of this Order.

Die Jovis 19 *Januarii*, 1715.

The Earl of *Wintoun* was brought to the Bar, by the Gentleman-Uſher of the Black Rod, where he kneeled until the Lord Chancellor directed him to riſe, and his Lordſhip acquainted him with the above-mentioned Order, and demanded of him if he was ready to put in his Anſwer.

He ſaid he had a Petition to preſent to the Houſe: He was an entire Stranger to the Nature of their Lordſhips Proceedings, and deſired his Petition might be read; and the ſame was read as follows.

To the Right Honourable the Lords Spiritual and Temporal in Parliament Aſſembled.

The Humble Petition of *George* Earl of *Wintoun*,

Humly Sheweth,

THAT on *Thurſday* laſt I having applied to your Lordſhips, repreſenting how I had caus'd Application to be made to two Lawyers, to act as Council for me, in the Impeachment exhibited before your Lordſhips againſt me by the Honourable Houſe of Commons, and that they both declin'd to meddle, for Reaſons then given; your Lordſhips were pleas'd to allow me ſome more Time for nominating of Council, and Sollicitors, and this Day for giving in my Anſwers; but by Reaſon of my cloſe Confinement, and that your Lordſhips Order for allowing ſome Perſons to have acceſs to me, expired on *Friday* laſt at Eleven Forenoon; I have had no Opportunity of naming other Council and Sollicitors; nor can I have the Aſſiſtance of any, till they are appointed by your Lordſhips, and they allow'd acceſs to me.

That your Petitioner has ſeveral Specialities and Matters of great Moment, which he conceives neceſſary to be a Part of his Anſwers, and which cannot be drawn into Form, without the Aſſiſtance of his Council and Sollicitors.

Foraſmuch therefore as this Affair is to me of the greateſt Importance; may it pleaſe your Lordſhips to aſſign Sir *Conſtantine Phipps*, and Mr. *Peer Williams*, to be Council, and *Charles Menzies*, and Mr. *James Leſlie*, to be my Sollicitors; and to order that they may have acceſs to me from Time to Time during my Trial; as alſo that your Lordſhips would be pleas'd to allow Mr. *George Hereot*, a Miniſter of the Church of *England*, to have acceſs to me from Time to Time, ſeeing I am confin'd in a Room alone.

And your Petitioner ſhall ever pray, &c.

WINTOUN.

The ſaid Earl of *Wintoun* was directed to withdraw; and being withdrawn accordingly,

The Order made on *Thurſday* laſt upon his Petition was read, as alſo the ſeveral Orders made on *Monday* laſt.

Ordered, That the Council mentioned in the ſaid Petition be aſſigned him, and that either of the ſaid Sollicitors be likewiſe aſſigned, and that he have Time to put in his Anſwer to the ſaid Articles till *Monday* next. And that the Clergyman mention'd in his Petition, being his Relation, may have acceſs to him, provided he will ſtay in Cuſtody with him during his Confinement.

Then the Earl of *Wintoun* was again called in, and the Lord Chancellor acquainted him, that the Houſe had conſidered his Petition, and aſſign'd him the Council he deſir'd; and would aſſign him either of the two Sollicitors he ſhould chuſe; and that the Clergyman above-mentioned might come to him upon the Condition before expreſſed. Then the ſaid Earl of *Wintoun* naming Mr. *Menzies*, the Houſe accordingly aſſign'd him for his Sollicitor, and Ordered, that the ſaid Council and Sollicitor may have acceſs to him from Time to Time at all ſeaſonable Hours; and he withdrew.

Die Sabbati 21 *Januarii* 1715.

A Petition of *George* Earl of *Wintoun* was preſented to the Houſe and read, praying that their Lordſhips will allow him ſuch further Time for putting in his Anſwer, as their Lordſhips ſhall think fit.

Ordered, That the ſaid Petition be rejected.

Die Lunæ 23 *Januarii*, 1715.

The Earl of *Wintoun* being brought to the Houſe according to Order by the Lieutenant of the Tower, the Gentleman-Uſher was commanded to bring him to the Bar, where he kneel'd until he was directed by the Lord Chancellor to riſe; and his Lordſhip acquainted him that this was the peremptory Day appointed by the Houſe for his putting in his Anſwer to the Articles of Impeachment exhibited againſt him by the Houſe of Commons, and asked him if he was ready to put in his Anſwer.

He thereupon made ſome Excuſes, and deſired further Time for that purpoſe;

And was directed to withdraw.

Ordered, That the Earl of *Wintoun* be called in, and acquainted, that this Houſe, upon conſidering his Petition on *Saturday* laſt, for further Time to put in his Anſwer to the Articles of Impeachment exhibited againſt him, did reject his ſaid Petition; and having indulged him more than any of the Lords impeached, are ſtill of Opinion (this being the peremptory Day for putting in his Anſwer) to allow him no further Time, and that the Conſequence of his refuſing to plead which will enſue in Law is, that Judgment will be awarded againſt him, as if he had pleaded guilty. Then,

He was accordingly called in, and the Lord Chancellor acquainted him with the ſaid Matter.

He thereupon delivered in at the Bar his Anſwer fairly engroſſed on Parchment, which was read.

Die Sabbati 28 *Januarii*, 1715.

The Commons replied to the Anſwer of the Earl of *Wintoun*.

Die Mercurii 8 *Februarii*, 1715.

Ordered, By the Lords Spiritual and Temporal in Parliament aſſembled, that *Thurſday* the ſixteenth Day of this inſtant *February* be, and is hereby appointed for the Trial of *George* Earl of *Wintoun* at the Bar of this Houſe in *Weſtminſter-Hall*, upon the Impeachment of High-Treaſon exhibited againſt him by the Houſe of Commons.

Die Veneris 10 *Februarii*, 1715.

Upon reading the Petition of *George* Earl of *Wintoun*, ſetting forth, that he had a Petition in the Houſe on *Wedneſday* laſt, when their Lordſhips appointed *Thurſday* next for the Petitioner's Trial, deſiring that Conſideration might be had to the diſtance of the Place, and the Seaſon of the Year, for bringing up of his Witneſſes, both Men and Women, from *Scotland*, and other Parts; but the Noble Peer who promiſed, and would have moved the ſaid Petition, not being preſent at the Time of making the Motion for appointing a Day of Trial, the ſaid Petition was not preſented in Form, which occaſion'd the Appointment of ſo ſhort a Time, wherein it is altogether impoſſible to prepare any thing in order for the ſaid Trial: And praying that this Houſe will grant an Order to compel the ſeveral Witneſſes following (*viz.*) *John Gordon*, *George Trotter*, *George Hogg*, *John Stewart*, all Servitors to the Earl of *Wintoun*, —— *Beatoun*, Wife to Mr. *David Nicholſon* in *Tranent*, *Adam Purvis*, Clerk of the Epiſcopal Meeting-Houſe in *Tranent*, *Chriſtopher Seton* in *Port-Seton*, Lieutenant-General —— *Wills*, —— *Forſter*, Eſq; —— *Miller*, Eſq; Capt. *Alexander Streton*, —— *Mackintoſh* of *Bordlim*, —— *Aenſlie*, and —— *Tod*, Bailiffs of *Muſſelbrough*, and the School-maſter of *Fiſherau*, to appear before this Houſe at the Trial, to give Evidence on behalf of the Petitioner; and to allow ſuch Time for their coming hither, as, in regard to the Diſtance of the Place, and the Seaſon of the Year, and the Importance of the

Affair, their Lordſhips, in their great Wiſdom and Juſtice ſhall think reaſonable: It is Ordered, That the Time appointed for the Trial of the Petitioner in *Weſtminſter-Hall* be, and is hereby, enlarged to *Thurſday* the eighth Day of *March* next: And that the ſeveral Perſons afore-named be, and are hereby required, to attend this Houſe on *Thurſday* the ſaid eighth Day of *March*, as Witneſſes on behalf of the Petitioner, except ſuch of the ſaid Perſons as are now Priſoners for High-Treaſon; and that they ſhall have the Protection of this Houſe for their ſafe coming and going, during the Time of the ſaid Trial.

Trial put off to Thursday March 8.

Die Lunæ 5 Martii, 1715.

Upon reading the Petition of *George* Earl of *Wintoun*, ſetting forth, that his Agents have uſed all Diligence poſſible in ſerving the Order of this Houſe for the Attendance of his Witneſſes; and now they are all on their Way hither, part by Sea and part by Land: And that the Nature of his Defence is ſuch, that if the Witneſſes were arrived, as none of them are, the Time would be too ſhort to prepare his Briefs, and inſtruct his Council; and praying that the Time appointed for his ſaid Trial, may be enlarged for ſuch Time as their Lordſhips, in their great Juſtice and Wiſdom, ſhall think proper, in a Caſe of ſo great Conſequence: It is order'd, that the Time appointed for the Petitioner's Trial be, and is hereby enlarged till *Thurſday* the fifteenth Day of this inſtant *March*, at ten of the Clock in the Forenoon.

Die Lunæ 12 Martii, 1715.

A Petition of *George* Earl of *Wintoun* was preſented to the Houſe and read, ſetting forth, that his Agents have uſed all poſſible Diligence in getting his Witneſſes hither, and ſeveral of them are lately arrived, but four of the moſt material of them, tho' they all be on their Way hither, are not yet come up, ſome of them being lame and others very infirm, ſo that they are not able to travel ſo quickly; and praying, that the Time appointed for his Trial may be enlarged for ſuch Time as their Lordſhips, in their great Juſtice and Wiſdom, ſhall think proper, in a Caſe of ſo great Concern.

And after Debate thereupon, and reading the Orders made in relation to the ſaid Trial, *Charles Menzies*, the Petitioner's Solicitor, was called in and examined upon Oath at the Bar, touching the Allegations of the ſaid Petition; and failing to make good the ſame;

And being withdrawn,

It was moved to reject the Petition.

And the Queſtion being put whether the ſaid Petition ſhall be rejected, it was reſolved in the Affirmative.

Die Martis 13 Martii, 1715.

Several Orders were made for preſerving the Peace, and touching the Courſe of Proceeding, to, and at the enſuing Trial; and among them,

Ordered, That the Council aſſigned the ſaid Earl of *Wintoun* may be preſent when he is at the Bar, in order to be heard touching any Point or Matter of Law, if any ſuch ſhall ariſe.

Die Mercurii 14 Martii, 1715.

Upon reading the Petition of *George* Earl of *Wintoun*, praying that this Houſe will be pleaſed to aſſign, and add Mr. *Kettelby*, and Dr. *Strahan* to his Council formerly named, and that they may have acceſs to him during his Confinement: It is Ordered, that the Council above-mentioned be aſſigned the Petitioner, to be heard to Matters of Law, but not to Matters of Fact, ſo as not to put off the Petitioner's Trial, and that they, or either of them have acceſs to the Petitioner from Time to Time, at all ſeaſonable Times.

A Motion being made, that the following Perſons, whoſe Names were contained in a Liſt exhibited at the ſame Time, on behalf of the Earl of *Wintoun*, might be ſummon'd as Witneſſes for the ſaid Earl at his Trial; being then, as alledg'd, in or near the City of *London*.

Ordered, By the Lords Spiritual and Temporal in Parliament aſſembled, that *John Gordon* of *Kirkhill*, *Alexander Nisbet* Writer in *Edinburgh*, *William Knox*, *Thomas Baine*, *John Watteſone*, all three of *Seaton*, Mrs. *Magdalen Corſbie* of *Canongate*, *Agnes Duncan* of *Seaton*, Dr. *Lidderdale* a Phyſician, Dr. *Cockburne* a Divine, Dr. *John Inglis*, Major *Sinclair*, *George Trotter*, and *George Hogg* of *Seaton*, be and are hereby required to attend this Houſe in *Weſtminſter-Hall*, to-morrow at ten of the Clock in the Forenoon, in order to be examined as Witneſſes, on the behalf of *George* Earl of *Wintoun* at his Trial.

The Houſe being informed that the Earl of *Wintoun* deſired that General *Carpenter* might be examined as a Witneſs at his Trial:

The ſaid General *Carpenter* being a Member of the Houſe of Commons;

A Meſſage was ſent to that Houſe by Mr. *Holford* and Mr. *Lovibond*, to acquaint them, that the Lords do deſire that they will give leave to the ſaid General *Carpenter* to be examined at the ſaid Earl's Trial.

Ordered, That the Witneſſes which ſhall be produced by the Earl of *Wintoun* to be examined in his Defence, ſhall be examined upon Oath, which Oath to be adminiſter'd to the Witneſſes on both Sides at the ſaid Trial ſhall be this:

> *The Evidence which you ſhall give in this Trial, concerning* George *Earl of* Wintoun, *Priſoner at the Bar, ſhall be the Truth, the whole Truth, and nothing but the Truth.*
>
> So help you God, and the Contents of this Book.

Die Jovis 15 Martii, 1715.

The Meſſengers ſent Yeſterday to the Houſe of Commons return Anſwer, That the Commons have given leave to General *Carpenter* to be examined as a Witneſs at the Trial of *George* Earl of *Wintoun*.

The Houſe was then adjourn'd to *Weſtminſter-Hall*.

Begun in Weſtminſter-Hall *on* Thurſday, March 15, 17^{15}_{16}.

The Firſt Day.

ABOUT one of the Clock, the Lords came from their own Houſe into the Court erected in *Weſtminſter-Hall*, in the manner following.

The

The Lord High-Steward's Gentlemen Attendants, two and two.

The Clerks Aſſiſtant to the Houſe of Lords, and the Clerk of the Parliament, with the Clerk of the Crown in the Court of Chancery; the Clerk of the Parliament bearing the King's Commiſſion to the Lord High-Steward.

The Maſters in Chancery, two and two.

Then the Judges.

The Peers Eldeſt Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeoman Uſhers of the Houſe.

Then the Peers, two and two, beginning with the youngeſt Barons.

Then four Serjeants at Arms with their Maces.

The Serjeant at Arms attending the Great-Seal, and Purſe-Bearer.

Then Garter King at Arms; and the Gentleman-Uſher of the Black Rod, carrying the White Staff before the Lord High-Steward.

William Lord *Cowper.* The Lord High-Steward alone, his Train borne.

When the Lords were placed in their proper Seats, and the Lord High-Steward upon the Wool-Pack,

The Clerk of the Crown, in the Court of Chancery, ſtanding before the Clerk's Table, with his Face towards the State, having his Majeſty's Commiſſion to the Lord High-Steward in his Hand, made three Reverences towards the Lord High-Steward; and, on his Knee, preſented the Commiſſion to the Lord High-Steward; after which, and uſual Reverences, the ſame was carried down to the Table: And then Proclamation for Silence was made in this manner:

O Yes, O Yes, O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then the Lord High-Steward ſtood up, and ſpoke to the Peers.

Lord High-Steward. His Majeſty's Commiſſion is going to be read; your Lordſhips are deſired to attend.

All the Peers uncovered themſelves, and they and all others ſtood up uncovered while the Commiſſion was reading.

GEORGIUS R.

GEORGIUS, Dei Gratia, Magnæ Britanniæ, Franciæ & Hiberniæ Rex, Fidei Defenſor, &c. Prædilecto & Fideli Conſiliario noſtro Willielmo Domino Cowper, Cancellario noſtro Magnæ Britanniæ, Salutem. Cum Georgius Comes de Winton, cum aliis, coram Nobis in præſenti Parliamento, per Milites, Cives & Burgenſes in Parliamento noſtro Aſſemblat' de alta Proditione per ipſum Georgium Comitem de Winton, & al' commiſſ' & perpetrat' in nomine ipſorum Militum, Civium & Burgenſium, & nomine omnium Communium Regni noſtri Magnæ Britanniæ impetit' & accuſat' exiſtit. Nos conſiderantes quod Juſtitia eſt Virtus excellens & Altiſſimo complacens, Volenteſque quod prædict' Georgius Comes de Winton, de & pro Proditione unde ipſe ut præfertur impetit' & accuſat' exiſtit coram Nobis in præſenti Parliamento noſtro, ſecundum Leg' & Conſuetudinem hujus Regni noſtri Magnæ Britanniæ, & ſecundum Conſuetudinem Parliamenti audiatur, ſententietur & adjudicetur, cæteraque omnia quæ in hac parte pertinent debito modo exerceantur & exequantur, ac pro eo quod Proceres & Magnates in præſenti Parliamento noſtro aſſemblat' Nobis humiliter ſupplicaverunt ut Seneſcallum Magnæ Britanniæ pro hac vice conſtituere dignaremur. Nos de fidelitate, prudentia, provida circumſpectione, & induſtria veſtris plurimum confidentes, Ordinavimus & Conſtituimus vos ex hac Cauſa Seneſcallum Magnæ Britanniæ ad Officium illud, cum omnibus eidem Officio in hac parte debit' & pertinen' (hac vice) gerend' occupand' & exercend'. Et ideo vobis Mandamus quod circa præmiſſa diligenter intendatis, & omnia quæ in hac parte ad Officium Seneſcalli Magnæ Britanniæ pertinent & requiruntur hac vice faciatis, exerceatis, & exequamini cum effectu. In cujus rei Teſtimonium has Literas noſtras fieri fecimus Patentes, Teſte meipſo apud Weſtm' Decimo Quinto Die

Per ipſum Regem propria Manu Signat'

Wrighte.

Serjeant at Arms. God ſave the King.

Then the Herald and Gentleman Uſher of the Black Rod, after three Reverences, kneeling, preſented the White Staff to his Grace; and then his Grace, attended by the Herald, Black Rod and Seal-Bearer (making his proper Reverences towards the Throne) removed from the Wool-Pack to an armed Chair, which was placed on the uppermoſt Step but one of the Throne, as it was prepared for that purpoſe, and then ſeated himſelf in the Chair, and delivered the Staff to the Gentleman Uſher of the Black Rod on his Right Hand, the Seal-Bearer holding the Purſe on the Left.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made, as follows.

O Yes, O Yes, O Yes! Lieutenant of the Tower of *London* bring forth your Priſoner to the Bar, according to the Order of the Houſe of Lords to you directed.

Then *George* Earl of *Wintoun* was brought to the Bar by the Deputy Governour of the Tower, having the Ax carried before him by the Gentleman Jaylor, who ſtood with it on the Left Hand of the Priſoner, with the Edge turned from him. The Priſoner when he approached the Bar (after kneeling) bowed to his Grace the Lord High-Steward, and to the Houſe of Peers; which Compliment was returned him by his Grace, and the Houſe of Peers.

And Proclamation being again made for keeping Silence,

The Lord High-Steward ſpake to the Priſoner as follows.

George Earl of *Wintoun*, you are brought to the Bar of this Auguſt Judicature, in order to a fair and impartial Trial, on the Impeachment of High-Treaſon exhibited againſt you by the Commons of *Great-Britain* in Parliament aſſembled; to which you have anſwered, and pleaded Not Guilty: Thereupon the Commons have replied, and undertaken to prove you Guilty of the High-Treaſon whereof you ſtand impeached.

Under this heavy Charge (of which your Lordſhip has long ſince had a Copy, and which you will now hear read again) nothing can be a greater Support to your Mind (eſpecially if not conſcious of Guilt) than to conſider, that you are about to be tried by your Peers; not any ſelect Number of them, but by their whole Body aſſembled in Parliament, and indifferently ſummoned to attend this Trial.

Hence your Lordſhip may be aſſured, that Juſtice will be adminiſter'd to you, attended not only with that common Degree of Compaſſion which Humanity itſelf derives to Perſons in your Condition, but alſo with that extraordinary Concern for you, which naturally flows from a Parity of Circumſtances common to yourſelf, and to them who judge you, (thoſe Bonds, the weighty Accuſation laid upon you, with its Conſequences, almoſt only excepted.)

On the other hand, you muſt not hope, that if you ſhall be clearly prov'd guilty, their Lordſhips, being under the ſtrongeſt Obligation to do Right that can be laid on noble Minds, I mean that of their Honour, will not break through all the Difficulties unmerited Pity may put in their way, to do perfect Juſtice upon you, however miſerable that muſt render your Condition.

Your Lordſhip will not be interrupted while you are making your Defence in a proper manner; and therefore you will alſo attend with Patience to what ſhall be ſaid by the Managers of the Houſe of Commons, or given in Evidence againſt you.

When any of the Witneſſes produced againſt you by the Gentlemen of the Houſe of Commons are thoroughly examined by them, your Lordſhip will have Liberty to croſs-examine every Witneſs before another is called.

But the Council aſſigned you are not to croſs-examine any Witneſſes, nor to give you any Aſſiſtance publick or private, while Matter of Fact only is in Queſtion; but if any Matter of Law ariſe during the Courſe of your Trial, they may ſpeak to it in your Lordſhip's Behalf: And to that End they are permitted to be within hearing, that they may be the more ready and able to ſerve your Lordſhip on ſuch Occaſion.

Your Lordſhip is the firſt that on an Impeachment for High-Treaſon will have had the Benefit of a good Law made in the firſt Year of the late Queen (ſince the Revolution;) whereby in all Trials for High-Treaſon, as well as other capital Offences mentioned in the Act, the Witneſſes produced on the Part of the Priſoner are to be examined on their Oaths: So that your Witneſſes will become entitled, in Reſpect of the Obligation under which they give their Teſtimony, to the ſame Degree of Credit as the Witneſſes produced againſt you will be.

I take it for granted, that if your Lordſhip deſires it, you will be allowed the Uſe of Pen, Ink, and Paper, to take Notes in order to your Defence: And I doubt not but if during the Trial you are obſerved to omit any juſt Advantage which the Law allows you, I ſhall not only be excuſed, but approved, if I put you in mind of it.

I am alſo commanded to acquaint your Lordſhip, that when you have Occaſion to ſpeak you are to addreſs yourſelf to the Lords in general, and not to any Lord in particular; as all others who ſhall have Occaſion to ſpeak in this Trial will likewiſe take notice they are to do.

The Lord High-Steward having done, commanded the Articles of Impeachment, and the Earl of *Wintoun*'s Anſwer thereunto, as alſo the Replication of the Commons to the ſaid Anſwer, to be read; and the ſame were read accordingly, as follows.

ARTICLES *of Impeachment of High-Treaſon exhibited againſt* James *Earl of* Derwentwater, William *Lord* Widdrington, William *Earl of* Nithiſdale, George *Earl of* Wintoun, Robert *Earl of* Carnwath, William *Viſcount* Kenmure, *and* William *Lord* Nairn.

WHEREAS for many Years laſt a moſt wicked Deſign and Contrivance has been formed and carried on, to ſubvert the ancient and eſtabliſhed Government, and the good Laws of theſe Kingdoms, to extirpate the true Proteſtant Religion therein eſtabliſhed, and to deſtroy its Profeſſors; and inſtead thereof, to introduce and ſettle Popery and Arbitrary Power; in which unnatural and horrid Conſpiracy great Numbers of Perſons of different Degrees and Qualities have concerned themſelves and acted; and many Proteſtants, pretending an uncommon Zeal for the Church of *England*, have joined themſelves with profeſſed Papiſts, uniting their Endeavours to accompliſh and execute the aforeſaid wicked and traiterous Deſigns:

And whereas it pleaſed Almighty God in his good Providence, and in his great Mercy and Goodneſs to theſe Nations, to crown the unwearied Endeavours of his late Majeſty King *William* the Third of ever-glorious Memory, by making him the Inſtrument to procure the Settlement of the Crown of theſe Realms in the Illuſtrious Houſe of *Hanover*, as the only Means under God to preſerve our Religion, Laws and Liberties, and to ſecure the Proteſtant Intereſt of *Europe*; ſince which happy Eſtabliſhment the ſaid Conſpirators have been indefatigable in their Endeavours to deſtroy the ſame, and to make Way for the vain and groundleſs Hopes of a ſpurious Impoſtor and Popiſh Pretender to the Imperial Crown of theſe Realms.

And to accompliſh theſe Ends, the moſt immoral, irreligious and unchriſtian-like Methods have been taken, but more particularly in the laſt Years of the Reign of the late Queen *Anne*, during which Time all imaginable Endeavours were uſed by the ſaid Conſpirators to prejudice the Minds of the Subjects of this Realm againſt the Legality and Juſtice of the ſaid Settlement of the Crown: And for that purpoſe the Holy Scriptures were wreſted, and the moſt wholſome Doctrines of the Church of *England* perverted and abuſed by Men in Holy Orders, in the moſt publick and ſcandalous Manner, in order to condemn the Juſtice of the late happy Revolution; and thereby to ſap and undermine the Foundation of the ſaid happy Eſtabliſhment; and the moſt notorious Inſtruments of theſe wicked Purpoſes were countenanced by particular Marks of publick Favour and Diſtinction; falſe and dangerous Notions of a ſole Hereditary Right to the Imperial Crown of theſe Realms were propagated and encouraged by Perſons in the higheſt Truſt and Employments, contrary to the ancient, undoubted

doubted and eſtabliſhed Laws of theſe Kingdoms; jeſuitical and ſcandalous Diſtinctions were invented and publickly inculcated, to enervate the Force and Obligation of thoſe Oaths which had been contrived in the plaineſt and ſtrongeſt Terms by the Wiſdom of Parliament for the Security of the ſaid Eſtabliſhment; and to conceal their Deſigns, and thereby the better to enable them to carry on the ſame, great Numbers of the ſaid Conſpirators of all Ranks and Conditions, pretending a Zeal for the Proteſtant Succeſſion, openly and voluntarily took the ſaid Oaths; groundleſs Fears of the Danger of the Church of *England* were fomented throughout theſe Kingdoms, to diſorder the Minds of well-diſpoſed Proteſtants.

By all which and many other ſuch ungodly Practices of the ſaid Conſpirators, the moſt cauſeleſs and dangerous Jealouſies and Diſſatisfactions were created in the Minds of the good People of this Kingdom, and great Numbers of well-meaning, but deluded Proteſtants were much diſquieted.

But nevertheleſs theſe diſhoneſt Methods were purſued by the ſaid Conſpirators with indefatigable Induſtry, as the only Means to weaken the Foundations of the ſaid happy Eſtabliſhment.

And whereas the Diſſolution of the late glorious Confederacy againſt *France*, and the Loſs of the Ballance of Power in *Europe*, were further Steps neceſſary to compleat the Deſigns of the ſaid Conſpirators; and the ſame being effected by the late ignominious Peace with *France*, the *French* King was render'd formidable, and the Proteſtant Succeſſion was thereby brought into the moſt imminent Danger; and by theſe and other pernicious Meaſures, the Deſtruction ſo long intended by the ſaid Conſpirators, for theſe poor Nations, ſeemed near at Hand.

At which Time, and under which moſt deplorable Circumſtances, it pleaſed Almighty God in his infinite Wiſdom to call to himſelf the late Queen *Anne*, and by a Concurrence of many moſt wonderful Providences to give a quiet and peaceable Acceſſion to his preſent moſt Gracious Majeſty to the Throne of his Anceſtors, to which he was received with one full Voice and Conſent of Tongue and Heart, and the united Joy of every good Subject and good Proteſtant, as their only lawful and rightful Liege Lord; and altho' from the Moment his Majeſty aſcended the Throne to this Day, his Reign has been one Series of Wiſdom, Juſtice and Clemency; his Labours conſtant, unwearied and ſucceſsful to retrieve the Honour and Reputation of theſe Nations; to re-eſtabliſh the Trade and recover the Wealth of his Kingdoms; and although all imaginable Encouragement has been given to the Church of *England*, and all Tenderneſs ſhewn even to his Popiſh Subjects, and his conſtant Care has been to procure the univerſal Good of his People; nevertheleſs the ſaid Conſpirators have, by the moſt vile and impious Methods, renewed their Endeavours to throw theſe Kingdoms into the utmoſt Confuſion, and to entail endleſs Miſeries on us and our Poſterities: For theſe Ends many of the abovementioned moſt wicked and dangerous Practices have been repeated with the utmoſt Induſtry and Inveteracy, to delude, diſorder and corrupt the Minds of his Majeſty's good Subjects; the moſt groundleſs Jealouſies have been fomented againſt his wiſe and happy Adminiſtration, and in many Parts of his Kingdoms the moſt unnatural, unexampled Riots and Tumults, by the ſecret and malicious Endeavours of the ſaid Conſpirators, have been procured, ſtirred up, and encouraged againſt his peaceable Proteſtant Subjects, under falſe Pretences of Zeal for the Church of *England*, and thereby more effectually to delude his good Subjects, and ſeduce them from their Allegiance, and prepare them for an open Rebellion.

And the ſaid Conſpirators having at length reſolved to deprive theſe Nations of the invaluable Bleſſings which they now enjoy under the wiſe and gentle Reign of his preſent moſt gracious Majeſty King *George*, and of the certain Proſpect of Happineſs which they have for their Poſterity, in a Succeſſion of Princes derived from himſelf; did contrive, confederate, and reſolve to put their moſt malicious, wicked, and traiterous Deſigns into immediate Execution; for which purpoſe, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, together with *Thomas Forſter*, Jun. the Lord *Charles Murray*, *Edward Howard*, *Thomas Errington*, *John Clavering*, *William Shaftoe*, Sir *Francis Anderton*, *Ralph Standiſh*, *Richard Townly*, *Thomas Butler*, *Thomas Walton*, *Gabriel Haſket*, *Richard Gaſcoigne*, and divers other Perſons, as falſe Traitors to his preſent moſt ſacred Majeſty King *George*, the only lawful and undoubted Sovereign of theſe Kingdoms, having withdrawn their Allegiance, and cordial Love, and true and due Obedience, which they as good and faithful Subjects owed to his ſaid Majeſty, did, in or about the Months of *September*, *October*, or *November*, 1715. moſt wickedly, maliciouſly, falſely and traiterouſly imagine and compaſs the Death of his ſaid moſt ſacred Majeſty.

And for the accompliſhing and executing their ſaid traiterous Purpoſe, they the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, did, in or about the ſaid Months, or ſome of them, and at divers other Times, and in divers Places within this Kingdom, wickedly and traiterouſly agree, confederate, conſpire, and reſolve, together with many other evil-diſpoſed Perſons, to raiſe, excite, and levy within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and the County *Palatine* of *Lancaſter*, and elſewhere within this Kingdom, a moſt cruel, bloody, and deſtructive War, againſt his Majeſty, in order to depoſe and murther his ſacred Majeſty, and to deprive him of his Royal State, Crown and Dignity.

And the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, their Accomplices and Confederates, in or about the Months aforeſaid, in the Counties aforeſaid, or ſome of them, did gather together great Numbers of his Majeſty's Subjects, and with them did aſſemble in a warlike and traiterous Manner, in order to raiſe Tumults and Rebellion within this Kingdom, and having procured great Quantities of Arms, Ammunition and warlike Inſtruments, at the Times and Places aforeſaid, or ſome of them, did form and compoſe, or did

aſſiſt

aſſiſt in the forming and compoſing an Army of Men, conſiſting of his Majeſty's Liege Subjects, in order to wage War againſt his ſaid Majeſty, for and in behalf and in favour of the ſaid Pretender to the Crown of theſe Realms; and the ſaid laſt mentioned Conſpirators, their Accomplices and Confederates, at the Time and Times and Places aforeſaid; and at divers other Times and Places within this Kingdom, did maliciouſly and traiterouſly make, levy, and raiſe War and Rebellion againſt his moſt ſacred Majeſty; and in a warlike and hoſtile Manner did march thro' and invade ſeveral Parts of this Kingdom; and did unlawfully take and ſeize the Horſes and other the Goods and Chattels of many of the peaceable and good Subjects of his Majeſty, and in other Places did take and ſeize, from his Majeſty's faithful Subjects, Guns, and other warlike Inſtruments, for the carrying on their traiterous Purpoſes.

And the ſaid laſt mentioned Conſpirators, their Complices and Confederates, during their March and Invaſion aforeſaid, in open Defiance of his moſt ſacred Majeſty's juſt and undoubted Title to the Imperial Crown of theſe Realms, did wickedly and traiterouſly cauſe and procure the ſaid Pretender to be proclaimed, in the moſt publick and ſolemn Manner, as King of theſe Realms; and in ſeveral Places in the Counties aforeſaid, or ſome of them, did unlawfully take and ſeize from his Majeſty's Officers of the Revenue the publick Money, for the Uſe and Service of the ſaid Pretender; and tho' many of the Conſpirators are avowed Profeſſors of the Popiſh Religion, yet the more effectually to cover and diſguiſe their moſt wicked and traiterous Deſigns, and to delude his Majeſty's Subjects, they did prevail on and procure ſeveral Men in Holy Orders, Miniſters of the Church of *England*, and who had before that Time abjured the ſaid Pretender, to accompany, countenance and abet the ſaid moſt traiterous Enterprize; and in ſeveral Places in the Counties aforeſaid, where the ſaid Conſpirators, their Complices and Confederates then were, to pray for the ſaid Pretender in the publick Churches, as King of theſe Realms.

That the ſaid laſt mentioned Conſpirators, their Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth or Thirteenth of *November* aforeſaid, traiterouſly ſeize and poſſeſs themſelves of the Town of *Preſton* in the County *Palatine* of *Lancaſter* againſt his Majeſty, and did then and there in a warlike and hoſtile Manner levy War, oppoſe, engage, and fight againſt his Majeſty's Forces; and did then and there cauſe and procure a miſerable and horrid Slaughter and Murther of many of his Majeſty's faithful Subjects.

All which Treaſons and Crimes abovementioned were contrived, committed, perpetrated, acted and done, by the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, and other the Conſpirators aforeſaid, againſt our Sovereign Lord the King, his Crown and Dignity; and contrary to the Duty of their Allegiance, and againſt the Laws and Statutes of this Kingdom.

Of all which Treaſons and Crimes, the Knights, Citizens and Burgeſſes in Parliament aſſembled, do, in the Name of themſelves and of all the Commons of *Great Britain*, impeach the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, and every of them.

And the ſaid Commons by Proteſtation ſaving to themſelves the Liberty of exhibiting at any time hereafter any other Accuſations or Impeachments againſt the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, or any of them; and alſo of replying to the Anſwers which the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, or any of them, ſhall make to the Premiſſes, or any of them, or to any Impeachment or Accuſation that ſhall be by them exhibited according to the Courſe and Proceedings of Parliament; and do pray, that the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, be put to anſwer all and every the Premiſſes: And that ſuch Proceedings, Examinations, Trials and Judgments may be upon them and every of them had and uſed as ſhall be agreeable to Law and Juſtice.

The Anſwer of George *Earl of* Wintoun, *to the Articles of Impeachment exhibited againſt him by the Honourable Houſe of Commons, for High-Treaſon, and other High Crimes and Miſdemeanours.*

THE ſaid Earl ſaving to himſelf all Benefit of Exception to the Incertainties and Inſufficiencies in the ſaid Articles of Impeachment contained, and alſo all Advantages and Privileges belonging to him as a Peer of *Great Britain*, for Anſwer to the ſaid Articles ſays, That he cannot but eſteem it the greateſt Addition to his Afflictions, to fall under the Diſpleaſure of the Honourable Houſe of Commons: Yet as his Innocence under theſe Misfortunes is his Support, ſo he hopes it will be his Security. He being taken with Perſons that were in Arms againſt the Government, might reaſonably be preſumed to be equally guilty, and to be juſtly joined with them in the ſame Impeachment; but when it ſhall appear how much the Circumſtances of his Caſe differ from others, he does not doubt but your Lordſhips great Juſtice will diſtinguiſh him in Judgment; and that it will be as pleaſing to that Honourable Body, who are his Accuſers, to have an innocent Man acquitted, as one that is guilty condemned. He begs leave to take notice, that he is deſcended from a very ancient, noble Family, in whoſe Blood the Streams of Loyalty were always pure, never corrupted or polluted with Treaſon or Sedition; and he never degenerated ſo much from his Loyal Anceſtors, as to form or carry on any Deſign to ſubvert or alter the Conſtitution of theſe Kingdoms, but for the Preſervation of it was upon all Occaſions ready to ſacrifice his Fortune, and even his Life: He

was ſo cautious to avoid giving occaſion to be ſuſpected by the Government, that about eight Years ago, upon his Return from his Travails, he withdrew from all Converſation, and confined himſelf to his Houſe, never correſponded by Letter with any Perſon whatſoever; yet to his great Misfortune, he could not be quiet or ſafe in his cloſeſt Retirement; for many Perſons both Officers and others of the Militia of the Shire of *Lothian*, under the ſpecious Pretence of ſerving the Government, but in reality actuated by private Pique and Revenge, ſeveral times, contrary to Law, forcibly entred by Night into his Dwelling-houſe, called *Seaton* Palace, rifled it, turned his Servants out of Doors, and carried away the Proviſions of his Family. The moſt Sacred Places did not eſcape their Fury and Reſentment, they broke into his Chapel, defaced the Monuments of his Anceſtors, took up the Stones of their Sepulchres, thruſt Irons thro' their Bodies, and treated them in a moſt barbarous, inhuman and unchriſtian-like manner; Cannon and Mortars were brought to demoliſh his Houſe, and ſeveral Troops of Dragoons having gotten the Poſſeſſion thereof, ſome of them kept Guard there, and when they left it, many of the Militia enter'd, and kept Poſſeſſion thereof till they were driven from thence by the Highlanders, by whom he was likewiſe very ill treated, he being the only Perſon that was plunder'd by them. By theſe and many other Severities, the ſaid Earl was forced to leave his Houſe, and ſeek for Shelter among his Tenants and Neighbours, where he was purſued from Houſe to Houſe, and at laſt very unfortunately driven into the Company of ſome of the Gentlemen named in the Impeachment. He preſumes to affirm to your Lordſhips, that he did not join them with a traiterous or rebellious Deſign, but only with an Intention to preſerve himſelf from being inſulted and aſſaſſinated; for he had been once before taken up without any Warrant or Authority, and having got from the Perſons in whoſe Cuſtody he was, they threatned, if they could retake him, to murder him; and had before imbrued their Hands in the Blood of the Son of a neighbouring Gentleman. He never intended to have left his own Country; and when ſome Gentlemen mentioned coming into *England*, he oppos'd it; he was far from aſſiſting or encouraging them in their Undertakings; he was not admitted into their Secrets, nor informed of their Deſigns, and was ſo much a Stranger to their Proceedings, that when they marched towards *Northumberland*, he was told they were going along the Skirts of the Hills in *Scotland* to avoid General *Carpenter*; but afterwards diſcovered they were in *England* when it was too late, and to return alone into *Scotland* was too hazardous, which he did not attempt, becauſe he had reaſon to believe they would ſoon go back to *Scotland*.

Altho' he was conſtrain'd to keep the other Lords and Gentlemen Company, yet he never joined with them in any act of Hoſtility, nor aſſiſted in taking any of the Publick Money, or in ſeizing any Guns or other warlike Inſtruments, or countenanced or abetted them therein. He did not at *Preſton* or elſewhere fire a Piſtol, offer Violence to any Perſon whatſoever, or in any other manner fight againſt or reſiſt his Majeſty's Forces, but with the reſt ſurrendered himſelf to General *Wills*. The Honour of a Peer is more valuable than Life it ſelf, and therefore he ought to be ſo much the more cautious that it be not ſtained with the leaſt Imputation of Guilt. The ſaid Earl knows his Innocence, and hopes your Lordſhips will excuſe him, if in Juſtice to himſelf, and for the Preſervation of his Honour, he does not take upon him the Guilt of Crimes, the very Thoughts of which were always Strangers to his Breaſt: And therefore, in Anſwer to the Impeachment, he ſays, that he is Not Guilty of the Treaſon and other the Crimes and Miſdemeanours mentioned in the ſaid Articles, or any of them, in Manner and Form as is therein alledged; and for his Trial puts himſelf on your Lordſhips, who are his Peers, and begs your Lordſhips to believe that his Anſwer proceeds from the Senſe he has of the Truth of it, and not from Obſtinacy or any Inclination to give your Lordſhips and the honourable Houſe of Commons any unneceſſary Trouble, or from the leaſt Doubt or Miſtruſt of his Majeſty's Clemency. But if upon his Trial it ſhall appear, that he hath committed any Act which in the Rigour of the Law may be conſtrued to amount to the Crime of High-Treaſon, he hopes the Innocence of his Heart, and his Ignorance in the Law will, by the Power of your Lordſhips Interceſſion, render him an Object of his Majeſty's Mercy, which he and the reſt at the time of ſurrendring themſelves were encouraged by his Majeſty's Officers to depend upon. The ſaid Earl ſubmits his Caſe thus circumſtanced to your Lordſhips great Wiſdom and Judgment, and humbly prays your Lordſhips favourable Interpretation thereof, not doubting but to make his Innocence appear to your Lordſhips Satisfaction.

WINTOUN.

The Reply of the Houſe of Commons to the Anſwer of George *Earl of* Wintoun.

A Meſſage was brought from the Houſe of Commons by Mr. *Hampden* and others, to acquaint this Houſe, that they have conſidered the Anſwer of *George* Earl of *Wintoun* to the Impeachment exhibited againſt him by the Knights, Citizens, and Burgeſſes aſſembled in Parliament, and do aver their Charge againſt the ſaid *George* Earl of *Wintoun* for High-Treaſon to be true, and that the ſaid Earl of *Wintoun* is guilty of the High-Treaſon in ſuch manner as he ſtands impeached; and that the Commons will be ready to prove their Charge againſt him at ſuch convenient time as ſhall be appointed for that purpoſe.

Lord High-Steward. The Diſtance of this Place from the Bar is ſo very great, that I am obliged to aſk your Lordſhips Leave that I come down to the Table.

Lords. Ay, ay.

Which being done accordingly,

The *Lord High-Steward* ſaid, Gentlemen of the Houſe of Commons, you will be pleaſed now to proceed.

Mr. *Hampden.* MY Lords, we appear in this Place in behalf of all the Commons of *Great Britain*, to make good the Impeachment of High-Treaſon againſt the Priſoner at the Bar, *George* Earl of *Wintoun*.

The Commons in Parliament aſſembled being juſtly alarmed with the Dangers to which this Nation has been expoſed by the late unnatural Rebellion, have found it incumbent on them to enquire into the Authors and Promoters of ſo fatal and pernicious an Attempt, which was no leſs than to deprive theſe Nations of the invaluable Bleſſings which they enjoy under the wiſe and gentle Reign of his moſt Sacred Majeſty King *George*.

The indiſpenſable Duty which the Commons owe to his Majeſty, and to thoſe they repreſent, engage them to appear in the Cauſe of their Country, by examining into the Riſe and Progreſs of the ſaid late traiterous Enterprize, contrived and carried on with an Intent to depoſe and murder his ſaid Majeſty, and to ſet up a Popiſh Pretender to the Crown of theſe Realms, and in conſequence, to change the Conſtitution of this Nation, and to introduce a ſlavith and arbitrary Government.

The Earl of *Wintoun* appearing to the Commons to have been deeply engaged in the late Rebellion, their Zeal and Affection, and their Concern for the Safety of the Nation, and the Proteſtant Succeſſion, and the Liberties of the People, have rendered it neceſſary for them to bring to your Lordſhips Bar this Offender, againſt whom they have, in the Name of themſelves, and of all the Commons of *Great Britain*, exhibited Articles of Impeachment of High-Treaſon, ſetting forth and charging,

That the Earl of *Wintoun* (with his Aſſociates named in the Articles, and divers others) contrary to his Allegiance, did traiterouſly conſpire and imagine the Death of his moſt Sacred Majeſty; and in Aid of ſuch Treaſon, did in the Months of *September*, *October*, or *November* 1715, reſolve to levy in ſeveral Parts of *Scotland* and *England* a moſt deſtructive War againſt his Majeſty.

That his Lordſhip, with other his Confederates, did aſſemble in a warlike manner, and procur'd Arms, Ammunition, and warlike Inſtruments, and did compoſe an Army to wage War againſt his Majeſty, and did march thro' and invade ſeveral Parts of this Kingdom, and unlawfully ſeiz'd his Majeſty's Treaſure for the Service of the Pretender, and took away the Horſes and other Goods of many of his Majeſty's peaceable Subjects.

And that during the ſaid March and Invaſion, the Earl of *Wintoun*, with other Rebels, did, in open Defiance of his Majeſty's undoubted Title to the Crown of theſe Realms, frequently cauſe the Pretender to be proclaimed in a publick and ſolemn manner as King of theſe Realms.

That the more effectually to diſguiſe theſe wicked Intentions, and to delude his Majeſty's Subjects, the ſaid Earl, with other Rebels, did prevail on ſeveral Miniſters of the Church of *England*, and who had abjur'd the Pretender, to pray for the Pretender in ſeveral publick Churches as King of theſe Realms.

And that the ſaid Earl, his Aſſociates, and Accomplices, did in *November* laſt, traiterouſly poſſeſs themſelves of the Town of *Preſton* in the County-Palatine of *Lancaſter*, and did levy War and fight againſt his Majeſty's Forces, and procur'd a miſerable Slaughter and Murther of many of his Majeſty's good and faithful Subjects.

My Lords, the Earl of *Wintoun* has, in his Plea to the ſaid Impeachment, thought fit to deny part of this great and heavy Charge; and in Anſwer to other Parts of it, he ſuggeſts to your Lordſhips to the Effect following;

That being taken with Perſons that were in Arms againſt the Government, he might be preſum'd to be equally guilty with them; but that when your Lordſhips ſhall conſider the Circumſtances of his Caſe, he doubts not of finding a Diſtinction from others in your Judgment.

He acquaints your Lordſhips with the Loyalty of his Anceſtors, from whoſe Character, he ſays, he is not ſo much degenerated, as to form or carry on a Deſign againſt the Conſtitution of theſe Kingdoms.

That to avoid being ſuſpected by the Government, he withdrew himſelf ſome Years ago from all Converſation, and retir'd to his own Houſe; but that ſeveral of the Militia of the Shire of *Lothian*, under pretence of ſerving the Government, did, contrary to Law, forcibly enter his Lordſhip's Houſe, which they rifled, and committed ſeveral other Diſorders there.

That afterwards Cannon and Mortars were brought to demoliſh his Houſe, and ſeveral Troops of Dragoons took Poſſeſſion of it; and upon their leaving it, the Militia came and kept Poſſeſſion of his Houſe till they were driven thence by the Highlanders, by whom he was alſo very ill treated.

That by theſe Severities, and afterwards not being ſuffered to live quietly among his Tenants, where he had retir'd for Shelter, he was driven into the Company of ſome of the Gentlemen named in the Impeachment; but affirms to your Lordſhips, that it was with an Intent to preſerve himſelf from being aſſaſſinated.

That he oppos'd the Propoſition of coming into *England*, and was not acquainted with the Deſigns of the other Gentlemen with him; and was ſurpriz'd when he found himſelf in *England*, but declin'd going back, becauſe he believ'd they would ſoon return to *Scotland*.

That he did not aſſiſt in taking any of the publick Money, or in ſeizing any warlike Inſtruments.

That he did not at *Preſton*, or elſewhere, fire a Piſtol, offer Violence to any Perſon, or fight againſt his Majeſty's Forces, but ſurrendred himſelf to the King's General.

And as an Inducement for ſuch Surrender, his Lordſhip ſays, that he, and the reſt with him, were at that time encouraged by his Majeſty's Officers to depend on his Majeſty's Mercy.

My Lords, notwithſtanding what is contain'd in the Earl of *Wintoun*'s Plea to the Impeachment of the Commons, and the ſpecious Explanation which his Lordſhip has given to ſuch Proceedings of his, as were a Foundation to the Commons to include his Lordſhip in the Articles againſt the other Lords mentioned therein; we make no queſtion but we ſhall ſhew the Fallacy and Inſufficiency of the ſaid Plea to our Charge againſt him, and make it appear, that no leſs is contain'd in our Accuſation againſt his Lordſhip, than what the Law in every Man's Breaſt, the Light of Nature, and the Rules of Society diſapprove of, and condemn.

We ſhall in the Courſe of our Evidence prove to your Lordſhips, that the Earl of *Wintoun* joined early with the Rebels in *Scotland* in the beginning of this Enterprize; and that the Diſorders mentioned in his Plea to have been com-

mitted at his Houſe, and which he alledges as the Ground of his leaving it, and ſeeking Shelter among the Rebels, were not the true Cauſe of his joining them, ſince his Lordſhip had left his Houſe before the Highlanders came to it.

This Noble Peer was too great a Perſon to act an ordinary Part in this Rebellion. He openly engag'd in it, and not only appeared in Perſon, but led on, and encouraged his Aſſociates in it; ſome of which, thro' the Bleſſing of God on his Majeſty's Arms, are now in the Hands of Juſtice, and others have ſuffer'd for the ſame Treaſon.

We ſhall prove to your Lordſhips, that the Earl of *Wintoun* form'd a Troop of Horſe, which he maintain'd at his own Charge.

That he afterwards commanded a Squadron of Horſe, and that he continued his Command thereof in the ſeveral Marches to *Preſton*, and until the Surrender of that Place to the King's Forces.

That during the ſeveral Marches of the Rebels, the Earl of *Wintoun* was with them on Horſeback, arm'd with a Sword and a Caſe of Piſtols; and that he never ſhew'd any Uneaſineſs, but always appear'd as forward as any one; and that at the Action at *Preſton* his Lordſhip was aſſiſting, and very active among the Rebels.

That at ſeveral Places in *Scotland* and *England*, his Lordſhip, and other Rebels, caus'd the Pretender to be proclaim'd King of theſe Realms, and that his Lordſhip was preſent at ſuch Proclamations.

That his Lordſhip, and other Rebels, did in ſeveral Places cauſe his Majeſty's Treaſure to be ſeiz'd, for the Service of the Pretender; and did in ſeveral Places prevail on Miniſters of the Church of *England*, and who had abjur'd the Pretender, to pray for him in the publick Churches, as King of theſe Realms.

That when the Rebels ſurrender'd themſelves at *Preſton* to the King's Forces, they were far from receiving any Aſſurances of Mercy from his Majeſty's Officers; but were acquainted by the ſaid Officers, that his Lordſhip, and others taken with him, had no Reaſon to expect Mercy, ſince they were taken in open Rebellion againſt his Majeſty.

My Lords, the Commons, who are ever vigilant for the Safety of his Majeſty, and for the Preſervation of the Liberties of the People, cannot anſwer it to God or their Country, if they ſhould neglect to exert themſelves, in bringing to exemplary Juſtice the open and declar'd Inſtruments of this Rebellion; and it is a Satisfaction to the Commons, that in the Courſe of their Interpoſition, to reſcue the Nation from the fatal Conſequences of the late unprovok'd Rebellion, whatever Miſrepreſentations other Proſecutions may have been formerly liable to, the Notoriety of this Rebellion has been ſo evident, that the moſt malicious of our Enemies want Confidence to deny it.

We are not ſurpriz'd, that Papiſts ſhould be engag'd in this Rebellion, tho' the moſt unnatural and unexampled in its Circumſtances, by being void of the leaſt Pretext of Provocation, ſince they maintain it lawful to kill a Heretick King, and ſuch they term his preſent Majeſty, and 'tis declar'd by them, that ſuch a Piece of Service is not only lawful, but pious, and agreeable to God.

But how Proteſtants could be poſſeſſed with ſuch a Spirit of Infatuation, and to ſuch a Degree be deluded, as to believe the moſt ſecure and effectual Way to protect the Church, was to have Recourſe to a Popiſh Prince, to reſcue it from the Danger they imagined it liable to, from the Proteſtant Succeſſion taking place: And how it could enter into the Hearts of Proteſtants to be fir'd with ſuch an ill-directed Zeal, as to act in conjunction with avow'd Enemies of their Religion and Liberties, is not to be accounted for; unleſs ſuch unnatural and deſtructive Attempts are ſome of the neceſſary Conſequences of the late Male-Adminiſtration.

No leſs was to be the Sacrifice, than of his Majeſty, and his Royal Family, (a Succeſſion of Princes appointed by Divine Providence to be the Guardians of the Proteſtant Intereſt in *Europe*) and of our preſent happy Conſtitution, to appeaſe the Fury of Papiſts and Proteſtants aſſociated in this Rebellion, and who envied us the Bleſſings we enjoy'd by the uninterrupted Exerciſe of our Religious and Civil Rights and Privileges.

Had this Rebellion taken place, this Nation, the Glory of the Reformation, the moſt ſubſtantial Bulwark againſt Popery, and that had at the happy Revolution, under the Influences of King *William* the Third, of immortal Memory, triumph'd over the arbitrary Deſigns of our Enemies to ſubvert our Conſtitution, was to fall a Victim to Bigotry, Superſtition and Slavery, the pernicious and neceſſary Conſequences of introducing a Religion, void of natural Senſe and natural Conſcience.

If an Attempt to ſubvert the Government, to deſtroy the King, and ſet up a Popiſh Pretender; if marching in an hoſtile Manner; if carrying on a deſtructive War in the Bowels of the Nation, are only Acts of Surprize and Inadvertency, any Rebellion may be palliated over and excus'd; ſince ſcarce any Circumſtances can be added in Aggravation of that, which has lately been rais'd and carried on in this Kingdom.

My Lords, I have acquainted your Lordſhips with the neceſſary Occaſion of this Proſecution: I have endeavour'd in the moſt impartial Manner to diſcharge the Truſt repos'd in me, by opening the Nature of the Charge againſt the Earl at the Bar. I have likewiſe ſtated to your Lordſhips the Subſtance of his Plea to the Impeachment of the Commons. I have given your Lordſhips a general View of the Evidence which we ſhall produce, to make good our Charge, and to ſhew the Invalidity of the ſaid Plea; and from the Malignity of the late rebellious and traiterous Enterprize, and its fatal Tendency, I have repreſented the Neceſſity the Commons were under of applying to your Lordſhips for National Juſtice. I am not inſenſible how deficient I have been, in not ſetting a Matter of this Importance in the moſt advantageous Light; but I make no doubt, but that what is wanting in me, will be ſupplied by the Abilities of others that follow, and that your Lordſhips will find no Defect in their Diſcharge of the Parts they have taken in this Proſecution, whatever you may have found in the Opening of the Charge, and in that Part which has come to my Share.

Sir Joſeph Jekyll. I Have the Command of the Houſe of Commons upon me, to bear a Part in the Proſecution of their Impeachment againſt this Lord at the Bar.

And that which is aſſigned to me, is firſt to obſerve to your Lordſhips the Nature of the Charge; and in the next Place, to take notice of the Defence made to that Charge; and laſtly, to give your Lordſhips a general View of the Evidence which the Commons will produce to maintain their Accuſation.

And this I ſhall do with all the Plainneſs I am capable of, without attempting ſo vain and wicked a Thing, as to impoſe upon your Lordſhips, or divert you from the true Merits of this Cauſe.

My Lords, The Charge exhibited againſt this Lord, is a Charge of High-Treaſon; High-Treaſon at the Common Law, as declared by the Statute of the 25th of King *Edward* III. And there are two Species of High-Treaſon mention'd in that Statute, which the Commons have taken notice of in their Articles of Impeachment. The Firſt is compaſſing and imagining the Death of the King; the Second is levying War againſt his Majeſty.

My Lords, The Overt-Acts that are ſet down in the Articles, I think, may be reduced to theſe Heads: Firſt, a Conſpiracy of the Earl of *Wintoun*, with other Lords and Gentlemen his Accomplices, to levy War with an Intent to depoſe the King; and a Conſpiracy to levy ſuch a War, hath been held a ſufficient Overt-Act of compaſſing and imagining the Death of the King.

My Lords, The next Overt-Act is, his Lordſhip's joining with his Accomplices in proclaiming the Pretender, which is endeavouring to ſet up another Prince in the Room of his Majeſty; and I believe it will not be doubted, but that is likewiſe an Overt-Act of the ſame Species of Treaſon. And if there wanted another Overt-Act, the levying War againſt the King with an Intent to depoſe him (which is likewiſe mention'd in the Articles, as a diſtinct Species of Treaſon) may ſerve for an Overt-Act of the other Species of compaſſing and imagining the King's Death; for tho' it is reckon'd in the Statute as a diſtinct Treaſon; yet it doth not thereby ceaſe to be of the Nature of an Overt-Act of compaſſing and imagining the King's Death which it was antecedent to, its being declar'd a diſtinct Species; and this Point is likewiſe ſupported by Authorities, and many Attainders have been upon it.

My Lords, The ſecond Species of High-Treaſon I charge upon this Lord, is that of levying War againſt the King; and the Overt-Acts mentioned are, the forming an Army, marching in an hoſtile Manner, ſeizing a Town, the Town of *Preſton*, engaging and fighting with the King's Forces.

My Lords, Perhaps it was not neceſſary to have alledged any of theſe Overt-Acts of levying War againſt the King, becauſe levying War itſelf being an Act, it ſuperſedes the Neceſſity of inſtancing particular Acts of Hoſtility. But to avoid all Cavils, theſe particular Acts are likewiſe alledged in the Commons Impeachment.

My Lords, I find another Crime charged upon this Lord who ſtands at the Bar, and that is Murder, the Murder of many of the King's faithful Subjects. And although this Crime is not mentioned in the Title of the Articles, and there was a good Reaſon for not doing it, ſince it is ſwallow'd up in the High-Treaſon, the greater Crime in the Eye and Eſtimation of the Law; yet it doth not thereby loſe its moral Exiſtence or real Guilt; but on the contrary, by accompanying the other Crime of High-Treaſon, is aggravated, and ſhews with what Miſchief his Heart may be filled, who at the ſame time he is murdering his Fellow-Subjects is meditating the Deſtruction of his Prince, and the Overthrow of his Country's Liberty.

My Lords, this is the Nature of the Charge againſt my Lord. In the next Place I ſhall take notice of that which occurs to me to be material in his Lordſhip's Defence, or the Anſwer he hath put in to this Charge.

My Lords, he hath pleaded generally Not Guilty; but not wholly relying on that general Plea, he hath in his Anſwer added a particular Specification of his Caſe. He begins in his Anſwer, by taking notice and admitting, That *he being taken with Perſons that were in Arms againſt the Government, might reaſonably be preſumed to be equally guilty, and to be juſtly joined with them in the ſame Impeachment.* He goes on to acquaint your Lordſhips with what ſevere and barbarous Uſage he met with at his Dwelling-Houſe, which he ſays forced him from his Houſe. He tells your Lordſhips at laſt, he was *very unfortunately driven into the Company of ſome of the Gentlemen named in the Impeachment*; but *he preſumes to affirm to your Lordſhips, that he did not join them with a traiterous or rebellious Deſign, but only with an Intention to preſerve himſelf from being inſulted and aſſaſſinated*; then he ſays, *Altho' he was conſtrain'd to keep the other Lords and Gentlemen Company, yet he never joined them in any Act of Hoſtility.* But yet he is ſtill under ſome Diffidence of his Caſe, therefore your Lordſhips will find at the Cloſe of his Anſwer he ſays, *But if upon his Trial it ſhall appear that he hath committed any Act, which in the Rigour of the Law may be conſtrued to amount to the Crime of High-Treaſon, he hopes the Innocence of his Heart, and his Ignorance in the Law, will, by your Lordſhips Interceſſion, render him an Object of his Majeſty's Mercy, which he and the reſt, at the Time of ſurrendering themſelves, were encouraged by his Majeſty's Officers to depend upon.*

My Lords, this ſpecial Caſe which my Lord hath made in his Anſwer, is not at all like the Caſe in my Lord Chief Juſtice *Coke*'s Third Inſtitutes, Fol. 10. upon an Impeachment of High-Treaſon. Several Perſons were found to join with Sir *John Oldcaſtle* and others (who were in open Rebellion) *pro timore Mortis, & quam cito potuerunt receſſerunt*, and thereupon they were acquitted; but here my Lord doth not pretend that any Force was upon him, when he went in and joined the Rebels. I may therefore preſume to ſay this Lord's Defence is a weak and a doubtful one, but far be it from the Commons to deſire to convict his Lordſhip of the High-Treaſon charged upon him by any Infirmity in his Defence, or by any Means whatever, but by the Strength and Clearneſs of the Evidence they ſhall produce to your Lordſhips, and for that I ſhall trouble your Lordſhips but a very little with repreſenting to you the general View of the Evidence that we ſhall produce, and it is this: This Lord thought fit to go in and join the Rebels, not alone, but accompanied with fourteen of his own Servants; when he was there, he formed a Troop, conſiſting of his own Servants, and others; he paid the Troop, com-

commanded a Squadron of the Rebels Horſe in their March; aſſiſted at the ſeveral Proclamations of the Pretender; when there was an Alarm given of the coming of the King's Forces, he got on Horſe-back in order to oppoſe and fight them; and he was in Arms and active with the Rebels in the Action at *Preſton*; and we ſhall ſhew your Lordſhips that at the Surrender there no Promiſe was made, no Expectation of Mercy was raiſed by any of the King's Officers in the Mind of this Lord, or of any of his Accomplices.

My Lords, tho' this be not material to the Iſſue now joined before your Lordſhips, yet it being put into my Lord's Anſwer, and being neceſſary for the Vindication of publick Juſtice, we ſhall ſhew plainly there was not the leaſt Encouragement or Intimation of that kind given.

My Lords, the Evidence will be more largely and particularly taken notice of, by the Gentleman who is to come after me; and I am ſure my Defects will be amply made up, by what he will offer to your Lordſhips.

But I can't ſit down without taking notice, that if this heavy Accuſation be proved againſt the Lord at the Bar, it is a ſtrange Notion of Loyalty, ſo much boaſted of in my Lord's Anſwer, which he hath been pleaſed to entertain.

My Lords, there is not a nobler or more uſeful Principle belonging to a *Britiſh* Subject, than true Loyalty: Loyalty is a faithful and dutiful Obedience to the King, under the Sanction and Direction of the Law. If therefore his Lordſhip hath contracted the Guilt of this high Offence againſt the Law, which is charged upon him, he hath offended againſt this Principle! And this I will ſay in general, whoever they be who caſt the Law out of the Idea of Loyalty, they looſen the Bands of Allegiance; for it is the Law that binds upon the Conſcience of the Subject the Faith and Allegiance he owes to his Sovereign, as it doth upon the Conſcience of the Sovereign, that Juſtice and Protection he affords to his Subjects.

Mr. Attorney-General.
Sir Edward Northey.

MY Lords, the Charges of High-Treaſon mentioned in the Articles of Impeachment exhibited by the Commons of *Great-Britain* againſt the Earl of *Wintoun*, the Priſoner at the Bar, and the Nature of his Crimes, having been fully open'd by Mr. *Hampden* and Sir *Joſeph Jekyll*; what remains for my Part is to give your Lordſhips an Account of the Nature of the Evidence we ſhall produce to your Lordſhips againſt the Priſoner, to prove him guilty of the High-Treaſon for which he ſtands impeached. He is charged with two Species of Treaſon, mentioned in the Statute of the 25 *Edw.* III. *viz. Firſt*, compaſſing and imagining the Death of our ſovereign Lord the King, whom God long preſerve. *Secondly*, levying War againſt the King within this Realm.

The Evidence that will be a Proof of the latter Treaſon, will alſo prove the firſt: For levying War to depoſe the King, is an Overt-Act of conſpiring the Death of the King, and hath always been ſo adjudged.

I ſhall briefly, and with as much Clearneſs and Truth as I can, ſtate the Evidence againſt the Priſoner, as it will appear by the Witneſſes we ſhall produce, without aggravating any thing which I do not think proper or neceſſary, your Lordſhips being Judges of the Fact, and of the Law ariſing thereupon. I ſhall only make this Obſervation on the Preamble to the Earl's Plea, that it directly contradicts his Plea of Not Guilty; and that if what he alledges be taken as true, he therein owns himſelf to be guilty, though from thence he concludes, that he is not guilty.

In *September* laſt, the late Earl of *Mar* in *Perthſhire*, and in the beginning of *October*, Mr. *Forſter* with ſome of the attainted Lords in *Northumberland*, with a great Number of armed Men, raiſed a Rebellion in Favour of the Pretender, and proclaimed him King of theſe Realms, and ſet up his Standard.

About the ſeventh or eighth Day of *October* laſt, the Earl of *Wintoun* left his Seat at *Seaton* in the County of *Lothian*, armed with a broad Sword and Piſtols, and carried with him fourteen or fifteen of his Servants well mounted, and ſo armed; about the tenth Day of *October* joined the Earl of *Carnwath* and the Lord Viſcount *Kenmure* at *Moffett* in the County of *Annandale*, and there they formed a little Army, which was commanded by Lord *Kenmure* till they joined *Forſter*.

The Lord *Wintoun* formed a Troop with his own Servants and others, and it was called his Troop, and he paid his own Servants eighteen Pence or two Shillings a Day, and he commanded from that Time a Squadron of Horſe, till he and the others ſurrender'd to the King's Forces at *Preſton*.

About the fourteenth or fifteenth Day of *October*, the Earl of *Wintoun* and the reſt of the Rebels marched from *Moffett*, in a hoſtile Manner, with Trumpets and a Standard to *Lochmaben*. There the Pretender was proclaimed King of *Scotland*, *England*, *&c.* and the Earl of *Wintoun* attended, and joined in the Proclamation, with his Sword drawn. Thence the Rebels marched to

Auchtelfechen,	*Jedburg*,
Langholm,	*Rodberry*,
Hawick,	*Wooler*.

where, about the twentieth Day of *October*, *Forſter* and his Rebels, being about five Hundred, joined the Lord *Wintoun* and the other *Scots*, being three Troops of Horſe.

From *Wooler* they all marched to *Kelſoe* in *Tiviotdale*, where the Highland Foot, commanded by *Mackintoſh*, joined them. There, at the Croſs, the Pretender was again proclaimed King, with Sound of Trumpet and Colours flying, the Lord *Wintoun* and the reſt aſſiſting.

On the ſeventeenth Day of *October* they marched back to *Jedburg*, and there were alarmed with an Account that the King's Forces were near; on which they mounted, and marched out of Town, and drew up, the Earl of *Wintoun* being very active; but the Forces advancing being diſcover'd to be part of the Rebels, they returned to *Jedburg*; and on the twenty-ninth Day of *October* they marched to *Hawick*.

Here Cockades were made of blue and white Ribbons for the *Scots* Rebels, to diſtinguiſh them from the *Engliſh*, who had red and white, and the Earl of *Wintoun* wore one, and gave others to his Men.

On the thirtieth Day of *October*, from *Hawick* they marched to *Langholm*: Here, on the thirty-firſt Day of *October*, about five or ſix Hundred of the Highland Foot left them, and went back; and they would not ſuffer any Perſon to come to them, to perſuade them to return, but the Earl of *Wintoun*; and he went to perſuade them, but could not prevail, and he returned, and declared

it was not his Fault that they went away; and he after very much promoted the Rebels coming into *England*.

Here the Earl might have ſafely left the Rebels, if he had thought fit, without Hazard; and he had not gone alone, as in his Preamble he alledges.

From *Langholm* the Rebels marched to *Langtown* in *Cumberland*; and on the Firſt Day of *November* to *Brampton*; on the Second to *Penrith*; on the Third to *Appleby*; on the Fifth to *Kendall*; and on the Sixth to *Kirby-Lonſdale*.

At all theſe Places the Pretender was proclaimed King, the Earl of *Wintoun* aſſiſting.

On the Seventh Day of *November* they marched from *Kirby-Lonſdale* to *Lancaſter*, into which the Rebels marched with their Swords drawn, particularly the Earl of *Wintoun*; and here they again proclaimed the Pretender King, Lord *Wintoun* aſſiſting in the Circle.

Here the Rebels ſeized Arms, and ſome pieces of Cannon.

From *Lancaſter* the Horſe of the Rebels marched on the Ninth Day of *November* to *Preſton*, the Foot halted at *Garſtang*, and came to *Preſton* the Tenth.

In the Way to *Preſton* the Rebels were joined with about Fifteen Hundred Men, moſt part being of the County of *Lancaſter*.

And at *Preſton* the Pretender was again proclaimed at the Croſs.

During this March, at ſeveral Places, particularly at *Duns*, *Brampton* and *Appleby*, the publick Revenue of the King was collected by the Rebels, and Ceſſes raiſed on the King's Subjects.

They marched with Drums, Trumpets and Colours; and, where they could, took Priſoners ſuch as appeared for his Majeſty.

They cauſed the Pretender to be prayed for, as King, in the Churches in *Lancaſter*, and other places in their March.

Their conſtant Health was the Pretender's, by the Name of King *James*, and Succeſs to their Cauſe.

During the whole March the Earl of *Wintoun* never ſhewed any Uneaſineſs or Backwardneſs, but always appeared as forward and active as any of the Rebels.

Mr. *Calderwood*, their Quarter-Maſter, quartered the *Scots* in all places; and the beſt, next to the Lord *Kenmure*'s, he provided for the Earl of *Wintoun*, who uſed to complain, if good Quarters were not provided for him.

The next part of our Evidence will be to ſhew what happen'd at *Preſton*, of which the Rebels had taken Poſſeſſion the Tenth Day of *November*.

On *Saturday* the Twelfth Day of *November*, about One in the Afternoon, General *Wills* with the King's Forces inveſted the Town, and attacked it that Day and on *Sunday*, and the Rebels defended it, and had made a Barrier at the entring of the Town, and planted the Foot in ſeveral Lanes and Streets for their Defence, and had the Cannon with them which they ſeized at *Lancaſter*.

The Earl of *Wintoun* during the Attack was with the other Lords, at the Head of two hundred Men, drawn up in the Market-place; he had his Sword, a Piſtol in one Hand, and another in his Breaſt; during that Attack, ſeveral of his Majeſty's Officers and Soldiers were killed.

On *Sunday*, about Ten in the Morning, General *Carpenter* came alſo to *Preſton*, with the King's Forces under his Command. Thereupon the Rebels finding themſelves to be ſurrounded, about Three in the Afternoon ſent out Colonel *Oxborough* to the Generals, to know what Terms would be granted to them if they would ſurrender; the Generals gave this Anſwer, That no Terms would be granted to them, but that they muſt ſurrender at Diſcretion.

Soon after the Rebels ſent out Captain *Dalziel*, to deſire time till Seven a Clock on *Monday* Morning, to conſider whether they ſhould ſurrender at Diſcretion. Upon which General *Carpenter* ſent Colonel *Churchill*, and General *Wills* Colonel *Cotten*, into the Town, to acquaint the Rebels that the time deſired ſhould be allowed them, provided they ſent out immediately an *Engliſh* Lord, and one of the *Mackintoſhes*, as Hoſtages, that none within the Town ſhould attempt to Eſcape, or make any Works for their Defence.

Colonel *Churchill* and Colonel *Cotten* went into the Town, and there met the Earl of *Wintoun* and the other Lords, and Mr. *Forſter*, and told them their Meſſage: All the Lords treated with them about the ſurrendring the Town, and ſeverally gave their Words, that if Time might be allowed them till next Morning to ſurrender, they would uſe their Endeavours that none ſhould make their Eſcape, and that they would not throw up any new Works for their Defence. Which Terms were agreed to, and the Earl of *Derwentwater* and Colonel *Mackintoſh* were delivered to them, and brought to the Generals as Hoſtages, and ſtaid all Night; and in the Morning early the Rebels agreed to ſurrender at Diſcretion; and the Lord *Foreſter* took Poſſeſſion of the Town, where he found the Earl of *Wintoun* in Arms, and he ſurrendred himſelf to the Lord *Foreſter*, and delivered to him two Caſes of Piſtols; and being in Cuſtody, complained of the little Regard Mr. *Forſter* had ſhewed to a Man of his Quality, and ſaid all the Reſpect that he had ſhewed him, was to give him the Poſt of Honour when there was any Danger.

The Generals *Carpenter* and *Wills* never offered any other Terms than that the Rebels ſhould ſurrender at Diſcretion, never promiſed them Mercy, or that they would even intercede for Mercy for them; nor gave the Colonels, ſent into the Town, any Orders to offer Mercy; nor did they: All the Encouragement they gave them to ſurrender at Diſcretion, was, that if they did ſo, they ſhould not be immediately put to the Sword by the Soldiers; and denied to promiſe, even to recommend them to the King's Mercy.

This is the Subſtance of the Evidence we ſhall lay before your Lordſhips, and the Order we ſhall give it in; and if what I have opened be proved, as I believe it will, or I would not have mention'd it, I apprehend it will fully prove the Charge againſt the Noble Lord, and ſhew how vain the Allegations in the Preamble to his Plea are.

I beg leave to ſay one thing more. The Noble Lord alledges, in the Preamble to his Plea, that he never ſhot off a Piſtol: certainly that is not material; for aſſembling and marching in a Hoſtile manner for a publick Purpoſe, and oppoſing the King's Forces, is levying a War, although the Lord accuſed never ſhot off a Piſtol.

We will call our Witneſſes, and begin with *William Calderwood*, who was Quarter-Maſter the whole time with Lord *Wintoun*.

Sir *J. Jekyll.* My Lords, we deſire that *William Calderwood* may be ſworn.

L. H. Steward. Is it *William Calderwood* you call?

Sir *J. Jekyll.* My Lords, we deſire *William Calderwood* may be ſworn.

And he was ſworn by the Clerk accordingly.

Sir *J. Jekyll.* Mr. *Calderwood*, pray acquaint my Lords with what you know concerning this Rebellion, or any Part that the Noble Lord at the Bar had in it; tell the Story according to your own Method.

L. H. Steward. Do you hear what Queſtion is aſked? You are upon your Oath; give an Account of what you know of the late Rebellion, and what Part the Noble Lord at the Bar had in it.

Calderwood. Upon the Eleventh of *October* I went, with about Seventy Horſe, to join my Lord *Carnwath*, my Lord *Wintoun*, and my Lord *Kenmure* at *Moffett*; where the Pretender was proclaimed.

Attorney-General. We deſire that he may acquaint your Lordſhips, what Number of Men they had at *Moffett*.

Calderwood. One Hundred and Fifty.

Att. Gen. What Number of Men?

Calderwood. One Hundred and Fifty.

Att. Gen. Was the Priſoner at the Bar amongſt them? and did he bring in any with him?

Calderwood. Yes.

Att. Gen. About what time did he come in?

Calderwood. Towards the Evening of the Eleventh Day.

Att. Gen. What Day?

Calderwood. The Eleventh.

Sir *J. Jekyll.* What Number did the Lord *Wintoun* bring with him?

Calderwood. About Fourteen.

L. H. Steward. You ſpeak of the Priſoner at the Bar; he came in with Fourteen Men?

Calderwood. Yes, my Lord.

Att. Gen. Were they all armed; or how many were armed?

Calderwood. I don't know whether all were, but the moſt part of them were, with Sword and Piſtol.

L. H. Steward. You have ſaid at what Place they were, but your Voice did not reach hither; at what Place?

Calderwood. At *Moffett*.

Sir *J. Jekyll.* When my Lord at the Bar joined the Rebels, what did they do? Go on, and tell your Story.

Calderwood. They went to *Lochmaben*.

Sir *J. Jekyll.* When did the Lord at the Bar join them there?

Calderwood. The next Day.

Att. Gen. What was done there?

Calderwood. The Pretender was proclaimed there next Day.

Att. Gen. Was the Noble Lord at the Bar aſſiſting at the proclaiming of him?

Calderwood. Yes, he was.

Att. Gen. In what manner did he aſſiſt?

Calderwood. With his Sword drawn on Horſeback.

L. H. Steward. Who did aſſiſt at the Proclamation with a drawn Sword?

Calderwood. The Earl of *Wintoun*.

Att. Gen. Whence did you march from thence?

Calderwood. To *Auchtelfechen*.

Att. Gen. Whither did you march from thence?

Calderwood. To *Langholm*.

Sir *J. Jekyll.* And whither then?

Calderwood. To *Hawick*.

Att. Gen. Go on.

Calderwood. The Pretender was proclaimed there.

Sir *J. Jekyll.* Was the Lord *Wintoun* preſent at the Proclamation?

Calderwood. Yes.

Sir *J. Jekyll.* Whence did you go from thence?

Calderwood. To *Jedburg*.

L. H. Steward. Was the Pretender proclaimed there?

Calderwood. Yes.

Sir *J. Jekyll*, Who were preſent?

Calderwood. The Earl of *Wintoun*, *Carnwath*, and all the Lords.

Att. Gen. Where did you march then?

Calderwood. To *Rodberry*.

Att. Gen. What happen'd there?

Calderwood. We were join'd by General *Forſter*.

Att. Gen. How long did you ſtay there?

Calderwood. Two Nights.

Att. Gen. Was the Pretender proclaimed at *Rodberry*?

Calderwood. No.

Att. Gen. What Place did you go next to?

Calderwood. To *Wooler*.

Att. Gen. Whither from thence?

Calderwood. To *Kelſoe*; where we were joined by the Highland Foot.

Sir *J. Jekyll.* What Foot do you mean?

Calderwood. The Highlanders.

Sir *J. Jekyll.* Who commanded them?

Calderwood. Brigadier *Mackintoſh*.

Sir *J. Jekyll.* From *Kelſoe* whither did you go?

Calderwood. Back again to *Jedburg*.

Sir *J. Jekyll.* Whither from *Jedburg*?

Calderwood. To *Hawick*.

Att. Gen. What happen'd at either of theſe Places?

Calderwood. Nothing.

Sir *J. Jekyll.* At *Hawick*; did nothing happen there?

Calderwood. No.

Att. Gen. Was the Pretender proclaim'd at *Hawick* at either of the Times?

Calderwood. Yes, the firſt time, but not the ſecond.

Att. Gen. Who were preſent?

Calderwood. All the Lords.

Att. Gen. Name them — Was the Priſoner at the Bar there?

Calderwood. Yes.

Sir *J. Jekyll.* From *Hawick*, the ſecond time, to what Place did you go?

Calderwood. To *Langholm*.

Att. Gen. What happen'd at *Langholm*?

Calderwood. Five or Six Hundred of the Highland Foot went from us.

Att. Gen. Was there any Endeavours uſed to bring thoſe Five Hundred Highlanders back again?

Calderwood. I don't know of any.

Sir *J. Jekyll.* Who went to them? Did any of thoſe that were in Arms go to them?

Calderwood. I was not there when they went off.

Att. Gen. Did the Noble Lord attempt to go with them, the Priſoner at the Bar?

Calderwood. No; at *Jedburg* the Earl of *Wintoun* went up to them, to make them come back; where the Foot deſigned to go, and the Horſe were drawn up; and they would have no Body come to them but the Priſoner.

L. H. Steward. I do not hear you; What do you ſay?

Calderwood. At *Jedburg* the Earl of *Wintoun* went to them.

Att. Gen. Did he declare any thing after his Return, about their going off, or their not returning?

Calderwood. No, not at *Jedburg*.

Att. Gen. Any where elſe?

Calderwood. I heard him at *Langtown* ſay, it was not his Fault they were gone off.

Att. Gen. Pray, might not my Lord *Wintoun* have gone off with them, if he would?

Calderwood, Yes, he might.

Att. Gen. From *Langtown* whither did you go?

Calderwood. To *Brampton*.

Att. Gen. Whither next?

Calderwood. To *Penrith*.

Att. Gen. Whither next?

Calderwood. To *Appleby*.

Att. Gen. Whither next?

Calderwood. To *Kendall*.

Att. Gen. Whither next?

Calderwood. To *Kirby-Lonſdale*.

Att. Gen. What happen'd there?

Calderwood. The Pretender was proclaim'd at the two laſt Places.

Sir *J. Jekyll.* Who was there?

Calderwood. I ſaw him there.

Sir *J. Jekyll.* Who?

Calderwood. The Earl of *Wintoun* at *Kirby-Lonſdale*.

Sir *J. Jekyll.* Whither did you go from thence?

Calderwood. To *Lancaſter*.

Sir *J. Jekyll.* Was the Pretender proclaimed there?

Calderwood. Yes.

Sir *J. Jekyll.* Who were preſent?

Calderwood. Earl of *Wintoun*, *Kenmure*, *Carnwath*, *Nitbisdale*.

Sir *J. Jekyll.* How did they enter the Town of *Lancaſter*?

Calderwood. Sword in Hand.

Att. Gen. Was there any Arms or any Guns ſeized?

Calderwood. Yes, Six Cannon were ſeized.

Att. Gen. From whence did they take them?

Calderwood. From a Ship.

Att. Gen. Speak up, and tell my Lords.

Calderwood. They ſeized Six Guns.

Att. Gen. Whence did they take them?

Calderwood. From a Ship.

Att. Gen. What became of them?

Calderwood. They carry'd them to *Preſton*, and mounted them there.

Att. Gen. What time came you to *Preſton* from *Lancaſter*?

Calderwood. What time? we ſtayed two Nights at *Lancaſter*.

Mr. Cowper. Sir, I deſire to aſk you a Queſtion — Whether you was at Church at *Lancaſter*?

Calderwood, Yes.

Mr. Cowper. Who was prayed for there?

Calderwood. The Pretender as King of *England*.

Sir *J. Jekyll.* Who was at Church? Was it the Pariſh Church?

Calderwood. Yes, the Pariſh Church.

Sir *J. Jekyll.* Who was preſent at Church?

Calderwood. I don't remember.

Mr. Cowper. From *Lancaſter* whither did you go then?

Calderwood. We went to *Preſton*.

Mr. Cowper. What Day did you arrive at *Preſton*?

Calderwood. The Ninth or Tenth Day of *November*.

Mr. Cowper. Did the Horſe and Foot arrive the ſame Day?

Calderwood. No, the Horſe came in one Day, and the Foot another.

Mr. Cowper, How long after the Horſe did the Foot come?

Calderwood. The next Day; then the Pretender was proclaimed. The Horſe came in on a *Wedneſday*, the Foot on *Thurſday*.

Att. Gen. Had you any Diſtinction between the *Scots* and *Engliſh*, by Cockades?

Calderwood. Yes.

Att. Gen. What was the Diſtinction?

Calderwood. The *Scots* had Blue and White, and the *Engliſh* had Red and White.

Att. Gen. Did the noble Lord meddle with any Cockade?

Calderwood, Yes, he had one at *Hawick*.

Att. Gen. Did he diſtribute them?

Calderwood. Yes, he delivered them from my Hands.

L. H. Steward. Who do you ſpeak of? Raiſe your Voice.

Calderwood. I ſay, my Lord, the Earl of *Wintoun* had a Cockade at *Hawick*, and took ſeveral of them from my Hands, and gave them away as he thought fit.

Sir *J. Jekyll.* You ſaw the Earl of *Wintoun* at *Preſton* when the King's Forces came thither; do you remember what paſt afterwards?

Calderwood. My Lord, I ſaw him, he had Sword and Piſtols; he was a Foot by the Church-yard.

Att. Gen. As you came along to *Preſton*, acquaint my Lords whether you know any thing of the publick Revenues being collected?

Sir *J. Jekyll.* Before that, when my Lord was on Foot with Sword and Piſtols going towards the Church-yard, was there any Forces drawn up there?

Calderwood. Yes, both Horſe and Foot were drawn up in the Church-yard.

Sir *J. Jekyll.* While my Lord was in Company, and in this March, was there any Troop formed?

Calderwood. Yes, there was a Troop.

Sir *J. Jekyll.* Who had any of thoſe Troops?

Calderwood. My Lord *Wintoun* had the Firſt.

Sir *J. Jekyll.* Of whom did his Troop conſiſt?

Calderwood. It conſiſted partly of Gentlemen, and partly of his own Servants.

Sir *J. Jekyll.* By whom where they paid?

Calderwood. By my Lord *Wintoun*.

Sir *J. Jekyll.* How much a Day?

Calderwood. Two Shillings a Day.

Sir *J. Jekyll.* In what manner was the Troop accoutred?

Calderwood. Very well, with Swords and Piſtols.

Att. Gen.

Att. Gen. Did my Lord's Servants retain his Livery in the Army?

Calderwood. He had five in Liveries.

Att. Gen. What were the reſt?

Calderwood. Domeſtick Gentlemen.

Att. Gen. Did my Lord command only that, or any other Body?

Calderwood. He commanded a Squadron.

Sir *J. Jekyll.* In your Paſſage, did my Lord diſcover any Uneaſineſs, or ſeek for any Opportunity of leaving them?

Calderwood. He never did that I know of.

Sir *J. Jekyll.* I think you quarter'd him, did he complain of his Quarters at any time?

Calderwood. He order'd me to give him good Quarters.

Sir *J. Jekyll.* And accordingly you did it for him?

Calderwood. Yes.

Att. Gen. We will go on. What happened at *Preſton?* What time did the King's Forces come there?

Calderwood. We came on *Wedneſday*, they came on *Saturday*.

Att. Gen. Tell my Lords what happen'd after the King's Troops came to Town.

Calderwood. We defended the Town two Nights.

Att. Gen. When did they ſurrender?

Calderwood. They ſurrender'd on *Monday*.

Att. Gen. What paſt before? Did the King's Troops attack it, and demand a Surrender?

Calderwood. Yes, and we defended it.

Sir *J. Jekyll.* Was there any Proviſion made to ſecure the Town? Acquaint my Lords how it was defended.

Calderwood. We barricado'd it in every Street.

Sir *J. Jekyll.* After what manner? how?

Calderwood. We had two Cannon in every Street.

Att. Gen. During the Time the King's Troops were at the Town, what Share did my Lord *Wintoun* bear in the Defence of it? where was he?

Calderwood. I ſaw him go towards the Church-yard?

Att. Gen. Was there a Body of Men with him in the Church-yard?

Calderwood. Yes, there was.

Sir *J. Jekyll.* When my Lord joined the Men, and in his March, was there any levying of Money.

Calderwood. They raiſed Taxes as they called it, a Ceſs.

Sir *J. Jekyll.* We have done with this Witneſs; if my Lord hath a Mind to ask him any Queſtions, he is at Liberty to do it.

L. H. Steward. My Lord, if you have any Queſtion to ask, propoſe it, and it ſhall be asked.

L. Wintoun. I can't examine him, I deſire my Council may examine him.

L. H. Steward. I told your Lordſhip your Council are not to aſſiſt your Lordſhip in croſs-examining the Witneſſes; you have a Liberty of croſs-examining them yourſelf, by propoſing your Queſtions, and they will be ask'd by the Court.

L. Wintoun. I never examin'd a Witneſs in my Life, I deſire my Council may do it for me.

L. H. Steward. Have you any Queſtions?

L. Wintoun. My Lord, I hope you will allow my Council to ſpeak for me.

L. H. Steward. Have you any Queſtion you deſire to be ask'd, and it ſhall be ask'd?

L. Wintoun. I deſire my Council may ask for me; it is very hard to have none to ſpeak for me, and there are twenty againſt me.

Proclamation for Silence as uſual.

L. H. Steward. My Lord *Wintoun*, I hope now you will be better heard. If you have any Queſtion to ask this Witneſs, if your Lordſhip propounds it, it ſhall be ask'd him.

L. Wintoun. My Lord, allow my Council to ſpeak for me, I have but two.

L. H. Steward. My Lord, I have acquainted you, (but apprehend you did not hear me) that the Law of the Land doth not allow it.

Sir *J. Jekyll.* My Lords, if my Lord at the Bar doth not think fit to ask this Witneſs any Queſtions, nor your Lordſhips, we muſt call another Witneſs.

L. H. Steward to Calderwood *the Witneſs.* Direct your Anſwer this way. You have mention'd ſeveral Proclamations of the Pretender, was there any at which my Lord, the Priſoner at the Bar, was not preſent?

Calderwood. I did not ſee him at the Proclamation at *Preſton*.

L. H. Steward. At how many other Places did you ſee him?

Calderwood. I ſaw him at *Wooler*, *Jedburg*, *Kelſoe* and *Kirby-Lonſdale*, and *Lancaſter*, where the Pretender was proclaim'd.

L. H. Steward. Did he join in cauſing him to be proclaim'd, or did he ſeem to miſlike it?

Calderwood. No, my Lord, he was always among the reſt.

Att. Gen. With your Lordſhip's Favour, the next Witneſs is *James Lindſey*, we deſire he may be ſworn.

L. Wintoun. My Council are preſent, pray allow my Council to ſpeak for me, I am not uſed to ſpeak in ſuch Aſſemblies.

Lindſey was ſworn accordingly.

L. H. Steward. Who do you call next, Gentlemen?

Att. Gen. James Lindſey is ſworn, we deſire he may give your Lordſhips an Account, whether he was at any time at *Moffett*, when the Pretender was proclaim'd, and what Share my Lord *Wintoun* had in it? —— I believe it will be better to have ſomething for the Witneſſes to ſtand upon; —— ſtay a little, till ſomething is brought to ſtand upon.

A Chair was brought to ſtand upon.

Sir *J. Jekyll.* Was you at *Moffett?*

Lindſey. Yes.

Sir *J. Jekyll.* What paſt there, and who was at that Place?

L. H. Steward. Keep your Face, and direct your Anſwer this way; tho' the Gentlemen on the Left Hand ask you Queſtions, keep your Face this way.

Lindſey. I ſaw ſeveral Gentlemen.

Sir *J. Jekyll.* But did you ſee my Lord *Wintoun* there?

Lindſey. Firſt I ſaw him there; the ſecond time at *Jedburg*, the third time at *Kendall*, and the laſt at *Preſton*.

Sir *J. Jekyll.* You ſaw him at theſe Places you have mentioned, what happened at either of theſe Places?

Lindsey. The first time I saw him, he was riding on a grey Horse, mounted with Sword and Pistol; the second time, sitting with the Guard; and at *Kendall* on Horseback, when he came out of Town I saw him riding on Horseback; and at *Preston*, I saw him riding at the Market-Place, with other Gentlemen along with him.

Sir *J. Jekyll.* Was there any Proclamation made at any of these Places?

Lindsey. Yes, there was a Proclamation at *Jedburg*, they told me they proclaim'd the Pretender.

Sir *J. Jekyll.* Did you hear the Proclamation?

Lindsey. I heard the Voice, but not the Words pronounced.

Sir *J. Jekyll.* Who assisted at it?

Lindsey. A great many Gentlemen on Horseback.

Sir *J. Jekyll.* Was the Prisoner at the Bar there?

Lindsey. I did not see him.

Sir *J. Jekyll.* Was the Prisoner at the Bar at *Lancaster?*

Lindsey. I do not know, I was not there.

Sir *J. Jekyll.* Was he at *Preston?*

Lindsey. Yes, he was there.

Sir *J. Jekyll.* Was you present when they proclaimed the Pretender there?

Lindsey. I was standing at a great distance, but did not hear it, but saw the Army.

Sir *J. Jekyll.* From those Places when you marched, in what manner did you march? In Squadrons?

Lindsey. Yes, in Squadrons.

Sir *J. Jekyll.* Did the noble Lord at the Bar command a Squadron?

Lindsey. I did not know what his Lordship's Command was, he rode at the Head of the first Squadron.

Att. Gen. Did he march along with the Forces?

Lindsey. I had very seldom Occasion to see his Lordship. I believe he did.

Sir *J. Jekyll.* Do you know any thing of raising Money?

Lindsey. I heard talk of it only.

Sir *J. Jekyll.* What Troops were with the Rebels?

Lindsey. I can't tell how many.

Sir *J. Jekyll.* Do you remember any one Troop?

Lindsey. Yes, there was *Lockhart's.*

Sir *J. Jekyll.* Any beside?

Lindsey. There was one went by the Name of my Lord *Wintoun's*, but I knew it not.

Att. Gen. Who was there in that Troop of *Lockhart's?*

Lindsey. Several Gentlemen.

Att. Gen. Was there any but Gentlemen?

Lindsey. Some private Men and Servants.

Att. Gen. Whose Servants?

Lindsey. The Captain's, Mr. *Lockhart* had two or three himself.

Att. Gen. Was there any other Servants?

Lindsey. No, I don't think there was any other.

Att. Gen. Did you know the Troop called my Lord *Wintoun's?*

Lindsey. I did not know it, there was one called his.

Att. Gen. Was there any Servants in it?

Lindsey. There were Servants in that Company.

Sir *J. Jekyll.* Were they armed with Sword and Pistol?

Lindsey. Yes.

Sir *J. Jekyll.* Was you at *Preston* when the King's Forces invested it?

Lindsey. Yes.

Sir *J. Jekyll.* How did the Prisoner behave himself?

Lindsey. I cannot tell.

Sir *J. Jekyll.* My Lords, we have done with our Examination of this Witness.

L. H. Steward. My Lord *Wintoun*, if you would ask this Witness any Question, propose it, and it shall be asked.

After a considerable Pause,

Att. Gen. Our next Witness is *Elias Cammeron*, we desire he may be sworn.

He was sworn accordingly.

Mr. Cowper. My Lords, we desire he may be asked whether he was in the Rebels Army.

L. H. Steward. You hear the Question; direct your Answer this way.

Cammeron. Yes, I was there.

Mr. Cowper. Under whose Command?

Cammeron. Under the Command of Captain *Mackcleane.*

Mr. Cowper. And in whose Regiment?

L. H. Steward. Turn your Face this way, that your Voice may be heard.

Cammeron. My Lord *Charles Murray's* Regiment.

L. H. Steward. Whose Command was you under?

Cammeron. Under Captain *Mackleane.*

Sir *J. Jekyll.* In whose Regiment?

Cammeron. In my Lord *Charles Murray's* Regiment.

Sir *J. Jekyll.* Will you give a general Account of what you know from the first time you came into the Army of the Rebels?

Cammeron. I joined them at *Moffett*, and then we proceeded to a Place called *Lochmaben*; and then we march'd to *Duns*, from thence to *Kelsoe*; within two Miles of *Kelsoe* we met the Horse. Then we went from *Kelsoe* to *Jedburg*, I saw my Lord *Wintoun* there; the next Day we rested. Then we marched, from *Langtown* to *Brampton*; from *Brampton* to *Penrith*; from *Penrith* to *Kirby-Lonsdale*; and from *Kirby-Lonsdale* to *Lancaster*; where I saw my Lord *Wintoun* at the Head of his Horse with a Trumpet sounding before him; I saw them march; we staid a Day at *Lancaster*, and the Horse went into *Preston* the next Day; either *Wednesday* or *Thursday* I saw my Lord *Wintoun*, and after the King's Forces were come I saw my Lord *Wintoun* with other Lords.

Mr. Cowper. You have mentioned proclaiming the Pretender at one or two Towns, pray give an Account at how many Places you observed that he was proclaimed?

Cammeron. I heard him proclaimed at *Duns*, at *Kelsoe*, and at *Lancaster.*

Mr. Cowper. I desire to know if at any of these Places you observed the Prisoner, my Lord *Wintoun?*

Cammeron. At *Lancaster* I did observe him to go into the Ring when they were going to proclaim him, but at the Time of the Proclamation I did not see him, being in the outward Part of the Ring.

Att. Gen. Pleaſe to acquaint my Lords, whether in your March you took any Priſoners.

Cammeron. When we were near *Penrith*, we took a great many Priſoners. I did not ſee them taken.

Att. Gen. Was the Priſoner at the Bar with you in that March?

Cammeron. I can't really determine. I ſaw him there.

Att. Gen. Where did you ſee him firſt?

Cammeron. At *Kelſoe*, when the Foot joined us.

Att. Gen. Where did you take the Priſoners?

Cammeron. At *Penrith*.

Att. Gen. Did the noble Lord at the Bar ever leave you after he joined you?

Cammeron. I heard he was not for coming into *England*. I only heard this by Report.

Sir *J. Jekyll.* Was you at *Seaton* Houſe?

Cammeron. Yes.

Sir *J. Jekyll.* Was my Lord *Wintoun* there?

Cammeron. No, only Brigadier *Mackintoſh* and the Foot.

Sir *J. Jekyll.* What Time did they come to *Seaton* Houſe?

Cammeron. On *Saturday* to my beſt Remembrance, they were at *Seaton* Houſe; then the Duke of *Argyle* returned back, and that Night about Six or Seven o' Clock we retreated to *Seaton* Houſe, and ſtaid there *Sunday*, *Monday* and *Tueſday*.

Att. Gen. At the Time the Highlanders came to *Seaton* Houſe, was this Lord there?

Cammeron. No, I do not know that he was.

Att. Gen. Do you know any thing of the publick Revenues being gather'd at *Duns*, *Brampton* and *Appleby*?

Cammeron. Yes,

Att. Gen. Did they give any Receipts?

Cammeron. Yes, they gave Receipts. I ſaw one which was to this Effect: After the Year and Date, then, Receiv'd ſuch a Sum of Money as Exciſe-Duty, due from ſuch a Perſon to ſuch a Perſon.

Att. Gen. During the Time the King's Forces attack'd *Preſton*, what did you obſerve my Lord *Wintoun* do?

Cammeron. What I obſerved of my Lord *Wintoun*, was this: I was there by the Church-yard, there I ſaw my Lord *Wintoun* in the Church-yard, with my Lord *Kenmure* and *Derwentwater* at the Time of the Action, but I did not ſee him in the Action, and whether he had Piſtols or not I can't be poſitive.

Att. Gen. Was there any Perſons at the Market-Place?

Cammeron. I was not at the Market-Place.

Att. Gen. You was at the Church-yard?

Cammeron. Yes.

Sir *J. Jekyll.* When you obſerved my Lord *Wintoun*, what did you ſee him do?

Cammeron. I obſerved nothing, but he was like the reſt, riding to and fro with the reſt.

Sir *J. Jekyll.* Did you ſee him aſſiſting at the Proclamation of the Pretender at *Preſton*?

Cammeron. I ſaw him go into the Ring with the reſt, but I did not ſee him at the time of the Proclamation.

L. H. Steward. I believe in this Narration his Voice did not reach this End of the Court; therefore if he hath ſaid any thing proper to be taken notice of, you will do well to have it over again.

Att. Gen. We aſk him whether he knew the noble Lord to be at any of thoſe Places aſſiſting at proclaiming the Pretender?

Cammeron. I did not obſerve him but at *Lancaſter*.

Att. Gen. What happen'd there?

Cammeron. They proclaimed the Pretender there, and I ſaw him go into the Ring.

Att. Gen. But did you not obſerve him at the time of proclaiming the Pretender?

Cammeron. I ſaw him go into the Market-Place with the reſt.

L. H. Steward. You ſaw him go in when the reſt went in to proclaim the Pretender?

Cammeron. Yes.

Att. Gen. Did he then ride at the Head of the *Scots* Horſe?

Cammeron. Yes, he rid at the Head of ſome Horſe, and a Trumpet ſounding before him.

Att. Gen. Was that the Time when the Pretender was proclaimed at *Lancaſter*?

Cammeron. Yes.

Att. Gen. Whether had my Lord his Sword by his Side, or had he it drawn?

Cammeron. Really I cannot be poſitive to that.

L. H. Steward. My Lord *Wintoun*, will you ask this Witneſs any Queſtion?

L. Wintoun. My Lords, I be not prepared, ſo I hope your Lordſhips will do me Juſtice; I was not prepared for my Trial; I did not think it would come on ſo ſoon, my material Witneſſes not being come up, and therefore I hope you will do me Juſtice, and not make uſe of *Cowper*-Law, as we uſed to ſay in our Country, hang a Man firſt, and then judge him.

L. H. Steward. Did you hear? My Lord *Wintoun*, pleaſe to ſpeak it again.

L. Wintoun. I ſaid that I was not prepared for my Trial; I did not think it would come on ſo ſoon. Some Gentlemen are juſt come up; pleaſe your Lordſhips to let me know what they ſay, that I may be the better able to make my Defence.

L. H. Steward. If your Lordſhip will ask this Witneſs any Queſtion, now is your Time; but if what you are ſaying is your Defence, you ſhould reſerve that till the Commons have done.

Robert Patten is called and ſworn.

Proclamation made for Silence as uſual.

Sir *W. Thomſon.* With your Lordſhips Permiſſion I beg leave to ask this Witneſs, whether at any time he was in Company with theſe Rebels, and when he firſt joined them?

Patten. I joined them on the 20th of *October*, at *Wooler*.

Sir *W. Thomſon.* Pray Sir will you give an Account what paſt from that Time you joined them till they were taken.

Patten. I remember from *Wooler* we march'd to *Kelſoe*.

Sir *W. Thomſon.* Did you ſee my Lord *Wintoun at Wooler*?

Patten. I can't ſay I did.

Sir *W. Thomſon.* Did you ſee him at *Kelſoe*?

Patten. I ſaw him when the Proclamation was there.

Sir *W. Thomſon.* What Proclamation?

Patten. To proclaim the Pretender.

Sir *W. Thomſon.* Was my Lord *Wintoun* preſent?

Patten. Yes.

Sir *W. Thomſon.* In what Manner?

Patten. He appear'd among the reſt of the Gentlemen.

Sir *W. Thomſon.* Was he armed?

Patten. Only his Sword, that I ſaw.

Sir *W. Thomſon.* Pray what paſs'd afterwards?

Patten. We came to *Kelſoe*, and from thence we went to *Jedburg*.

Sir *W. Thomſon.* Where did you go?

Patten. To *Jedburg*.

Sir *W. Thomſon.* What paſs'd there?

Patten. After they came to *Jedburg* they were alarmed by a Party, they thought of the King's Forces, but it happen'd to be ſome of their own Party.

Sir *W. Thomſon.* What happened on that Occaſion?

Patten. I ſaw the Lords, and among the reſt my Lord *Wintoun*, at the Head of ſome Horſemen there drawn up.

Sir *W. Thomſon.* In what Manner?

Patten. The Earl of *Wintoun* was drawn up with his Men, and the *Scots* Lords with their Men.

Sir *W. Thomſon.* With what Intent?

Patten. They apprehended General *Carpenter* with the King's Forces was coming to attack them.

Sir *W. Thomſon.* You ſay my Lord *Wintoun* march'd out at the Head of ſome Horſemen?

Patten. I can't ſay I ſaw him march out, but I ſaw him at the Head of ſome Horſe.

Sir *W. Thomſon.* What happen'd afterwards?

Patten. They returned to *Jedburg* and ſtaid all Day, and the next Day they marched to *Hawick*.

Sir *W. Thomſon.* What happen'd at *Hawick?*

Patten. At Midnight we were again alarmed with a Party.

Sir *W. Thomſon.* What happen'd upon that?

Patten. I ſaw my Lord *Wintoun* in the Street.

Sir *W. Thomſon.* Was there any Preparation made for Defence?

Patten. Yes, they were going out to defend themſelves.

Sir *W. Thomſon.* You ſaw my Lord *Wintoun* there?

Patten. Yes.

Sir *W. Thomſon.* In what manner?

Patten. He had his Sword by his Side.

Sir *W. Thomſon.* When you went from that Place, whither did you go then?

Patten. We went to *Langholm*.

Sir *W. Thomſon.* What paſs'd there?

Patten. We continued there till next Morning, when we conſulted whether to march for *England* or for *Scotland*; a Party of Horſe went for *Dumfreiſe*. The Highlanders, a great part of them went off there, and would not march for *England*.

Sir *W. Thomſon.* Was my Lord *Wintoun* with them at their going off?

Patten. I ſaw my Lord *Wintoun* go off, and come up again: I ſpoke to my Lord upon that account.

Sir *W. Thomſon.* What did his Lordſhip ſay?

Patten. Nothing material, but aſk'd me if I knew the Country.

Sir *W. Thomſon.* When the Foot went off at *Langholm*, did my Lord go to them?

Patten. I ſaw him go up to them, and make a Halt.

Sir *W. Thomſon.* But he came back again?

Patten. Yes.

Sir *W. Thomſon.* At that time, if my Lord had had any Inclination to it, whether might he not have gone off?

Patten. Yes: I can't tell my Lord's Inclination, but any Body might have gone off, there was no Reſtraint upon him.

Sir *W. Thomſon.* Whither did you march from *Langholm?*

Patten. To *Langtown*.

Sir *W. Thomſon.* Did any thing happen at *Langtown?*

Patten. We march'd through.

Sir *W. Thomſon.* Whither did you go then?

Patten. To *Brampton*.

Sir *W. Thomſon.* Whither from thence?

Patten. To *Penrith*.

Sir *W. Thomſon.* What happen'd there?

Patten. There was the *Poſſe Comitatus*, whether that *Poſſe Comitatus* were the Militia I can't tell; they were got together, and upon our advancing they diſpers'd themſelves.

Sir *W. Thomſon.* Where was my Lord *Wintoun* then?

Patten. I ſaw him among the *Scots* Lords there after his uſual manner, on Horſeback, with Sword and Piſtols.

Sir *W. Thomſon.* Was his Sword drawn?

Patten. No.

Sir *W. Thomſon.* Whither did they go then?

Patten. They went to *Appleby*.

Sir *W. Thomſon.* What paſſed at *Appleby?*

Patten. They went from *Appleby* to *Kendall*.

Sir *W. Thomſon.* What happened there?

Patten. A Proclamation was read, as at moſt of the Towns.

Sir *W. Thomſon.* Did you ſee my Lord *Wintoun* at any of thoſe Proclamations?

Patten, No, I did not.

Sir *W. Thomſon.* Where did you go then?

Patten. To *Kirby-Lonſdale*.

Sir *W. Thomſon.* Did any thing happen remarkable there?

Patten. I dined with the *Scots* Lords at *Kirby*.

Sir *W. Thomſon.* What happen'd there? and what Healths were drank there?

Patten. The Pretender's Health, and Succeſs to our Cauſe, that was the uſual Health.

Sir *W. Thomſon.* Was my Lord *Wintoun* there?

Patten. Yes, there was my Lord *Kenmure*, *Carnwath*, and the other Lords.

Sir *W. Thomſon.* Did he drink the Health among the reſt?

Patten. All the Table did.

Sir *W. Thomſon.* From thence whither did you go?

Patten. To *Lancaſter*.

Sir *J. Jekyll.* At the place where you drank Healths, was there any other remarkable Health?

Patten. The uſual Health was good Succeſs to the Cauſe in hand.

L. H. Steward. Who drank that Health?

Patten. All the Company.

L. H. Steward. Who was in Company? was the Priſoner at the Bar in Company?

Patten. Yes, he was.

Sir *W. Thomſon.* When you came to *Lancaſter*, in what manner did you enter that Town?

Patten. We entred that Town more regularly than any other we had marched thro'.

Sir *W. Thomſon.* After what manner?

Patten. They march'd into the Town with their Swords drawn, and the Highlanders were drawn

round the Croſs; the Gentlemen marched into the Town on Horſeback; the Pretender was proclaimed there.

Sir *W. Thomſon.* You was by when the Pretender was proclaimed?

Patten. Yes.

Sir *W. Thomſon.* Was my Lord *Wintoun* there?

Patten. I can't ſay I ſaw him there: I ſaw him in the Town at the head of ſome Horſe with his Sword drawn.

Sir *W. Thomſon.* Was there any Cannon ſeized at *Lancaſter?*

Patten. Some Pieces of Cannon were ſeized.

Sir *W. Thomſon.* What did you do with the Cannon?

Patten. We carried them with us to *Preſton.*

Sir *W. Thomſon.* When there were Prayers in the Pariſh Church at *Lancaſter,* who was prayed for?

Patten. The Pretender.

Sir *W. Thomſon.* Do you know who were preſent?

Patten. A great many.

Sir *W. Thomſon.* Was the Lord *Wintoun* there?

Patten. I can't tell.

Sir *W. Thomſon.* Did you obſerve at any time any Force or Compulſion uſed to detain my Lord *Wintoun?*

Patten. No, none at all.

Sir *W. Thomſon.* Did he ſhew any Uneaſineſs, or any Backwardneſs to go with them?

Patten. I can't be Judge of my Lord's Uneaſineſs, it did not appear ſo.

Sir *W. Thomſon.* By whoſe Direction was the Prayer for the Pretender?

Patten. By Order of Mr. *Forſter.*

Sir *W. Thomſon.* My Lords, we have done with this Witneſs.

L. H. Steward. My Lord *Wintoun,* will you pleaſe to aſk this Witneſs any Queſtion?

L. Wintoun. No.

Att. Gen. My Lords, we deſire to call my Lord *Forreſter.*

Then a Chair was placed for Lord *Forreſter* near the Clerks Table.

And the Oath was adminiſtred to him by the Lord High Steward.

Sir *J. Jekyll.* My Lords, we beg leave to aſk this Noble Lord a Queſtion or two: Was your Lordſhip at *Preſton?*

L. Forreſter. Yes, my Lords.

L. H. Steward. Your Lordſhip will pleaſe to raiſe your Voice.

L. Forreſter. I was there with the King's Troops, and had the Honour to command Brigadier *Preſton*'s Regiment. We came before *Preſton* on *Saturday* the 12th of *November.*

Att. Gen. Will your Lordſhip acquaint my Lords what paſs'd at *Preſton* when you was there? whether you was by at *Preſton* when the King's Forces attack'd it, and whether it was defended by the Rebels, and what elſe paſſed there?

L. Forreſter, I was there, and commanded one of the Attacks under Brigadier *Honywood.*

Att. Gen. Was the Town defended by the Rebels, and were any of the King's Officers and Soldiers killed?

L. Forreſter. Yes, a great many.

Att. Gen. Pleaſe to give an Account what Number.

Lord Forreſter. We loſt a great many.

Att. Gen. Can you gueſs the Number?

L. Forreſter, No, I can't exactly tell: A good many; we had 'twixt Sixty and Seventy of the Regiment I had the Honour to Command killed and wounded.

Att. Gen. How many were killed?

L. Forreſter. About thirty were killed dead on the Spot.

Att. Gen. How long did that Attack laſt, before they deſired to capitulate?

L. Forreſter. From *Saturday* till *Sunday* Morning between one and two a Clock.

Sir *J. Jekyll.* I think your Lordſhip had a command to take Poſſeſſion of the Town?

L. Forreſter. Yes; I took Poſſeſſion of the Church-yard *Monday* Morning about Six a Clock.

Sir *J. Jekyll.* Will you pleaſe to give an Account of what you know of the Noble Lord at the Bar when the Town ſurrendred.

L. Forreſter. The Town ſurrender'd at ſix a Clock in the Morning; I came into the Church-yard and took Poſſeſſion of it; then I went to the *Mitre Tavern,* where that Lord and the reſt of the Lords were; I diſarmed them.

Att. Gen. What Arms did my Lord *Wintoun* deliver up at that time?

L. Forreſter. Two Caſes of Piſtols.

Sir *J. Jekyll.* If my Lord hath a mind to aſk any Queſtion of the Noble Lord that hath been examined, we deſire he may do it.

L. H. Steward. My Lord *Wintoun,* will you be pleaſed to aſk this Noble Lord any Queſtion concerning this matter at *Preſton?*

L Wintoun. I had no Arms: Pleaſe to aſk him whether I had Sword or Piſtol in my Hand?

L. H. Steward. Take my Lord's Queſtion in Writing.

Then the Clerk went and took it.

Queſtion. Whether the Arms your Lordſhip mentioned to have been delivered to you, whether he had the Arms then about him, or his Lordſhip did not ſay they were in the Stable?

L. Forreſter. He brought the Arms to me himſelf, and gave them me out of his own Hands.

L. H. Steward. My Lord ſays you brought the Arms to him your ſelf, and gave them him out of your own Hands.

L. Forreſter. I got ſo many of them that I ſhould not have made any Diſtinction of his from the reſt, but that I remember he gave me his Arms out of his own Hands, and deſired me to give them to my Lord *Kimmergem.*

L. H. Steward. You deſired my Lord *Forreſter* to give them my Lord *Kimmergem.*

L. H. Steward. Another Queſtion propoſed is, Whether my Lord *Wintoun* did not give Orders to his Servant to bring the Arms out of the Stable, and to give them my Lord *Kimmergem?*

L. Forreſter. I believe he did bring them out of the Stable.

L. H. Steward. My Lord believes you did bring them out of the Stable.

L. Wintoun. I deſire he may be aſked whether I had a Sword about me.

L. H. Steward. My Lord *Forreſter,* the Queſtion is, Whether your Lordſhip found a Sword about my Lord *Wintoun?*

L. Forreſter. I did not ſee any Sword that he had; he had a great Coat on, and might have had a Sword under that, but I ſaw none.

L. H. Steward. My Lord *Forreſter,* did the Priſoner at the Bar deliver himſelf and his Arms to your Lordſhip as one of thoſe in the Surrender?

L. For-

L. Forreſter. I took it ſo.

Sir *J. Jekyll.* We beg leave to call General *Carpenter*, and deſire he may be Sworn in his Place, and give your Lordſhips his Evidence.

General *Carpenter* was Sworn in his place.

Proclamation for Silence as uſual.

Sir *J. Jekyll.* Mr. *Carpenter*, pleaſe to give my Lords an Account when you came to *Preſton*, and what happened there.

Gen. *Carpenter.* I came to *Preſton* on *Sunday* the 12th of *November* laſt: The Troops under Mr *Wills* had been there the Afternoon before. I got there about Ten a Clock on *Sunday* Morning, with Three Regiments of Dragoons; and there had been no Intercourſe nor Meſſage paſs'd before I came.

Att. Gen. Pleaſe to inform my Lords what paſs'd there after you came to *Preſton*.

Gen. *Carpenter.* After I came, the Rebels ſent out to know what Terms they might expect, and were anſwer'd none but at Diſcretion. They ſoon after ſent out one Captain *Dalziel*, to deſire a Ceſſation till next Morning; upon which I ſent in Colonel *Churchill* to tell them, I agreed to a Ceſſation, provided they ſent out an *Engliſh* Lord and a *Scots* Lord as Hoſtages: I named my Lord *Derwentwater* and my Lord *Kenmure*. Captain *Dalziel* ſaid he thought my Lord *Kenmure* would not come out. I named then Brigadier *Mackintoſh*: He alſo thought he would not come out. I was unwilling to make great Difficulties, it growing towards Night; and ſaid either of the *Mackintoſh's* and an *Engliſh* Lord: And he brought out my Lord *Derwentwater* and Colonel *Mackintoſh* as Hoſtages, that they ſhould make no Attempt to eſcape, nor any Works for Defence in the Town.

Att. Gen. Pray, Sir, acquaint my Lords who you ſent in with Colonel *Churchill*.

Gen. *Carpenter.* Colonel *Cotten*.

Att. Gen. When did they agree to the Surrender of the Place?

Gen. *Carpenter.* Not till the next Morning. The Hoſtages were, that none ſhould attempt to eſcape, nor any Defences ſhould be made in the Town till the next Morning, at which time they would determine whether they would ſurrender or not.

Att. Gen. I deſire you to acquaint my Lords whether theſe were all the Terms offered, or whether there was any Hopes of Mercy given them?

Gen. *Carpenter.* I gave them none at all my ſelf, and it is very unlikely any Body elſe ſhould: I commanded in Chief his Majeſty's Forces there: No Body ought to have done it; and if any Officer whatſoever took upon him ſo to do without my Order or Leave, it was very unanſwerable by the Rules and Diſcipline of War; and what he cannot anſwer: I hope no Body did: I am ſure I gave no ſuch Directions: Colonel *Churchill* can acquaint your Lordſhips whether I directed him to mention any other Conditions to them than at Diſcretion.

Sir *J. Jekyll.* Did you hear any other Officer give them any Hope or Expectation of Mercy?

Gen. *Carpenter.* No, I did not.

Sir *J. Jekyll.* If my Lord *Wintoun* hath any Queſtions to ask this honourable Perſon, he may do it.

L. H. Steward. My Lord *Wintoun*, now is your Time if you'll aſk any Queſtion of General *Carpenter*.

L. Wintoun. Whether I was concern'd in making any——

L. H. Steward. I don't hear the Queſtion—— Then the Clerk was ſent down to take it in Writing.

And the Queſtion being brought up to the Lord High-Steward by the Clerk,

L. H. Steward. The Queſtion my Lord asks is, Whether he was concern'd in making any Capitulation, or knew any thing about it?

Gen. *Carpenter.* Not that I know of; it is impoſſible for me to know, except by Hearſay: He was not the Perſon treated with, I treated with my Lord *Derwentwater* and one of the *Mackintoſh's*, ſo that I know nothing of his being concerned in any manner of Treaty.

L. H. Steward. You hear the Anſwer.

Sir *J. Jekyll.* We beg leave to call General *Wills*.

L. Wintoun. I deſire to ask my Lord *Forreſter* a Queſtion.

L. H. Steward. My Lord *Wintoun* deſires to propoſe a Queſtion to my Lord *Forreſter*.

Sir *J. Jekyll.* Tho' that be out of Method, yet don't oppoſe it.

L. H. Steward. Bring up the Queſtion. My Lord, the Queſtion my Lord *Wintoun* propoſes is, Whether he had any Sword or Arms when he firſt ſaw your Lordſhip at *Preſton*?

L. Forreſter. I don't remember I had a Sword from him; I can't tell whether he had a Sword about him, for he had a great Coat on; but I remember I took none from him, I had only the two Caſes of Piſtols which he gave me.

L. H. Steward. He could not tell whether you had a Sword about you, you had a great Coat that he could not well ſee; but he remembers he took none from you, only the two Caſes of Piſtols which you gave him.

L. H. Steward. Who do you call next?

Sir *J. Jekyll.* My Lords, we deſire that General *Wills* may be ſworn.

He was ſworn accordingly.

Sir *J. Jekyll.* Mr. *Wills*, pray give my Lords an Account when you came before the Town of *Preſton*, and what happen'd there.

Gen. *Wills.* My Lords, I had the Honour to command the King's Troops that attack'd the Rebels at *Preſton*; I came before that Town the 12th of *November* laſt about One o' Clock, and order'd two Attacks upon the Town; that Attack which leads to *Wiggen* was commanded by Brigadier *Honywood*, who beat the Rebels from their firſt Barricade, and took Poſſeſſion of ſome of the Houſes in the Town; the other Attack which leads to *Lancaſter* was commanded by Brigadier *Dormer*, who lodg'd his Troops nigh the Barricade of the Rebels. The next Day, about Two o' Clock, Mr. *Forſter* ſent out one Mr. *Oxborough*, an *Iriſhman*, offering to lay down their Arms and ſubmit themſelves, and hoped that I wou'd recommend them to the King for Mercy; which I refuſed, and told them I wou'd not treat with Rebels, for that they had killed ſeveral of the King's Subjects, and that they muſt expect to undergo the ſame Fate; upon which he ſaid, that as I was an Officer, and a Man of Honour, he hoped I wou'd ſhew Mercy to People who were willing to ſubmit: Upon which I told them all I would do for them was, that if they laid down their Arms, and ſubmitted Priſoners at Diſcretion, I would prevent the Soldiers from cutting them to pieces till I had further Orders, and that I would give them but one Hour to conſider of it; and

and ſent him back again into the Town to acquaint *Forſter* of it; before the Hour was expir'd they ſent out Mr. *Dalziel*, Brother to the Earl of *Carnwath*, and he wanted Terms for the *Scots*. My Anſwer was, that I wou'd not treat with Rebels, nor give them any other Terms than what I had before offer'd them: Upon which it was deſired that I would grant further Time till Seven o' Clock next Day, to conſult the beſt Method of delivering themſelves up. I agreed to grant them the Time deſired, provided that they threw up no new Intrenchments in the Streets, nor ſuffer'd any of their People to eſcape, and that they ſent out the Chief of the *Engliſh* and *Scots* as Hoſtages for the Performance; and I ſent in Colonel *Cotten* to bring them out, who brought out the Earl of *Derwentwater* and Mr. *Mackintoſh*. The next Day about Seven o' Clock Mr. *Forſter* ſent out to let me know, that they were willing to give themſelves up Priſoners at Diſcretion, as I had demanded. Mr. *Mackintoſh* being by when the Meſſage was brought, ſaid he could not anſwer that the *Scots* would ſurrender in that manner; for that the *Scots* were People of deſperate Fortunes, and that he had been a Soldier himſelf, and knew what it was to be a Priſoner at Diſcretion; upon which I ſaid, go back to your People again, and I will attack the Town, and the Conſequence will be, I will not ſpare one Man of you. *Mackintoſh* went back, but came running out immediately again, and ſaid, that the Lord *Kenmure*, and the reſt of the Noblemen, with his Brother, would ſurrender in like manner with the *Engliſh*.

Sir *J. Jekyll.* When the Attack was made by the King's Forces, whether any, and how many were killed?

Gen. *Wills.* I believe between ſixty and ſeventy, but few of the Horſe; there were killed and wounded about a hundred and thirty.

Att. Gen. If you pleaſe to acquaint my Lords, whether any of the Rebels came and treated with you, or if you gave them any Encouragement to hope for Mercy.

Gen. *Wills.* All the Terms I gave them was, that I would ſave their Lives from the Soldiers 'till further Orders, if they ſurrender'd at Diſcretion: I deſire to explain the Meaning of ſurrendering at Diſcretion, which is, then it is in our Power to cut them all to pieces; but I would give them their Lives till further Orders; for I could have cut them to pieces immediately after they are made Priſoners at Diſcretion, by the Rules of War; and if they did not comply I would renew the Attack, and not ſpare a Man.

L. H. Steward. You told them that if they did not comply, you would renew the Aſſault?

Gen. *Wills.* Yes, and not ſpare a Man of them.

Sir *J. Jekyll.* Did you give your Officers any Directions to give any other Terms?

Gen. *Wills.* No, I did not.

L. H. Steward. Then you gave no Directions to any other Officer to give other Terms than you yourſelf had offer'd?

Gen. *Wills.* No, I did not.

Mr. *Cowper.* Was there any other but theſe two, Colonel *Churchill* and Colonel *Cotten* ſent in by you, or by General *Carpenter?*

Gen. *Wills.* Yes, Colonel *Naſſau*, to bid our own People forbear firing.

Mr. *Cowper.* Had Colonel *Naſſau* any Authority to treat?

Gen. *Wills.* No, he went in only to bid our Troops to forbear firing, and order Colonel *Cotten* to come out with the Hoſtages.

Sir *J. Jekyll.* You ſay the Rebels deſired you to recommend them to the King's Mercy? Who made that Propoſition?

Gen. *Wills.* One *Oxborough.*

Sir *J. Jekyll.* Had you any other Propoſition by any other?

Gen. *Wills.* Mr. *Dalziel*, Brother to my Lord *Carnwath*, for the *Scots*. I refuſed him likewiſe, and told him I wou'd treat with no Rebels, nor give them any Quarter.

Sir *J. Jekyll.* If my Lord at the Bar will ask this honourable Gentleman any Queſtion, now is the Time.

L. H. Steward. My Lord *Wintoun*, the Clerk is ſent down to you again; if you have any Queſtion he will take it.

The Clerk return'd with the Queſtion to my Lord High-Steward.

L. H. Steward. The Queſtion my Lord propoſes to General *Wills* is, Whether you, General *Wills*, gave any Summons to ſurrender before you made the firſt Attack; or if you did not make the Attack without any Summons at all?

Gen. *Wills.* When I was viewing the Town they ſhot two of my Dragoons, and I did not ſummons them.

Another Queſtion taken by the Clerk and brought up.

L. H. Steward. Another Queſtion my Lord deſires to be ask'd is, Whether you offer'd to prevent the Forces from falling upon the Gentlemen at *Preſton*, provided they ſurrender'd at Diſcretion?

Gen. *Wills.* Before ever I had drawn up the Troop——

L. H. Steward. The Queſtion is, Whether you offered to prevent the Forces from falling upon the Gentlemen at *Preſton*, provided they ſurrender'd at Diſcretion?

Gen. *Wills.* Yes, my Lords, I did hinder the Troops from falling upon them after they offer'd to ſurrender.

Another Queſtion brought up by the Clerk.

L. H. Steward. General *Wills*, my Lord deſires you may be ask'd what you know, or have been inform'd of his Lordſhip's being againſt coming to *England*; or of my Lord's being againſt fighting with any of yours, or General *Carpenter's* Troops?

Gen. *Wills.* I never knew my Lord *Wintoun*, nor ſaw him till four Days after he was taken at *Preſton*, ſo that I can ſay nothing to that I don't know any think of.

L. Wintoun. I deſire General *Carpenter* may be ask'd the ſame Queſtion.

L. H. Steward. Do you know any thing, or have heard that my Lord *Wintoun* was againſt coming into *England*, or fighting the King's Forces?

Gen. *Carpenter.* My Lords, I heard that at *Jedburg* they held a Council of War, the chief Officers, *&c.* this is only Hearſay, I ſpeak not of my own Knowledge.

Sir *J. Jekyll.* For the ſake of Evidence it is incumbent on us to deſire that my Lord confines himſelf to ask the General what he knows, and not to what he heard ſaid.

Att. Gen. We have two Witneſſes more, the Colonels that were ſent into the Town by the two Generals, Colonel *Churchill* and Colonel *Cotten.*

Colonel

Colonel *Churchill* was ſworn.

Mr *Cowper*. The Queſtion propos'd is, Whether you was ſent into *Preſton*, and by whom?

Col. *Churchill*. I came up to *Preſton* on *Sunday* Morning, under General *Carpenter*'s Command, about Ten o' Clock; about One they ſent out to capitulate; about Five I was ſent in by General *Carpenter*, their Requeſt being, that they might have Time till next Day to conſider whether they ſhould ſurrender or not. My Directions were, they ſhould have that, upon Condition they ſent out Hoſtages that none of them ſhould attempt to eſcape, and that no Defence ſhould be made in the Town. The People named to me by General *Carpenter* were my Lord *Derwentwater* or my Lord *Widdrington*, and my Lord *Kenmure* or *Mackintoſh* was mentioned for the *Scots*. I directed them to ſend the Hoſtages to me. They could not find my Lord *Derwentwater* nor *Widdrington*, and *Mackintoſh* was gone to Bed. A little before eight I went with them, and told them the Terms I was to deliver to them, that they were to throw up no Works to fortify themſelves, and ſhould anſwer for the People, that none of them ſhould eſcape. My Lord *Derwentwater* and *Mackintoſh* went out with me: I carried them to the two Generals there, and at Seven o' Clock next Morning they ſurrender'd themſelves.

Mr. *Cowper*. Pleaſe to give me leave to ask you, whether you had any Commiſſion from the General that ſent you into the Town, or whether you of yourſelf, without ſuch Commiſſion, gave them any Hopes of Mercy?

Col. *Churchill*. I had not any Power to do it, and was ſo far from doing it, that I don't remember a ſingle Syllable was mentioned either on our Side or theirs about it.

Mr. *Cowper*. Did you at any other Time hear any other Officers give them ſuch Aſſurance?

Col. *Churchill*. I never heard a ſingle Word like it.

Att. Gen. Who did you treat with?

Col. *Churchill*. The Body I treated with carried me to Mr. *Forſter*, and then to my Lord *Kenmure*. I deliver'd my Meſſage to Mr. *Forſter*. I did not know any *Scots* Lord but *Kenmure*.

Att. Gen. Who was preſent beſides my Lord *Kenmure?*

Col. *Churchill*. I ſaw a great many, but I did not know particularly any.

Att. Gen. The next is Colonel *Cotten*, who was ſent in by General *Wills*. We deſire Colonel *Cotten* may be ſworn.

He was ſworn accordingly.

Att. Gen. We deſire to ask Colonel *Cotten*, whether he was ſent into *Preſton* by General *Wills*, and what Inſtructions were given him when he went in?

Col. *Cotten*. I was ſent into the Town by General *Wills* at their Deſire, they having Terms to offer: I told them we could give them none; they urged they had Diſputes amongſt the *Scots* and *Engliſh*, and deſired till the next Morning to reconcile them. General *Wills* ſent me again into the Town to allow them that time, provided that the Lords would give their Words that they would throw up no Works for their Defence from that time, and do their utmoſt that none of their People ſhou'd make their Eſcape; and the Lords did give their Words; and the Lord at the Bar was preſent.

Att. Gen. I deſire you would acquaint my Lords upon what Terms they ſurrendered.

Col. *Cotten*. I had no Power from Mr. *Wills* to promiſe them any Terms, nor I did not.

Sir *J. Jekyll*. Did you acquaint them you had no Power to offer them any Terms?

Col. *Cotten*. I did.

Att. Gen. Who did you acquaint?

Col. *Cotten*. All the Lords, and the People that had any Influence over the common Men.

Sir *J. Jekyll*. Was the Noble Lord at the Bar amongſt them?

Col. *Cotten*. He was.

Sir *J. Jekyll*. Was there any Overtures made of obtaining the King's Mercy?

Col. *Cotten*. I had no ſuch Order from Mr. *Wills*, and I did not offer it neither directly or indirectly.

Att. Gen. My Lords, I thing it hath been deſired to call Brigadier *Munden*, who ſpeaks only as to the Attack; and I think, my Lords, if this Evidence need to be corroborated, we ſhall deſire to call another Evidence who was with General *Wills* all the time the Overtures paſs'd.

Sir *J. Jekyll*. My Lords, if the Lord at the Bar hath any Queſtion to aſk Colonel *Cotten*, we deſire he may be indulged.

L. Wintoun. I would know whether they did not take Priſoners and kill them, notwithſtanding the Capitulation?

L. H. Steward. The Queſtion my Lord deſires may be aſk'd is, Whether you did not take Priſoners and kill them, notwithſtanding the Capitulation?

Col. *Cotten*. My Lords, upon my coming out of the Town, tho' the Lords had engaged to prevent any of their People making their Eſcape, we were alarm'd with an Account that ſeveral were attempting it, and about ſix of thoſe who were endeavouring to eſcape were cut to Pieces. Upon this Breach of their Parole Colonel *Churchill* and my ſelf were ſent in to demand Hoſtages, and brought out Lord *Derwentwater* and Mr. *Mackintoſh*.

Att. Gen. We deſire Brigadier *Munden* may be Sworn.

He was accordingly called and Sworn.

Att. Gen. We deſire Brigadier *Munden* may be aſked whether he was ſent with theſe two Colonels into the Town, and what Directions were given them.

L. H. Steward. You hear the Queſtion, pleaſe to give your Anſwer.

Brigadier *Munden*. I humbly apprehend I am called to give ſome Account of the Attack at *Preſton*, which I will do in as few Words as I can. I am firſt to tell your Lordſhips, after the Rebels demanded an Audience of General *Wills*, their firſt Demand was for Terms: The Anſwer they received was, that General *Wills* would not treat with Rebels, but if they ſurrendered as Priſoners at Diſcretion, they ſhould have their Lives ſpared 'till his Majeſty's Pleaſure was known. They aſk'd if thoſe were the only Terms; it was anſwered yes. Afterwards this Gentleman went into the Town, who had an Hour's time allowed him to conſider of it. I remember his inſiſting upon Terms, but all the Anſwer Mr. *Wills* gave them was, if he had Inclination, he had no Power to give them any, otherwiſe than ſaving their Lives till his Majeſty's Pleaſure was further known. If they expected other Terms, they might return into the Town immediately, and he would attack them and cut them to Pieces.

After

After this the Gentleman went into the Town, my Lord *Derwentwater* and Mr. *Mackintoſh* came out to us. Mr. *Mackintoſh* and my Lord *Derwentwater* and I heard them frequently repeat their Requeſt to the General for Terms, and I heard *Mackintoſh* give a particular Account of the Bravery and Hardineſs of their Troops. Mr. *Wills* told him he might have proved and tried them if he had pleaſed, and then it would have been ſeen whether the King's Troops or a parcel of Rebels would have acted the braver Part. Mr. *Wills* received them with the utmoſt Deteſtation and Contempt, and gave them no hope of Mercy either directly or indirectly.

Att. Gen. Did you ever hear any other of the Officers offer them any other Terms?

Brig. *Munden.* No, I did not hear any. I heard the Inſtructions that were given to Colonel *Cotten* by General *Wills*, and when Mr. *Cotten* came out of the Town the third time, which was when he went to take their Parole of Honour.

Sir *J. Jekyll.* Did my Lord *Wintoun* come to give his Parole?

Brig. *Munden.* When Colonel *Cotten* came out, I very well remember he ſaid he had received his Parole of Honour among the reſt.

Sir *J. Jekyll.* If my Lord at the Bar hath any mind to aſk this honourable Perſon, Brigadier *Munden*, any further Queſtions, we have done with him.

L. H. Steward. My Lord *Wintoun*, do you aſk this Witneſs any Queſtion?

L. Wintoun. No.

Sir *J. Jekyll.* We that are entruſted by the Houſe of Commons have no more Evidence to offer to your Lordſhips.

L. H. Steward. My Lord *Wintoun*, the Gentlemen of the Houſe of Commons have done with the Evidence they propoſed to call againſt you, therefore it is your Lordſhip's time to open what Evidence you have, or if you have made any Obſervations on the Evidence given againſt you, to deliver them, or to call your own Witneſſes — Take your own Method.

Proclamation was made for Silence as uſual; and after ſome Pauſe,

L. H. Steward. My Lord *Wintoun*, I acquainted your Lordſhip that the Gentlemen of the Houſe of Commons who manage the Evidence to ſupport the Impeachment, have done with giving their Evidence; they deſign to give no more againſt you; therefore this is the time that is proper for your Lordſhip to make your Defence; you are to do it in your own Method, either by calling your Witneſſes, or making ſuch Obſervations in your Defence as you think proper.

L. Wintoun. Pleaſe to allow me ſome time, for my Witneſſes are not yet come. I have uſed all poſſible Endeavours to get them, pleaſe to allow me till this Day Month 'till they come up. It will ſignify nothing to examine any Witneſſes after I am dead.—I never ſaw my Council but once, that they might inſtruct me what I have to ſay. My Lords, I am informed they will be here ſome time next Week.

L. H. Steward. What your Lordſhip ſaid is not heard.

L. Wintoun. I ſaid I never ſpoke to any of my Council, and that but once I have ſent to my Council; I never ſaw them.

Proclamation for Silence was made as uſual.

L. H. Steward. My Lord, offer what you have to ſay now, while the Court is in Silence.

L. Wintoun. My Lords, the moſt material of my Witneſſes are not come up, they will be here ſome time next Week; I have not talk'd to my Council.

L. H. Steward. Your moſt material Witneſſes are upon the Road, you deſire ſome time till they come up; the Effect of your Petition to the Houſe of Lords, that is what you offer again?

L. Wintoun. Yes, my Lords.

Att. Gen. We think it our Duty to acquaint your Lordſhips, that what that noble Lord inſiſts upon now is out of time. If he had any Reaſons to offer to defer the Trial, he knew the proper Time and Place. Our Duty is to let your Lordſhips know, that when the Evidence for the Proſecution is given, the Priſoner is not to have time to delay the Proceedings, not any longer time. He ought to have applied before. We muſt ſubmit it to your Lordſhips.

Mr. *Cowper.* This Requeſt of his Lordſhip, the Priſoner at the Bar, ſeems to concern the Methods of Juſtice, and is, we think, of great Conſequence with reſpect to the Commons. My Lords, we ſhould have been very far from preſſing to bring on his Lordſhip's Trial ſooner than might have been thought conſiſtent with the Rules of Juſtice: But when we conſider the Time your Lordſhips have allowed him upon ſeveral Applications he has made to your Lordſhips for that purpoſe; when we all know he has had Notice ever ſince he was ſeized and made Priſoner at *Preſton*, that a Defence would be neceſſary, and that it concerned him to provide for it; when we reflect how long it is ſince the Commons exhibited their Impeachment againſt him, it's ſurprizing after all to find his Lordſhip alledge, that he hath not had Time to bring up his Witneſſes. With what View his Lordſhip is adviſed to make this Defence may be eaſily explained: It is, my Lords, to move the Compaſſion of the People, and, I fear, to traduce the Juſtice of your Lordſhips Proceedings. Surely it muſt be confeſſed, that he hath had more than Time ſufficient, more than any one in the like Circumſtances hath been allowed by your Lordſhips great Indulgence; and yet at laſt to have nothing to offer, but that his Witneſſes are not come, without attempting to produce one ſingle Witneſs to prove that he has or expects any one Witneſs to appear for him.

My Lords, the ſtated Rules of Proceeding in Trials of this Nature ought to be ever ſacred; and I don't know that any one Priſoner hath a Right to be indulged in Methods unknown to the Conſtitution.

My Lords, I believe when a Priſoner impeached by the Commons puts himſelf upon his Defence, and is brought upon his Trial, there ought to be no Interruption or Delay whatſoever. Sure I am, it is inconſiſtent with the Proceedings of all other Courts of Juſtice.

Your Lordſhips, as we are informed, lately denied the Priſoner any further Time; and if it was then thought not proper to be granted, certainly now he hath put himſelf upon his Trial, and ſtands upon his Defence at your Lordſhips Bar, he ſhall not be indulged to making the ſame Requeſt.

My Lords, whatever Compaſſion we may have for this unhappy Lord, yet the Commons, when they reflect that the Methods and Forms of Juſtice

are eſſential to Juſtice it ſelf, they then think themſelves obliged to oppoſe a new Attempt, and hope the Trial ſhall proceed.

L. Wintoun. My Witneſſes are not come up. They will be up about *Monday* or *Tueſday* next. I have had no longer time than ſince the 10th of *February* laſt to bring up my Witneſſes, when it was very bad travelling.

A Motion was made to adjourn.

L. H. Steward. My Lord *Wintoun*, your Lordſhip hath heard the Commons oppoſe your Requeſt: You have heard the Reaſons given for ſuch Oppoſition. Doth your Lordſhip, having heard the Reaſons, yet inſiſt upon it, or do you withdraw your Requeſt?

L. Wintoun. I inſiſt upon it, my Lords.

Then the Houſe was adjourned to the Chamber of Parliament.

And being returned in about an Hour, and the Houſe reſumed, and Proclamation made for Silence, as uſual;

L. H. Steward. My Lord *Wintoun*, I am commanded by the Lords to let you know, that they have conſidered your Requeſt, and that they are of Opinion it is not now conſiſtent with the Rules of Juſtice to allow you further Time for ſending for your Witneſſes; therefore you are to proceed in your Defence. I am likewiſe to acquaint you, that in reſpect to the lowneſs of your Voice, the Lords have ordered a fit Perſon to ſtand by you (after he is ſworn) to report truly to their Lordſhips what you ſay during your Trial.

Is it your Lordſhips Pleaſure that one of your Lordſhips Clerks be appointed to ſtand by and report to your Lordſhips?

Lords. Yes, Yes.

A Clerk was ſworn to make true Report; but my Lord *Wintoun* began to ſpeak ſo very low, as ſcarce any could hear. Whereupon

Sir *J. Jekyll.* My Lords, I perceive it is your Lordſhips Pleaſure to indulge the Lord at the Bar, to have a Perſon ſworn to report truly to your Lordſhips what he ſhall ſay in his Defence; but it is not your Lordſhips Intention that the Lord at the Bar ſhould ſpeak ſo low, as it is impoſſible for us or any near him to hear what he ſays.

L. H. Steward. My Lord *Wintoun*, Speak as loud as you can, ſo as the Managers may hear; he is only to help your Voice, ſo as their Lordſhips may hear.

Clerk from Lord Wintoun. I think it very hard, and great Injuſtice, that I ſhould not be allowed Time to make my own Defence; and that my Witneſſes ſhould not come up; and that I ſhould be tyed down to a fooliſh Form, which I am not accuſtom'd to, when I am in danger of my Life.

Then the Houſe was adjourned to the Chamber of Parliament.

Friday, March 16. *The Second Day.*

L. H. Steward. THE Houſe is reſumed. Do your Lordſhips give the Judges leave to be cover'd?

Lords. Ay, ay.

Proclamation made for Silence, and another to bring forth the Priſoner, as uſual.

The Priſoner brought to the Bar, and kneels.

L. H. Steward. My Lord *Wintoun*, you may riſe. ——My Lord *Wintoun*, you may proceed upon your Defence.

The Clerk order'd to report as before.

L. H. Steward. I again remind your Lordſhip, you are to ſpeak in your Defence as loud as you can; if your Voice is not heard, he is ready to report to the Lords what you ſay, but you muſt ſpeak as loud as you can.

Clerk from Lord Wintoun. My Council is ready here to ſpeak for me.

L. H. Steward. My Lord, I would not preſume to make an Anſwer, but that it is known Law; that undoubtedly your Lordſhip cannot have Council, by the Law of the Land, to ſpeak in your Defence, unleſs it be to Matter of Law; for the Law ſuppoſes every Man ſufficient to anſwer for himſelf as to Matter of Fact.

Clerk from L. Wintoun. My Lords, I am not accuſtomed to ſpeak on ſuch Occaſions; therefore I hope your Lordſhips will allow my Council to ſpeak for me.

L. H. Steward. My Lord, I muſt acquaint you, that the Law in this Caſe admits of no Exception, but holds to the general Rule.

Clerk from L. Wintoun. My Lords, I don't underſtand the Law; I am perfectly a Stranger to the Cuſtoms of the Houſe, therefore hope your Lordſhips will allow my Council that know them to ſpeak for me.

L. H. Steward to the Clerk. You let your Voice fall.

Clerk from L. Wintoun. I am not accuſtomed to the Practice of this Houſe; therefore I deſire that your Lordſhips would pleaſe to allow other People to ſpeak for me that underſtand them.

L. H. Steward. My Lord *Wintoun*, your Council are not to be allowed to ſpeak for you, as to thoſe Things that are Matter of Fact, in an Impeachment of High-Treaſon, but to what is Matter of Law; and I believe if you aſk your own Council they will tell you, as the Law ſtands they cannot be heard for you here as to Matter of Fact.

Clerk from L. Wintoun. The Council will inform your Lordſhips of the Matter of Fact, and they know how better to expreſs it than I do.

L. H. Steward. My Lord *Wintoun*, have you any Witneſſes to call in your Defence?

Clerk from L. Wintoun. I told your Lordſhips Yeſterday, my moſt material Witneſſes were not yet come up.

L. H. Steward. My Lord, I acquainted your Lordſhip Yeſterday, and now would remind you of your own Petition exhibited to the Houſe of Lords, wherein you acknowledge that a great many of your Witneſſes were come up; thoſe Witneſſes were arrived, you only then pretended Four were not yet come. Doth your Lordſhip deſign to make no manner of uſe of thoſe great Numbers of Witneſſes that you admitted were come?

Clerk from L. Wintoun. Without thoſe they would not be of ſuch an Effect—They would ſerve for nothing without thoſe Witneſſes coming.

L. H. Steward. My Lord *Wintoun*, your Lordſhip will pleaſe to obſerve the Lords wait with great Patience, to ſee if your Lordſhip would be better adviſed, and go into your Defence.

Clerk from L. Wintoun. I don't really know, my Lords, what to ſay for it, for I don't underſtand the Proceedings of this Houſe. It was always the Cuſtom in any Court where I was, for People to be allowed to ſpeak, or the Council be allowed

allowed to ſpeak for me, for I am not accuſtomed to ſpeak any manner of way in my own Defence, therefore I hope you will allow my Council to ſpeak for me. My Council have a Point of Law to ſpeak to; they ſay ſo, but I know nothing of it.

L. H. Steward. My Lord *Wintoun*, your Council have had Acceſs to you; and tho' your Lordſhip can't ſpeak and argue to the Point of Law, can't your Lordſhip propoſe what the Queſtion is?

Clerk from L. Wintoun. It is impoſſible for me to do a thing I don't underſtand; I don't know what the Point of Law is, no more than a Man that knows nothing about it.

When ſome laugh'd,

L. Wintoun. I am only ſpeaking in my own Defence; I don't expect to be laugh'd at.

L. H. Steward. I think his Lordſhip does obſerve well; I hope every one will forbear that.

L. H. Steward. Won't your Lordſhip be pleaſed to name what Matter the Queſtion concerns?

Clerk from L. Wintoun. It will be ſomething about the Trial; no doubt ſomething of what the common People have been ſpeaking about—It is, no doubt, in Anſwer to the Managers of the Houſe of Commons. I have not ſeen my Council ſince I was laſt here in the Houſe; I have been kept cloſe Priſoner all the time, and no Body come near me; nor had I any Time to ſpeak with any Body, particularly with my Council; ſo that I have not had Time to be exactly informed of all the Points of Law they have to plead. The Council will tell themſelves what Point of Law they have to plead.

L. H. Steward. My Lord *Wintoun*, regularly you ſhould propound your own Queſtion before your Council ſpeak. Before it appears to be a Point of Law, it is not fit for your Council to be heard.

Clerk from L. Wintoun. It is impoſſible I ſhould direct a Council, I, that don't underſtand Law; I can't introduce a Point of Law; my Council will ſpeak to the Point of Law.

L. H. Steward. My Lord *Wintoun*, did not you ſpeak to your Council laſt Night?

Clerk from L. Wintoun. I could not.

L. H. Steward. Why?

Clerk from L. Wintoun. Becauſe it was late when I went from hence; and your Lordſhips know I am a cloſe Priſoner in the *Tower*; and was lock'd up and could not ſee them. I ſee no Body but the Guards.

L. H. Steward. Hath not your Lordſhip ſeveral times ſeen your Council, as often as you required an Order for ſo doing?

Clerk from L. Wintoun. I never ſaw my Council but once, before I gave in my Anſwer.

L. H. Steward. Did you deſire to ſee them oftner?

Clerk from L. Wintoun. My Lords, my Solicitor ſpoke to them; and my Witneſſes not being come up, it was needleſs for me to ſpeak to my Council, before that they might know what the Witneſſes had to ſay, and ſo might draw up the State of the Queſtion. I did not doubt but the Lords would have given me more Time; and therefore I was not ſo deſirous to ſee my Council, as I would have been, if I thought I ſhould have been ſo much crampt in Time.

Mr. Cowper. My Lords, I had the Honour to receive the Commands of the Commons, to reply to his Lordſhip's Defence; and it was reaſonable to expect that the Priſoner, having pleaded Not Guilty to the Impeachment, would have attempted to give ſome Evidence in ſupport of his Plea; but ſince it ſeems to be his Lordſhip's Reſolution not to enter into a Defence, I think it my Duty to ſay ſomething to your Lordſhips upon this unexpected Occaſion. Such is the Treaſon, and ſo full the Evidence to prove it, that I think his Lordſhip's Behaviour, unaccountable as it is, more to his Purpoſe than any other could have been. My Lords, I am very unwilling to ſpeak my own private Sentiment of his Lordſhip's preſent Conduct, although the Obſervations I could make ariſe out of his Lordſhip's Anſwer to the Impeachment: Whoever ſhall read and conſider it, will find my Lord *Wintoun* not denying, but confeſſing the ſeveral Overt-Acts of Treaſon laid to his Charge, and then drawing a falſe Concluſion, that he is Not Guilty however of the Treaſon whereof he is accuſed. He denies that what he did was done with a traiterous Intention, and ſays very emphatically, that the pure Streams of Loyalty which have always run in the Blood of his Anceſtors, are derived to him uncorrupted; and thus, my Lords, a Popiſh Pretender being the Object of his Lordſhip's Loyalty, he thinks he may be guilty of the whole Impeachment without being a Traitor. This is the true ſtate of the Caſe. It ſeems to me, his Lordſhip is determined to maintain his Point; and how far he may think it proper to acknowledge your Lordſhip's Juriſdiction I know not. My Lords, as to the Impeachment which the Commons with great Juſtice have exhibited againſt this Priſoner, your Lordſhips have obſerved that the ſeveral Treaſons therein contained have been fully proved; I am unwilling, in a caſe ſo plain, and where no Defence has been, or can be made, to waſte your Lordſhip's Time. Your Lordſhips have heard, in the courſe of the Evidence which we have produced, that this Lord departed from his Seat of *Seaton* Houſe with about fourteen of his own Servants free and unconſtrained; that he joined others of the Rebels at *Moffett*, at which Place his Lordſhip was pleaſed to form a Troop, which from thenceforth was called the Earl of *Wintoun*'s Troop. The Priſoner had the Command of it, and for fear his Zeal for the Pretender ſhould paſs unobſerved, his own Servants rid in his own Troop in his own Livery; and I may add, that it appears his Lordſhip's Troop was paid after the rate of Two Shillings *per diem* each Man, by his Lordſhip's Order, and with his own Money. From the Town of *Moffett*, which I mentioned, your Lordſhips had an account of many Marches and Countermarches; his Lordſhip and the Rebels under him every where increaſing in their Numbers; every where declaring and proclaiming the Pretender to his Majeſty's Crown, as King of theſe Realms. And, my Lords, I may venture to ſay it appears through the whole courſe of the Evidence, that no one was more zealous and active than the Priſoner. My Lords——

L. Guilford. I am very ſorry to interrupt that Gentleman, but I think it proper, before the Houſe of Commons ſum up their Evidence, to move your Lordſhips to adjourn to the Houſe of Lords.

Then the Houſe was adjourned to the Chamber of Parliament; and after about half an Hour returned, and the Houſe was reſum'd.

And Proclamation for Silence being made as uſual,

L. H. Steward. My Lord *Wintoun*, I am order'd by their Lordſhips to acquaint you, that they are yet ready to hear any thing that you have to ſay in your Defence by way of Obſervation upon what hath been proved againſt you, or alledged againſt you, or otherwiſe; they are likewiſe ready to hear any Witneſſes you are pleaſed to call or produce; but then I am to acquaint your Lordſhip, that if you neglect this Opportunity now given you, then it is their Lordſhips Pleaſure that I ſhould ſignify to the Managers of the Houſe of Commons, that they ſhould go on to their Reply; and if ſuch Reply be made, your Lordſhip hath no further Opportunity to alledge any thing, or to prove any thing. This Notice is order'd by their Lordſhips to be given you. I am likewiſe to acquaint you, that it is their Lordſhips Opinion, as I before told you, that if you have any Queſtion of Law to be ſpoken by your Council, their Lordſhips cannot admit any other Form, but that you ſhould propound it to their Lordſhips yourſelf.

Clerk from L. Wintoun. I believe my Council, my Lords, have ſomething to ſay in Anſwer to what the Managers have ſaid. My Lords, the Gentleman who was preſent, knows they would not let me know what they had to ſay.

Clerk. He ſays I was by when his Council ſaid ſo.

L. H. Steward. My Lord, if your Lordſhip hath any Notes or Papers, you may help your Memory by them in your Defence——Read or look upon them.

Clerk from L. Wintoun. I ſhall read it as I can, and you will excuſe it if I don't do it right as I ſhould do.

Lord Wintoun reads, and the Clerk repeats.

The Council have a Point of Law ariſing from what hath been paſs'd in the Houſe, to ſhew that he is ſuch a Perſon as is not capable of committing the Treaſon laid in the Impeachment. I plead Not Guilty, and this alledges the ſame. I ſay I am Not Guilty, and the Paper ſays it will demonſtrate I am not.

The Paper read again and repeated as before. The Council have a Point of Law ariſing from what hath paſſed in the Houſe, to ſhew that he is ſuch a Perſon that is not capable of committing the Treaſon laid in the Impeachment.

Clerk from L. Wintoun. I don't underſtand Law, and how ſhould I introduce a Point of Law?

L. H. Steward. My Lord *Wintoun*, if your Lordſhip doth not proceed to make a Defence, and to call your Witneſſes, I have already acquainted you, and I believe I ſhall be excuſed for doing it a ſecond Time, that I ſhall ſignify to the Managers of the Houſe of Commons to reply, after which your Lordſhip can't have them examined.

Clerk from L. Wintoun. I heard your Lordſhip what you ſaid, but I don't underſtand what is meant by it.

L. H. Steward. They may proceed to ſay what they think proper touching that Sort of Defence your Lordſhip is making, to anſwer what they have already ſaid and proved againſt your Lordſhip; after they have ſaid and done this, the Lords won't allow you to ſpeak afterwards.

Clerk from L. Wintoun. The Council deſire to be heard, ſince they have written a Paper, to be heard on that Paper.

L. H. Steward. The Paper is allowed to help your own Memory, but you muſt not give in any Paper as written by your Council, nor mention it as ſuch.

Clerk from L. Wintoun. I deſire my Council may be heard on the Point of Law contained in what I call the Paper. I deſire my Council may be heard to the Point of Law, which I read out of the Paper. I deſire my Council may be heard to the Point of Law, which they urge they have to ſay.

L. H. Steward. My Lord *Wintoun*, you have by the help of a Paper, propounded that which you call a Point of Law. Their Lordſhips have heard what you have propounded. I don't find any Motion is made to adjourn, to conſider whether ſuch a Point is fit for your Council to be heard to, that is, whether it is a Point of Law. If there be any Doubt, you will preſently ſee it by the Effect, by ſuch a Motion as I have mentioned.

After ſome Pauſe,

L. H. Steward. If your Lordſhip doth not proceed, I muſt intimate to the Managers of the Houſe of Commons that they may reply.

Clerk from L. Wintoun. My Lords, if your Lordſhips will allow my Council to be heard on the Point of Law I have given in.

L. H. Steward. My Lord, I think I may now preſume to tell you, that I humbly apprehend it is no Point of Law which you propoſe.

Clerk from L. Wintoun. I am not a Judge of a Point of Law, for I don't underſtand Law, nor never did.

L. H. Steward. My Lord *Wintoun*, the ſame Matter muſt not be drawn over and over again. If your Lordſhip doth not proceed to ſomething proper for your Defence, I muſt ſignify immediately to the Managers that they may reply.

Clerk from L. Wintoun. If your Lordſhips pleaſe to hear the Council, they will tell you what it means. The Council dare not ſpeak till they be deſired.

L. H. Steward. Gentlemen of the Houſe of Commons, you may reply.

Mr. Cowper. My Lords, I ſhall avoid, as near as I am able, repeating any Thing I have already ſaid before your Lordſhips laſt Adjournment. I was obſerving that the Behaviour of the Priſoner, my Lord *Wintoun*, throughout all his Conduct, during the whole Progreſs of the Rebellion, appear'd in a quite different Light, to that in which he would now willingly appear: Your Lordſhips find him, according to the Evidence, at every falſe Alarm very inquiſitive to know the Occaſion; having aſſumed the Command of a Squadron, his Lordſhip was inſtantly at his Poſt, ready to receive and encounter his Majeſty's Forces, and the Reverend Mr. *Patten* has done Juſtice to his Lordſhip's Vigilance and Courage upon this Occaſion; but it ſeems the Alarms were both falſe: Hence we may obſerve, that Alarms may be falſe, and *Dangers may be imaginary*; which Mr. *Patten*, and Men of his Principles would do well to reflect on at leiſure. My Lords, after great Numbers of Marches and Counter-marches, during which his Majeſty's Subjects were plundered, the Publick Money ſeized, and Taxes exacted from the People by Force and Violence, Your Lordſhips have heard that the Town of *Preſton* was ſeiz'd by this Lord,

and the Traitors, his Accomplices. At this Place enſued a terrible Slaughter of his Majeſty's faithful Soldiers, Men who deſerved a better Fate than to die by the Hands of ſuch perfidious Rebels. But when the uſual Bravery of the King's Troops prevailed, and there was nothing left but the undeſerved Hope of Mercy, you find the Priſoner amongſt the reſt ſurrendering his Arms and his Perſon to the Diſcretion of his Majeſty's Generals. The Commons cannot, my Lords, but take a particular Satisfaction in one Incident, occaſion'd by this Lord's putting himſelf upon his Trial, which is, that it has adminiſter'd to them a Time and an Opportunity, in the moſt publick Manner before this Auguſt Aſſembly, to vindicate his Majeſty's Generals from a malicious Calumny ſuggeſted even by this Lord, the Priſoner, in his Anſwer to the Impeachment, and not only by him, but by the reſt of his Accomplices already attainted. It ſeems not to be accidental, that all the Lords mentioned in the Impeachment ſhould every one of them (falſe as it appears to be) alledge that they ſurrender'd, ſome ſay upon Promiſes, but all agree upon Hopes given of Mercy, conſidering how fully it now appears, that there is not the leaſt Colour or Shadow of Truth to ſupport this Suggeſtion; it is no uncharitable Reflection to ſay, that their Lordſhips, I doubt, to ſupply the Miſchiefs their Arms could not accompliſh, were willing to aſſiſt their Party, by furniſhing them with an Untruth to propagate. With what Zeal and Induſtry has it been accordingly propagated! I may take the Liberty, I preſume, to ſay, with the Conſent of this whole Aſſembly, that it appears on the Evidence to be utterly falſe; nay further, that the very Reverſe is true, the Rebels would willingly have obtained a Promiſe, or even a Hope of being recommended, but the Generals rightly told them, Rebels deſerved no Mercy, nor would they treat with Rebels of ſurrendering otherwiſe than at Diſcretion. I cannot conclude without touching ſhortly upon a Queſtion which I obſerved his Lordſhip to aſk, during the Courſe of the Evidence; I think it was propoſed to Colonel *Cotten*, Whether any of *our Men*, as his Lordſhip was pleaſed to expreſs it, were ſlain during the Time of the Ceſſation of Arms at *Preſton?* which, in fact, was true; and if it had been anſwer'd in the Affirmative without Explanation, I believe his Lordſhip would have been gratified, by furniſhing his Friends with another Story to propagate, which, well improved, might have laſted a good while; but when the Witneſs (who, I preſume, diſcerned the Tendency and Malignancy of the Queſtion) gave his Anſwer, the Caſe appears this; The Rebels ſtipulate and agree (Hoſtages being delivered) that no Works ſhall be erected in the Town during the Suſpenſion; that no Perſon then in the Town ſhall go out of it during the ſame time; in Breach of which Stipulation and Agreement about ſix of the Rebels attempt, Sword in Hand, to charge through the King's Troops, in which Attempt they fell; and if the King's Troops had done leſs they had not done their Duty. My Lords, I thought it not improper to make ſome few Obſervations upon the Evidence; not that his Lordſhip's Defence has made it requiſite, but to anſwer, according to my Power, the End of that Truſt which the Commons have been pleaſed to repoſe in me.

Sir *William Thomſon.* My Lords, I ſhould think myſelf unworthy the Honour of being allowed any Share of your Lordſhips Time; but as I was entruſted by the Commons to aſſiſt the learned Gentleman who ſpoke laſt, in a Reply to ſuch Defence as ſhould be made by the Noble Lord at the Bar, although no Evidence has been produced by him, yet I muſt requeſt your Lordſhips Patience to make a few Remarks upon the Nature of this Cauſe, as it ſtands before your Lordſhips.

The Anſwer of the Noble Lord not being ſupported by Evidence, ought to go for nothing; but ſince ſeveral Matters are alledged in it to mitigate, if not to juſtify his Proceedings, which are falſified by our Evidence, I beg leave to take ſome notice of it.

I muſt agree with the Noble Lord, that "It "will be very pleaſing to that honourable Aſ- "ſembly who are his Accuſers to have an inno- "cent Man acquitted, as well as a guilty one "condemned." Nor can I differ with him where he aſſerts, "That to be taken with Perſons in "Arms againſt the Government, is a reaſonable "Preſumption of his Guilt, and a very juſt "Foundation to accuſe him with the reſt ſo "taken; but that the Circumſtances of his Caſe "appear ſo different from the others, as to re- "quire your Lordſhips diſtinguiſhing him in "Judgment." I cannot ſay, that any thing has been offer'd to your Lordſhips which makes room for ſuch a Diſtinction.

"The Noble Lord is pleaſed to give an Ac- "count of what happened to him about eight "Years ago, when he endeavour'd to avoid the "Suſpicion of the Government; he mentions the "ill Uſage of the Militia and the King's Troops, "and ſeveral Tranſactions, *viz.* rifling his Houſe, "and committing Diſorders there, without tel- "ling when they happened, or from whom; he "is pleas'd to ſay that he was unfortunately "driven into the Company of ſome of the Per- "ſons mentioned in the Impeachment; that he "joined them without any Intention to aſſiſt their "Deſigns; that he never meant to leave his own "Country; that he was ignorant of the Pur- "poſes of his Companions; that he was con- "ſtrain'd to keep them Company, but never "join'd in any Act of Hoſtility, or countenanced "or abetted them therein.

My Lords, the Evidence againſt this Noble Lord ſufficiently explains how far he abetted the Undertakings of his Companions.

It was prov'd to your Lordſhips, that when he firſt came to join the Rebels at *Moffett*, he brought fourteen of his Domeſticks with him, moſt of them well armed and accoutred; that he came with them to a Place of Rendezvous, where were aſſembled the Lord *Kenmure*, and about one hundred and fifty Horſe; that from the Time he joined them till he was taken, he marched along with them in an Hoſtile Manner through all the Towns at the Head of his Troop that he had form'd, and which he commanded upon all Occaſions; that he had alſo a Squadron under his Command and Direction, to whom he gave Orders, and was very ready to have diſpoſed them to Action, particularly on two Alarms of the King's Troops; that he aſſiſted ſeveral Times at the proclaiming the Pretender by the Rebels in the

the Towns where they paſſed thro' with his Sword in Hand; that he was with them at thoſe Towns where they ſeized the Publick Money, the Cannon, and other warlike Inſtruments; and when he came to *Preſton*, that in the Preparations to reſiſt the King's Troops he was as active as any of the reſt; and particularly in the Church-yard, where the Rebels were drawn together in order to that Reſiſtance, he had his Sword and Piſtols with him, and was aſſiſting in making the Diſpoſitions for Engagement.

And for the Conſtraint that is pretended, 'tis plain, that as he came in to the Rebels in the manner I have mentioned without any Force or Compulſion whatever, ſo he continued all along with them, and gave them the beſt Aſſiſtance he could, and was far from ſhewing any Backwardneſs or Uneaſineſs at their Proceedings through the whole Progreſs of this Affair. He drank the Pretender's Health, and the other uſual Healths among the Rebels, *viz.* Succeſs to their Cauſe; and if he had not wiſh'd it, he might have left them whenever he would, if he had an Inclination ſo to do; he did not want an Opportunity, particularly at *Langholm*, when about five hundred Highlanders went back to *Scotland*; before they went they ſuffer'd him to come to them (though they would not any other) that he diſcourſed them, and came back from them, and declared it was not his Fault that they would not go along with him into *England*. My Lords, whether the whole Tenor of this Proceeding does not manifeſt the Intentions of this Noble Lord, and whether the Evidence of theſe Facts does not falſify every Allegation in his Anſwer, by which he would juſtify himſelf, your Lordſhips will eaſily determine.

The Noble Lord ſays further in his Anſwer, "That if he hath committed any Act which by "the Rigour of the Law may be conſtrued High-"Treaſon, he hopes the Innocence of his Heart, "and his Ignorance of the Law, will, by your "Lordſhip's Interceſſion, render him an Object "of his Majeſty's Mercy; which, he ſays, at "the Time of his Surrender, he was encouraged "to depend upon by his Majeſty's Officers."

As to any Aſſurances or Encouragement to expect Mercy upon the Surrender, the direct contrary is fully made out, I dare ſay, to your Lordſhips entire Satisfaction. And for your Lordſhips Interceſſion, that is not the Conſideration now before you: The Queſtions is only, whether the Witneſſes have proved him guilty of the High-Treaſon of which he is accuſed?

I find the noble Lord cannot condeſcend to own the Facts he is charged with to amount to this Crime: He is pleaſed to ſay, "That he is de-"ſcended from a noble Family, in whoſe Blood "the Streams of Loyalty were always pure, "never corrupted or polluted with Treaſon or "Sedition; that he never degenerated from his "loyal Anceſtors, ſo as to form or carry on any "Deſign to ſubvert or alter the Conſtitution of "this Kingdom, but that he was always ready "to ſacrifice his Fortune, and even his Life for "its Preſervation.

My Lords, I could wiſh, for the Sake of this unhappy Lord, the Object of your preſent Conſideration, that it were not too evident what Conſtitution he meant to preſerve, and for which he has ventured his Life and Fortune.

All Mankind, who will not ſhut their Eyes, muſt ſee that the Purpoſe of this Noble Lord and his Accomplices was to dethrone his moſt ſacred Majeſty, our Proteſtant King, whom God and the Laws have ſet over us, and in his Stead to ſet up a Popiſh Pretender to his Crown, bred up in Superſtition, and under the Maxims of Tyranny and Arbitrary Power: The Succeſs of this Deſign muſt neceſſarily have produced a moſt dreadful Scene of Blood and Confuſion; the Life of our moſt gracious Sovereign, the Lives of all his Royal Family, your Lordſhips, and thoſe other brave and honeſt *Britons* who would have ſtood in the Defence of the Religion, the Laws and Liberties of their Country, muſt have been ſacrificed to the Rage and Fury of Popiſh Bigotry, and to the inſatiable Cruelty of Jeſuits and Prieſts, who, as we are Proteſtants, are our moſt implacable Enemies.

Inſtead of the Happineſs we now enjoy under our moſt excellent Form of Government, where every thing that is dear and valuable to human Nature is protected by the Laws from the leaſt Violence or Invaſion whatever, what could this Nation expect from Popery and Arbitrary Power, but endleſs Miſeries and Calamities, and the moſt abject Slavery?

My Lords, it is a melancholy Reflection, that there ſhould be any, who pretend to the Name of *Britons*, who would engage in ſo groundleſs, ſo unprovok'd, and, moſt properly called, ſo unnatural a Rebellion; or that others ſhould be ſo deluded or corrupted, as, by their falſe and malicious Inſinuations, and by their vile Calumnies on the beſt of Princes, or by their avowed Indifference towards him, to encourage that traiterous Enterprize.

All ſuch Enemies to the Welfare and Proſperity of their Country, ought to reflect, with the utmoſt Shame and Confuſion, on the diſmal Proſpect they were preparing for us by the natural Tendency of their Proceedings: And I cannot but think, that it muſt add to the Affliction of this unfortunate Lord who ſtands before this Auguſt Judicature, while he reflects on the Aſſurances given him of generous Compaſſion as far as is conſiſtent with the Rules of Juſtice, while he conſiders of that Humanity and tender Regard expreſs'd towards him by that great and noble Mind, who ſo juſtly repreſented all your Lordſhips Sentiments, while he obſerves that Care and Concern ſhewn to him, that Aſſiſtance granted him towards making his Defence, and that his Judges are ſo many noble Peers, who can never be influenced to condemn the Innocent, and who will be govern'd only by full Proof and clear Conviction: Sure he muſt now reproach himſelf, when he thinks that he was about to ſubvert thoſe very Laws by which even his Life, who has ſo tranſgreſſed, is thus protected.

My Lords, I am here led to take notice alſo, that his moſt gracious Majeſty (againſt whom this unfortunate Lord, with his Aſſociates, have ſo ſignally offended) hath been pleaſed to expreſs his mild and gentle Diſpoſition, even to them his moſt inveterate Enemies. *It was an Uneaſineſs to him that he could not diſtinguiſh the firſt Years of his Reign by the endearing Marks of Peace and Clemency; it afflicted him that the Calamities of his faithful Subjects ſhould require indiſpenſable Returns of Severity.*

I may preſume your Lordſhips natural Compaſſion would incline you to the ſame merciful Diſpoſition; but the Commons are perſuaded that

your Lordſhips will have ſome Regard to the Lives of thoſe many brave and gallant Men, who by the baſe Methods of the Rebels were murdered, and expired in their Country's Cauſe; that their Blood demands the Juſtice of that Country in whoſe Defence it was ſpilt; and the Commons are aſſured that your Lordſhips muſt think that the Publick Safety alſo requires your exemplary Juſtice, more eſpecially on the principal Offenders; and that 'tis the moſt effectual Method to prevent any future Inſurrections or Diſturbance of the Publick Repoſe and Tranquillity of the Kingdom, and to render firm and laſting our preſent happy Eſtabliſhment.

Sir *J. Jekyll.* My Lords, the Gentlemen of the Houſe of Commons have nothing more to offer to your Lordſhips, but deſire your Lordſhips Opinion on this Evidence.

Then the Houſe of Lords was adjourned to the Chamber of Parliament; and being returned, the Houſe reſumed, and Proclamation made for Silence as uſual.

Then the Lord High-Steward being ſeated on the Chair, placed as before-mentioned, ſtood up uncovered, and beginning with the youngeſt Peer, ſaid,

Thomas Lord *Parker*, what ſays your Lordſhip, is *George* Earl of *Wintoun* Guilty of the High-Treaſon whereof he ſtands impeached, or not Guilty?

Then *Thomas* Lord *Parker* ſtanding up in his Place, and laying his Right Hand on his Breaſt, ſaid, Guilty upon my Honour.

In like manner, the ſeveral Lords after-mentioned, being all that were preſent, anſwered as followeth,

Richard Lord *Cobham*, Guilty upon my Honour.

Henry Lord *Carleton*, Guilty upon my Honour.

Bennet Lord *Harborough*, Guilty upon my Honour.

James Lord *Saunderſon*, Guilty upon my Honour.

Robert Lord *Bingley*, Guilty upon my Honour.

Allen Lord *Bathurſt*, Guilty upon my Honour.

Thomas Lord *Manſell*, Guilty upon my Honour.

Charles Lord *Boyle*, Guilty upon my Honour.

Simon Lord *Harcourt*, Guilty upon my Honour.

John Lord *Belhaven*, Guilty upon my Honour.

William Lord *Roſs*, Guilty upon my Honour.

John Lord *Gower*, Guilty upon my Honour.

Maurice Lord *Haverſham*, Guilty upon my Honour.

Henry Lord *Gilbert*, Guilty upon my Honour.

John Lord *Aſhburnham*, Guilty upon my Honour.

Francis Lord *Guilford*, Guilty upon my Honour.

Richard Lord *Lumley*, Guilty upon my Honour.

Peregrine Lord *Osborne*, Guilty upon my Honour.

Charles Lord *Cornwallis*, Guilty upon my Honour.

John Lord *Colepeper*, Guilty upon my Honour.

Charles Lord *Bruce*, Guilty upon my Honour.

William Lord *Brook*, Guilty upon my Honour.

James Lord *Compton*, Guilty upon my Honour.

William Lord *St. John*, Guilty upon my Honour.

Thomas Lord *Howard* of *Effingham*, Guilty upon my Honour.

Charles Lord *Fitzwalter*, Guilty upon my Honour.

John Lord *Delawar*, Guilty upon my Honour.

Peregrine Lord *Willoughby* of *Ereſby*, Guilty upon my Honour.

Henry Lord Viſcount *Tadcaſter*, Guilty upon my Honour.

Henry Lord Viſcount *Lonſdale*, Guilty upon my Honour.

Talbot Lord Viſcount *Longueville*, Guilty upon my Honour.

Charles Lord Viſcount *Townſhend*, Guilty upon my Honour.

Laurence Lord Viſcount *Say* and *Seal*, Guilty upon my Honour.

George Earl of *Halifax*, Guilty upon my Honour.

John Earl of *Briſtol*, Guilty upon my Honour.

Heneage Earl of *Aylesford*, Guilty upon my Honour.

Charles Earl of *Tankerville*, Guilty upon my Honour.

Lewis Earl of *Rockingham*, Guilty upon my Honour.

James Earl of *Carnarvon*, Guilty upon my Honour.

Thomas Earl of *Strafford*, Guilty upon my Honour.

Archibald Earl of *Ilay*, Guilty upon my Honour.

Henry Earl of *Deloraine*, Guilty upon my Honour.

Hugh Earl of *Loudoun*, Guilty upon my Honour.

Thomas Earl of *Hadington*, Guilty upon my Honour.

John Earl of *Rothes*, Guilty upon my Honour.

Hugh Earl of *Cholmondeley*, Guilty upon my Honour.

Francis Earl of *Godolphin*, Guilty upon my Honour.

John Earl *Poulet*, Guilty upon my Honour.

John Earl of *Greenwich*, Guilty upon my Honour.

Henry Earl of *Grantham*, Guilty upon my Honour.

William Earl of *Jerſey*, Guilty upon my Honour.

Edward Earl of *Orford*, Guilty upon my Honour.

George Earl of *Warrington*, Guilty upon my Honour.

Richard Earl of *Scarbrough*, Guilty upon my Honour.

Henry Earl of *Portland*, Guilty upon my Honour.

Robert Earl of *Holderneſs*, Guilty upon my Honour.

Henry Earl of *Rocheſter*, Guilty upon my Honour.

Daniel Earl of *Nottingham*, Guilty upon my Honour.

Charles Earl of *Radnor*, Guilty upon my Honour.

Richard Earl of *Burlington*, Guilty upon my Honour.

Arthur Earl of *Angleſey*, Guilty upon my Honour.

Edward Earl of *Clarendon*, Guilty upon my Honour.

Thomas Earl of *Stamford*, Guilty upon my Honour.

Charles

Charles Earl of *Manchester*, Guilty upon my Honour.

George Earl of *Northampton*, Guilty upon my Honour,

John Earl of *Leicester*, Guilty upon my Honour.

Scroop Earl of *Bridgwater*, Guilty upon my Honour.

Lionel Earl of *Dorset* and *Middlesex*, Guilty upon my Honour.

Henry Earl of *Lincoln*, Guilty upon my Honour.

Thomas Earl of *Pembroke*, Guilty upon my Honour.

James Earl of *Derby*, Guilty upon my Honour.

William Marquiss of *Annandale*, Guilty upon my Honour.

Thomas Duke of *Newcastle*, Guilty upon my Honour.

Evelin Duke of *Kingston*, Guilty upon my Honour.

Robert Duke of *Ancaster* and *Kesteven*, Lord Great Chamberlain, Guilty upon my Honour.

Henry Duke of *Kent*, Guilty upon my Honour.

John Duke of *Roxburgh*, Guilty upon my Honour.

James Duke of *Montross*, Guilty upon my Honour.

John Duke of *Montague*, Guilty upon my Honour.

John Duke of *Buckingham* and *Normanby*, Guilty upon my Honour.

John Duke of *Marlborough*, Guilty upon my Honour.

Charles Duke of *Shrewsbury*, Guilty upon my Honour.

Charles Duke of St. *Albans*, Guilty upon my Honour.

Charles Duke of *Richmond*, Guilty upon my Honour.

Charles Duke of *Somerset*, Guilty upon my Honour.

Charles Duke of *Bolton*, Lord Chamberlain of his Majesty's Houshold, Guilty upon my Honour.

William Duke of *Devonshire*, Lord Steward of his Majesty's Houshold, Guilty upon my Honour.

Charles Earl of *Sunderland*, Lord Privy-Seal, Guilty upon my Honour.

L. H. Steward. My Lords, I am of Opinion that *George* Earl of *Wintoun* is Guilty of the High-Treason whereof he stands Impeached, upon my Honour.

Proclamation for Silence, and Proclamation to bring forth the Prisoner, as usual.

L. H. Steward. George Earl of *Wintoun*, the Lords have considered of the Charge, and the Evidence given against you; and likewise of what you have said in your Defence, and of the whole Matter as it hath been before them in this Trial, and are of Opinion that your Lordship is Guilty, and have found your Lordship guilty of the High-Treason whereof you stand impeached.

Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. Steward. This House is adjourned to the Chamber of Parliament.

Then all the Lords return'd in the Order before-mentioned to the Chamber of Parliament.

Monday, March 19. *The Third Day.*

PRoclamation for Silence, and Proclamation for the Prisoner to be brought to the Bar, as usual.

L. H. Steward. George Earl of *Wintoun*, when you was last at this Bar, I let your Lordship know that your Peers had found you guilty of the High-Treason whereof you stand impeached, that is in the Terms of Law, convicted you of High-Treason. I am now to ask your Lordship if you have any thing to offer why Judgment of Death should not pass upon you according to the Law.

Clerk from L. Wintoun. My Lord *Wintoun* saith his Council have a Point of Law to offer to your Lordships, to shew that he is such a Person, against whom, by Law, Judgment ought not to be given.

L. H. Steward. My Lord, will your Lordship state the Point upon which your Lordship is advised, that you are not such a Person against whom Judgment ought to be given?

Clerk from L. Wintoun. I don't know what your Lordship means.

Sir *C. Phipps.* If your Lordships please, we have a Point of Law humbly to offer to your Lordships, if ——

Att. Gen. My Lords, I hear a Gentleman of the long Robe offering to speak. I do humbly insist on it that they are not to speak, unless there be a Point of Law stated by the Prisoner, and which your Lordships shall think to be a Point of Law, we think it irregular.

Mr. *Cowper.* We apprehend the Objection to that Gentleman's being heard is so obvious, that we are surprised to find he should presume to speak without your Lordship's Direction so to do; he cannot but know that the Prisoner is to propound the Question in Law; and if your Lordships shall conceive it to be a Point of Law proper to be argued by Council, your Lordships will direct him to speak; but he ought not in any case to propound a Question in Law, nor when a Question is propounded by the Prisoner, to speak to it without your Lordships express Direction.

Lord High-Steward. Sir *Constantine Phipps*, you know the Practice to be so, and the Point must be first stated by the Prisoner before you can speak to it.

Sir *C. Phipps.* My Lords, if I had been heard but ten Words more ——

Sir *W. Thomson.* My Lords, we humbly insist upon it that that Gentleman be not heard one Word more.

Lord *Ilay* moved to adjourn.

L. H. Steward. Is it your Lordship's pleasure to adjourn?

Lords. Ay, ay.

L. H. Steward. This House is adjourned to the Chamber of Parliament.

The Lords went in their Order to the Chamber of Parliament.

And after about half an Hour being returned,

The House was resumed, and Proclamation made for Silence, as usual.

L. H. Steward. My Lord *Wintoun*, the Lords have consider'd of the Matter which you have moved in Arrest of Judgment, which was to this

effect, that you are not ſuch a Perſon as againſt whom Judgment of Death for High-Treaſon ought to be pronounced. I am directed to acquaint you that their Lordſhips are of Opinion it is Matter of Fact, and not of Law; and that the Lords think you are ſuch a Perſon as againſt whom Judgment ought to be given in this Caſe. I am likewiſe ordered by the Lords to reprimand you Sir *Conſtantine Phipps*, for having, in a Proceeding of this Nature, preſumed to be ſo forward as to ſpeak for the Priſoner at the Bar before a Point of Law was firſt ſtated, and you had leave to ſpeak to it; and your Fault is certainly the greater, for having preſumed to do this to a Matter which you cannot but know is Matter of Fact, and that the Law is not doubtful one way or other, the Fact being ſuppoſed. My Lord *Wintoun*, I am allowed again to aſk your Lordſhip, if you have any thing further to alledge or move why Judgment of Death ſhould not paſs upon you according to the Law.

Clerk from L. Wintoun. My Council are ready to offer, in Arreſt of Judgment, that the Impeachment is inſufficient, for the Time of committing the Treaſon is not therein laid with ſufficient Certainty.

L. H. Steward. I think the Matter moved by my Lord is, that his Council ſhould be admitted to ſhew that the Impeachment is inſufficient, in reſpect that the Time therein is not laid with ſufficient Certainty. This I think is the Matter moved. Will your Lordſhips be pleaſed that the Council have Leave to ſpeak?

L. H. Steward. Is it your Lordſhips pleaſure that the Council for the Priſoner may be allowed to ſpeak to this Pont?

Lords. Ay, ay.

L. H. Steward. I aſk your Lordſhips leave to go nearer to the Table.

Which being done,

Proclamation for Silence was made as uſual.

L. H. Steward. Gentlemen that are of Council for the Priſoner at the Bar, you have liberty to ſpeak to the Point propoſed.

Sir *Conſtantine Phipps.* MAY it pleaſe your Lordſhips, we that have the Honour to be aſſigned by your Lordſhips as Council in this Caſe, do humbly apprehend the Impeachment againſt the noble Lord at the Bar to be inſufficient; it is ſo uncertain, that we (with the greateſt Submiſſion) take it no Judgment can be given upon it. My Lords, we beg leave to take Notice to your Lordſhips, that in Indictments in the Courts below, even for Treſpaſſes, the Law requires the certain Day when the Offence is ſuppoſed to be committed to be alledged, and if a particular Day be not laid, the Indictment is inſufficient. And if ſuch Certainty is requiſite in Offences of the moſt minute Nature, it is much more ſo in capital Crimes, and more ſtill in Offences of the higheſt Nature, ſuch as Treaſon, with which this noble Lord is charged.

My Lords, there be two Reaſons why, in Indictments for High-Treaſon, a certain Day ſhould be aſſigned when the Treaſon was committed.

One is for the Advantage of the Priſoner, that being appriſed not only of the Facts with which he is charged, but alſo of the Time when thoſe Facts are ſuppoſed to be committed, he may be the better able to make his Defence: 'Tis poſſible he may have Witneſſes to prove he was at another Place, and in other Company, at the Time when he is accuſed to have committed the Treaſon, or may by other Circumſtances make his Innocence appear.

The ſecond Reaſon is for the Benefit of the Crown, that it may be known to what Time the Forfeiture ſhall relate; for in Treaſon the Forfeiture relates to the Time laid in the Indictment; and if there be no preciſe Time alledged in the Indictment, the Forfeiture can relate no further than to the Judgment.

My Lords, the Forfeitures in Caſes of Treaſon are very great, therefore we conceive, with humble Submiſſion, that the Accuſation ought to contain all the Certainty it is capable of, that the Priſoner may not by general Allegations be rendered incapable to defend himſelf in a Caſe which may prove ſo fatal to him.

Our Books, my Lords, furniſh us with many Inſtances where Indictments have been held to be inſufficient for leſs Faults than not ſpecifying the Day when the Offence was committed; but in Caſes ſo plain, I will not trouble your Lordſhips with citing Authorities; for I believe there is not one Gentleman of the long Robe but will agree an Indictment for any capital Offence to be erroneous, if the Offence be not alledged to be committed upon a certain Day.

My Lords, an Attainder upon an Impeachment ſubjects the Offender to the ſame Puniſhment, the ſame Forfeitures, as an Attainder upon an Indictment; and therefore I am at a loſs to find out a Reaſon why there ſhould not be the ſame Certainty in one, as in the other; if equal Certainty be required in both, then we humbly ſubmit to your Lordſhips Judgment whether this Impeachment be not erroneous and inſufficient, in that there is no particular certain Time alledged when the Treaſon or the Overt-Acts were committed. The Treaſon alledged is conſpiring and imagining the Death of the King, and the Impeachment ſets forth, "That the Conſpirators "(and names them) as falſe Traytors to his pre- "ſent moſt ſacred Majeſty King *George*, the only "lawful and undoubted Sovereign of theſe King- "doms, having withdrawn their Allegiance, and "cordial Love, and true and due Obedience, "which they, as good and faithful Subjects, "owed to his ſaid Majeſty, did, in or about "the Months of *September*, *October*, or *Novem- "ber* 1715, moſt wickedly, maliciouſly, falſly, "and traiterouſly imagine and compaſs the Death "of his moſt ſacred Majeſty." My Lords, a Proſecution by Impeachment is a Proceeding at the Common Law, for *Lex Parliamentaria* is a Part of the Common Law; and we humbly ſubmit it to your Lordſhips Conſideration, whether there is not the ſame Certainty required in one Method of Proceeding at the Common Law as in another.

Your Lordſhips obſerve with what Uncertainty, as to the Time, the Treaſon is alledged. 'Tis ſaid to be in or about the Months of *September*, *October*, or *November* 1715. Who is able to ſay to which of theſe Months, much leſs to what Day of either of theſe Months, the Forfeiture ſhall relate? And how is it poſſible for the noble Lord, the Priſoner at the Bar, to make a Defence to a Charge ſo general, unleſs he bring for Witneſſes all thoſe Perſons with whom he has had any Converſation during thoſe three Months at leaſt?

My Lords, The Overt-Acts are alledged with the ſame Inſufficiency and Uncertainty as the Treaſon it ſelf is; for in charging the firſt Overt-Act, which is conſpiring to levy War and to depoſe the King, it is ſaid, "That for accompliſhing "and executing their ſaid traiterous Purpoſes, "they the ſaid *James* Earl of *Derwentwater*, *&c.* "did, in or about the ſaid Months, or ſome of "them, and at diverſe other Times, and at di-"verſe other Places within this Kingdom, wick-"edly and traiterouſly agree, confederate, *&c.* "to raiſe, excite, and levy, within the Counties "of *Teviotdale*, *Northumberland*, *Cumberland*, and "the County-Palatine of *Cheſter*, and elſewhere "within this Kingdom, a moſt cruel, bloody, "and deſtructive War againſt his Majeſty, in "order to depoſe and murther his ſacred Ma-"jeſty, and to deprive him of his royal State, "Crown and Dignity." My Lords, can any thing be more uncertainly alledged, than to ſay that the Conſpirators did, in or about the ſaid Months, or ſome of them, and at diverſe other Times, and at diverſe other Places within this Kingdom, confederate, *&c.* to levy War within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and County-Palatine of *Cheſter*, and elſewhere within this Kingdom?

The next Overt-Act, which is actually levying War, is not laid with greater Certainty; for the Impeachment ſets forth, "That the ſaid Earl of "*Derwentwater*, *&c.* their Accomplices and Con-"federates, *in or about the Months* aforeſaid, in "the Counties aforeſaid, *or ſome of them*, did "gather together great Numbers of his Maje-"ſty's Subjects, and with them did aſſemble in "a warlike and traiterous manner, in order to "raiſe Tumults and Rebellion within this King-"dom; and having procured great Quantities "of Arms, Ammunition, and warlike Inſtru-"ments, *at the Times and Places aforeſaid, or* "*ſome of them*, did form and compoſe, or did "aſſiſt in forming and compoſing an Army of "Men, conſiſting of his Majeſty's liege Sub-"jects, in order to wage War againſt his ſaid "Majeſty, for, and in behalf, and in favour of "the ſaid Pretender to the Crown of theſe "Realms; and at the Time, and Times, and "Places aforeſaid, *and at divers other Times and* "*Places* within this Kingdom, the ſaid Conſpi-"rators did levy and raiſe War and Rebellion "againſt his moſt ſacred Majeſty, *&c.*

The next Overt-Act is proclaiming the Pretender, which is more uncertain than any of the other; for the Impeachment ſets forth, "That "the aforeſaid Conſpirators, *during their March* "*and Invaſion aforeſaid*, in open Defiance of his "moſt ſacred Majeſty's juſt and undoubted Ti-"tle to the Imperial Crown of theſe Realms, "did wickedly and traiterouſly cauſe and pro-"cure the ſaid Pretender to be proclaimed in the "moſt publick and ſolemn manner as King of "theſe Realms.

Here is no certain Time or Place alledged when or where the Pretender was proclaim'd, but only that it was during their March and Invaſion.

The laſt Overt-Act ſeems to be laid with greater Certainty than the reſt; for 'tis ſaid, "That the "Conſpirators did, on or about the 9th, 10th, "11th, 12th, or 13th of *November* aforeſaid, "traiterouſly ſeize and poſſeſs themſelves of the "Town of *Preſton*, in the County Palatine of "*Lancaſter*, againſt his Majeſty, and did then, "and there, in a warlike and hoſtile Manner, "levy War, oppoſe, engage, and fight againſt "his Majeſty's Forces, and did then and there "cauſe and procure a miſerable and horrid "Slaughter and Murther of many of his Ma-"jeſty's faithful Subjects." Here indeed are particular Days mention'd, but then the Words *or about* leave it at large, for no Man can tell how many Days may be included in theſe Words *or about*. We humbly apprehend that a Charge of this high Nature ought not to be alledged with ſuch uncertainty, and that the Impeachment is as erroneous as an Indictment drawn in this Manner would be; this being a Proceeding of the ſame Nature, and according to the Courſe of the Common Law.

My Lords, I do not pretend any great Skill in Parliamentary Proceedings, but preſume to ſay that in my little Experience in Buſineſs in other Courts, I never ſaw a Charge exhibited againſt any one that was laid in ſo uncertain a manner, unleſs in Libels in the Eccleſiaſtical or Admiralty Courts, which cannot in the leaſt influence the Caſe now before your Lordſhips; this (as I have obſerved) being a Proceeding according to the Courſe of the Common Law.

Upon the whole Matter I humbly ſubmit to your Lordſhips Judgment, whether for the Reaſons I have offer'd to your Lordſhips Conſideration, the Impeachment is not erroneous, and whether your Lordſhips will think fit to proceed to Judgment againſt the noble Lord the Priſoner at the Bar upon an Impeachment ſo uncertain and inſufficient as I humbly apprehend this to be.

Mr. Williams. MY Lords, I am alſo aſſign'd, by your Lordſhips, of Council for this unfortunate Lord, and humbly inſiſt in arreſt of Judgment, that there is a Defect in this Impeachment, in regard no certain Day is laid, when the Treaſon is charg'd to have been committed.

In the Impeachment 'tis ſaid, that this noble Lord did, *in or about* the Months of *September*, *October* or *November* 1715, together with the others in the Impeachment nam'd, traiterouſly compaſs the Death of his moſt ſacred Majeſty: That this noble Lord did, *in or about* the ſaid Months, *or ſome of them*, together with the reſt, agree and confederate to levy War, againſt his Majeſty: That *in or about* the ſaid Months, *or ſome of them*, this noble Lord with others did levy War, and did march thro' ſeveral parts of the Kingdoms, and did proclaim the Pretender to be King: And that *on or about* the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of the ſaid *November*, the noble Lord with others did ſeize and poſſeſs themſelves of the Town of *Preſton*, and fought againſt his Majeſty's Forces.

This is the Effect of the Impeachment.

And with great Submiſſion I take it, that in Point of Law, the Impeachment is defective in reſpect of the Uncertainty of the Time when this Treaſon is ſaid to have been committed.

I humbly apprehend, that the Honourable the Houſe of Commons is the *Grand Inqueſt of the whole Nation*; and that their Impeachment is in Nature of an Indictment, found by that Grand Inqueſt: Differing from an Indictment in this Reſpect, that an Indictment is found by the Inqueſt of a *County only*; but an Impeachment by the *Grand Inqueſt of the whole Kingdom*.

And

And taking it, that Impeachments are properly to be reſembled to Indictments,

Then as the omitting of the laying of a certain Day when the Treaſon was committed, wou'd be a material Fault in the Caſe of an Indictment; with great Submiſſion, it is as material a Defect in the Caſe of an Impeachment.

It ſeems plain, that in the Caſe of an Indictment, a certain Day ought to be laid when the Treaſon was committed.

It will, I believe, hardly be denied, but that in Caſe of an Indictment for Treaſon, it wou'd be ill, if 'twere laid, that the Party indicted committed the Treaſon *on or about* the firſt of *September*, 1715.

It wou'd be apparently worſe, if 'twere laid in an Indictment, that the Party committed the Treaſon *in or about the Month of September*, 1715.

It wou'd ſtill be worſe (becauſe more uncertain) if it were laid in an Indictment, that the Party committed the Treaſon *in or about* the Months of *September*, *October* or *November*, 1715.

And, with great Submiſſion, this, as I humbly take it, is the very Caſe before your Lordſhips; I mean, taking it, that Impeachments and Indictments, as to the material Parts of them, are to be meaſured by the ſame Rules of Law, as I humbly conceive they ought to be.

That the certain Day, for the committing the Treaſon, ought to be laid in Caſe of Indictments for Treaſon, ſeems to be proved, not only from the conſtant Practice of laying a Day certain in all Indictments of Treaſon; but from the Reaſon of the Law, which ſhews it to be a *Subſtantial and Material* Part of the Indictment.

That the conſtant Practice, in Caſe of Indictments for Treaſon, is to lay the Day on which the Treaſon is ſuppoſed to be done, will, as I preſume, be admitted.

And ſuch conſtant Practice is, of itſelf, a ſtrong Argument that the Law requires it.

But I humbly take it, that the Reaſon of the Thing argues ſtill much ſtronger for me, and ſhews it to be an *eſſential* Part of the Indictment.

The Reaſon of mentioning a Day certain in the Indictment when the Treaſon is ſuppoſed to have been committed, is in ſome Reſpects even for the Benefit of the Crown itſelf, and in ſome Reſpects for the Advantage of the Party indicted.

It concerns the Crown, in reſpect of the Forfeitures accruing to the King, of the Lands of the Party indicted; for where an Attainder enſues upon an Indictment for Treaſon, the Lands of the Party indicted are forfeited to the Crown, not only from the Judgment, but from the Day mentioned in the Indictment when the Treaſon is charged to have been committed.

This is expreſly ſaid, in the Lord *Coke*'s 1 *Inſt.* 13. *a. b.* 390. *b.* and the Difference there taken is, between a Writ of Appeal and an Indictment. 'Tis there ſaid, That if a Man be indicted for a capital Offence and outlaw'd upon it, the Land of the Party is forfeited from the Day laid in the Indictment, for the committing of the Treaſon, or other capital Crimes; but in the Caſe of an Outlawry upon a *Writ of Appeal*, becauſe no Day is mentioned in the Writ, the Forfeiture is only from the Judgment.

And tho' in the Caſe of a Writ of Appeal, which is called in *Latin* (*Breve*) from its Brevity, no Day is mention'd, yet in the Declaration upon the Appeal (which reſembles an Indictment) 'tis neceſſary not only to mention the Day, but even the Hour when the Murder or Felony was committed.

In the Caſe of *Wilſon* againſt *Law*, which was adjudg'd in the Court of *King's-Bench*, in the ſixth Year of King *William* and Queen *Mary*, in an Appeal of Murder, an Exception was taken to the Appeal that it was too uncertain, in regard the Murder was laid to be done, *circa horam primam poſt meridiem*, and this Incertainty even of the Hour was much inſiſted upon: But this, 'tis true, was at length over-rul'd, and held that *circa horam primam*, or *inter horam primam & ſecundam*, was well enough.

However no one, as I humbly apprehend, ever doubted, but that laying of a certain *Day* when the Fact was committed, is neceſſary both in the Caſe of an Indictment, and in a Declaration upon an Appeal; and that as to the Land of the Party indicted, the Forfeiture relates to the Day mentioned in the Indictment.

But, if the Queſtion were aſk'd in the preſent Caſe, from what Day the real Eſtate of this unhappy Lord ſhould be forfeited, it wou'd, as I humbly apprehend, be difficult to anſwer it.

And that Difficulty ariſes from the Incertainty of the Impeachment, as to the Time when the Fact was committed.

If then the laying in an Indictment the certain Day when the Treaſon was committed concerns the Benefit of the Crown, as it ſurely does;

If it entitles the King to the Forfeiture of the Lands from the Day laid in the Indictment, as from the Authorities I have mentioned it appears to do;

If this Matter concerns that great Prerogative and Flower of the Crown, and its Right to Forfeitures;

Then ſurely this Omiſſion can by no means be called a ſlight Omiſſion, or a Fault in Form only.

It will alſo have its Weight with your Lordſhips, That the mentioning a Day certain in the Indictment, when the Crime is laid to have been done, is likewiſe for the Benefit of the Party indicted. 'Tis for his Advantage to know the Time when he is charg'd to have committed the Offence, and by that he will be the better enabled to defend himſelf againſt the Accuſation.

It is a known Rule in Law, that in all Caſes of Indictments, (tho' for Miſdemeanours only) they ought to be ſtrictly certain.

This Rule holds *a fortiori* in Caſes of Indictments for capital Offences;

And ſtill, *a fortiori*, in Caſes of Indictments for High-Treaſon, where for Example ſake the Judgment, tho' juſt, is as terrible as can well be thought of.

My Lords, I am ſenſible I ought to have too great a Value for your Lordſhip's Time, to cite any of thoſe numerous Caſes in the Law-Books, which juſtify that known Rule in the Law that requires Certainty in Caſes of Indictments.

I ſhall only beg leave to mention to your Lordſhips one Caſe, which is an Authority of your Lordſhips, upon a Writ of Error before your Lordſhips, which ſhews how ſtrict the Law is in the penning of Indictments for Treaſon; and that it requires that even what ſeems to be Matter of Form only in ſuch Indictments muſt be complied with. It is the Caſe of the King againſt *Tucker*,

which was in the ſixth Year of King *William* and Queen *Mary*, and is reported in Serjeant *Levinz*, 3. *Rep.* 396. where *Tucker* was indicted for Treaſon, and in the Concluſion of the Indictment it was not ſaid to be *contra allegiantiæ ſuæ debitum*; and upon this Indictment *Tucker* was attainted, and his Lands forfeited to the Crown, and afterwards purchas'd under the Attainder; but afterwards this Attainder was revers'd in a Writ of Error in the King's-Bench upon very great Debate, for want of thoſe Words in the Indictment, *contra allegiantiæ ſuæ debitum*, and upon a Writ of Error before your Lordſhips the Judgment of Reverſal was affirmed, by which means a Purchaſer under the Attainder loſt the Eſtate.

With Submiſſion, this Caſe is much ſtronger than the principal Caſe now before your Lordſhips.

In that Caſe it might with ſeeming Reaſon be objected, that the Word (*Proditorie*) which is always in the Body of every Indictment, ſhews and neceſſarily implies, that the Treaſon committed was againſt the Party's Allegiance, for elſe how cou'd it be *Proditorie*?

Alſo in that Caſe the Treaſon is ſet forth at large in the Indictment, together with the Overt-Act, which *demonſtrates* that the doing this muſt be againſt the Party's Allegiance.

But all this would not maintain the Indictment, in regard Indictments for Treaſon were always laid to be againſt the Party's Allegiance.

And if the conſtant Forms of Indictments be an Argument,

'Tis as ſtrong a one for us in the preſent Caſe; for I believe there never was an Indictment without mentioning the Day when the Fact was committed.

Neither, with Submiſſion, is this Matter of Form only, but 'tis the ſubſtantial Part of the Indictment, in regard in this Point the King is intereſted in reſpect of the Forfeiture, and the Party in reſpect of his Defence.

It will, I humbly preſume, hardly be expected, from us, that we ſhould cite Precedents of Impeachments, eſpecially if 'twere known what few Hours notice we have had of attending your Lordſhips in arreſt of Judgment.

However, I will beg leave to mention one Caſe of an Impeachment freſh in your Lordſhips Memory, Dr. *Sacheverell*'s Caſe.

Dr. *Sacheverell* was impeach'd before your Lordſhips by the Honourable Houſe of Commons for ſeditious Expreſſions in two Sermons; the one preach'd at *Derby* Aſſizes, and the other at St. *Paul*'s, *London*; and in that Impeachment the preciſe Days are laid when the Doctor preached each of theſe two Sermons.

And I humbly take it, that by a like Reaſon a certain Day ought to be laid in the Impeachment, when this Treaſon was committed; and that the Authority of Dr. *Sacheverell*'s Caſe ſeems ſo much ſtronger than the preſent Caſe in queſtion, as the Crime of Treaſon is higher than that of a Miſdemeanour.

My Lords, I have nothing elſe to ſay on behalf of this unhappy Lord; unhappy, as being in that doubtful State of Memory, not *inſanæ* enough to be within the Protection of the Law, nor at the ſame time *ſanæ* enough to do himſelf in any reſpect the leaſt Service whatever.

Here the Managers gave ſome Interruption to the Council.

Lord High-Steward. Mr. *Williams*, I apprehend the Reaſon why the Managers of the Houſe of Commons appear uneaſy with you, is, that you are going into a Matter of Fact, and which you have not leave to ſpeak to; you muſt therefore confine yourſelf to the Point of Law that was ſtated.

Mr. *Williams.* My Lords, I ſhall take up no more of your Lordſhip's Time; but humbly hope that the Caſes of Indictments are parallel with thoſe of Impeachments;

That, as in an Indictment for Treaſon, the want of laying a Day when the Treaſon is charg'd to have been committed, is a manifeſt Error;

That as the conſtant Forms of Indictments are ſo;

That as the Reaſon of the Law requires they ſhould be ſo;

So for want of this Certainty in this Impeachment, we with great Submiſſion inſiſt that the Impeachment is defective:

And therefore pray that the Judgment againſt this unfortunate Lord may be arreſted.

Mr. *Walpole.* MY Lords, the Commons have attended to the Objection made by the Council on the Part and Behalf of the noble Lord at the Bar, and they humbly conceive thoſe learned Gentlemen ſeem to forget in what Court they are. They have taken up ſo much of your Lordſhips time in quoting of Authorities and uſing Arguments to ſhew your Lordſhips what would quaſh an Indictment in the Courts below, that they ſeem to forget they are now in a Court of Parliament, and on an Impeachment of the Commons of *Great Britain*. For ſhould the Commons admit all that they have offered, it will not follow that the Impeachment of the Commons is inſufficient; and I muſt obſerve to your Lordſhips, that neither of the learned Gentlemen have offered to produce one Inſtance relating to an Impeachment, I mean, to ſhew that ever the Sufficiency of an Impeachment was called in queſtion from the Generality of the Charge, or that any Inſtance of that Nature was offered at before. The Commons don't conceive, that if this Exception would quaſh an Indictment, it would therefore make this Impeachment inſufficient; nor do they think it neceſſary, in Juſtice to the noble Lord at the Bar, that a certain Day ſhould be mentioned in the Impeachment. They don't think, from the Nature of this Crime, and the Evidence that has been given, that there can be any Hardſhip for want of fixing a certain Day on which the Treaſon was committed. What he is charged with, is being concerned in a moſt notorious Rebellion. The Time mentioned in the Impeachment is the Months of *September*, *October*, and *November*, and particularly the Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Days of *November*. He is charged with being concerned from the Time that he left his own Houſe, to the Time he was taken at *Preſton*; and it hath been proved, I believe, in a more ample Manner than ever any Crime of the like Nature hath been. And how can this noble Lord ſuffer becauſe no particular Day is mentioned, after he continued in Rebellion for ſo many Days and Months, and marched through ſo many Counties? It is impoſſible to conceive he can ſuffer from any Uncertainty in the Charge, in not having a particular Day fixed.

But,

But, my Lords, the Commons think themſelves ſufficiently juſtified, and their Impeachment ſupported by a Precedent I have in my Hand, the Trial of my Lord *Stafford*, who was tried for High-Treaſon, and was executed for the ſame. And I obſerve that he had Council, and it appears he offer'd ſome Things in Arreſt of Judgment; and altho' it will appear that the Time was more uncertain in that Impeachment, yet that was never attempted to be offer'd in Arreſt of Judgment. In his Caſe the Words of the Articles of Impeachment are, That for divers Years laſt paſt a damnable Contrivance and Conſpiracy had been form'd and carried on, that is juſt as theſe Articles are; and when they come to the particular Charge, all that is ſaid is, That within the Time aforeſaid, *&c.* that is, ſome Time within divers Years laſt paſt; but this Impeachment is ſo far from being uncertain, that the Commons have named three Months, in which the Treaſon charged in the Impeachment was committed; and in the Precedent it is only ſaid, Within ſome of the Years laſt paſt; ſo that here the Commons are ſufficiently juſtified in the Articles exhibited by them, by the Precedent I have mentioned; and there Judgment paſſed, and nothing of this Nature was offered in Arreſt of Judgment. I hope this will ſatisfy your Lordſhips, that this Impeachment is ſufficient, notwithſtanding this Objection; and I hope it will never be allowed here as a Reaſon, that what quaſhes an Indictment in the Courts below, will make inſufficient an Impeachment brought by the Commons of *Great Britain*.

Mr. *Attorney-General*. MY Lords, the Council for the Priſoner have made two Objections, as I apprehend, in Point of Law, which I would give a ſhort Anſwer to, without taking notice of the other Matter which was ſpoke to by one of the Gentlemen, contrary to the Orders of the Houſe.

The Firſt Objection is, That there is no certain Day charged in the Impeachment, when the Treaſon was committed.

The Second is, That as to ſeveral of the Overt-Acts there is no Time mentioned at all.

I would follow the Steps of the learned Gentleman who ſpoke before me, and I think has given a good Anſwer to theſe Objections; I would take notice, that we are upon an Impeachment, and not upon an Indictment. The Courts below have ſet Forms to themſelves, which have prevailed for a long Courſe of Time, and thereby are become the Forms by which thoſe Courts are to govern themſelves; but it never was thought, that the Forms of thoſe Courts had any Influence on the Proceedings of Parliament. In *Richard* the Second's Time it is ſaid in the Records of Parliament, That Proceedings in Parliament are not to be govern'd by the Forms of *Weſtminſter-Hall*.

I beg leave to take notice, in Anſwer to this Objection, that tho' it is the uſual Form in the Courts below to alledge a certain Day on which the Crime is charged to be committed, yet at the ſame time they add (and at divers other Days and Times) and that Day which is laid, is only for Form ſake; but that Day is not material, they are not bound to prove the Crime committed on that Day, but they may prove the Defendant Guilty at any Time, either before or after the Day laid in the Indictment. There has been produced by the Honourable Gentleman who ſpoke before, a Precedent in Parliament much ſtronger than this Caſe, it is the Caſe of the Lord *Stafford*; there is not ſo much Certainty as there is in this Impeachment. Here it is ſaid, That on or about the Months of *September*, *October*, or *November*, or on or about one of them, the Crimes charged in the Impeachment were committed; but all that is ſaid in my Lord *Stafford*'s Caſe is, That there had been for many Years then laſt paſt a damnable Conſpiracy carried on; and when they came to charge the noble Lord with particular Facts, there is no Time mentioned at all.

One of the Gentlemen cited another Caſe in Parliament, which was Dr. *Sacheverell*'s Caſe: There was in that Caſe an Exception taken to the Impeachment for Uncertainty; and it was ſaid and argued from the Forms of the Courts in *Weſtminſter-Hall*, that where Indictments were for Words ſpoke or writ, the Words muſt be laid as they were ſpoke or wrote; and the Opinion of the Judges was, that it was neceſſary according to the Forms of the Courts below, but it was reſolved to be otherways in the Court of Parliament, and they were not bound but by their own Forms; ſo that upon this Head we apprehend we are clear of the Forms of Law in the Courts below, and that they are of no Uſe, ſince if a certain Day is laid, they are not by Law bound to prove the Crime committed on that Day, but may prove it upon any other Day.

The Second Objection is, That there is no Time laid for ſome of the Overt-Acts.

I think there is a certain Day charged when one of them was done, the ſeizing of *Preſton*; and in the inferior Courts it has been held, that it is not neceſſary there ſhould be a Day and Place alledged for every Overt-Act.

We think this Objection has no Weight in it, and therefore would not ſpend more of your Lordſhips Time in it; we are in the Caſe of an Impeachment, and in the Court of Parliament. Your Lordſhips have already given Judgment againſt Six upon this Impeachment, and it is warranted by the Precedents in Parliament; therefore we inſiſt that the Articles are good in Subſtance, and according to the Forms of Parliament.

Mr. *Cowper*. THE Objection, as ſtated by the Priſoner, and upon which his Council have argued, is this, That the Time of the Treaſon committed is not laid in the Impeachment with ſufficient Certainty. The Council have acquainted your Lordſhips with the Practice of inferior Courts, and have inſiſted too much upon the Precedents of Treſpaſſes and other Crimes ſet forth in Indictments, conſidering the Queſtion ariſes upon the Uſage and Practice of the High-Court of Parliament; and they cannot but know that the Uſages of Parliament are Part of the Laws of the Land, altho' they differ in many Inſtances from the Common Law, as practiſed in the inferior Courts, in Point of Form.

My Lords, if the Commons, in preparing Articles of Impeachment, ſhould govern themſelves by Precedents of Indictments, in my humble Opinion they would depart from the ancient, nay, the conſtant Uſage and Practice of Parliament.

It is well known that the Form of an Impeachment has very little Reſemblance to that of an Indictment; and I believe the Commons will endeavour to preſerve the Difference, by adhering to their own Precedents.

One

One of the learned Gentlemen has ſaid that he had not time to ſearch Parliamentary Precedents: That Gentleman ſeldom wants time to make himſelf ſerviceable to his Clients; but when he has more Leiſure, I believe he will not find one Precedent, where, in the caſe of an Impeachment of High-Treaſon, there hath been a certain Day or Time laid when the Treaſon was committed. The Precedent that hath been mentioned of my Lord *Stafford* is directly otherwiſe: There your Lordſhips will find it laid thus, that *for many Years laſt paſt* there has been contrived and carried on by Papiſts a traiterous and execrable Conſpiracy. And afterwards when it comes to charge the Treaſon and Overt-Acts, it alledges *they were done* and committed *within the time aforeſaid.* And yet we don't find any Exception was taken for want of Certainty, altho' not ſo much as a Year was laid with Certainty, within which the Treaſon was committed.

In the Caſe of my Lord *Wintoun* the Commons have charged, that his Lordſhip, together with *James* Earl of *Derwentwater*, and ſeveral others, as falſe Traytors to his Majeſty, did, in or about the Months of *September*, *October*, or *November* 1715, traiterouſly imagine and compaſs the Death of the King: That his Lordſhip and the reſt, to accompliſh their ſaid traiterous Purpoſe, did, in or about the ſaid Months, or ſome of them, conſpire and agree to levy War within this Kingdom, in order to depoſe and murther his Majeſty: That his Lordſhip did, within the time aforeſaid, traiterouſly levy a War and Rebellion in the Bowels of the Kingdom; and that he, together with his Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of *November* aforeſaid, traiterouſly ſeize and poſſeſs themſelves of the Town of *Preſton*; and did then and there cauſe and procure a miſerable and horrid Slaughter and Murther of many of his Majeſty's faithful Subjects. So that, my Lords, here is a Certainty not only of the Year, but of the Months and Days; and the Treaſons committed by the Priſoner are, with Submiſſion, not only charged with Certainty as to the Point of Time, but are charged with a great deal more Certainty than was neceſſary, in a Caſe where his Lordſhip's Treaſons began at *Seaton* Houſe, and continued from thence till the Surrender of *Preſton*.

Surely there is not the leaſt Weight in the Priſoner's Objection; for even in the Caſe of an Indictment, tho' it be neceſſary to lay a Day, yet it is not neceſſary to prove the Treaſon to be done upon that Day: So that even in inferior Courts it is an immaterial Form. One would think, if it be neceſſary to aſſign a Day certain, it ſhould be neceſſary alſo to prove the Treaſon to be done upon that Day; but it is not requiſite to prove the Treaſon upon the Day; therefore in inferior Juriſdictions it ſeems rather a Form than Subſtance. The Courts below have, it's true, their Forms, many Forms for which no Reaſon can be given; but I believe in Parliamentary Proceſs, nothing is neceſſary that is not material.

Sir *W. Thomſon.* MY Lords, we humbly apprehend that the Exception taken in Arreſt of Judgment has no Foundation in Law or Reaſon.

As to the Law, we muſt refer to the Forms of Proceedings in the Court of Parliament, which is the Law of Parliament, and which muſt be owned to be Part of the Law of the Land. It has been mentioned already to your Lordſhips, that the Precedents in Impeachments are not ſo nice and preciſe in Form as in the inferior Courts; and we preſume your Lordſhips will be governed by the Forms of your own Court, (eſpecially Forms that are not eſſential to Juſtice) as the Courts below are by theirs; which Courts differ one from the other in many Reſpects as to their Forms of Proceedings, and the Practice of each Court is eſteemed as the Law of that Court.

As to the Reaſons alledged to ſupport the Exception, they will receive a plain Anſwer.

'Tis ſaid, that 'tis neceſſary to alledge a certain Day in an Impeachment when the Fact was committed, that the Defendant may be able to make his Defence, that he may produce Witneſſes to give an Account where he was at the time he is accuſed to have been guilty. And one of the learned Council was pleaſed to ſay, that this is requiſite in Indictments for the ſmalleſt Offences, and ought to be much more ſo in capital Caſes, and in Impeachments for ſo high a Crime as Treaſon. My Lords, that Gentleman knows very well, that the Day which is mention'd in an Indictment is not material to the Purpoſe of making a Defence as to that Time only, for that the Defendant muſt come prepared to give an Account of his Innocence all the time between the Day alledged and the Indictment found. And in this Caſe there is no Hardſhip on the noble Lord at the Bar. Here is one of the Treaſons alledged to be within the Compaſs of Five Days (*viz.* the ſeizing of *Preſton*, levying War there, and engaging the King's Troops.) if he could have given an Account of himſelf to have been elſewhere at thoſe times, it might have been of Service to him: But that happened very unfortunately for him to be otherwiſe; and your Lordſhips have found him guilty of thoſe Facts on or about thoſe Five Days: Which has created a ſecond Reaſon to be offered to your Lordſhips, that the time alledged is not ſufficiently certain (*viz.*) To what Day ſhall the Forfeiture of the Defendant's Eſtate relate? If 'tis taken the moſt favourably for the Defendant, the Conviction ſhall operate ſo as to make the Forfeiture only from the laſt of theſe Days, and I don't apprehend any other Inconvenience. But to infer that, for that Reaſon, no Judgment at all ſhall be given upon this Conviction, where the material, the ſubſtantial Part of the Iſſue is found, ſeems not to be right Conſequence.

My Lords, we conceive for theſe Reaſons, and what has been mention'd before, this Exception has no Weight in it, and hope your Lordſhips will over-rule it.

L. H. Steward. Gentlemen of the Houſe of Commons, I ſuppoſe you don't oppoſe the Council's replying to you; afterwards, if you have any thing to offer, you may be heard to it.

Att. Gen. My Lords, we don't object to it, if the Commons have the Liberty of ſpeaking afterwards and cloſing, which they inſiſt upon as their Right.

L. H. Steward. Gentlemen, you may reply.

Sir *C. Phipps.* Is it your Lordſhips Pleaſure that we reply?

L. H. Steward. You may reply.

Sir *C. Phipps.* IF your Lordſhips pleaſe, we do not, with great Submiſſion, apprehend they have anſwer'd our Objection; but before I take notice of the Anſwers, I beg leave to ſet the learned Gentleman that ſpoke laſt right in one thing, wherein he did miſapprehend me: He was pleaſed to ſuggeſt that I ſaid the Day laid in an Indictment was material. I don't remember I ſaid ſo, for I never thought the Day ſo material, that there was a Neceſſity to prove the Treaſon to be committed upon that very Day; I did ſay there ought a certain Day to be alledged in Indictments, and that there always is; but how material that Day is, when alledged, is another Conſideration; but I conceive the Day laid in an Indictment, ought to be very near the time, if not upon the very Day the Treaſon is ſuppoſed to be committed, for the Reaſons I have before offered; and I take conſtant Practice to be ſo. I perceive all the Gentlemen who have ſpoke in Anſwer to me have been pleaſed to admit, that in Indictments for Treaſon and other capital Offences, there is a certain Day always alledged. The honourable Gentleman that ſpoke firſt, was pleaſed to make a Difference between an Indictment and an Impeachment; That an Impeachment is a Parliamentary Proceeding, and that the Parliament in their Proceedings are not tyed up to ſuch ſtrict Form as the Courts below. I have already ſpoken fully to this Point, and therefore ſhall not trouble your Lordſhips with any Repetition, but ſubmit to your Lordſhips Judgment, whether an Impeachment, by which a Noble Peer is to be attainted, ought not to be as certain as an Indictment, by which a Commoner is to be attainted, and whether by the *Lex Parliamentaria* as much Certainty is not required in one Caſe as in the other. The ſame Gentleman was pleaſed to obſerve, that the Impeachment in my Lord *Stafford*'s Caſe was more general than this, for there it was charged, that for many Years laſt paſt there had been a Conſpiracy to alter and ſubvert the Government, *&c.* In anſwer to which I beg leave to take Notice, that the Impeachment of that Lord begins with an Account of the Plot in general, and in that Caſe there is no doubt but ſuch a general Allegation was ſufficient. But whether the particular Part, which my Lord *Stafford* had in that Plot, be not more certainly alledged, I muſt beg leave to refer to the Tryal, for I cannot take it upon my Memory to ſay one way or other. But whether it was ſo or no, I think is not material? for that honourable Perſon admits, that no Objection was made to that Impeachment for the Uncertainty of the Charge: If ſuch Objection had been made and over-ruled, it would have been a full Anſwer to us; but ſince no Notice was taken of it, our Objection is as ſtrong and of the ſame Force as if that Caſe had never happened.

A learned Gentleman of great Eminence in the Law was pleaſed to obſerve, that frequently in Indictments for Treaſon, the Offence is laid to be committed, *diverſis aliis diebus & vicibus*, which is true; but then in all ſuch Caſes there is a particular Day firſt charged in the Indictment; and I believe that learned Gentleman, or any other of the Long Robe, will not ſay that an Indictment conceived in ſuch general Terms, without alledging a particular Day, would be good. As to that Part of the Impeachment which relates to the taking of *Preſton*, tho' that ſeems more certain than any other Overt-Act; yet I have ſhewed that the Words *or about*, leave it at large, and render it uncertain.

My Lords, this is what we humbly offer by way of Reply; and humbly ſubmit to your Lordſhips Judgment, whether our Objections are not good, notwithſtanding what has been ſaid in Anſwer to them.

Mr. *Williams.* MY Lords, I muſt ſubmit it to your Lordſhips, whether the learned Managers have anſwer'd the Objection which we have humbly laid before your Lordſhips in Arreſt of Judgment.

The Managers are pleaſed to object, that we are attempting to quaſh an Impeachment of the Honourable Houſe of Commons for High-Treaſon, and that this has not been known.

But, my Lords, with great Submiſſion, we are not endeavouring to quaſh this Impeachment. We are ſo far from it, that we muſt admit that the Courts of *King's-Bench* will not quaſh Indictments for Treaſon, nor Indictments for Felony, nor even Indictments for any groſs Miſdemeanours, but will put the Party to plead to ſuch Indictments; but in the preſent Caſe, where the Matter in Iſſue has been try'd, and the unhappy Lord is convicted; if this Impeachment be defective, as I humbly hope and inſiſt it is, then what other Way, what other Method has this unfortunate Lord at the Bar to take Advantage of this Defect, but by offering it to your Lordſhips in Arreſt of Judgment, which on my Lord's Behalf we now humbly do?

It ſeems admitted, as I apprehend, that had the preſent Queſtion been upon an Indictment, inſtead of an Impeachment, that then the Exception might have prevailed: But the Managers are pleaſed to inſiſt, that the Law and Courſe of Parliaments juſtify this Omiſſion in Caſe of Impeachments; and for this an Honourable Manager has been pleaſed to cite the late Lord *Stafford*'s Caſe; and that the Impeachment of that Lord was more uncertain, as to the Time laid for the committing the Treaſon, than the Impeachment now before your Lordſhips.

My Lords, I muſt confeſs I am very unfit to anſwer an Objection of this Nature, and which concerns the Courſe of Parliaments: But wou'd beg leave, with the greateſt Submiſſion, to obſerve, that only one Precedent (I beg Pardon if I miſtake, I mean that of the late Lord *Stafford*) has been cited againſt us: It muſt be ſubmitted to your Lordſhips, how far that one ſingle Precedent will of it ſelf be taken as a Proof, that this is the Courſe and Cuſtom of Parliamentary Impeachments, eſpecially when it appears that the Objection now made, was not made in that Caſe. It muſt be ſubmitted to your Lordſhips, whether repeated and iterated Acts are not requiſite to prove this, as well as all other Cuſtoms; and that if this were *Lex & Conſuetudo Parliamenti*, whether it wou'd not be an eaſy Matter to cite many Inſtances in that Behalf, and whether it is not the more neceſſary in this Caſe to cite farther Precedents, in regard the ſingle Caſe of the Lord *Stafford* may ſeem, as to this Point, to have loſt ſome Part of its Force, by the later Precedent of Doctor *Sacheverell*'s Caſe, when even in Caſe of a Miſdemeanour, a certain Day is laid in the Impeachment when the Miſdemeanour is charged to have been committed.

It has been alſo objected by the learned Managers, that in Indictments of High-Treaſon, it is uſually charg'd, that the Party committed the Treaſon *diverſis diebus & vicibus*, which is as uncertain as the preſent Impeachment.

My Lords, It is very true that theſe Words (*diverſis diebus & vicibus*) are as uncertain as the Words in the preſent Impeachment; and that theſe Words are uſually put into Indictments: But with Submiſſion, it is as true, that in all Indictments for Treaſon, over and beſides theſe Words, there is a certain Day laid when the Treaſon is ſaid to be committed; and I would beg leave to know, whether if in Caſe of an Indictment, the Treaſon were laid to be committed *diverſis diebus & vicibus*, without any further Certainty as to the Day, whether this wou'd not be ill for the Uncertainty: And this Caſe, with Submiſſion, ſeems to come neareſt to the preſent Caſe; and as to the Words *diverſis diebus & vicibus*, tho' they are frequently mentioned in an Indictment, yet they are only Surpluſage, and the Indictment good, whether with 'em, or without 'em.

It is likewiſe objected, that if a certain Day for the committing this Treaſon had been mentioned in this Impeachment, or in an Indictment, yet it had not been material; becauſe if the Treaſon had been proved to have been committed on any other Day, the Party muſt have been found guilty; and therefore, if the Day be immaterial, the omitting of it muſt be alſo immaterial.

My Lords, I muſt admit that the Day, as to the Party indicted, is not in this reſpect ſo far material, but that if it ſhou'd be prov'd that the Party committed the Treaſon on a different Day, than that laid in the Indictment, yet the Party muſt be found guilty: And that it might put too great a difficulty on ſuch Proſecution, to hold, that if the Treaſon be not proved to be committed on the preciſe Day laid in the Indictment, that therefore the Party, who appears ſtill guilty of the Treaſon, ſhou'd upon the nicety of the time be found not guilty; but what I humbly inſiſt on is, that 'tis the conſtant Courſe to mention a Day certain in the Indictment; and that the Day thus mention'd in the Indictment is, as I believe, generally the very Day on which the Treaſon is inſiſted on to be committed; and to know this, is, with Submiſſion, of great uſe to the Party indicted or impeached, and may very much aſſiſt him in his Defence. And I farther humbly inſiſt, that the mentioning of a Day certain in the Impeachment or Indictment for the committing the Treaſon, is manifeſtly for the Advantage, and the omitting it, is to the Prejudice, of the Crown; in regard, as between the Party impeached or indicted, and the Crown, the Forfeiture of the Land to the King ſhall relate to that Day which is laid in the Impeachment or Indictment.

My Lords, from hence, with the greateſt Deference to your Lordſhips, I beg leave to infer;

That the mentioning of a Day certain in the Impeachment, is material:

That by Conſequence the Omiſſion of it is alſo material:

That therefore in reſpect of this Omiſſion, the Impeachment is defective;

And in regard of this Defect I humbly pray that your Lordſhips wou'd be pleaſed to arreſt the Judgment.

Mr. *Attorney General.* MY Lords, for preſerving the Rights of the Commons of *Great Britain*, I ſhall trouble your Lordſhips with a Word or two.

I think the learned Gentlemen have left it now where they left it on their firſt Speech: They now agree that the particular Day in an Indictment is but Form, and that the Fact may be proved any Day before or after, and ſo the Law is in the inferior Courts.

I only add this, that the Priſoner loſes no Benefit nor gets any, by having a Day charged or omitted; for ſince it is of no uſe, he muſt provide for his Defence as if no Day was laid; and ſince it is immaterial in Indictments, it muſt be ſo in Impeachments. We are juſtified by the Forms and Precedents of Parliament. As to the Anſwer given to my Lord *Stafford*'s Caſe, that this Objection was not made there, but that it paſt *ſub ſilentio*: If that Impeachment had not been thought good, we know he had the Aſſiſtance of learned Council, who were well able to adviſe him, and who certainly would have taken the Exception. There is no uncertainty in it that can be to the Prejudice of the Priſoner, we inſiſt it is according to the Forms of Parliament, he has pleaded to it, and your Lordſhips have found him guilty.

L. H. Steward. My Lord *Wintoun*, your Council have been heard, hath your Lordſhip any thing more to offer in Arreſt of Judgment?

L. Wintoun. If your Lordſhip will be pleaſed to aſk the Council, they will tell you what they have to object.

L. H. Steward. My Lord, you have been told again and again upon this Occaſion, that the Point you would have your Council ſpeak to muſt be firſt ſtated and propoſed by your ſelf; you have had a ſufficient Opportunity to inform your ſelf.

L. Wintoun. Since your Lordſhip won't allow my Council, I don't know nothing.

Lord *Stamford* moved to adjourn.

L. H. Steward. I once more acquaint your Lordſhip, that as your Council have been allowed to ſpeak; ſo the Queſtion yet is, whether you have any other Point or Matter for them to ſpeak to; the Lords are ready to hear: Have you any thing elſe to propoſe?

L. Wintoun. If you will allow my Council to anſwer, he will anſwer.

L. H. Steward. My Lords! Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Then the Houſe was adjourned about three of the Clock, and about five returned again, and Proclamation was made for Silence as uſual.

L. H. Steward. GEORGE Earl of *Wintoun*, I have already acquainted you, that your Peers have found you Guilty, (*i. e.*) in the Terms of the Law, convicted you of the High-Treaſon whereof you ſtand impeached.

After, your Lordſhip has moved in Arreſt of Judgment, and the Lords have diſallow'd that Motion; their next Step is to proceed to Judgment.

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The melancholy Part I am to bear in pronouncing that Judgment upon you, ſince it is his Majeſty's Pleaſure to appoint me to that Office, I dutifully ſubmit to; far, very far, from taking any Satisfaction in it.

'Till Conviction, your Lordſhip has been ſpoke to without the leaſt Prejudice, or Suppoſition of your Guilt; but now it muſt be taken for granted, that your Lordſhip is guilty of the High-Treaſon whereof you ſtand impeached.

My Lord, this your Crime is the greateſt known to the Law of this Kingdom, or of any other Country whatſoever: And it is of the blackeſt and moſt odious Species of that Crime; a Conſpiracy and Attempt, manifeſted by an open Rebellion, to depoſe and murder that ſacred Perſon, who ſuſtains and is the Majeſty of the whole; and from whom, as from a Fountain of Warmth and Glory, are diſperſed all the Honours, all the Dignities of the State, indeed the laſting and operative Life and Vigour of the Laws, which plainly ſubſiſt by a due Adminiſtration of the executive Power.

So that attempting this precious Life, is really ſtriking at the moſt noble Part, the Seat of Life and Spring of all Motion in this Government; and may therefore properly be called a Deſign to murder, not only the King, but alſo the Body-Politick of the Kingdom.

And this is moſt evidently true in your Lordſhip's Caſe; conſidering that Succeſs in your Treaſon muſt infallibly have eſtabliſhed Popery; and that never fails to bring with it a Civil, as well as Eccleſiaſtical Tyranny; which is quite another Sort of Conſtitution than that of this Kingdom, and cannot take Place, 'till the preſent is annihilated.

This your Crime (ſo I muſt now call it) is the more aggravated, in that when it proceeds ſo far, as to take Arms openly, and to make an offenſive War againſt lawful Authority, 'tis generally (as in your Caſe) complicated with the horrid and crying Sin of murdering many, who are not only innocent but meritorious.

And if Pity be due (as I admit it is, in ſome Degree) to ſuch as ſuffer for their own Crimes; it muſt be admitted, a much greater Share of Compaſſion is owing to them, who have loſt their Lives merely by the Crimes of other Men.

As many as have ſo done in the late Rebellion, ſo many Murders have they to anſwer for who promoted it; and your Lordſhip, in examining your Conſcience, will be under a great Deluſion, if you look on thoſe who fell at *Preſton*, *Dumblain*, or elſewhere, on the Side of the Laws, and in Defence of ſettled Order and Government, as ſlain in lawful War; even judging of this Matter by the Law of Nations.

Alas! my Lord, your Crime of High-Treaſon is made yet redder, by ſhedding a great deal of the beſt Blood in the Kingdom: I include in this Expreſſion the brave Common Soldiers, as well as thoſe Gallant and Heroick Officers, who continued faithful to Death, in Defence of the Laws; for ſure but little Blood can be better than that, which is ſhed while it is warm in the Cauſe of the true Religion, and the Liberties of its native Country.

Believe it, notwithſtanding the unfair Arts and Induſtry uſed, to ſtir up a pernicious Exceſs of Commiſeration, towards ſuch as have fallen by the Sword of Juſtice, (few, if compar'd with the Numbers of good Subjects, murdered from Doors and Windows at *Preſton* only) the Life of one honeſt, loyal Subject is more precious, in the Eye of God, and all conſidering Men, than the Lives of many Rebels and Parricides.

This puts me in mind to obſerve to your Lordſhip, that

There is another Malignity in your Lordſhip's Crime (open Rebellion) which conſiſts in this; that it is always ſure of doing Hurt to a Government in one Reſpect, though it be defeated; (I will not ſay it does ſo on the whole Matter.)

For the Offence is too notorious to be let paſs unobſerved, by any Connivance: Then is a Government reduced to this Dilemma; if it be not puniſhed, the State is endanger'd, by ſuffering Examples to appear, that it may be attack'd with Impunity; if it be puniſhed, they who are publickly or privately Favourers of the Treaſon (and perhaps ſome out of meer Folly) raiſe undeſerved Clamours of Cruelty againſt thoſe in Power; or the loweſt their Malice flies, is, to make unſeaſonable, unlimited, and injudicious Encomiums upon Mercy and Forgiveneſs (Things rightly uſed, certainly of the greateſt Excellence.)

And this Proceeding, it muſt be admitted, does ſome Harm, with ſilly undiſtinguiſhing People.

So that Rebels have the Satisfaction of thinking they hurt the Government a little, even by their Fall.

The only, but true Conſolation every wiſe Government has in ſuch a Caſe (after it has temper'd Juſtice with Mercy in ſuch proportion as ſound Diſcretion directs, having always a Care of the Publick Safety above all Things) is this;

That ſuch like Seeds of unreaſonable Diſcontents, take Root on very ſhallow Soil only; and that therefore, after they have made a weak Shoot, they ſoon wither and come to nothing.

It is well your Lordſhip has given an Opportunity of doing the Government right, on the Subject of your Surrender at *Preſton*.

How confidently had it been given out by the Faction, that the Surrender was made on Aſſurances, at leaſt Hopes inſinuated of Pardon: Whereas the Truth appears to be, that Fear was the only Motive to it; the evil Day was deferred; and the Rebels rightly depended, fewer would die at laſt by the Meaſures they elected, than if they had ſtood an Aſſault: They were aw'd by the experienced Courage, Diſcipline, and Steadineſs of the King's Troops; and by the ſuperior Genius and Spirit of his Majeſty's Commanders, over thoſe of the Rebels; ſo that in truth they were never flatter'd with any other Terms, than to ſurrender, as Rebels and as Traitors; their Lives only to be ſpar'd till his Majeſty's Pleaſure ſhould be known.

It was indeed a Debt due to thoſe brave Commanders and Soldiers (to whom their King and Country owe more than can be well expreſs'd) th[illegible] Victory ſhould be vindicated to the preſent and future Ages from untrue Detraction, and kept from being ſullied by the Tongues of Rebels and their Accomplices, when their Arms could no longer hinder it.

'Tis hard to leave this Subject without ſhortly obſerving, that this Engine which ſets the World on fire, a lying Tongue, has been of prodigious uſe to the Party of the Rebels, not only ſince

and during the Rebellion, but before, while it was forming, and the Rebels preparing for it.

False Facts, false Hopes, and false Characters, have been the greater Half of the Scheme they set out with, and yet seem to depend upon.

It has been rightly observed, your Lordship's Answer does not so much as insist, with any Clearness, on that, which only could excuse your being taken in open Rebellion; That you was forced into it, remain'd so under a Force, and would have escaped from it but could not.

If you had so insisted, it has been clearly prov'd, that had not been true; for your Lordship was active and forward in many Instances, and so considerable in a Military Capacity among your Fellow-Soldiers, as to command a Squadron.

These and other Particulars have been observed by the Managers of the House of Commons, and therefore I shall not pursue them farther;

But conclude this Introduction to the Sentence, by exhorting your Lordship, with perfect Charity and much Earnestness, to consider, that now the Time is come when the Veil of Partiality should be taken from your Eyes (it must be so when you come to die) and that your Lordship should henceforward think with Clearness and Indifference (if possible) which must produce in you a hearty Detestation of the High Crime you have committed, and being a Protestant, be very likely to make you a sincere Penitent, for your having engaged in a Design, that must have destroyed the Holy Religion you profess, had it taken Effect.

Nothing now remains; but that I pronounce upon you that Sentence which the Law ordains, and which sufficiently shews, what Thoughts our Ancestors had, of the Crime of which your Lordship is now convicted: *viz.*

"That you *George* Earl of *Wintoun* return to "the Prison of the *Tower* from whence you "came; from thence you must be drawn "to the Place of Execution; when you "come there, you must be hang'd by the "Neck, but not till you be Dead; for you "must be cut down alive, then your Bowels "must be taken out, and burnt before your "Face; then your Head must be sever'd "from your Body, and your Body di-"vided into four Quarters; and these must "be at the King's disposal.

And God Almighty be merciful to your Soul!

Serjeant at Arms. O Yes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Lord High Steward stood up uncover'd, and declaring there was nothing more to be done by vertue of the present Commission, broke the Staff, and pronounced it dissolv'd: And then leaving the Chair, came down to the Woolpack, and said, Is it your Lordships Pleasure to adjourn to the House of Lords?

Lords. Ay, ay.

And then the House adjourn'd to the Chamber of Parliament, and the Lords and others returned in the same Order they came down.

The Earl of *Wintoun* was carried back to the *Tower*, from whence he afterwards made his Escape.

The Trial of Francis Francia *a* Jew *at the* Old-Baily, *for* High-Treason, Jan. 22. 1716, 3 Geo. I.

FRANCIS *Francia* having been formerly arraigned upon the Indictment found against him for *High-Treason*, and having pleaded *Not Guilty*, was on *Tuesday* the 22d of *January* brought to the Bar to receive his Trial.

Clerk of Arraignments. You the Prisoner at the Bar, these Men that you shall hear call'd, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to challenge them as they come to the Book to be sworn, and before they be sworn.

Cl. of Arr. Sir *Dennis Dutry*, Bart.

Prisoner. Are you a Freeholder in this City?

Sir *D. Dutry.* Yes.

Sir *J. Jekyll.* My Lord, we that are Council for the King desire, that those who are called may be asked that Question; Whether they have Freehold (or Copyhold) of Ten Pounds *per Annum*, or not; before they are sworn in Chief?

Mr. *Att. Gen.* We suppose the Prisoner will ask that Question; and therefore we desire that it may be ask'd of every one as they come to the Book. Sir *Edward Northey.*

Mr. *Ward.* It is a Challenge on both Sides.

L. C. Baron. They ought to be sworn whether they have a Freehold or not, if they would excuse themselves.

Mr. *Hungerford.* I have nothing to offer against it. In case the King's Council think fit to proceed in that Method, we concur in it. I should have mov'd it myself, if they had not.

Mr. *Att. Gen.* It was in the Trials of the Rebels.

Prisoner. He has had a Quarrel with me; and there was a Suit depending between us about seven Years ago: And I challenge him for Cause.

Mr. *Att. Gen.* He may challenge him peremptorily, if he will. But if he challenges him for Cause he must prove it.

Prisoner, Sir *Dennis* will not deny it.

L. C.

L. C. Baron. If you challenge him, you muſt prove your Challenge. Do you challenge him for Cauſe, or peremptorily?

Priſoner. For Cauſe.

L. C. Baron. That which you aſſign is no Cauſe.

Then Sir Dennis *was ſworn upon a* Voir Dire, *with reſpect to his Freehold; as all the others were, before they were either challenged, or ſworn in Chief.*

Sir *J. Jekyll.* Sir, have you a Freehold in this City?

Sir *D. Dutry.* Yes.

Sir *J. Jekyll.* To what Value?

Sir *D. Dutry.* About Ten Pounds a Year.

Priſoner. My Lord, there has been a Suit depending between us.

Mr. *Att. Gen.* If they talk of a Suit, they muſt prove it by Record.

Priſoner. His Name is *Dennis*; and they have given me a Pannel with barbarous *Latin*. In my Copy of the Pannel, he is return'd by the Name of *Dionyſius*; that is not the ſame Name.

Mr. *Ward.* The Priſoner obſerves, that in the Pannel he is return'd by the Name of *Dionyſius*, when his Name is *Dennis*.

Sir *J. Jekyll.* He is to have a Copy of the Pannel; and it is not to be put into *Engliſh* for him.

Mr. *Ward.* But we ſay, that is not *Latin* for *Dennis*.

Sir *J. Jekyll.* Sure no one will argue, but that *Dionyſius* is the proper *Latin* Name for *Dennis*.

L. C. Baron. You offer no Cauſe of Challenge.

Priſoner. I hope I prove his Name is return'd in the Pannel *Dionyſius*.

L. C. Baron. It is ſo; and that is *Latin* for *Dennis*.

Priſoner. No, it is not. *Dennis* is a Saint in *France*, and *Dionyſius* is a Saint in *Italy*. They are two different Names, and of different Countries.

L. C. Baron. Dionyſius is *Latin* for *Dennis*. If you don't challenge him peremptorily, he muſt be ſworn.

Priſoner. I alledge, that we fell out about ſeven Years ago: And that his Name is not *Dionyſius*, as it is wrote in the Pannel. And in my former Pannel he was put down *Knight*, and in this *Baronet*.

L. C. Baron. Theſe Things are nothing, except the Suit; and that you muſt prove.

Mr. *Hungerford.* As to the Diſtinction of the two Saints, I do not meddle in it. But I ſuppoſe Sir *Dennis* can tell whether he is a Knight, or a Baronet. But as to the Saints, whether the Nominal ones Abroad, or the Pretended ones at Home, I let them alone.

Priſoner. You allow'd this Callenge the laſt Time.

Mr. *Att. Gen.* You challeng'd him peremptorily.

Mr. *Ward.* He was ſtiled Knight in the laſt Pannel.

L. C. Baron. That don't appear to us. You muſt either challenge him peremptorily, or he muſt be ſworn.

Priſoner. I muſt do what you order; but I think it very hard. Then I challenge him.

Cl. of Arr. Sir *John Scott*, Kt.

Priſoner. I challenge him.

Cl. of Arr. Sir *Daniel Wray*, Kt.

Priſoner. I don't except againſt him.

Then he was ſworn.

Cl. of Arr. Sir *W. Chapman*, Kt.

Priſoner. I challenge him.

Cl. of Arr. Joſeph Web.

Priſoner. I challenge him.

Cl. of Arr. Robert Adams.

Priſoner. Was you upon the Grand Jury, that found the Indictment againſt me?

Mr. *Adams.* No.

Priſoner. I challenge him.

Cl. of Arr. Robert Aſhurſt.

Priſoner. I challenge him.

Cl. of Arr. Joſeph Biſhop.

Priſoner. I challenge him.

Cl. of Arr. Thomas Boucher.

Priſoner. I challenge him.

Cl. of Arr. Joſeph Brookſbank.

Priſoner. I challenge him.

Cl. of Arr. Nicholas Benoiſt.

Priſoner. I challenge him.

Cl. of Arr. John Child.

Priſoner. I challenge him.

Cl. of Arr. Joſeph Chamberlain.

He was ſworn.

Cl. of Arr. John Caſebert.

Priſoner. He was upon the Grand Jury that found the Bill againſt me; and I challenge him for that Cauſe.

Cl. of Arr. Robert Wood.

Priſoner. I challenge him.

Cl. of Arr. Iſaac Cailovell.

Priſoner. He don't write his Name as it is in the Pannel. I could never find this Gentleman out by all the Enquiry I could make.

L. C. Baron. What is the Miſtake?

Priſoner. It is wrote in the Pannel *v* Conſonant, and he ſpells his Name with a *w*. And it is in the Pannel a ſingle *l*, and he writes it with double *ll*.

Then Mr. Cailovel *being ask'd, ſaid he wrote his Name with a* v *Conſonant, as in the Pannel; but with a double* ll.

L. C. Baron. That don't alter the Pronunciation. It is the ſame Name.

Priſoner. I challenge him.

Cl. of Arr. Thomas Davis. He was ſworn.

Cl. of Arr. John Dodſon, Eſq;

Priſoner. I challenge him.

Cl. of Arr. William Dewick.

Priſoner. I challenge him.

Cl. of Arr. William Dell.

Priſoner. I challenge him.

Cl. of Arr. John Davis. He was ſworn.

Cl. of Arr. Joſeph Emmes. He was ſworn.

Cl. of Arr. John Farr. He was ſworn.

Cl. of Arr. Thomas Gouge.

Priſoner. I challenge him.

Cl. of Arr. Thomas Geering.

Priſoner. I challenge him.

Cl. of Arr. Joſeph Goddard.

Priſoner. I challenge him.

Cl. of Arr. Robert Gill.

Priſoner. I challenge him.

Cl. of Arr. Henry Greenway.

Priſoner. I challenge him for Cauſe. He is return'd upon the Pannel *Greenway*, and his Name is *Greenaway*: That is a different Name.

Sir *J. Jekyll.* How are you uſually called; *Greenway*, or *Greenaway*.

Mr. *Greenaway.* I am moſt commonly called *Greenaway*.

Then he was ſet aſide.

Cl. of Arr. John Glaſbrook. He was ſworn.

Cl. of Arr. John Goodlad.

Priſoner. I challenge him.
Cl. of Arr. John Gore.
Priſoner. I challenge him.
Cl. of Arr. Henry Aukey.
Priſoner. I challenge him.
Cl. of Arr. Lawrence Hatſell.
Priſoner. I challenge him.
Cl. of Arr. Robert Hackſhaw.
Priſoner. I challenge him.
Cl. of Arr. Benjamin Hooper.
Priſoner. I challenge him.
Cl. of Arr. Jonathan Hicks.
Priſoner. I challenge him.
Cl. of Arr. Jeremiah Jennings.
Priſoner. I challenge him.
Cl. of Arr. Thomas Jordan.
Priſoner. I challenge him.
Cl. of Arr. William Kent. He was ſworn.
Cl. of Arr. Richard Levitt, Eſq;
Priſoner. I don't except to him.
Sir *J. Jekyll.* I challenge him for the King.
Cl. of Arr. James Lamb.
Priſoner. I challenge him.
Cl. of Arr. Thomas Lingard. He was ſworn.
Cl. of Arr. Stephen Lee. He was ſworn.
Cl. of Arr. John Lane, Eſq;
Priſoner. I challenge him.
Cl. of Arr. John Lane.
Priſoner. I challenge him.
Cl. of Arr. Richard Lindſey.
Priſoner. I don't except to him.
Sir *J. Jekyll.* I challenge him for the King.
Cl. of Arr. John Mahew. He was ſworn.
Cl. of Arr. Henry Mallett. He was ſworn.
Then they were counted; and the Twelve Sworn were Jurors.

Sir *Daniel Wray,* K^t.	*John Glaſbrook.*
Joſeph Chamberlain.	*William Kent.*
Thomas Davis,	*Thomas Lingard.*
John Davis.	*Stephen Lee.*
Joſeph Emines.	*John Mahew.*
John Farr.	*Henry Mallet.*

Then Proclamation was made, as is uſual in thoſe caſes.

Priſoner. I pray that *George Flint,* a Priſoner in *Newgate,* may be ſent for; and may be near me during my Trial.

L. C. Baron. What is he in *Newgate* for?

Priſoner. For a Fine.

L. C. Baron. Then he may be ſent for.

Which was done accordingly.

Cl. of Arr. Francis Francia, hold up your Hand.

Which he did.

Gentlemen, you that are ſworn, look upon the Priſoner, and hearken to his Cauſe.

HE *ſtands indicted by the Name of* Francis Francia, *of* London, *Merchant: For that he being a Subject of our moſt Serene Lord* GEORGE, *King of* Great Britain, France *and* Ireland, *Defender of the Faith,* &c. *not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance; but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traitor againſt our ſaid Lord the King, his ſupreme, true, natural, lawful and undoubted Lord; withdrawing that cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our ſaid Lord the King towards him ought to bear; and deſigning and traiterouſly intending, the Government of theſe Kingdoms, under our ſaid Lord the King duly and happily eſtabliſh'd, to change and ſubvert; and our ſaid Lord the King from the Title, Honour, Royal Eſtate, Empire and Government of theſe Kingdoms to depoſe; and our ſaid Lord the King to Death and final Deſtruction to bring; and the Perſon in the Life of King* James *the Second, pretended to be Prince of* Wales, *and after the Death of the ſaid late King pretending to be, and taking upon himſelf the Stile and Title of King of* England, *by the Name of* James *the Third, to the Crown, Royal Eſtate, and Dignity of King, and to the Government of this Kingdom to advance; The Firſt Day of* September *in the Second Year of the Reign of our ſaid Lord the King, and at ſeveral Days and Times as well before as after, falſly, maliciouſly, deviliſhly and traiterouſly did compaſs, imagine and intend, our ſaid Lord the King, now and then his ſupreme, true, natural, lawful and undoubted Lord, from the Title, Honour, Royal Eſtate, Empire and Government of theſe Kingdoms, to depoſe and to Death and to final Deſtruction to put and bring; and the ſaid Perſon, in the Life of the ſaid King* James *the Second, pretended to be Prince of* Wales, *and ſince the Death of the ſaid late King pretending to be, and taking upon himſelf the Stile and Title of King of* England, *by the Name of* James *the Third, to the Crown, Royal Eſtate and Dignity of King, and to the Empire and Government of this Kingdom, to exalt. And that he the ſaid* Francis, *to accompliſh and bring about the ſaid Treaſon, and traiterous and deviliſh Intention, did traiterouſly meet, propoſe, conſult, conſpire, and agree with divers other Traitors, to the Jurors unknown, to raiſe Inſurrection, Rebellion and War within this Kingdom, againſt our ſaid Lord the King, and in Favour of the ſaid Perſon, in the Life of the ſaid King* James *the Second, pretended to be Prince of* Wales, *and ſince the Death of the ſaid late King taking upon himſelf the Stile and Title of King of* England, *by the Name of* James *the Third. And that he the ſaid* Francis Francia, *for the more effectual compleating and perfecting the ſaid Treaſon and traiterous Intention, did propoſe, conſult, conſpire and agree with divers other Traitors, to the Jurors unknown, to require, ſollicite and procure, from divers Foreigners, and others, in the Kingdom of* France, *Arms, Ammunition and Money, to aſſiſt and help in the ſaid War. And that he the ſaid* Francis Francia *did traiterouſly compoſe and write, and cauſed to be compoſed and written, ſeveral traiterous Letters, notifying the Intentions and Reſolutions of him the ſaid* Francis Francia, *and the ſaid other Traitors, to move and levy the ſaid War; and requiring Aid in the ſaid War, of the ſaid Foreigners, and other Perſons then in* France. *And the ſaid Letters ſo compoſed and written, and cauſed to be compoſed and written, did traiterouſly ſend, and cauſed to be ſent, to Parts beyond the Seas, to be delivered to the ſaid Foreigners, and other Perſons in* France, *and cauſed and procured them to be delivered accordingly; againſt the Duty of his Allegiance, againſt the Peace of our ſaid Lord the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided.*

Upon this Indictment he hath been Arraigned and hath thereunto pleaded *Not Guilty:* And for his Trial hath put himſelf upon God and his Country; which Country you are. Your Charge is to enquire, whether he be guilty of this High-Treaſon whereof he ſtands indicted, or not guilty? If you find that he is guilty, you are to enquire what Goods or Chattels, Lands or Tenements, he had

at

at the Time of the High-Treaſon committed, or at any Time ſince. If you find him *Not Guilty*, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him guilty: If you find him not guilty, nor that he did fly for it, you are to ſay ſo, and no more; and hear your Evidence.

Mr. *Cowper*, Jun. MAY it pleaſe your Lordſhip, and you Gentlemen that are ſworn: The Priſoner at the Bar, *Francis Francia*, ſtands indicted of High-Treaſon; in intending to alter and ſubvert the Government of theſe Realms, happily eſtabliſh'd under his Majeſty King GEORGE; to depoſe his Majeſty, to bring him to Death, and to place the *Pretender* upon his Throne.

The Indictment ſets forth, that for this Purpoſe the Priſoner, the Firſt of *September*, in the Second Year of the Reign of his preſent Majeſty, and at ſeveral other Days and Times, at *London* in your County, traiterouſly compaſſed and imagined, to depoſe and kill his moſt Sacred Majeſty, and to place the *Pretender* on his Throne.

And that for the more effectual performing ſuch his Intentions, he did meet, propoſe, conſult and agree with ſeveral other Traitors, to raiſe Rebellion and War within this Kingdom, againſt his Majeſty, and in favour of the *Pretender*. And that he did ſollicit Men, Arms and Ammunition, from certain Foreigners and others in *France*, to aſſiſt him in that Rebellion. And that he did write and cauſe to be written ſeveral Letters, intimating this Reſolution, and requeſting the Aſſiſtance of ſuch Foreigners and others.

The Indictment charges further, that he wrote and compoſed ſuch Letters, and cauſed them to be wrote and compoſed; and procured them to be ſent and deliver'd for that Purpoſe. And this, Gentlemen, is laid to have been by him done, contrary to the duty of his Allegiance, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe provided.

Gentlemen, to this Indictment the Defendant has pleaded that he is Not Guilty. If upon calling our Evidence for the King, we ſhall prove this Caſe upon him; it will become your Duty to find him guilty of the Charge.

Sir *J. Jekyll*. MAY it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Council with his Majeſty: And, Gentlemen, it is my Part to open to you the Subſtance of the Charge againſt the Priſoner at the Bar; and the Nature of the Evidence we ſhall offer to prove that Charge.

The Priſoner ſtands indicted of the firſt Species of High-Treaſon, mentioned in that antient Statute 25 *Edw.* III. that is, compaſſing and imagining the Death of the King.

The Overt-Acts alledged in the Indictment, to manifeſt that traiterous Deſign of the Priſoner, are three:

He is charged with conſulting and conſpiring, with other Traitors, to levy War againſt the King, in favour of the *Pretender* to his Majeſty's Crown:

With conſpiring and agreeing to ſollicit and procure Aſſiſtance, from Foreigners and others in *France*, to carry on that War:

And further, with writing traiterous Letters, notifying his and his Accomplices Reſolution to Levy that War; and requiring the before-mentioned Aſſiſtance; and ſending thoſe Letters into foreign Parts for that Purpoſe.

Theſe are undoubted Overt-Acts of the High-Treaſon charged upon him.

To make good this Charge, we ſhall ſhew, that about three or four Years ſince, there was a Correſpondence begun between the Priſoner and Abbot *Butler*, an Eccleſiaſtick of *Cambray*. That Correſpondence began on the Occaſion of a Law-Suit in *England*; wherein one Mrs. *Butler*, a Relation of that Abbot, was concerned; which was recommended to the Priſoner's Care. But ſome Time after (a Gentleman, whoſe Name it will be neceſſary to mention in the Proſecution of this Cauſe) Mr. *Harvey* of *Combe* took upon him to make uſe of that Correſpondence, in order to tranſmit and receive Letters to and from that Abbot; and alſo to the Duke *D'Aumont*, by the means of the Priſoner.

Mr. *Harvey*, for ſome time, made uſe of the Priſoner only to convey thoſe Letters forward and backward, under the Priſoner's Cover, directed to one *D'Aulmay*, alias *Payen*; who had married a near Relation of the late Duke of *Ormond*; to be communicated by *D'Aulmay* to the Abbot, or the Duke *D'Aumont*. But it ſeems, the Priſoner having gained a Knowledge of the Tendency of Mr. *Harvey*'s Correſpondence, (which was a treaſonable one) he himſelf ſoon after came to partake of the Guilt.

As it was at firſt a Correſpondence between the Priſoner and the Abbot, and afterwards between Mr. *Harvey* and the Abbot, under Covers; ſo afterwards, Mr. *Harvey* made uſe of the Priſoner himſelf, to correſpond with *D'Aulmay*. And in thoſe Letters you will find, that the Priſoner does not enter into the Correſpondence as a Matter that he was tranſacting only as for Mr. *Harvey*, but ſhews a great Concern in it himſelf: He is importunate for Aſſiſtance to the late Rebellion from *France*; Impatient for its Coming, and Anxious for the Succeſs.

The Evidence we ſhall offer to you, to ſhew that this Correſponce was thus carried on, will be this.

Informations being given to a Noble Lord, (then Secretary of State) of a treaſonable Correſpondence being carry'd on by Mr. *Harvey*, by means of the Priſoner; there was a Warrant iſſued to take the Priſoner, and ſeize his Papers. And upon the Execution of that Warrant, Letters directed to the Priſoner, and his Copy-Book of the Letters wrote by himſelf, and an Original Letter of Mr. *Harvey*'s, were found in the Priſoner's Cuſtody, and will be produc'd to you; and theſe were own'd and admitted by the Priſoner.

The Letters themſelves plainly ſpeak the Nature and traiterous Effect of this Correſpondence begun by Mr. *Harvey*, and carried on with the participation of the Priſoner. And Gentlemen, my Lords the Judges will tell you, that it is not couching ſuch a Correſpondence in the Cant of a Law-Suit, (as in the preſent Caſe) or otherwiſe, that will ſcreen an Offender from Publick Juſtice, in caſe a traiterous Correſpondence can be made manifeſt. If that would evade the Juſtice of the Law, it would be impoſſible for Traitors to be brought to Puniſhment. But that which puts this out of all doubt, is, that the Senſe which is

put on these Letters by us, and by the Indictment; that very Sense, or Construction, has been put upon them by the Prisoner himself. For we shall lay before you the Examination of the Prisoner before the Secretary of State. In that he admits, that the Subject-Matter of the Letters wrote by *D'Aulmay* to him, to be communicated to Mr. *Harvey*, was the Design of the *Pretender*'s Invading the Dominions of his Majesty. And those Letters being one Side of the Correspondence, (I mean that which came from Abroad) serves to evince or demonstrate the other Part or Side of the Correspondence, which came from hence.

I shall not enter into the Particulars of the Letters; or state and reason upon Matters in writing, without having them first read, whereby to lay a Foundation for Observing upon them. But the Letters will be read to you; And we who are the King's Council, don't desire you to put any forc'd or strain'd Construction upon them. Nay, we desire you to put no other Construction upon them, than what the Prisoner himself has done already.

I shall say nothing to you, Gentlemen, to aggravate the Nature of the Offence. I rather chuse to appeal to your Judgments, than to excite your Passions.

All that is desired of you, is, to give your best Attention to the Evidence; and to do Justice, and discharge your Consciences.

Mr. *Att. Gen.* MAY it please your Lordships, and you the Gentlemen of this Jury; I am also of Council against the Prisoner at the Bar. The Indictment has been at large opened and explained by Mr. Serjeant *Jekyll*. The Prisoner is charged with High-Treason, in compassing and imagining the Death of his Majesty, in order to set the *Pretender* on the Throne. The Overt-Acts laid, are conspiring to levy that War and Rebellion that broke out lately; and in applying to *Aliens*, and others in *France*, for Men and Money for carrying it on.

It is notorious, that Preparations were making many Months for the Rebellion that broke out in *Scotland*, *September* 1715. under the Earl of *Marr*; and in *Northumberland* in *October* after, under Mr. *Foster*; and the like were design'd at *Oxford*, *Bath*, *&c.* in *October* 1715. And Men were listed and sent down for those Purposes; as hath appear'd on the Trials of the Persons who have suffer'd for those Treasons.

The Conspiracy was carry'd on with great Secrecy: And tho' it had been long in agitation in favour of the *Pretender*; yet was not publickly known, till his Majesty (upon the 20th of *July* 1715) was pleased to acquaint his Parliament, that he had certain Notice of the *Pretender*'s Design to Invade this Kingdom; and that at the same time there were great Preparations here to assist that intended Invasion.

The Defendant lives in *Plow-Yard* in *Fetter-Lane*, and goes for a *Jew*. When the Duke *D'Aumont*, as Ambassador from the *French* King, in the Year 1713. was here, the Prisoner came acquainted with the Abbot *Butler*, called the *Vidame* of *Cambray*; and from that time he corresponded with him. The Abbot had a Relation of his Name, *Barbara Butler*, who had a Suit at Law depending here, which he recommended to the Care of the Prisoner; and that I believe might be the beginning of the Correspondence between them. There is a Gentleman that has been named, Mr. *Harvey* of *Combe*; he also then contracted an Acquaintance and Familiarity with the Duke *D'Aumont*, and Abbot *Butler*, and corresponded with both. These Correspondencies first began in the Queen's Time, and appear to have been carried on with great Secrecy and Caution, which induce a Belief they were then Criminal; but I don't mention this, as if what was done in the Queen's Time would affect the Prisoner upon this Indictment, for it is laid only for Treason committed against the King. These Correspondencies were carried on, from the going away of the Duke *D'Aumont*, till the Prisoner was seized, which was occasioned in this Manner:

My Lord *Townshend*, then Secretary of State, was diligent in his Enquiries, and on the 16th of *September* 1715. had a private Information given him, that Letters constantly came by the Post from *France*, to *Francia*, and Mr. *Harvey*; from the Duke *D'Aumont*, and Abbot *Butler*, and one *Payen* alias *D'Aulmay de Coulange*; and that the Subject of the Letters related to the *Pretender*, and that intended Invasion.

His Lordship was cautious, and did not immediately seize the Prisoner, but staid the coming in of two Posts from *France*, and gave Orders for stopping all Letters directed to the Prisoner, to see what further Discovery they would make, and having received further Information by those Letters, on the 19th of *September* 1715. his Lordship made his Warrant to *Joseph Smith*, one of the Messengers, to apprehend *Francia*, and seize his Papers. He having received the Warrant, went, together with *Wilcox* another Messenger, (who is since dead) to the Defendant's House, and there seized his Person, and at the same time his Copy-Book of Letters. And it is extraordinary to find therein entred the Copies of any Letters relating to a Matter of this Nature. When they seized that Book, he told them there was nothing in it, and that it was only his Copy-Book of his Letters to his Correspondents. They seized also several Original Letters, wrote from *France* to him by *D'Aulmay* alias *Payen*, which will be read to you. They then seized also in his Custody an Original Letter of Mr. *Harvey*'s to Abbot *Butler*, dated *January* 9. 1714. which was sent to *Francia* to be transmitted beyond Sea; but it seems *Francia* opened it out of Curiosity, or by Accident, and kept it. In it were Figures for Names and Things, which he well understood. The Prisoner was on *September* 22. 1715. examined before both Secretaries of State, and the Copy-Book of Letters was shewn him, and he owned it to be his Book, wherein he entred the Letters of his Correspondency, and that the Entries were made by himself or his Son. *D'Aulmay*'s Letters were also shewed to him, and he owned that they were those that he received, and were found in his Custody.

He at first seemed to be open and ingenuous, and the Secretaries of State then thought him to be so. He told them in particular when the Correspondence began, how long carried on by covering Mr. *Harvey*'s Letters; and when altered, and the Correspondence carried on only by *Francia*; and that the Subject of the Letters wrote to him by *Payen*, was, the Design of the *Pretender* to invade his Majesty's Dominions; and he named Persons, who were intended in them by initial Letters of their Names or Titles. That *M. H.*

was Mr. *Harvey*. My *D D* the Duke of *Ormond*; *M B.* Lord *Bolingbroke*; *Dd.* the Duke *D'Aumont*. He alſo explained Mr. *Harvey*'s Letter, and the Figures therein. That 22 was the Duke *D'Aumont*; 6 the late *French* King; 17 the *Tories*; 8 the *Pretender*; and 9 his Majeſty King *George*; and ſigned his Examination, and was ſent back in the Meſſenger's Cuſtody. But it appearing after, on further peruſing of the Letters, that he had not been ingenuous, but had concealed a great Part of what he knew, he was further examined, and then changed his Note, and thereupon was committed to *Newgate*.

He was here twice before, in Order to be tried; the firſt Time he was adviſed by his Council, (and he was in the Right to follow it, and take all the Advantages the Law allowed him) to inſiſt, that in the Copy of the Indictment delivered to him, there was a Miſtake of an *I* for an *A*, and therefore he had not had a true Copy of his Indictment; and thereupon the Trial was put off. The next Time he came, he made uſe of another Privilege the Law allows him, and challenged ſo many of the Jurors, that there did not appear beſides enough to make a Jury. There were Accidents afterwards, which occaſioned the putting off the Trial twice by the King's Council, ſome of the Witneſſes being abroad on his Majeſty's Service.

The Indictment charges the Priſoner with compaſſing and imagining the Death of the King: And it's plain, a Conſpiracy to levy War, to dethrone or to deprive the King of his Liberty, is an Evidence of imagining his Death; for the War neceſſarily tends to that End. That this Tranſaction which he was concerned in, was a Deſign to have a Rebellion raiſed here, and to bring in the *Pretender*, we don't doubt but we ſhall give you Satisfaction of, when we produce the Letters, and you will obſerve that the Priſoner hath ſo explained them: And if he had not, every Body muſt ſo underſtand them.

The Correſpondence began in the Year 1713, and continued to the Time he was taken, which was on *September* 19, 1715. And ſo far we may read the Letters in the Queen's Time, to ſhew the Nature and Beginning of it. At firſt he carried on the Correſpondence, only as a Correſpondence between Mr. *Harvey* and *Butler*, by covering Mr. *Harvey*'s Letters, and having the Anſwers ſent under Cover to him; what he wrote in the Covers, he has enter'd in his Book; for Mr. *Harvey* was cautious not to let his Letters go openly to and from him. And ſo for a good while Mr. *Harvey*'s Letters were brought to *Francia*, which he covered and directed to *Butler* or to *D'Aulmay*, ſometimes by that Name, and ſometimes by the Name of *Payen*, and ſometimes by the Name of *Coulange*, which is a way uſed by many in *France*, to take the Name of the Place where they live inſtead of their Sirname. While the Correſpondence was carried on by covering Letters, *Francia* in his Covers wrote thoſe Matters that demonſtrate he was privy to the Correſpondence, and you will underſtand it by Mr. *Harvey*'s Original Letter.

Mr. *Harvey* is not before the Court, and therefore we ſhall not meddle with him more than is neceſſary, to ſhew that while the Correſpondence was carried on under *Francia*'s Covers, *Francia* well knew the Subject-Matter of the Correſpondence, and many Times gave Cautions to have to do with diſcreet Perſons, and to make uſe of People that do not babble.

The Correſpondence was carried on thus till about *June*, 1715. and then the way of Correſponding was changed. For Mr. *Harvey* was adviſed to be more careful, and not to write himſelf; but whatever was wrote, it was agreed ſhould be wrote to and by *Francia*. And ſo the Correſpondence was carried on between *D'Aulmay* and him, to the Time of the Priſoner's being apprehended. We have Entries of Letters of his for a conſiderable Time in his Copy-Book; and it is ſurpriſing to me, and will be ſo to every Man, that a Man ſhould enter Copies of Letters that carry ſuch an Evidence of Crimes in the Writer. In one of the Letters enter'd in the Copy-Book, he writes to *D'Aulmay*, dated *April* 7. 1715. "to be cautious, to avoid giving Umbrage to "thoſe in Power; and ſays, when I have any "thing particular to write to you, I will do it "by a ſtrange Hand, and will ſign *Jacques Chrêtien*. Take notice of this, and provided you "let me know you received this Letter without "its having been opened, I ſhall be eaſy.

From that Time there is no Entry of *Francia*'s Letters in the Book; but we have a Chain of Letters from that Time wrote by *D'Aulmay* to *Francia*, in Anſwer to Letters written by *Francia* to him, wherein *D'Aulmay* takes notice, "That "*Francia* in his Letters had complained that the "Invaſion was delay'd; and reproach'd thoſe in "*France* with Backwardneſs, Neglect and Indolence; and the Cauſe he knew of, would be "undone for want of Care.

In the reading the Letters, we ſhall firſt produce that of Mr. *Harvey*, dated *January* 9. $17\frac{1}{1}\frac{4}{5}$. to Abbot *Butler*; which was found in *Francia*'s Cuſtody, with his Explanation of it; by which it will appear, he was fully acquainted with the Subject of the Correſpondence, while he cover'd Mr. *Harvey*'s Letters: And after that we ſhall produce the Letters from and to *Francia*, in the Order of Time they were written.

It is remarkable, that the Correſpondence was ſo cloſe, that ſcarce a Poſt paſs'd without Letters from the one or the other.

The firſt of Mr. *Francia*'s Letters that we ſhall produce, is dated *March* $\frac{14}{24}$. $17\frac{1}{1}\frac{4}{5}$. He writes to *D'Aulmay*; "and deſires to know what was "in the Story of the Marriage between the *Pre*"*tender*, and one of the *Arch-Dutcheſſes*. For it "is eſſential to the Intereſt of your Wife." She was a *Butler*.

D'Aulmay anſwers that, *March* 20. 1715. and writes, "that no mention was made of late of "the Marriage of the *Pretender:* And that he "was of Opinion, that would not be a ſure Way "to bring his Affairs to a happy Iſſue. But that "a Party-War (that is, among ourſelves) would "be much more to his Advantage.

March 10. *Francia* writes, "That there was "a Letter from the Duke *D'Aumont*, which 'tis "wiſh'd may ſucceed better than the former; "which have not been anſwer'd, tho' entirely for "the Affairs. Beſides I am (by the way) to tell "you, that Perſons of 50 or 60 Thouſand Crowns "a Year can't with Prudence run the Hazard "of loſing ſuch Eſtates, unleſs more Encourage"ment be given them. And that the Misfor"tunes of a certain Perſon are more owing to "their being neglected on your Side of the Water, "than to the Party that is againſt him: So that

" if this continue, your Wife muſt loſe all Hopes." This demonſtrates, that the Matter ſollicited for was criminal, for which the Perſons concerned might forfeit their Eſtates; and is plainly a ſolliciting for Succours.

April 2. 1715. *D'Aulmay*, in Anſwer to this, writes, " He had communicated the Complaints " in *Francia*'s laſt Letter to the Duke *D'Aumont*; " and was aſſured all ſhould be amended.

March 17. 17$\frac{1}{2}$. *Francia* writes to *D'Aulmay*, " He ſhould be glad if he could find means to ſa- " tisfy Mr. *Harvey*——That to deal with him " as has been done, is no good Policy.

April 8. 1715. *Francia* writes to *D'Aulmay*, in Anſwer to his of the 20th; and tells him, " He " is ſatisfied; and conſequently we are now to " expect every thing from your Side the Water.

April 18. He writes again to *D'Aulmay*, " That Affairs are here in ſuch a Situation, that " great Precaution muſt be uſed, to avoid giving " Umbrage to thoſe who are in Power. When " I have any thing particular to write to you, I " will do it by a ſtrange Hand, and will ſign " *Jaques Chrêtien*. Take notice of this: And " provided you let me know you received this " Letter, without its having been open'd, I ſhall " be eaſy.

April 24. 1715. *D'Aulmay* writes to *Francia*, " That his Letter came ſafe to Hand; and bids " him be eaſy. If Mr. *Harvey*, in theſe trouble- " ſome Times, ſhould think fit to make uſe of " Mr. *J. Chrêtien*, he may.

Theſe Letters of *Francia*'s are enter'd in his Copy-Book: But from this Time there are no Entries in the Copy-Book: Which is not to be wonder'd at; but rather that they were enter'd ſo long. But we have many Original Letters from *D'Aulmay* (alias *Payen*) to *Francia*; which appear to be Anſwers to Letters written by him: And by what of them is repeated in the Anſwers, it appears in his Letters, great Sollicitations were for the *Pretender*'s Coming, and great Uneaſineſs expreſs'd at the Delay. And therefore, to quiet the Conſpirators in *England*, *D'Aulmay* gives frequent Aſſurances that all Things were preparing.

Auguſt 7. 1715. which was after his Majeſty had notice of the Invaſion deſign'd, and had acquainted the Parliament with it; *D'Aulmay* writes to *Francia*: " You are in the right to inveigh " againſt the Indolence you reproach us with; " but be perſuaded, 'tis only ſo in Appearance. " I even hope, that by this time, you have con- " vincing Proofs of it; and that ſuitable Re- " turns are made to the good Diſpoſitions on your " Side: And that at laſt God, bleſſing the Juſt " Cauſe of our Friend, will let him gain his Suit: " At leaſt, Aſſiſtance and powerful Sollicitations " ſhall not be wanting.

This needs no Explanation. The Suit of their Friend, appears plainly to be the Invaſion of the *Pretender*.

Auguſt 10. 1715. *D'Aulmay*, under the Name of *Payen*, acquaints *Francia*, that he received his of the 5th Inſtant. Says he, " Pray be eaſy; " before it be long you will be contented. The " Chief of the Name of our Friend the Abbot " arrived here on *Tueſday* Night, in good Health. " He is very well pleaſed; and has Reaſon to be " ſo. He is preparing to return Home with all " Expedition; and to take his Friends with him, " to paſs the Vacation there. I am this Moment " going to wait on him; and deſign to make " One in the Voyage with him, or to be with " him ſoon after his Departure.

Auguſt 21. *D'Aulmay* writes again to *Francia*, in Anſwer to two of his, of the 12th and 15th Inſtant; " Our Friend's Cauſe will ſoon be ready " (God willing) to be tried: All Preparations " are making for it. The Friend who is related " to my Wife has read your two Letters, and is " mightily pleaſed with them.

Auguſt 24. He writes again, " preſſing him " not to let a Poſt go, without letting him know " all that paſſes relating to the Cauſe of our " Common Friend. And he takes notice, that " he had been ſo buſy, that he had not had time " to write to *Treacher*, but would do it ſuddenly.

This ſhews the difference between *D'Aulmay*'s own Suit againſt *Treacher*, and the *Pretender*'s Deſign, which he calls the Cauſe of their Common Friend.

Auguſt 28. *D'Aulmay*, under the Name of *Payen*, writes to *Francia*, acknowledging the Receipt of his of the 22d Inſtant; and ſaith, " If " I could venture to acquaint you with the Par- " ticulars of all that paſſes on the Affair which " you know of, you would be more quiet than " you appear to me to be, and would accuſe us " of Negligence leſs than you do. I know there " are favourable Moments, which 'tis danger- " rous to let ſlip. But will you not grant too, " that 'tis the Part of Prudence to foreſee all In- " conveniencies; and to take proper and ſuffi- " cient Meaſures to enable us to ſurmount them " all? This is what we are doing: Be ſatisfied " of it: and that your Friends are more earneſt " and ardent than ever, to procure you all the " Satisfaction you can wiſh. Have Patience " therefore yet awhile.

September 3. *Payen* to *Francia*: " I received " this inſtant yours of the 29th paſt. We have " at laſt the Misfortune to loſe the Greateſt of " Kings. The *German* Journey might be very " proper; I wiſh it may be perform'd; the ra- " ther, becauſe for the Reaſons that you know " of. Our Preparations have been a little ſu- " ſpended, but not at all broken; Things go- " ing on always better and better. My (a) *D D* " and (*b*) *M B* are in a Houſe within half a " League of this Town, which a private Perſon " has lent them; where they receive all their " Friends, with whom they go to dine and ſup " every Day. They are both in perfect Health; " and think quite differently from what they are " reported to think: That is to ſay, they are " what they ought to be; you may aſſure your " Friends of this.

Septemb. 6. *D'Aulmay* writes to *Francia*; " I " have juſt now received your Letter of the ſe- " cond Inſtant. I deſire you to continue to write " to me directly; and if you had ſome truſty " Hand, other than your own, and that of your " Son, you would do well to employ it. I be- " lieve alſo, that a Cypher for the principal " Names, (which you might ſend me, and a " Copy whereof you might keep to make uſe of " yourſelf) would be very neceſſary: For I'll " avow to you frankly, that this Precaution " ſeems to me to be very neceſſary.

(*a*) Duke of *Ormond*.

(*b*) Lord *Bolingbroke*.

Sept.

Sept. 14. *D'Aulmay*, under the Name of *Payen*, writes to *Francia*; "The Contents of your laſt "without a Date were very agreeable to me, as "well as to all our Friends, who give you Thanks "for it. We knew already Part of what you "tell us about the Cauſe of our Friend; which "will ſoon end (pleaſe God) to his Satisfaction, "or all Appearances would deceive. As to my "own Cauſe, I can't help telling you that my "Fate is very unhappy, to have to do with ſo "diſhoneſt a Man.

Here again he diſtinguiſhes between his own Cauſe, and the Cauſe of their Friend the *Pretender*.

There cannot be any Doubt of the Subject of this Correſpondence: Every Body that hears or reads theſe Letters, muſt underſtand them to relate to the intended Invaſion; and if there were any Doubt, (as there is not) Mr. *Francia*'s Confeſſion ſufficiently explains them.

It cannot be expected we can produce Mr. *Francia*'s Letters, to which the laſt are Anſwers, they being ſent away by him to *France*; but we inſiſt that the Anſwers to them take notice of his, and of the Contents of them, with their being taken in his Cuſtody, and owned by him on his Examination, to be thoſe he received; and that he knew the Deſign of them to be, the Deſign of the *Pretender* to invade his Majeſty's Dominions; is a full and ſufficient Evidence to prove the treaſonable Correſpondence charged in the Indictment.

The Secretary of State did right, in ſtopping the Letters at the *Poſt-Office*, which were directed to the Priſoner; but thoſe Letters having never been in the Priſoner's Cuſtody, we ſhall not offer them in Evidence.

In one of them *D'Aulmay* complains, that the Correſpondence was interrupted; and afterwards in another to *Francia*'s Son, he bewails his Father's Misfortunes.

It can't be pretended that *Francia* was only a Hand to convey Letters from one to another; and that the Correſpondence was only Mr. *Harvey*'s; and that *Francia* is only guilty of Miſpriſion of Treaſon, in concealing the other's Treaſon; for while he covered Mr. *Harvey*'s Letters, he alſo wrote in the Cover thoſe Things that demonſtrate he was acquainted with the Subject of the Correſpondence, and aſſented to, and aſſiſted in the Treaſon: And the Law is plain in Caſe of High-Treaſon, that he that knoweth it before it be done, and aſſenteth to it, is *Particeps Criminis*, and guilty of the Treaſon.

What he did was not in the dark, but knowingly and openly, and he expreſſes himſelf concerned that the Buſineſs went on no better: That is making himſelf a Party and a Principal.

The Method of our Evidence will be this. Theſe Letters and Copy-Book were ſeized by the Meſſenger, who brought them to Mr. *Walpole*, Under-Secretary to my Lord *Townſhend:* They were laid before the Priſoner, in the Preſence of both Secretaries of State: He owned the Book to be his Copy-Book of his Letters to his Correſpondents; and the Letters ſhewn him, to be thoſe he received, and that were taken in his Cuſtody; and that that Correſpondence continued till the Time of his being taken into Cuſtody; and that the Subject whereof was the Deſign of the *Pretender* to invade his Majeſty's Dominions. We ſhall for the better underſtanding of them, firſt read his Confeſſion, and then the Letters; and when we have done this, we do not doubt but you will will be ſatisfied, we ſhall have fully proved the Charge laid in the Indictment againſt him.

My Lord, we will call our Witneſſes. Set up Mr. *Smith*. John Forteſcue Aland, *Eſq;*

Then *Joſeph Smith* was ſworn.

Mr. *Soll. Gen.* You was ſent, I think, as a Meſſenger to *Francia*'s Houſe: Pray give an Account of every Thing that paſſed there.

Mr. *Smith.* My Lord, I have the Honour to ſerve his Majeſty as one of his Meſſengers: I was appointed to attend the Secretaries Office that Day, being my Day of waiting, which was *September* 19. 1715. I had a Warrant delivered to me againſt Mr. *Francia*, but it being late I did not go to execute it that Night. The next Day I went to his Houſe, in *Plow-Yard* in *Fetter-Lane*; Mr. *Wilcox*, another Meſſenger, went with me, and went into the Houſe firſt; he went up one Pair of Stairs, and I ſtaid below, and after he had been up a little Time, he called me up, and told me there was the Priſoner: He was then in Bed, and there was a Woman with him he called Wife: We told him, we had a Warrant againſt him for High-Treaſon, and bad him get up. I asked him if he had any Cloſet? And looking about, I ſaw one by the Fire-Place: I opened it, and the firſt Thing I obſerved over-againſt the Cloſet-Door, upon a Shelf, was a Parcel of Letters lying open in *Folio*; I ſaw they were in *French*, and directed to the Priſoner, and upon the Desk there lay a Paper-Book.

Mr. *Soll. Gen.* Look upon this Book; is this the Book?

Mr. *Smith.* This is the Book; it lay upon the Desk, and I looked into it, and obſerved this Writing at the one End of it: He ſaid it was his Son's Writing, and then I ſhut it again. I open'd the Desk, and looked over the Papers; I found there ſeveral other Papers and Letters folded up: I took them out, and laid them upon the Desk by the others. Then I ſearch'd the other Parts of the Cloſet, and laid all the Papers by the other Letters. I deſired then to go up Stairs, and I did ſo: And a Perſon I ſaw juſt now in Court, his Son, went with me; and I ſearched the Rooms and Boxes, and found ſeveral other Papers, and brought them down into the Chamber where the Priſoner was, with Mr. *Wilcox*; I put up all the Papers together, and ſaid I had taken all Things that I thought neceſſary, and deſired to be going. The Priſoner deſired to ſtay and drink ſome Coffee; we did ſo, and then brought him down to a Houſe at *Weſtminſter*. We carried the Papers to the Office, and deliver'd them to Mr. *Horatio Walpole*. When I was in the Chamber with him, he ſeemed to be under a Concern when I put up the Book; and I asked him what that Book was? He ſaid it was the Book of his Correſpondence abroad.

Mr. *Att. Gen.* Is this the Book?

Mr. *Smith.* Yes.

Mr. *Att. Gen.* You ſay you ſaw ſeveral Letters there, did you look into them?

Mr. *Smith.* I ſaw they were directed to *Francia:* There was a Parcel lay open in *Folio*; and others that lay folded up in the Desk.

Mr. *Att. Gen.* What became of the Book and Papers after you had them?

Mr. *Smith.* We went with them and the Priſoner, and deliver'd the Priſoner into a Houſe at

Weſtminſter; and then went to the Office, and ſtaid till Mr. *Walpole* came, and then delivered the Book and Papers to him.

Mr. *Att. Gen.* Did you deliver any Papers to him but what were ſeized there?

Mr. *Smith.* No.

Mr. *Att. Gen.* What is become of Mr. *Wilcox?*

Mr. *Smith.* He is dead.

Mr. *Cowper.* What was it that the Priſoner ſaid about the Book?

Mr. *Smith.* He ſaid, that is my Copy-Book of my Correſpondence abroad, it ſignifies nothing. I afterwards obſerved ſome more Concern than ordinary in him; and he ſaid to me again, the Copy-Book of my Letters ſignifies nothing.

Mr. *Ward.* How long had you the Book and Letters in your Cuſtody?

Mr. *Smith.* I received them about Six or Seven o' Clock, and I deliver'd them the ſame Day to Mr. *Horatio Walpole.*

Mr. *Hungerford.* How can you be ſure this is the Book?

Mr. *Smith.* Becauſe I never parted with it.

Mr. *Hungerford.* Was it not out of your Poſſeſſion when you delivered it into the Office?

Mr. *Smith.* Yes, then it was.

Mr. *Hungerford.* Did you ſet any Mark upon the Book?

Mr. *Smith.* No.

Mr. *Hungerford.* Did he ſay that which was wrote in it, was wrote in it by him?

Mr. *Smith.* He ſaid, this is my Copy-Book of my Letters to my Correſpondents abroad.

Mr. *Hungerford.* But how can you be ſure this is the ſame Book?

Mr. *Smith.* I made a Remark of this * Writing as he ſat dreſſing himſelf.

Priſoner. Who was it that carried the Book and Papers to the Office, you or *Wilcox?*

Mr. *Smith.* I myſelf.

Priſoner. I know that to be falſe. How ſoon did you go out of Town after you had lodged me?

Mr. *Smith.* In a Day or two.

Priſoner. Did you not go that Moment?

Mr. *Smith.* No; not that Day.

Priſoner. To whom did you deliver them?

Mr. *Smith.* To Mr. *Horatio Walpole.*

Priſoner. Did you take no more Books?

Mr. *Smith.* There were ſeveral Books in your Houſe, but I don't remember that I carried any of them away but this.

Mr. *Hungerford.* Did the Priſoner own to you, that the Letters wrote in that Book were wrote by him?

Mr. *Smith.* He ſaid, that is the Copy-Book of my Letters to my Correſpondents abroad.

Then Mr. *Horatio Walpole* was ſworn.

Sir *J. Jekyll.* Pray Sir, will you give the Court and the Jury an Account of this Book and thoſe Letters; and how, and when they were brought to you?

Mr. *Walpole.* I remember the Warrant for ſeizing the Priſoner was dated the 19th of *September*, and that the Day after Mr. *Smith* and Mr. *Wilcox* came into my Room, and deliver'd to me a Copy-Book and a Parcel of Letters, which they ſaid they took at *Francia*'s Houſe. I took them and kept them by themſelves, to be produced when my Lord *Townſhend* ſhould call for them. I remember that Night Mr. *Buckley* came into my Room, and I deſir'd him to ſit down and look them over with me, and accordingly he and I look'd into them. The next Day my Lord *Townſhend* ſent for the Priſoner, and I carried in the ſame Book and Letters, and laid them upon the Table, and particularly the Letters, they were laid open, and my Lord examin'd the Priſoner about them. They were wrote in *French*, and directed to the Priſoner. My Lord ask'd him whether he knew the Hand of thoſe Letters, and turn'd them all over, and ſhew'd him the Directions, ſaying, are theſe directed to you? He own'd it. He own'd that he received them. My Lord ask'd him again, is this your Book? He anſwer'd, it is; ſome of the Letters are enter'd by me, and ſome by my Son.

Sir *J. Jekyll.* Were they all the ſame Letters that were brought to you by Mr. *Smith.*

Mr. *Walpole.* The ſame.

Sir *J. Jekyll.* Pray look upon this Book; is this the ſame Book?

Mr. *Walpole.* I am ſure this is the Book: This is the ſame Book that *Smith* deliver'd to me, and ſaid he took it at *Francia*'s Houſe.

Then ſeveral Letters were ſhewn to Mr. *Walpole.*

Mr. *Walpole.* I remember all theſe Letters to be the ſame that I received from *Smith.*

Mr. *Att. Gen.* After the Priſoner had been examin'd, what became of the Letters?

Mr. *Walpole.* I took them back again. I kept them under Lock and Key, till my Lord *Townſhend* had occaſion to uſe them, which was the ſame Night that my Lord examin'd the Priſoner; then I took them back, and I conſtantly kept them till I went to *Holland* for the *Dutch* Troops, and then I deliver'd them to Mr. *Buckley.*

Priſoner. And you can ſwear theſe are the ſame Letters that were deliver'd to you. By what Mark? You ſwear very home. What Mark did you put upon thoſe Letters, that you can ſwear to them?

Mr. *Ward.* Pray Sir, when they were in your Cuſtody, are you ſure they were never deliver'd out?

Mr. *Walpole.* I am ſure.

Mr. *Ward.* Do you remember one *Jones* the Gun-maker on the other Side the Water, when he was under Examination? Are you ſure they were not deliver'd out by Miſtake to him?

Mr. *Walpole.* I don't know that they were.

Mr. *Hungerford.* Did you put any Mark on thoſe Letters?

Mr. *Walpole.* No, I put no Mark on them.

Mr. *Hungerford.* Then how can you know them to be the ſame?

Mr. *Walpole.* I perus'd them ſeveral times. I remember the Hand, and Dates, and Directions.

Mr. *Hungerford.* Then probably you remember the Number too?

Mr. *Walpole.* No, I don't remember the Number.

Mr. *Ward.* Are you ſure theſe are all the Letters that were brought to you?

Mr. *Walpole.* No, there are not all the Letters.

Mr. *Att. Gen.* We ſhall now call Mr. *Buckley.*

Then Mr. *Buckley* was ſworn.

Mr. *Att. Gen.* Pray Mr. *Buckley* look upon this Book and theſe Letters, and acquaint the Court what you know of them.

* *George Francia*'s Name in large Church Text, at the End of the Book.

Mr. *Buckley,*

Mr. *Buckley*. My Lord, the Day the Priſoner was ſeiz'd, I came into Mr. *Walpole*'s Room. He told me he had receiv'd that Book and thoſe Letters that were ſeiz'd at the Priſoner's Houſe, and deſir'd me to ſit down and read them with him. I did ſo. Afterwards, when Mr. *Walpole* went to fetch the *Dutch* Troops, he deliver'd this Book and theſe Letters into my Hand. Afterwards my Lord *Townſhend* directed me to look into them, and ſee which contain'd Paſſages moſt Criminal, and to extract ſuch Paſſages, which I did accordingly out of ſeveral of them. I will look over them again, and then I can tell you whether they are the ſame.

Priſoner. By what Mark?

Mr. *Buckley*. I can tell you by that which is ſtronger than any Mark, I copy'd Paſſages out of ſeveral of them.

Then he look'd over the Letters one by one. I had every one of theſe Letters from Mr. *Walpole*, and I know it certainly; for that from every one of theſe I extracted ſome Paſſages.

Mr. *Cowper*. Was you preſent at any time when the Priſoner was examin'd?

Mr. *Buckley*. I was.

Mr. *Cowper*. Were this Book and theſe Letters produced to him at the time of his Examination?

Mr. *Buckley*. He was examin'd by My Lord *Townſhend* and Mr. Secretary *Stanhope*, and I was call'd in to take his Examination in Writing, accordingly I did.

Mr. *Cowper*. Were the Book and Letters at the time of his Examination produc'd to him?

Mr. *Buckley*. I can't ſay that, for I was intent on my Paper, writing the Examination, and looking upon the Priſoner, and hearing what he ſaid. When I had written down what is in my Hand, [*holding out the Original Examination.*] I read it over to him diſtinctly and audibly; and he being aſk'd whether he was willing to ſwear to it, and anſwering, Yes, I offer'd him his Oath: And I offer'd him a *New Teſtament* to ſwear on. He ſaid he could not ſwear on that Book. But he took another Book out of his Pocket, and I ſwore him on that. I aſk'd him whether this was true: He ſaid it was. Then he ſign'd it; and afterwards my Lord *Townſhend* ſign'd it.

Mr. *Cowper*. Is the Subſcription of his Handwriting?

Mr. *Buckley*. It is.

Priſoner. You ſay I took an Oath? On what Book was it?

Mr. *Buckley*. Indeed I don't know, I believe it was an *Hebrew* Book; Mr. Secretary *Stanhope* look'd upon it.

Mr. *Denton*. Was he examin'd at any time after?

Mr. *Buckley*, Yes.

Mr. *Denton*. Was you preſent then?

Mr. *Buckley*. No.

Mr. *Ward*. How long were they in your Cuſtody?

Mr. *Buckley*. From the time that Mr. *Walpole* went abroad, till he came back again, and then I deliver'd them back to him.

Mr. *Ward*. Were they in your Cuſtody when Mr. *Jones* was under Examination?

Mr. *Buckley*. I can't tell; but I never did ſhew them to him.

Mr. *Ward*. Were they not deliver'd out on that Occaſion?

Mr. *Buckley*. No, they were not deliver'd out by me.

Mr. *Ward*. You ſay you read the Examination to him. Did not he deſire to read it himſelf?

Mr. *Buckley*. I don't remember it.

Mr. *Ward*. Was he not refuſed to read it?

Mr. *Buckley*. No, upon my Soul.

Mr. *Ward*. Was you with the Priſoner in *Newgate?*

Mr. *Buckley*. I was with him at his own Deſire; otherwiſe I had not gone to him.

Mr. *Ward*. Do you remember the Days?

Mr. *Buckley* No.

Mr. *Ward*. How often was you with him there?

Mr. *Buckley*. Twice.

Mr. *Hungerford*. Were there any Offers made by you to him?

Mr. *Buckley*. I deſire you would explain yourſelf.

Mr. *Hungerford*. Did you make him any Offers, that upon his ſigning any Paper, he ſhould have his Liberty?

Mr. *Buckley*. No.

Mr. *Hungerford*. Did you not mention to him his giving Evidence againſt any other Perſon?

Mr. *Buckley*. No, upon my Soul.

Mr. *Att. Gen*. Theſe Queſtions ought not to be aſk'd. It is an Iniquity to tamper with any Man; and therefore ſuch Queſtions ought not to be put. If you have any Witneſſes, you may examine them.

Mr. *Hungerford*. Then we will examine to it.

Priſoner. Is that the Book I ſwore upon? [*ſhewing a Book he had in his Hand.*]

Mr. *Buckley*. I don't know indeed; it was ſuch a ſort of Book.

Mr. *Att. Gen*. I don't take that to be material, if it were the *Alchoran*. He had it in his Pocket. But it is not his Oath, but his Confeſſion that is material.

Mr. *Hungerford*. Taking the Book into his Hands. I underſtand a little *Hebrew*. This is a Book to pray by, not ſwear by. It is a Collection of ſome *Jewiſh* Prayers and Rituals; I believe, taken out of *Maimonides*. You had beſt ſend it the learned *Monfalcon* in *Paris*, he is compiling ſome critical Obſervations upon the *Eaſtern* Languages.

Mr. *Ward*. Did you put any Mark on any of thoſe Letters?

Mr. *Buckley*. I did on ſome of them.

Mr. *Hungerford*. Where are the Extracts you made out of them?

Mr. *Buckley*. I have ſome of them here. [*holding out ſome Papers.*]

Mr. *Hungerford*. What did you do with the Letters, after you had made thoſe Extracts?

Mr. *Juſt. Pratt*. He tells you that he kept them till Mr. *Walpole* came back again, and then deliver'd them to him.

Mr. *Buckley*. Here is my Name on ſome of them. The two initial Letters of my Name.

Priſoner. When was that Mark made upon them?

Mr. *Buckley*. I don't juſtly remember.

Priſoner. That might be done yeſterday, or ſince they were deliver'd out of his Cuſtody.

Mr. *Buckley*. I did it while they were in my Poſſeſſion, and before I deliver'd them back again to Mr. *Walpole*.

Then the Lord *Townſhend* was ſworn.

Sir *J. Jekyll*. We muſt deſire your Lordſhip to inform the Court, what your Lordſhip knows in relation to the Priſoner at the Bar, as to the iſſuing out the Warrant againſt him, and what happen'd afterwards.

Lord *Townſhend*. My Lord, having receiv'd Information that there was a treaſonable Correſpondence carry'd on between the late Duke of *Ormond*, Duke *D'Aumont*, *Coulange* and Mr. *Harvey*, in which the Priſoner was concern'd, and was the Channel in which the Correſpondence was convey'd; and that the Pretence of it was a Law Suit, but that the Deſign of it was in Favour of the Pretender; and that when they talk'd of the Party, the Pretender was meant; and that they expected him to be ſoon here. Having reaſon to rely on this Information, I drew a Warrant to ſeize the Priſoner and his Papers. I had indeed before ſent an Order to ſtop all Letters that came from *France* directed to *Francia*, by which I receiv'd a Confirmation of the Intelligence which had been before given me. Upon the iſſuing out the Warrant, the Priſoner was ſeiz'd, and his Letters were brought to Mr. *Walpole*.

The next Day I ſent for the Priſoner to be examin'd, and order'd Mr. *Walpole* to bring me the Papers, and ſent for the Priſoner in. The Letters that Mr. *Walpole* brought in, were laid open upon the Table, and the Book lay by them. I aſk'd him whether he knew the Hand, and whether thoſe Letters were not for him? He own'd the Letters, but ſaid he could not help what was in thoſe Letters, and that what others wrote to him could not make him guilty. As for what I have wrote (ſaid he) I appeal to my Book. That is my Book, I appeal to that for my Innocency. He did not appear obſtinate, and I remanded him; and at Night I ſent for him again, and Mr. Secretary *Stanhope* was with me; I had in that time look'd into more of the Letters, I ſaw ſeveral initial Letters of Peoples Names, I aſk'd him the meaning of them; and he gave me the Account contain'd in this * Examination. He ſeem'd in a Diſpoſition to tell me all he knew; he gave me an Account how this Correſpondence began, and was carry'd on; and then he came to explain the initial Letters that were in thoſe Letters that were taken upon him, and in ſeveral other Letters that I had intercepted. I remanded him again that Night, having taken this Examination in my Hand.

A ſecond Examination was taken upon Mr. *Harvey*'s Letter; *(which Examination and the Letter thereto annex'd was ſhewn to his Lordſhip.)*

This is the very Letter on which I examin'd him; he own'd to me how he came to ſtop the Letter, and not to forward it, and explain'd all thoſe Figures to me very diſtinctly. He proteſted that he knew no more, and made ſolemn Proteſtations that he had ſaid all he knew, and I was almoſt convinc'd he had; but in the Conſequence, I had reaſon to think he had not. But theſe two Examinations were taken before me, one I ſign'd alone, and the other Mr. Secretary *Stanhope* ſign'd with me. As to the Firſt, I believe Mr. Secretary *Stanhope* was gone out of the Room before it was ſign'd.

Sir *J. Jekyll*. I deſire to aſk your Lordſhip, whether all the Letters that were brought by Mr. *Walpole* were laid upon the Table at the time of the Priſoner's Examination?

Lord *Townſhend*. All that Mr. *Walpole* brought me were laid there, and I ſaw him take them back again.

Mr. *Ward*. I deſire to aſk your Lordſhip, whether you heard that Declaration read over to him?

Lord *Townſhend*. I dare ſay I did.

Mr. *Ward*. Did he not endeavour to excuſe himſelf from ſigning it, till he had read it himſelf?

Lord *Townſhend*. I don't remember that, I don't know that he made any Difficulty of ſigning it; but I am ſure it could not be becauſe he was refus'd to read it.

Priſoner. Was not there any Reluctancy in me to ſign it?

Lord *Townſhend*. What do you mean? Have not I anſwer'd that already?

Priſoner. Did not you offer me ſome Money to ſign it?

Lord *Townſhend*. I hope you can't ſay a thing of ſo much Infamy. After he had been examin'd, he complain'd to me of the Miſery he was reduc'd to, that his Wife and Family muſt ſtarve, and repreſented himſelf as if he were at a loſs for a Supper: I told him he had nothing to hope for, or any room to expect any Favour, but by making a clear Confeſſion. He went on begging, and ſaid that his Wife was ſtarving; I do not certainly know whether it was the very Night that he ſign'd his Confeſſion or not; but I am ſure it was not for that, but in pure Alms, and becauſe he begg'd ſo hard, I put my Hand in my Pocket, and gave him three, four, or five Guineas, I know not which, in Charity; and it was what I never could refuſe any Man that apply'd to me in that manner, and begg'd ſo hard. He ſaid his Brother would not look upon him, becauſe he was taken up for High-Treaſon, and he deſir'd me to give him ſomething in Charity, which I did.

Priſoner. I deſire to aſk you, whether you ever beſtow'd on any Body elſe the like Charity? Pray, my Lord, name the Man under your Examination, you ever gave five Guineas to before? [*At which there being a Laugh round the Court.*]

Priſoner. I muſt not be laugh'd out of my Life; you did not anſwer me.

Lord Ch. Baron. Propoſe your Queſtion to the Court?

Priſoner. I deſire to know who he ever gave five Guineas to beſides me?

L. Ch. Baron. My Lord ſays it was out of Charity.

Priſoner. And that he never refus'd any Body under his Examination the Sum of five Guineas?

L. Ch. Baron. He don't ſay ſo; he ſays, he never could refuſe his Charity to People that begg'd as you did.

Priſoner. I had leſs need to beg than ſome others.

Mr. *Ward*. I have but one Queſtion more to trouble your Lordſhip with, which my Inſtructions lead me to; and that is, whether at the time when this Examination was ſign'd by the Priſoner, he was not told of its being for ſome particular Purpoſe, but that it ſhould not be binding to him?

Lord *Townſhend*. He did deſire that it might not be made uſe of againſt him; I told him that depended on his Behaviour, if he was ingenuous, if he dealt frankly and fairly, and declar'd all the Truth, I would do all in my Power that he ſhould have Mercy; I don't know whether it is proper to give my Reaſons why I am convinc'd he did not deal candidly; but on the peruſal of the Letters, I found he was not a bare Conveyer of them, or came by Chance to the Knowledge of what he explain'd in them, but that he was wrote to, as

* *Referring to the Original Examination.*

one

one of the Managers: On that I ſent to him again, and told him plainly, he muſt know more of it. He ſtood it out that he did not, and then I ſent him to *Newgate:* Soon after he was committed, his Wife came, as Mr. *Buckley* inform'd me, and acquainted him that ſhe was perſuaded, if ſhe could ſee her Huſband, that ſhe could prevail with him to diſcover the whole: On that I gave Directions to put him into the Meſſenger's Hands again, which was done; about a Morning or two after, one *Curtis*, who was in the ſame Meſſenger's Houſe, brought a Letter to the Office, which he had found drop'd by his Man's Bed-ſide. It was directed to his Wife, and the Subject was to bid her not afflict herſelf, for he found better Company in *Newgate* than he expected, that the better half of them were in upon the Government Account; that he had ſaid nothing of Mr. *Harvey* that could hurt him, nor could he; that the Government had nothing againſt Mr. *Harvey*, but a general Suſpicion that he was againſt the Government, which three Parts in four of the Nation were; and that he himſelf laugh'd at any thing the Government could do againſt him the Priſoner: When I found a Man write in his Stile, I could not but think he had not dealt ingenuouſly.

Mr. *Hungerford.* I would propoſe to the Judgment of the Court, whether it is proper to give Evidence of the Subſtance of a Letter without offering the Letter it ſelf.

Mr. *Juſt. Pratt.* This comes in Anſwer to Mr. *Ward*'s Queſtion. He aſk'd my Lord *Townſhend*, whether there was not ſome Promiſe that this Confeſſion ſhould not be made uſe of againſt the Priſoner? His Lordſhip gives this Account, and juſtifies himſelf, how he came to make uſe of it, and gives this as the Reaſon.

Mr. *Hungerford.* But to give an Account of the Subſtance of a Letter without producing it, I apprehend, is not according to the Rules of Evidence.

Sir *J. Jekyll.* If the Council for the Priſoner deſire the Letter to be read, it ſhall be read.

Mr. *Att. Gen.* Do you inſiſt upon the Reading of it?

Mr. *Ward.* If you will read it in the proper time you may.

Mr. *Hungerford.* If in the Courſe of the Evidence the Letter is not read, I don't preſs it.

Then Mr. *Horat. Walpole* was call'd again, and the Letter was ſhewed to him.

Mr. *Att. Gen.* Pray, Sir, will you give an Account what you know of this Letter, and how it came to your Hands?

Mr. *Walpole.* This Letter *Curtis* brought to me, and I made this * Mark on it: He told me it was found in *Francia*'s Chamber near his Bed-ſide, and this is the Letter.

Mr. *Ward.* There is nothing prov'd yet of its being the Priſoner's Hand, its being found by his Bed-ſide will not affect him.

Then Mr. *Buckley* was call'd again, and the Letter was ſhew'd to him.

Mr. *Soll. Gen.* Pray look upon this Paper, and tell us whoſe Hand-writing you take it to be?

Mr. *Buckley.* I never did ſee the Priſoner write but once, and that was upon my being ſent to him to take a Confeſſion he ſeem'd willing to make, and then I ſat by him while he was writing.

Mr. *Soll. Gen.* How long did he write then?

Mr. *Buckley.* About an Hour, and I read it over.

Mr. *Soll. Gen.* Do you believe this to be his Hand-writing?

Mr. *Buckley.* I not only ſaw him write then, but I have read a great deal in this Book, which Mr. *Walpole* told me was taken at the Priſoner's Houſe; therefore being uſed to the Writing in this Book, and to what I ſaw him write, for thoſe Reaſons, and no other, I believe this Paper to be his Writing.

Mr. *Denton.* Are not the Letters of your Name on this Letter?

Mr. *Buckley.* Yes. When Mr. *Walpole* put into my Hands all the Letters, my Lord bid me ſingle out thoſe that were fit to be extracted, and I did mark them that were extracted, and I always kept them in my Hands till Mr *Walpole* return'd, and then I deliver'd them to him: Thoſe Letters that I extracted, I mark'd; ſome other Letters that were intercepted by my Lord *Townſhend*, I did not mark, becauſe they came to me at other times.

Mr. *Denton.* Did you mark that Letter?

Mr. *Buckley.* Yes.

Mr. *Ward.* Can you be poſitive that it is the Priſoner's Hand?

Mr. *Buckley.* No.

Mr. *Ward.* Do you rely on the Writing in the Book?

Mr. *Buckley.* By that, and by what I did ſee him write, from thence it is that I conclude this to be his Hand.

Mr. *Hungerford.* He attempts to prove his Hand by two Inducements, one that he ſaw him write, and the other is the Book; therefore let him fix on thoſe Parts of the Book, that he takes to be the Priſoner's Hand, and to be like this Letter.

L. Ch. Baron. The Book is not material; it is enough for a Man to ſay, that he ſaw another write for an Hour together, and then that he believes this to be his Hand.

Mr. *Hungerford.* If that was the ſingle Foundation, it was ſomething; but he makes another Foundation alſo.

Mr. Juſt. *Pratt.* We are going out of the way, the Queſtion is, whether this ſhall be read? In order to that, the Method is to prove, that the Witneſs is acquainted with the Priſoner's Hand-writing, and believes this to be his Writing. He tells you he ſaw him write for an Hour. He gives you a further Reaſon, that it is like ſome Letters in the Book. If that were laid out of the Caſe, the other would be ſufficient without it.

Mr. *Hungerford.* A Man makes two Things the Foundation of his Judgment, his ſeeing him write, and the Similitude of Hands in the Book; the moſt concluſive Evidence would be, the Similitude of the Hand in the Book, which others may judge of as well as himſelf.

L. Ch. Baron. That is no Evidence at all; Similitude of Hands is no Evidence.

Mr. *Hungerford.* I am far from thinking it is, or that there is as yet any Evidence at all. Do you believe this to be his Hand, only from your having ſeen him write, or from what you have obſerv'd in the Book alſo?

Mr. *Buckley.* I ſay that from my having ſeen him write, and my having ſeen the Entries in the Book, I believe this to be his Hand.

Mr. Juſt. *Pratt.* If you had never ſeen the Book, but had ſeen him write for an Hour; could you collect from thence that this was his Hand?

* *Shewing a Mark upon the Letter.*

Mr. *Buckley*. No, I would not affirm it.

Mr. *Hungerford*. Then it is with us, and makes it neceſſary to look into the Book.

Mr. *Att. Gen.* How come you to apprehend any one Part of the Book to be *Francia*'s Writing more than the other?

Mr. *Buckley*. By my Eye-ſight, and comparing it with this Letter.

Mr. *Att. Gen.* Is it from your Knowledge of ſeeing him write?

Mr. *Buckley*. Yes, and this Writing being like this Book.

Sir *J. Jekyll*. I deſire this Matter may be conſider'd how it ſtands, my Lord *Townſhend* is examin'd touching the Confeſſion of the Priſoner, and was ask'd, whether there was not Hopes of Mercy given him? My Lord ſaid there were, upon his making a frank Diſcovery; but he tells you the Priſoner was not entitled to Mercy, becauſe he had not made ſuch a Diſcovery, and then gives an Account of this Letter: I thought the Council for the Priſoner appeal'd to that Letter, and would have had it produced, to check the Evidence given by my Lord.

Mr. J. *Pratt*. Since it is gone thus far, I think it would be proper to clear this Matter.

Priſoner. I deſire to know where Mr. *Buckley* ſaw me write for an Hour together?

Mr. *Buckley*. It was in the Meſſenger's Houſe.

Mr. J. *Tracy*. My Lord *Townſhend* was giving an Account in Anſwer to a Queſtion propos'd by the Priſoner's Council, and gave his Reaſon why he did not think the Priſoner was frank. I did not think ſo (ſays he) becauſe of a Letter which was found by his Bed-ſide. Says Mr. *Hungerford*, then that Letter ought to be produced.

Mr. *Hungerford*. If the Account is no more than that my Lord obſerved ſo upon that Letter, there is no great Harm in reading it: But I am ſtill in your Judgment, whether, when the Contents of a Letter is inſiſted upon, and repeated, and that upon Memory only, the Letter itſelf ought not to be produced?

Then ——— *Curtis* was ſworn.

Mr. *Soll. Gen.* Look upon that Letter, whoſe Hand-writing is it?

Curtis. I believe it is Mr. *Francia*'s.

Mr. *Soll. Gen.* Have you ſeen him write?

Curtis. Yes.

Mr. *Soll. Gen.* And do you believe it to be his Writing?

Curtis. Yes.

Mr. *Ward*. How long have you been acquainted with the Priſoner?

Curtis. While he was in the Meſſenger's Hands.

Mr. *Ward*. How often did you ſee him write?

Curtis. Several times.

Mr. *Ward*. Was you in Cuſtody at the ſame time when he was?

Curtis. Yes.

Mr. *Soll. Gen.* Where did you find this Letter?

Curtis. In his Chamber by his Bed-ſide.

Mr. *Hungerford*. I don't hear that he gives an Account, whether he is ſo well acquainted with his Writing, that he can diſtinguiſh it from any others?

Curtis. He told me it was a Letter that he had wrote to his Wife.

Mr. *Att. Gen.* The Letter is in *French*; we have a Tranſlation of it; we muſt deſire that the Interpreters who tranſlated it may be ſworn.

Then Mr. *Boyer* and Mr. *Ozell* were both ſworn.

Mr. *Cowper*. Did you tranſlate the Letter?

Mr. *Boyer*. I did, and afterwards I compar'd it with Mr. *Ozell*.

Mr. *Cowper*. Is that a true Tranſlation of the Original Letter?

Mr. *Boyer*. I did make a true genuine Tranſlation of it, allowing for the Difference of Language and Stile.

Mr. *Cowper*. Was it the beſt and moſt exact Tranſlation you was able to make?

Mr. *Boyer*. Yes.

Mr. *Cowper*. Mr. *Ozell*, have you compar'd this Tranſlation with the Original?

Mr. *Ozell*. Yes, and I believe it to be a true Tranſlation.

Note. That the Original Letter was deliver'd into the Priſoner's Hand, during the Time that the Tranſlation was reading; and Mr. *Flint*, who was permitted to ſtand in the Bar near the Priſoner, aſſiſted him in comparing the Original with the Tranſlation. The like Method was obſerved, when the Tranſlations of the Letters received by the Priſoner were read; and when the Letters wrote by him were read out of the Copy-Book, the Copy-Book was ſhewn to him.

[*Clerk reads.*]

My Dear,

ALL *I exhort you to, is, to make yourſelf as eaſy as you can. I do the ſame, and am well, having ſlept well laſt Night; and the Company here is much better than I expected; they are all Tories, and the major Part for the Government, that is ſent hither for being ſo, according to their Informations. Although all ſhould fail, and my Lord* Townſhend *ſhould do nothing, the Buſineſs will be at an End in leſs than a Fortnight. You know upon what Account I am here, which cannot diſgrace me. Be therefore comforted, and do not grieve. God will aſſiſt us. I neither know, nor have ſaid any thing againſt Mr.* Harvey, *nor can they do any thing to him, unleſs he has other Affairs which I know not of; therefore you may aſſure that* Frenchman, *that's falſe, for I know nothing againſt that Gentleman, which is not intirely regular. He may only be ſuſpected of being a Friend to the Pretender; but that was well known before; and if all who are ſo were to be puniſh'd, above three fourths of the Nation would ſuffer. Therefore I laugh at any thing they can do to me, all my Sorrow is not to be with you; and I would not ſee you in this wretched Place, in which you can but grieve both me and yourſelf.* Adieu.

Mr. *Hungerford*. Pray let me have the Letter; I have a little *French*, and I would willingly ſee how they render the Word *Tories*.

Mr. *J. Pratt*. When did you find this Letter?

Curtis. Upon the 27th Day of *November*.

Mr. *Soll. Gen.* My Lord *Townſhend*, pray be pleas'd to give an Account of the Occaſion that this Confeſſion was not ſign'd by both the Secretaries?

Lord *Townſhend*. I ſuppoſe Mr. Secretary *Stanhope* might be gone out of the Room.

Mr. *Hungerford*. I would not willingly trouble my Lord *Townſhend* at any other Time, and therefore would take this Opportunity: I think your Lordſhip ſaid, that the Letters that were ſtopp'd at the *Poſt-Office* were laid on the Table

with the other Letttes, when the Priſoner was examined?

Lord *Townſhend*. I did not ſay that. The Letters that were intercepted, I did firſt lay them before the King, and then put them into the ſame Hands with the other Letters.

Then Mr. Secretary *Stanhope* was ſworn.

Mr. *Att. Gen.* Mr. Secretary *Stanhope*, we muſt deſire you to inform the Jury what you know about the Examinations of the Priſoner, and the Confeſſion he made.

Mr. *Secret. Stanhope*. I have here two Examinations, one ſign'd by my Lord *Townſhend*, the 21ſt of *Sept.* and the other dated the 22d of *Sept.* ſign'd by my Lord *Townſhend* and myſelf. I was preſent at both the Examinations: There has been an Account given of the firſt, which is perfectly agreeable to what paſs'd there, and my Name is to the ſecond.

There is annex'd to this ſecond a Letter, which we take to be Mr. *Harvey*'s: I remember the Letter; the Hand is particular, and there are Figures by way of Cyphers. I remember very well this Letter. It has been before the Cabinet Council. It was ſhewn to Mr. *Harvey* at the Council-Table; he did not deny it, but ſhew'd the utmoſt Conſternation when it was ſhewn to him; and deſir'd that he might withdraw, and have the Liberty to ſpeak to one particular Lord. The manner of his Behaviour was ſuch, as to induce the Lords of the Council to be of Opinion, that he was inclin'd to confeſs what he knew; therefore they thought fit to let him withdraw, and go to the Meſſenger's Houſe; but his Agonies were ſuch, that he ſtabb'd himſelf that Night, or the next Morning.

I believe at twice we ſpent about two Hours in the Examination of the Priſoner, and theſe Examinations were taken from his own Mouth; and I can be poſitive there is not a Paſſage in them, that he did not repeat more than once or twice. The Reaſon why my Name is to one, and not to the other, may be, becauſe the Room where he was examined was next to the Room where the Council uſed to meet; and I believe I might be going in and out between the two Rooms, and might not be there when he ſign'd it; and therefore I might not think it proper to ſet my Name to what I did not ſee ſign'd: But I ſaw him ſign that to which my Hand is ſet; and I don't remember that he had any Reluctancy to ſign it. I read the firſt Examination more than once or twice to him, and did myſelf examine him to all the Particulars of it.

After the firſt Night's Examination, it is certain he behav'd himſelf like a Man not worth a Groat, intimating as if he did not know how to get a Supper: He repreſented himſelf in a pitiful Condition, and it was at his going out of the Room, that my Lord put his Hand in his Pocket, and gave him ſomething, what it was I don't know, but it was after he had ſign'd his Examination; for after it, there was a good deal of Converſation paſs'd between him and me. I aſk'd him ſeveral Queſtions, as to his being in *France*, and about the Countries he came from; and aſk'd him as to ſeveral *Spaniſh* Letters that were in the Book, and other Things of that Nature.

Mr. *Ward*. Did he not deſire to read over the Examinations before he ſign'd them?

Mr. Sec. *Stanhope*. I don't remember that he did; but they were read over to him, and he was ask'd to every Particular by myſelf, ſome one Particular might ſlip; but I did examine him, I think, to every Particular, in order to have it alter'd, if he objected to it, and he did not expreſs the leaſt Reluctancy. I ſaw him ſet his Hand to one of them; as to the other, I can't ſay, becauſe the Room was next to the Room where the Council was ſitting, and I don't know but that I might be there.

Mr. *Ward*. Do you remember any thing particular that was ſaid to him, that thoſe Examinations ſhould only be laid before his Majeſty, and no other uſe made of them?

Mr. Sec. *Stanhope*. I don't remember any ſuch thing.

Sir *J. Jekyll*. If he had deſir'd to have read theſe Examinations, would you have refuſed it?

Mr. Sec. *Stanhope*. It never was denied to any Man to read his Examination before he ſign'd it, where I was preſent.

Sir *J. Jekyll*. Nor you would not have refus'd him, if he had deſir'd it?

Mr. Sec. *Stanhope*. No, God forbid.

Mr. *Hungerford*. I am informed that the Priſoner wrote ſome Letters to my Lord *Townſhend*, complaining of ſome other Uſe being made of his Examinations, than was deſign'd?

Mr. Sec. *Stanhope*. I received ſome Letters from the Priſoner, but none that I thought were of any ſort of avail.

Mr. *Hungerford*. Did he complain of his not being ſuffer'd to read them?

Mr. Sec. *Stanhope*. I don't remember it; but I am ſure it was not ſo. If he did complain, it was without any Ground.

Priſoner. I deſire a Sight of the Original Letter, which *Curtis* ſaid I own'd. I never wrote one Word of it; it is forged ſince: Any Body will ſay it; it is not like my Hand. *Which was ſhewn him accordingly.*

Mr. *Cowper*. Before the Examinations are read, I deſire the Gentlemen of the Jury would take an Account in Writing of the initial Letters and Figures they will hear read, and then will obſerve who are the Perſons meant and intended by them, according to the Priſoner's Explanation, when he was examin'd. Gentlemen, it is neceſſary you ſhould underſtand, who are the Perſons that are intended by the Letters and Numbers. If you take them down, all the Letters will read to the Purpoſe.

L. C. Baron. Gentlemen, they deſire you will take notice of the Letters and Numbers that are explain'd in this Examination, becauſe you will the better underſtand the Letters that will be read to you: That is what they deſire, and it will be for your Satisfaction.

The Examination upon Oath of Francis Francia *of* London, *Merchant*.

Clerk reads. THIS Examinant ſaith, That about two Years ago he became acquainted with the Abbot *Butler*, otherwiſe call'd, the *Vidame of Cambray*, at the Time when the Duke *D'Aumont* was here; and afterwards, *viz.* ſoon after the Duke *D'Aumont* left *England*, this Examinant receiv'd a Letter from the ſaid *Butler*, then in *France*, recommending to this Examinant's Care a Law-Suit, in which one *Barbara Butler*, a Kinſwoman of the ſaid

Abbot's, was concern'd; that this occaſion'd a Correſpondence between this Examinant and the ſaid Abbot *Butler*, which from a little before the late Queen's Death, hath laſted till within theſe few Days paſt; during which Correſpondence with the ſaid Abbot, this Examinant received from the ſaid Abbot ſeveral Letters directed to Mr. *Edward Harvey* of *Combe*, and convey'd back ſeveral Letters from the ſaid Mr. *Edward Harvey* to the ſaid Abbot, which Letters to the ſaid Abbot, from the ſaid Mr. *Harvey*, were ſometimes brought to this Examinant by the ſaid Mr. *Harvey* himſelf, and at other Times ſent by Mr. *Harvey* to this Examinant.

This Examinant further ſaith, That at ſuch Times during the ſaid Correſpondence, as the Abbot *Butler* was at *Cambray*, the ſaid Mr. *Harvey* uſually brought or ſent to this Examinant two Letters, one directed to the ſaid Abbot at *Cambray*, and the other, either directed by Mr. *Harvey* himſelf to the Duke *D'Aumont* at the *French* Court; or the ſaid Mr. *Harvey* deſired this Examinant to direct the ſame to the Duke *D'Aumont*, the ſaid Mr. *Harvey* telling this Examinant, that he did not ſend the ſaid Letters himſelf to *France* openly, becauſe he would not expoſe himſelf to be reflected on for having Friends in *France*, not that he car'd a Pin if it were known, becauſe we were in Peace with *France*, or Words to that Effect.

This Examinant further ſaith, that the Letters ſo delivered, or ſent to him by the ſaid *Harvey*, for the ſaid Abbot, or for the Duke *D'Aumont*, were by this Examinant ſent over to *France* under a Cover directed to Monſieur *D'Aulmay*, alias *Payen* at *Paris*, but about two Months ago that Method of Correſpondence was changed; for the ſaid *Payen*, inſtead of incloſing his Anſwers to the ſaid Mr. *Harvey* in Letters or Covers directed to this Examinant, wrote only to this Examinant, but order'd him to ſhew to Mr. *Harvey*, or to deliver to him, what he ſo wrote to this Examinant, which this Examinant did accordingly.

This Examinant further ſaith, that whereas in ſome of the Letters lately written to him by Monſieur *Payen*, to be communicated to the ſaid Mr. *Harvey*, and which were communicated to the ſaid Mr. *Harvey* accordingly, and which being taken in this Examinant's Cuſtody, were ſhewn to him; there are the Letters *M. H.* and my *D. D.* and *M. B.* which ſeem to be the initial Letters of Men's Names; he, this Examinant, underſtood that the ſaid Letters *M. H.* ſtand for the aforeſaid Mr. *Harvey*, and my *D. D.* for the Duke of *Ormond*, and *M. B.* for the Lord *Bolingbroke*; and this Examinant verily believes that the Subject of the ſaid Letters written to him by *Payen* to be communicated to Mr. *Harvey* aforeſaid, is the Deſign of the Pretender to invade his Majeſty's Dominions.

Francis Francia.

Capt. Die 21. *Sept.* 1715.

per TOWNSHEND.

The further Examination of Francis Francia.

THIS Examinant being ſworn, ſays, That a Letter ſhewn to him, and mark'd by him, which is hereto annex'd, and is dated the 9th of *January*, 1714. and writ by Mr. *Edward Harvey*'s own Hand, was ſent to him, this Examinant, by the ſaid Mr. *Harvey*, under a Cover, in order to be forwarded to the Abbot *Butler* in *France*: And that this Examinant in opening the Cover, accidentally broke the Seal of the ſaid incloſed Letter, which made him detain the ſaid Letter, and not forward it, leſt it ſhould be imagined that he had opened the ſaid Letter, out of a Curioſity to read it. And this Examinant further ſaith, that he verily believes that by N° (22) mentioned in the ſecond Line in the ſaid Letter, is underſtood the Duke *D'Aumont*; and that N° (6) mentioned in the thirteenth Line in the ſaid Letter, and where-ever the ſaid N° (6) is mentioned in the ſaid Letter, he, this Examinant, verily believes it ſignifies and is meant to ſtand for the late *French* King: And that by N° (17) mentioned in the ſaid Letter, is to be underſtood the Word *Tories*; and that where-ever (22) is mentioned in the ſaid Letter, the Duke *D'Aumont* is meant. And this Examinant further ſaith, he verily believes that by (8) is to be underſtood the *Pretender*; and by (9) mentioned in the ſaid Letter, is to be underſtood his Majeſty; but that this Examinant doth not well know what 24000, mentioned in the ſaid Letter, ſtands for; neither can he tell what (14) ſtands for, mentioned in the ſaid Letter.

Francis Francia.

Jur. 22. *Die Sept.* 1715.
Coram nobis,

TOWNSHEND.
JAMES STANHOPE.

Sir *J. Jekyll.* Now we will read Mr. *Harvey*'s Letter.

Mr. *Ward.* You cannot read that Letter againſt the Priſoner.

Sir *J. Jekyll.* He hath made it Part of his Examination.

[*Clerk reads.*] The 9th of *January*, 1714.
Dear Sir,

WITH great Satisfaction I receiv'd yovrs of the 12 yovr Stile, and the next time I write vnto [a] 22 I will be ſvre to write on yovr behalf, jvſt as yov mention, and I wiſh it may have the Effect yov propoſe; but I remember very well the Advice yov formerly have given me, that your great ones are good at words and fair promiſes, but ſlow at performing, if Ever; therefore as I take yov to be my Friend, I ſhall lay out no more Money till I am repaid what [b] 22 was pleaſed to promiſe me long agoe ſhould be rymitted me if the Fau—en had not done it on notice I meane the 130: 4—0 ſo long due, itt being abovt halfe I have bin ovt of Pocket, and for my good will am ſufficiantly ſcandaliſed as a friend to [c] 22, and Pentionar to [d] (6) nay and yov from tyme to tyme have aſſvred me it ſhovld be done, and ſtill itt is the ſame, and ſo is like if you ſee itt not done.

Now if you pleaſe only to remind [e] 22 to ſend me a Bill if he pleaſes for the 130: 4—I ſhall be obleged very mvch to yov, or otherwiſe I ſee it is loſt, and yov only doe give me faire words, which realy is not like a trew Freind, for I am ſure I have not, or ever will omitt any one thing.

[a] *Duke* D'Aumont. [b] *Duke* D'Aumont. [c] *Duke* D'Aumont. [d] *The* French *King*. [e] *Duke* D'Aumont.

to ſerve [f] (6) [g] 22 nor yov pay'd or not, itt ſhall not trovble ſo I have [h] 22 Eſteem; wee are now in a hurrey on choſing of Parliament Men, and how thoſe things will goe, God above beſt dos knows; but this I will affirme ware thoſe that are to chvſe lefte to them ſelfes to chvſe no Money from Corte threats, nor any other indirect means vſed, all wovld be ovt of ſeght on the [i] 17 ſide; and as it is, I hope all will doe well if [k] (6) and [l] 22 ſticks to theire trew Friends, and on no accompt forgett them and all theire good intentions. I deſire you to lett [m] 22 know, if my Life lay att ſtake, I cannot get 30 ſuch Hovnds as I dare ſend to his Friend the Co—t of To—ovs he deſiers; but by *March* I hope I may, my good Friend Mr. *B—ne* that you mention in yovr Directions, has given me two of his beſt Bitches; they are fovre Years Hunting, and they ſhall be in Whelpe a're I take them; and one young one I dayly will look ovt, tho' it is a thing quite ovt of my way, *but to ſerve* [n] 6 *or* [o] 22 *I will do any thing tho' to the hazard of my Life, and all I have.*

I have got for [p] 22 two as fine and good Grayhovnd Bitches as can run, and as handſome; the red and white one is three years olde, the other black and white, and but two; and one Covple of Stagg-hovnds, the Bitch is entired, the other bvt 11 Months old, large enough, and of the Queen's Hovnds breed; I have alſo a very fine Hovnd of Blood-kind, fit for a Harbering-Hovnd, and would rvn vp to any Hounds; he is but 9 Months old, and if [q] 22 ſends any one over with yovr Ambaſadore all ſhall be given him, or by any Token, I will ſend them to *Dover* on notice: As to Horſes, here is a Stone-horſe I think will pleaſe; he is a Bay, with a Blace down his Face, bvt by any till liked I dare not, ſo that mvſt depend on [r] 22 Pleaſvre, and if any I have, or can gett, or here of, I will, and I will alſo freely ſend in my own Charge, one to helpe by as many as [s] 6 or [t] 22 ſhall pleaſe to command me; bvt this, as things

pray order things ſo as not to give offence to [u] 22.

now Stands, muſt be done with Cavtion; why would you mention byeing of Stvffs to [w] 22, he will fancy I have ſome ſelf Intereſt in mind; I told 14 at dyner, that [x] 22 was his humble Servant; he aſſured me he was his real Friend, I mean [y] 22 and would write to him and wovld remind him of you; I dyne with him to morrow; preſs [z] 22 to think of his Friends, it will be of Service I am ſvre to [a] (6) all looks well for [b] (8) and in my Heart I think better than ever *c* (9) every day looſes himſelfe, and for the 24,000 it makes for [d] (8) and [e] 6. I am.

Mr. *Att. General.* We will now ſhew the Nature of this Correſpondence, by their ſending Letters to and again, and ſhew when he came into it himſelf.

Mr. *Ward.* Are you going to offer any Letters?

Mr. *Att. Gen.* Yes, out of his own Book.

Mr. *Ward.* We muſt humbly ſubmit it to your Lordſhip's Judgment, whether they can offer any of theſe Letters in Evidence, the Charge of the Overt-Act is general, that he wrote ſeveral treaſonable Letters: Now a Confeſſion that there were ſeveral treaſonable Letters paſt, might ſupport that Allegation, or they may give Evidence in general, that he did write ſuch Letters. But we muſt be in your Lordſhip's Judgment, whether they can produce any particular Letters, which are every one of them Overt-Acts themſelves, and are not laid in the Indictment.

We think the Law has guarded the Life of a Man by the Stat. 25 *Edw.* III. That tho' the Intention is the Crime, yet that muſt be declared by Overt-Act or Deed, which muſt be charged in the Indictment. And the late Laws ſince the Revolution ſays nothing ſhall be given in Evidence, but what is expreſly laid in the Indictment. Now if this be allowed of under ſuch a general Charge, to prove ſuch a number of Facts, which are not charged particularly in the Indictment, then all the Security of that Law will be eluded, and a Man will be no more able to make a Defence, than if it had been laid in general, that he conſpired the Death of the King; or it had been laid, that in order thereto, he had been guilty of ſeveral treaſonable Practices.

We inſiſt that they can't under this Allegation give any Evidence but what is correſpondent to it, as any Confeſſion or Proof in general; but they can't enter into any diſtinct Overt-Act, which ought to be laid, and can't be given in Evidence unleſs expreſly laid in the Indictment. If that Act has any meaning, it is to avoid any ſuch Artifice as this; and it obliges them that are concerned for the King to ſpecify in the Indictment the Overt-Act they will go upon.

Mr. *Hungerford.* My Lord, I think we have an Objection to the reading theſe Letters that cannot be got over. The Law hath in all Ages guarded the Life of the Subject againſt Proſecutions for High-Treaſon, and with a great deal of Reaſon: The Offence is great; the Proſecutions ſupported with great Power and Influence, and the Conſequence great to the Party concerned; for it is not only the Loſs of his Life, but the Ruin of his Family and Eſtate; his Family muſt be infamous and his Eſtate forfeited; therefore the Law hath guarded the Life of the Subject in a more particular manner, againſt theſe Proſecutions, than againſt any other capital Offences.

Before that happy Law, 25 *Edw.* III. the Proſecutions in Caſes of High-Treaſon were ſuch, that no Man could be ſafe againſt them. There was ſcarce any thing a Subject could do, even any thing that did but give the umbrage of Offence, but might be drawn into the compaſs of High-Treaſon. In Truth, the Definition or Deſcription of High-Treaſon before this Act is ſo looſe that it gave a colour for this Proceeding. It was among other things, *Si quis aliquid egerit vel agi procuraverit ad ſeditionem domini Regis vel exercitûs ſui*, &c. And in purſuance of this Notion of High-Treaſon, impriſoning an Officer of Juſtice, and Officers cheating Soldiers of their Pay, killing a Perſon going to Liſt himſelf, &c. were before this Act

[f] *The* French *King.* [g] *Duke* D'Aumont. [h] *Duke* D'Aumont. [i] Tories. [k] *The* French King. [l] *Duke* D'Aumont. [m] *Duke* D'Aumont. [n] *The* French *King.* [o] *Duke* D'Aumont. [p] *Duke* D'Aumont. [q] *Duke* D'Aumont. [r] *Duke* D'Aumont. [s] French *King.* [t] *Duke* D'Aumont. [u] *Duke* D'Aumont. [w] *Duke* D'Aumont. [x] *Duke* D'Aumont. [y] *Duke* D'Aumont. [z] *Duke* D'Aumont. [a] *The* French *King.* [b] *The* Pretender. [c] *King* George. [d] *The* Pretender. [e] *The* French *King.*

adjudged High-Treaſon. And I can ſhew that ſome of thoſe hard Caſes happen'd the Circuit before the Act. And therefore the Legiſlature thought fit to aſcertain what Offences ſhould be Treaſon for the future. And our Hiſtorians remark, that from the Time of this Law, the Sword that before hung by a ſlender Thread over the Heads of the Subjects, was then removed; and for this Reaſon likewiſe the Parliament is called *Benedictum*.

It is true, that the bare Compaſſing, or imagining the Death of the King is Treaſon, and it ought to be ſo; for in that precious Life the Common Weale, the Happineſs of all the Subjects, is eminently concerned. But this Act of Parliament hath provided, that ſuch Compaſſing, *&c.* ſhall be proved by Overt-Act, that is, not by Inferences, ſtrained Conſtructions, or rhetorical Aggravations, and the like, but by plain Proof of Matter of Fact. And I am bold to ſay, the Intent of this Law was perverted for ſome Ages, by laying the Charges of High-Treaſon ſo looſe, that the Party could not tell how to apply his Defence: And of this, and other Kinds, there had been ſeveral irregular Proſecutions; ſuch as thoſe of Col. *Sidney*, my Lord *Ruſſel*, *&c.* And for theſe Reaſons the late Act for regulating Trials, *&c.* hath provided, that no Evidence of an Overt-Act ſhall be given but what is ſpecially laid in the Indictment: And ſuch a Certainty was intended, that the Party might know certainly and exactly to what Points to apply his Defence.

If it ſhould be admitted that what is done in this Indictment is ſufficient to anſwer this Act, the Intent of it will be eluded: For the Intent is, that the Criminal ſhall know how to apply his Defence. The Offence in this Caſe is ſuppoſed to be in the Letters; muſt not therefore the Letters, or the Subſtance be ſet forth? For my Part I think they muſt, or they cannot be given in Evidence. I can produce very ancient Authorities to this purpoſe: And as to the Modern ones, beſides that in Dr. *Sacheverell*'s Caſe, I have one in my Eye, which is Mr. *Attorney*'s own Authority (for which I ſhall always have a great Regard) in the Indictment againſt *Gregg* *, which was a Proſecution of Mr. *Attorney*'s; there the Letter was ſet out at length.

Mr. *Att. Gen.* That was not in my Time; I was not Attorney then.

Mr. *Hungerford.* I beg Mr. *Attorney*'s Pardon; but he has been in and out ſo often, that I may have been eaſily led into the Miſtake.

I have another very great Authority, and that was in the Caſe of Dr. *Sacheverell:* The Queſtion was put to all the Judges for their Solution, whether in all Informations and Indictments, for Offences in Speaking and Writing, the Words ought not to be particularly mentioned? This was the Queſtion propoſed, and it was anſwered, that it ought ſo to be: Your Lordſhip's Anſwer was, That you was of the ſame Opinion with your Brethren. You, my Lord, Mr. Juſtice *Tracy*, agreed in the ſame Opinion, and ſo did the Eleven Judges then preſent; which was, that the Words ſuppoſed to be criminal, whether written or ſpoken, muſt be expreſly ſpecified in the Indictment or Information. This I am ſure is the greateſt Authority that can be in any Caſe: It is the Authority of all the then Judges of *England*, who were but Eleven, the Lord Chief Juſtice *Holt* being then lately dead; ſo, my Lords, to juſtify this Objection, we have the Precedents on our Side, particularly of *Coleman*, *Fitzharris*, *Gregg* and *Sidney*; in all which Caſes the Papers ſuppoſed to be Criminal, or the Subſtance of them, are inſerted in the Indictment. We have the Authorities for us, Ancient and Modern, and we have the Reaſon of the Thing for us. It being the higheſt Reaſon and Juſtice, that as the Priſoner is now to have ſome Days before his Trial the Names of his Judges, *viz.* the Pannel of the Jury, ſo he ſhould be apprized of his Charge with ſo much Certainty, as to know how to apply his Defence; and we don't doubt therefore but we ſhall have your Lordſhip's Opinion in favour of our Objection.

Sir *J. Jekyll.* We may offer this Book and theſe Letters, notwithſtanding this Objection. Mr. *Ward* did not go ſo far as Mr. *Hungerford*, that it is neceſſary to ſet them forth *Verbatim*. As to that, I believe it was never done in any Caſe: And as to *Coleman*'s Caſe, thoſe Letters are not ſet forth; but it is alledged, that they were wrote to procure the Aid and Aſſiſtance of the *French* King, as it is here ſaid, that the Priſoner's Letters were to deſire Aſſiſtance from *France* to the Rebellion here. If it be neceſſary to ſet forth the Words in the Caſe of a Miſdemeanour for a Libel in the ordinary Courts of Juſtice, it is becauſe the Libel is the Crime; but in the Caſe of a treaſonable Correſpondence it is otherwiſe; for there the Letters are not the Crime, but the Overt-Act of the Treaſon, which is the Manifeſtation of the Crime. Beſides, let it be conſidered what Evidence are we going to offer; we offer the Letters ſent to him in anſwer to the Letters wrote by him, and to require us to ſet them out in the Indictment is impoſſible; when we make it part of the Charge that the Letters were ſent to *France*, it is to mock us to call upon us to produce thoſe Letters themſelves.

Mr. *Ward* ſeemed to admit, that the Clauſe mentioned by him in the Statute 7 *Will.* was grounded upon the 25 *Edw.* III. For that old Statute doth require, that a Man be attainted by Overt-Act; and what doth 7 *Will.* do in that Caſe? No more than to make plain what the Law was before: For the Words are, that no Evidence ſhall be given of an Overt-Act that is not expreſly laid in the Indictment; and from thence the Priſoner's Council would infer, that no Letters ought to be given in Evidence that is not laid in the Indictment: No, the Act requires only that the Overt-Act be expreſly laid in the Indictment. Not that the Evidence ſhall be expreſly laid in the Indictment. All that the Court is to conſider as to this Matter is, whether the Overt-Act is not ſufficiently laid in the Indictment; it will not be doubted, but that writing Letters to excite Rebellion is an Overt-Act. Then the Queſtion is, whether this Indictment doth not expreſly alledge this Overt-Act. The Words in the Indictment are theſe; *Quodque prædictus Franciſcus Francia, ad dict' Prodicon' & Diabolic' & Proditor' Intencon' & propoſit' pred' ulterius perimplend' perficiend' & ad effectum redigend' poſtea ſcil' eodem primo Die Septembris, Anno ſupradicto nec non diverſis al' diebus & vicibus tam antea quam poſtea apud London' pred' in parochia & Ward' pred' malitioſe, diabolice & proditorie compoſuit & ſcripſit & componi & ſcribi cauſavit ſeparales proditorias Epiſtolas notifican' intention' & reſolution' ipſius Franciſci Francia & præd' al',*

* Jan. 19. 170$\frac{7}{8}$. *at the* Old Bailey, *when Sir* Simon Harcourt *was Attorney-General.*

proditor'

proditor' Jur' præd' adhuc ignot' ad bellum præd' contra dictum Dominum Regem nunc movend, &c. This is ſurely an expreſs laying the Overt-Act of which theſe Letters are the Evidence.

I have been looking upon the Caſe of my Lord *Preſton*; which tho' it was before the Statute of 7 *Will.* yet my Lord *Preſton* was not without the Aſſiſtance of Council, tho' he was not allowed them in Court. It is there laid, that he wrote ſeveral Letters to inform the *French* King what the Forces of the Kingdom were; and the Indictment goes on to ſhew the Purport of thoſe Letters. But in that Caſe the Letters are not particularly ſet forth: And yet that was never made an Objection at his Trial, or before Judgment. In that Indictment is charged his writing Letters, and they are deſcribed, and that we have done. This we think is ſufficient, that is, that we are bound to lay the Overt-Act expreſly, but not the Evidence of that Overt-Act. *Trial* 146.

Mr. *Attorney-General.* This is a ſurprizing Objection; we admit there muſt be an Overt-Act laid in the Indictment, and that is all that the Law requires; we muſt ſet it out ſo that we may apply our Evidence to it: And the Meaning of the Statute is, that when you lay one Overt-Act, you muſt not prove another.

The Inſtance that is given by the Serjeant is very ſtrong, and every Body remembers *Coleman*'s Caſe, the writing Letters is an Overt-Act; but it is not neceſſary to ſet them out, that being the Evidence of the Overt-Act. In *Gregg*'s Caſe there was but one ſingle Letter which was ſet out, and that was ſtopp'd at the Poſt-Houſe.

In the Caſe of Libels they muſt be ſet out; and that was the Opinion of the Judges in Dr. *Sacheverell*'s Caſe in Proceedings at Law: But the Courſe of Parliament was held by the Lords to be otherwiſe. We have charged that he agreed to write Letters; that he did write them, and ſend them; and now they would have us to ſet out thoſe Letters that are ſent beyond Sea: And if that were Law, it would be impoſſible to convict any Man of a Correſpondence Abroad, becauſe the Letters are ſent Abroad.

If it was charged in the Indictment, that he wrote to great Numbers of Men, it would not be neceſſary to ſet out the Names of thoſe Men; this is a Matter we don't need to labour much; for this laſt Statute has not altered the Law, as to the laying the Overt-Act, but only as to the Proof, that when you lay one Overt-Act, you can't prove another. I don't know that it could have been done before; ſo that that Act, as to this Matter, was only a Declaration of what the Law was before.

Mr. *Soll. Gen.* We think none of the Caſes inſtanced prove what is inſiſted upon in this Caſe. That Caſe of *Coleman* is miſtaken, for the Letters in that Caſe are not ſet forth particularly, only the Subject-Matter and Nature of them, as is here done.

They can inſtance no Caſe where the Indictment is for writing treaſonable Letters, importing a treaſonable Correſpondence, that ever they were ſet out in the Indictment; and to what a length would ſuch an Indictment be carried, if it ſhould be done in this Caſe.

Col. *Sidney*'s Caſe is againſt them; for there was a whole Volume wrote by him, and there was nothing put into the Indictment but the Subſtance of a very little Part; and that was Col. *Sidney*'s own Objection: Says he, *Am I to be found guilty for a little Part that is cull'd out of the reſt; when if the whole was put in, by comparing the whole together, it might not be poſſible to collect any Treaſon from it?*

As to Dr. *Sacheverell*'s Caſe, that is quite different from this; for that was in the Caſe of a Libel, where the Offence properly conſiſts in the Expreſſion. But even in the Caſe of Libels, I muſt beg leave to deny that the particular Words muſt be ſet out in the Indictment; for a Libel may be ſet out in *Latin*, which is the better and ſafer way; and then if you ſet out the Subſtance, it is ſufficient. And if you may ſet it out in *Latin*, it can't be true that you are bound down to the particular Words, for *Latin* Words and the *Engliſh* Words can't be the ſame.

The Act of Treaſons ſay, No Evidence is to be given but of the Overt-Act laid in the Indictment. Now what is that Overt-Act here? It is writing Letters, which is ſpecially expreſs'd, and the Subſtance of them ſet out, which ſhews them to be treaſonable. The Inconvenience objected is nothing, unleſs it ſhall be ſuppos'd, that the Priſoner may have wrote ſo many treaſonable Letters that he can't recollect them all.

Beſides, it is to be conſider'd, that all theſe Letters import a Correſpondence, and ſo are to be conſider'd as many, but as one Overt-Act, it is entire, and it is unreaſonable as well as unneceſſary, that the whole Correſpondence ſhould be ſet out. Therefore we think we have done what is ſufficient, and that they can't give one Inſtance of a Caſe where the Treaſon conſiſted in writing many Letters of Correſpondence, that the Letters themſelves were ſet out. For the Deſign of the Law before-mentioned was no more, than that it ſhould not be lawful to lay one Overt-Act, and give Evidence of another.

The Treaſon is, the Priſoner has imagined the Death of the King; and the Overt-Act is, he has wrote ſeveral Letters, that is expreſly and ſpecially laid; and then to diſtinguiſh theſe Letters from all others, the Subſtance of thoſe Letters are ſet out, notifying his Intentions to raiſe a Rebellion in this Kingdom, and inciting thoſe in foreign Parts, to aid, aſſiſt, and join with him.

But this Objection may receive another Anſwer, and that is, that there are two other Overt-Acts, beſides his writing of treaſonable Letters, which are conſpiring, conſulting, and agreeing to raiſe a Rebellion and Inſurrection in this Kingdom, and ſolliciting Aid and Aſſiſtance from *France*: And theſe Letters are very good Evidence to prove thoſe Overt-Acts; for I believe it will not be denied, but that theſe Letters are Evidence of a Conſpiracy, and therefore if they could not be read in Evidence to prove the writing Letters, becauſe they are not ſet out in the Indictment, yet they may be read as Evidence to prove a Conſpiracy.

Therefore we inſiſt that we are right both in Point of Reaſon and of Precedent.

Mr. *Ward.* My Lord, I beg a Word or two by way of Reply: They ſay we have not mentioned one Caſe where the Treaſon is grounded upon Letters, where they have been ſet out in the Indictment: I believe they can't ſhew one Caſe where it has been otherwiſe; we inſiſt upon the Caſe of Colonel *Sidney* and of *Fitzharris*.

Colonel *Sidney*'s Objection was, That they had not ſet forth the whole Book; but they had ſet forth intire Paragraphs, and that is what I inſiſt they ſhould have done in this Caſe.

They would have it believed, that the Act of Parliament, 7 *Will.* is nothing, and that the Law ſtands as it was upon 25 *Edw.* III. It was taken to be a great Point gained when that latter Act was paſs'd, and I am ſorry it is like to have ſo little Effect. But we inſiſt that what is now offer'd hath all the ill Effects that were before the making of the Act. It is not that a Man muſt be ſuppoſed to have wrote ſo many treaſonable Letters, that he can't remember them; but he don't know which of his Letters may be called ſo. And it was open'd that theſe Letters were of ſuch a Nature, that they could not be underſtood without producing them. Therefore they ought to be ſet out, that ſo a Man may know which of them to defend himſelf againſt.

There is one Caſe like this, which is the Caſe of the good Name of a Man: Every Witneſs that is produced may be examined to his Credit; but you will not ſuffer particular Facts to be prov'd upon him, becauſe he can't be prepared to maintain every Action of his Life. And that was intended in this Caſe; that a Man might be certain what he was to defend himſelf againſt, eſpecially in the Proſecutions from the Crown, which uſually come with a greater Weight than other Proſecutions. Agreeable to this have all the Precedents been when any thing have been founded upon Letters.

Mr. *Attorney* ſays, that the Letters are ſent into *France:* So that they can't be produced. I did not object that they ought to be produced. But they are going to produce a Copy-Book to prove that there were ſuch Letters, and by that they had the ſame Opportunity to ſet them out, as if they had the Letters themſelves.

There is no Inconvenience to the Crown by this Method, but the greateſt Inconvenience to the Subject by omitting it; for he may have all the Letters he ever wrote brought againſt him, and he muſt off-hand give an Account of them.

[Mr. *Ward, who had an Hoarſeneſs upon him, clos'd with ſaying, that his Voice fail'd him, and that he could go no farther.*]

Mr. *Hungerford.* The Gentleman who is join'd with me in the Defence of the Priſoner complains that his Voice fails him; (God be thanked) I have no Defect of that ſort, for I can ſpeak pretty audibly, but I have a greater, for I had my Inſtructions late laſt Night.

Mr. *Sollicitor* obſerves, that we are not entitled to have thoſe Letters ſet out either by Reaſon or by Precedent; as to the Reaſon of the Thing, I appeal to your Lordſhip, whether all the Laws relating to Trials of Treaſons, and ſome others, which are to take Effect three Years after his Majeſty's Acceſſion to the Throne, and the Death of the Pretender, have not been grounded on this great Reaſon, to guard the Subject againſt Proſecutions that have been ſometimes carried on with too much Severity. And as to what relates to the preſent Caſe, that the Overt-Act ſhould be ſo particularly laid, as to deſcribe the Offence with ſo much Certainty as to enable the Priſoner to apply his Defence.

What is the Intent of laying an Overt-Act at all, but that the Defendant may ſuit his Defence to it. If it is intended only that you ſhall not give Evidence of a different Overt-Act, as the King's Council would expound it, that will be of little avail to the Priſoner. It is of late grown to be the Practice to lay the Treaſon, to be in conſpiring the King's Death, and the Overt-Act, to be conſpiring to levy War, though by the way, that is making one Article of the Statute of 25 *Edw.* III. redundant and uſeleſs; for if every Intention of levying War doth imply an Intention to kill the King, there was no need of making levying of War a diſtinct Species of Treaſon at all, for at that rate it was comprehended in the former. And as to what is ſaid, that laying the Overt-Act is a ſufficient Certainty of the Charge, I think not; ſuppoſe the Overt-Act laid, be levying of War, or an Intention ſo to do; there are ſeveral Inſtances of levying War, one way may be by muſtering Men, another by ſeizing ſome of the King's Ships: Theſe are ſo different, that upon a general Charge of levying War, one perhaps may prepare to defend himſelf at Sea, and may be attack'd at Land; and ſo *vice verſa*; and by the general Charge he don't know what to defend himſelf againſt. Therefore the Intent of that Act muſt be to give a Man ſuch a Notice of the Matter laid to his Charge that he may know how to apply himſelf to his Defence.

I did not inſiſt that the Letters at large ought to be ſet out, but the Subſtance of them, or the Paragraphs in them, containing the Words ſuppoſed to be criminal, ſo that a Man may know how to apply to his Defence.

As to my Lord *Preſton*'s Caſe, though he might have Council to adviſe him, yet in his Time he could not (as the Judges had determin'd the Matter) have a Copy of his Indictment; ſo that he was outed of any Obſervations that could be made upon it. Therefore if that Indictment is in the ſame manner with this, it will be no Authority, for it might be irregular, as we inſiſt this is, and yet there could be no Opportunity to obſerve it ſo to be.

As to what Mr. *Sollicitor* inſiſts, that to inſert the Letters at large, would make the Indictment long and tedious: For God's Sake, my Lord, is there any Competition betwixt the Charge of two or three Skins of Parchment, and a Man's Life?

As for the Precedents, I have here *Coleman*'s Caſe, where the Date and Subſtance of the Letter is mentioned; and in Colonel *Sidney*'s Caſe, the Title of the Book, and the Paragraphs inſiſted on are ſet out: In *Fitzharris*'s Caſe, the Letter is ſet out *Verbatim.* As to what is ſaid of Dr. *Sacheverell*'s Caſe, that it was only for a Miſdemeanour, I am bold to ſay, the Queſtion was aſk'd in general, whether in all Indictments or Informations, the Words or Writing ſuppos'd to be criminal, ſhould not be ſet out. And ſurely if in a Caſe of Miſdemeanour, where only Fine or Impriſonment is the Puniſhment, ſo much Certainty is required, much more Certainty ought to be requiſite in a Charge of High-Treaſon, where Loſs of Life, Eſtate, and Poſterity are the Conſequence of the Conviction. So that as I obſerv'd before, we have both Reaſon and Precedent with us, and they have neither of their Side; and thoſe Precedents that are of their Side, were before the late Act of Parliament.

L. C. Baron. The Objection made by the Council for the Priſoner, is, that tho' here is an Overt-Act laid, yet it is not laid ſo expreſly as it ought

ought to be. The Overt-Act is, That he wrote ſeveral Letters to Foreigners, to move and excite a War, and ſent them to Foreigners beyond Sea for that purpoſe. I think this is a ſufficient Deſcription of the Overt-Act, and that is as much as is required by the Act of Parliament. That Act ſays, That no Evidence ſhall be given of any Overt-Act, that is not expreſly laid in the Indictment. None can ſay that here is not an Overt-Act expreſly laid. If it is expreſly laid, and ſufficiently deſcribed, ſure it is not neceſſary to mention all the Evidence that is to prove the Overt-Act, the Intent of the Law is no more, than that the Overt-Act ſhould be ſufficiently deſcribed and charged in the Indictment. It is here ſo charged and deſcribed, the Deſign and Intention of the Letters is ſet forth, and they go to prove that ſuch Letters, manifeſting ſuch Deſign and Intention, were written, and that they have laid that he wrote ſeveral Letters to move this War, then they go to produce the Letters. I am of Opinion, that they need not be more particularly deſcribed, and it would be endleſs to ſet out all the Letters.

As to what Mr. *Hungerford* inſiſted on in Dr. *Sacheverell*'s Caſe (which made a great Noiſe formerly, and has made ſome Noiſe now) the Queſtion there put to the Judges, was concerning Crimes and Miſdemeanours, by Writing or Speaking. As the Crime of a Libel conſiſts only in the Words, and therefore they muſt be laid in the Indictment, he might as well have mentioned an Action upon the Caſe for Words. There the Words muſt be expreſly laid, and they muſt be prov'd as they are laid.

But here the Crime is compaſſing and imagining the Death of the King, and the writing and ſending of Letters to Foreigners to excite a War is the Overt-Act, and that Act is expreſly laid in this Indictment, which is ſufficient, without ſetting forth the Words of the Letters.

If it be laid, that a Man did conſult and agree to levy War, a Time and Place muſt be laid, but all the Times and Places when and where he met and conſulted, and all the Perſons Names with whom he met and conſulted, need not be mentioned in the Indictment, neither need the very Words of the Conſultation be ſet forth. Therefore I think this Overt-Act is ſufficiently laid, and, as Mr. *Sollicitor* obſerves, if there was no other Act laid, but conſenting and agreeing to levy War, they might prove it by Letters, although no Letters had been mentioned; but here the Overt-Act is more particularly deſcribed, that he wrote Letters for that Purpoſe. Thoſe Letters are now offer'd to be read, and I think they ought to be read.

Mr. *Juſt. Tracy.* I am of the ſame Opinion; I think they have ſufficiently ſet out the Nature of the Overt-Act, writing Letters, praying Aid of Foreigners to aſſiſt in a Rebellion. Some of thoſe Letters are ſent by the Priſoner beyond Sea, and they can't be ſet out; and whatever is alledg'd as certainly as the Nature of the Thing will bear, is certain enough.

But it is objected, you have the Copy-Book, and you might ſet them out by that. But they don't go on that only, but alſo on ſeveral Letters wrote to and received by the Priſoner; and to ſet forth all thoſe Letters in an Indictment, is againſt Reaſon. But this is not the Matter now, for Mr. *Ward*'s Objection was againſt reading the Letters, which were offer'd to prove the writing and ſending the Letters as charg'd in the Indictment; but inſtead of ſhewing they are not Evidence, you have run into Exceptions againſt the Indictment itſelf; for Uncertainty in not ſetting out the Letters particularly, which is not the Queſtion now.

Mr. *Juſt. Pratt.* I am of the ſame Opinion; many Things have been ſaid of the great Care of the Laws to preſerve the Life of the Subject. I hope we ſhall always take a due Care to put thoſe Laws in Execution; but we muſt take Care of that precious Life, as Mr. *Hungerford* calls it, not to hazard it, by making it too difficult to convict any Man of ſuch a Correſpondence. And if we ſhould make ſuch a Conſtruction of the Act, as they contend for, it would be impracticable to convict any Man in any Caſe.

The Act ſays, the Overt-Act ſhall be expreſs'd, and is it not ſo here? It is writing Letters, and with an Intent to levy War againſt the King; ſo that it is mentioned that there were Letters, and the Purport of thoſe Letters is ſet forth. And whatever has been ſaid of that Caſe that was in the Houſe of Lords, none of you can ſay, but that it is ſufficient in Informations for Libels, if they are ſet forth in *Latin*, to ſet out the Subſtance of the Words. If a Man ſets it out *Verbatim*, he is tied up to the very Words, and by a Letter or Syllable miſtaken, he may be gone: Therefore the beſt way is to ſet out the Subſtance only. Now what would you be the better, if you had what you ask, if there are ſeveral Letters to the ſame purpoſe? It would only be ſetting out the ſame thing over and over again. This ſatisfies the Meaning of the Act as fully as if they had been ſet out at large. But to ſay that a Man ſhall be bound to ſet out the Letter itſelf, when it is gone from him, when it is gone beyond Seas, how can he come at it? If that were to be the Caſe, a Man might carry on a Correſpondence, and you could never convict him.

I think this is ſufficient to anſwer the Intent of the Act. They offer you Letters that correſpond with the Indictment, and if they offer any that do not, they will not be proper to be read.

Mr. *Att. Gen.* We will read our Letters as they are in Time and ſhew the Nature of the Correſpondence.

Mr. *Ward.* I am inform'd there are different Hands in that Book: Now whether your Lordſhip will admit them to read it under a general Proof of his owning it to be his Copy-Book, or whether you will not expect that that which is his Writing ſhould be prov'd, and what is wrote by any other, to be wrote by his Direction, or Privity; for a ſmall Variance in the Expreſſion may turn a Man out of his Life.

Mr. *Hungerford.* All that the Witneſſes ſaid was, that the Priſoner ſaid it was his Copy-Book. Now whether he is to be affected by every Word in that Volume, is what we muſt ſubmit to your Lordſhip; and whether they ought not to ſingle out which were wrote by him, and which not; for his ſaying that is his Book, that is, the Volume is his, the Cover is his, and the Paper is his, but it will not imply that he is the Author of all thoſe Letters.

Sir *J. Jekyll.* My Lord, when they objected to our reading the Copy-Book, they ought to have made all their Objections together; but this being

being in the Caſe of Life, I won't ſtand upon that.

It is plain, it ought to be read; for you obſerve the Letters, of which theſe are Copies, are ſuppos'd to be ſent to *France*; and it is impoſſible to have them; then what Certainties have we touching theſe Letters? We have the taking the Book in the Cuſtody of the Priſoner, and if there had been no more than its being found in his Cuſtody, I apprehend we might have been let in to read 'em. But it goes a great way farther; for ſeveral of the Witneſſes ſwear that he own'd it was his Copy-Book of his Letters.

Let's conſider how this Evidence would have been, if it had been given to every Letter in particular. If we had produced one ſingle Copy of a Letter, and he own'd that was a Copy of a Letter wrote by him, will any one doubt but that it might be read? No, the Evidence ſay that he own'd this to be the Copy-Book of his Letters.

Mr. *Juſt. Tracy.* Where the Court is in no doubt, we muſt not ſpend our Time in arguing Points that have nothing in them.

L. C. Baron. It is no matter whether any of them are of his Hand-writing or not, I think they may be read.

Then the Original Letters and the Tranſlations were ſhewn to Mr. *Boyer*, and to Mr. *Ozell*, who prov'd them to be true Tranſlations.

[*Clerk reads.*] This is directed to *Francis Francia*, and dated *Paris Feb.* 26. 1715.

Sir *J. Jekyll.* This is dated at *Paris, Feb.* 1715. but that is in our Stile 1714.

[*Clerk reads.*]

SIR,

THE baſe Dealing of the Sieurs *Treacher* and *Robinſon* with me, made me always believe that you would not otherwiſe bring them to Reaſon, than by preſſing them without Mercy. Since you have taken the Trouble to begin, be pleaſed to continue to the laſt the ſame Attention to my Concerns which you have had hitherto, and never conſent to any Accommodation till they have remitted not only my Diſburſements, as you tell me by your laſt of the 18th Inſtant, but alſo the whole of what may come to my Share, either in Money or Wine, ſuppoſing there remains any unſold, which I cannot believe. As for the fourth Share I have in the fifty odd Hampers, which I bought for them of my Friend, the Count *de Sillery*, if, in order to enter upon an Accommodation, you ſhould content yourſelf with their conſigning into the Hands of Mr. *Harvey* the 2500 and odd Livres diſburs'd, be perſuaded, Sir, that to get the Remainder, you'll find yourſelf under the Neceſſity to begin anew, to give yourſelf the ſame Trouble which you have taken hitherto. Therefore while you hold them, I beg the Favour of you to make an End of the Matter with them at once, and in order thereto, not to give them any Quarter. They have render'd themſelves unworthy of it upon all Accounts. If in this Matter you think the Intereſt of the Chevalier (Sir *Thomas*) *Hanmer*, Speaker of the laſt Parliament, may be uſeful to you; he does me the Honour to be one of my Friends: Viſit him from me; and I flatter myſelf he will readily grant you his Aſſiſtance, when you have inform'd him how the Caſe ſtands, and of the unfair Dealing of thoſe Merchants towards me. I am ſo ſenſible of Mr. *Harvey*'s Favours, that I would do any thing to ſhew him my Gratitude. Acquaint me therefore with the true State of his Affair with the [a] *D. D.* and write to me about it in ſuch a manner that your Letter may warrant my ſpeaking; after which I ſhall do my beſt to procure him the Satisfaction he deſires; be pleaſed to aſſure him of it from me. I hope that e're it be long you will acquaint me with the Concluſion of my Affair; in the mean time, I ſtill aſſure you that 'tis not poſſible for any one to be more perfectly than myſelf, Sir, your moſt humble and obedient Servant,

D'Aulmay.

Sir *J. Jekyll.* We read this only for the ſake of the Poſtſcript, which we will read preſently.

Priſoner. This is not a true Tranſlation.

L. C. Baron. What is your Objection to the Tranſlation?

Priſoner. There is not one Word true in it.

L. C. Baron. Who do you depend on to tranſlate it for you?

Priſoner. Upon Mr. *Flint.*

L. C. Baron. Tell us your Objection to the Tranſlation; tell us in any one material Part wherein the Tranſlation don't agree with the Original.

Mr. *Flint.* One can't carry it in one's Head.

Priſoner. I hope you will not take it for a true Tranſlation when it is falſe.

L. C. Baron. We ſhall if you don't ſhew wherein it is falſe.

Sir *J. Jekyll.* We will read the Poſtſcript, let them ſhew any Miſtake in that.

[*Clerk reads.*]

As I have Reaſons of private Concern to know what paſſes in the Country you live in, you will ſenſibly oblige me in informing me of it now and then. Be perſuaded of my Diſcretion, and that the State is no ways concern'd in my Curioſity; nothing raiſes it but the Concerns of my Wife and her Family, who is Iriſh.

Priſoner. That is wrong tranſlated.

L. C. Baron. How do you tranſlate it?

Flint. You will oblige me ſenſibly to inform me of the ſame. Be perſuaded of my Diſcretion, and that the State has nothing in my Curioſity: The Intereſt of my Wife, who is Iriſh excites me.

Sir *J. Jekyll.* That is to the ſame Effect as we read it. We will now read a Letter from the Priſoner to *D'Aulmay*, out of his Copy-Book.

[Clerk reads.]

Paris. Mr. *D'Aulmay de Coulange.*

London, March $\frac{1}{1}\frac{3}{4}$, 1714.

I Received the Honour of yours of the 26th paſt. I ſhall no ways ſpare the Sieur *Treacher*, but proſecute him to a final Judgment, which cannot be 'till *July*. He makes an Apothecary's Bill, ſets down the Wines that are ſold, for the moſt part, at half a Crown *per* Bottle, but I ſhall prove him the contrary. I am very ſorry this Buſineſs ſhould go ſo far, but it is according to the Laws of this Country, where we have no need of Sollicitations; without which he will, within that Time, be certainly adjudged to pay. You muſt in the mean time tranſmit hither the Ori-

[a] *Duke* D'Aumont.

ginal Paper you have of your Partnerſhip in the Wine; and without flattering you, a Letter of Attorney; for a Letter of Order will not be ſufficient. You may leave a Blank for the Name of your Attorney, which Mr. *Harvey* ſhall cauſe to be fill'd up as he ſhall think fit: But if you come to this Town before the Trial, as you told me, you may avoid all this. I ſhall take the Care I have promiſed you without any queſtion. As for the Buſineſs of Mr. *Harvey*, with the [a] D. D. the Matter is, that he has diſburs'd about 200*l.* Sterling: And that altho' the [b] D. D. had ſent to pay him what he had advanced, it happens that the Perſon whom he intruſted with it did not do it: Therefore, if there were Means to give the ſaid [c] D. D. to underſtand, without hinting that it comes from hence, that 'tis not juſt Mr. *Harvey* ſhould be ſo long out of Pocket, that would undoubtedly have the deſired Effect; for which I would, in particular, be very much obliged to you, *&c.* As for News from this Country, I learn ſometimes more in the *Paris Gazette* than here, where the greateſt Part of the Houſe murmurs to ſee the *Low-Church* flouriſh. The latter are very eager for a War, but they want the Emperor and Money. *'Tis ſtrongly reported, that a Match is very forward between the Prince who is at* Lorrain, *and one of the Arch-Dutcheſſes: Let me know what's in it, ſince that's eſſential to your Wife's Intereſt.* If, as I doubt not, an Ambaſſador comes hither, I deſire you to ſend me, by one of his Domeſticks, 20 Ells of fine *Ras—de—St. Maur*, very black, and at the cheapeſt Rate, and order the Bearer to receive the Account, or acquaint me with it, that I may remit it to you. Forgive, I beſeech you, this Trouble, and believe me with a great deal of Devotion.

Priſoner. He that commits a Fault in any eſſential Matter, may do ſo in the reſt. They have opened all my Letters at the Poſt, and they have made this Book for me; there is not one Word of my writing.

[*Clerk reads.*] This is directed to *Francis Francia.* and dated

SIR, *Paris, March.* 20. 1715.

I Received yeſterday the Honour of your Letter, dated the 14th Inſtant; I confeſs to you that it is a very melancholy thing for me to be obliged to give you ſo much Importunity upon the account of a Knave, from what you wrote to me in your former. I hoped a ſpeedier Concluſion of my Affair. Notwithſtanding which, you tell me we muſt ſtill wait till the Month of *July*. This is a very long Delay: But if there be an abſolute Neceſſity for it, we muſt e'en ſubmit. Be that as it will, I beg the Favour of you, Sir, not to give any Quarter to ſuch People who deſerve none, for their Diſhoneſty which they ſhew in its full Latitude. As for the Papers I have, I ſhall ſend you ſuch as will be neceſſary for you, as ſoon as you ſhall write to me for them. But as for a Letter of Attorney, I have ſigned a general and very extenſive one, on the 7th of *Auguſt* laſt, which is as particular and as ſtrong as poſſible; there is a blank for the Name, and it was ſent to Mr. *Arthur* at *London*, by Mr. the *Chev. Cantillon* of *Paris*. The ſaid Mr. *Arthur* having made no uſe of it, you may get it out of his Hands and uſe it in your Name, or in the Name of ſuch a Perſon which you and Mr. *Harvey* ſhall think fit to pitch upon. I believe it may be ſufficient, and that the ſaid Mr. *Arthur* will make no difficulty to deliver it to you when you ſhew him this Letter. However, I would cauſe Mr. *Cantillon* to write to him if it were neceſſary.

You may aſſure Mr. *Harvey*, that I ſhall do my utmoſt to procure him Satisfaction in the Matter you write to me about, without expoſing him to any Inconveniencies. I have followed the Court too long to be ignorant how to deal with our Grandees.

Flint. It is how to deal with our Lords.

Clerk reads.] I ſhall endeavour to know preciſely the time of the Departure of the Marquis *d'Allegre*, who is to go Ambaſſador to *London*; and I ſhall charge ſome Body in his Retinue with the 20 Ells of black *Ras de St. Maur*, which you aſk of me; if there be any thing elſe for your turn, let me know it. As you tell me you learn the News of *England* in the *Paris Gazette*; ſo I [d] you *that I learn from you the Marriage of the Chevalier de St.* George *with the Arch-Dutcheſs.*

Priſoner. Is it Chevalier *de St. George* there? It is not ſo in the Original.

Cl. of Arr. It is *Ch—— de St. G——*.

Mr. *Att. Gen.* That is Chevalier *de St. George.*

Mr. *Ward.* That is no part of the Key that was given by the Priſoner.

Sir *J. Jekyll.* Read it as it is.

Mr. *Hungerford.* Let it be read then without a Comment.

Mr. *Ward.* I wiſh the Jury take ſufficient Notice, that ſome of theſe Letters are not wrote by the Priſoner, but only directed to him.

Cl. reads.] *I learn from you the Marriage of the Ch—— de St. G—— with the Arch-Dutcheſs. 'Tis true, there was ſome talk of it when the Peace was made with the Emperor, but ſince that Time no mention has been made of it. That in my Opinion would be no proper way to bring his Affairs to a happy Iſſue. A Party War would beſt ſuit with his Affairs.* God is above all; but I hope ſtill, neither do I believe my Hopes altogether ill grounded. I ſhall be glad in the mean time to ſee what Turn Affairs will take before I croſs the Sea. Wherefore I ſtill deſire you to inform me. I aſſure you, Sir, that I am more than any Body elſe in the World,

Your moſt humble and
moſt obedient Servant,
D'AULMAY.

Sir *J. Jekyll.* The former Letter from *Francia* deſires to know what there is in the report of the Marriage of the Prince at *Lorrain*, with the Arch-Dutcheſs. This Letter in Anſwer ſays, it is true, there was ſome mention of it about the time of the Peace with the Emperor; but he is of Opinion, that a Party-War would be more advantageous.

[*Clerk reads.*] *Paris*, Mr. *D'Aulmay de Coulange.*

SIR, *London, March* $\frac{18}{21}$. 1715.

BY my laſt of the $\frac{1}{12}$ Inſtant, I gave you an Account of my Proceedings againſt the Sieur *Treacher*, which I again hereby confirm to you;

[a] *Duke* D'Aumont. [b] *Duke* D'Aumont. [c] *Duke* D'Aumont. [d] *Torn in the Original.*

and

and that I ſhall get you [b] between this and *July*, or he ſhall fly his Country. *Here is a Letter for Mr. le* [c] D. D. *which, 'tis wiſh'd, may ſucceed better than the former, which have not been anſwered, though intirely for the Affairs: Beſides which, I muſt needs tell you by the Bye, that Perſons of 50 or 60 Thouſand Crowns a Year cannot with Prudence run the hazard of loſing ſuch Eſtates, unleſs more Encouragement be given them. You will be perfectly underſtood if you ſay this to ſome Perſon familiar with that Lord, or to himſelf: And I add from my ſelf, that the Misfortunes of a certain Perſon are more owing to Neglect on your ſide of the Water, than to the Party that's againſt him. So if this continues, your Wife muſt loſe all hopes.*

Priſoner. If this had not been tranſlated wrong on purpoſe, and with deſign to take away my Life, there could not have been ſuch a Miſtake made. There is a ſcratch at the bottom of the *S* to make it an *L*. It was *Ses Affaires*, *His Affairs*, and it is made, *Les Affaires*, *The Affairs*.

Whereupon the Original was ſhewn to the Interpreter, and viewed by the Court, and appear'd to be a very plain *L*, and not alter'd from an *S*.

[*Clerk reads.*] This is directed to *Francis Francia*, and dated

SIR, *Paris, April* 2. 1715.

I Have deliver'd to M. le [d] D. D. *the laſt Letter you directed to me for him; and when I inſinuated that there was in it a Complaint for not having receiv'd an Anſwer to the former, I was particularly aſſured, that an Anſwer had been written, and even in relation to what is due to Mr.* [e] *H.* That the ſame expreſs'd a Sorrow for not having clear'd with him ſooner; that ſome Miſunderſtandings had been the Occaſion of it: But that however he was deſired to mention the exact Amount of his Diſburſements, as well for the private Account, as for that of Count *de Thoulouſe*, and that the whole would be immediately put into the Hands of the Chevalier *Cantillon*, to be paid in *London* to Mr. [f] *H.* This, Sir, is what I was told Yeſterday, and which I deſire you to repeat to Mr. [g] *H.* aſſuring him, that if he thinks me proper to ſerve him in ſomething elſe, he will do me a real Pleaſure in employing me.

The Marquis *d'Allegre* does not ſeem yet very forward to ſet out for *London*; therefore if you are in haſte for the black *Ras de St. Maur*, which you have wrote to me for, let me know which way you deſire I ſhould ſend it to you, and I ſhall do it immediately; you may depend upon it.

I ſhall add nothing to the laſt Letter I writ to you concerning the Rogues our Merchants; but I ſhall continue ſtill to deſire you to rid me of that Affair as ſoon as you can.

We have nothing new here; the Works of the Canal of *Mardyke* are, by Orders from Court, redoubled. I know not what Succeſs Mr. *Cadogan*'s Journey to *Vienna* has had; but we ſeem not to be very much uneaſy at it: *I have ſpoken, as you deſired me, to the Perſon for whom you ſent that Letter which you directed to me, and who has made me the faireſt Promiſes in the World*; pray acquaint me with what paſſes in relation to Mr. *Prior*, ſince his return to *London*; and believe me ſtill moſt perfectly,

SIR,

Your moſt humble,
and moſt obliged Servant,
D'AULMAY.

Paris, Mr. *D'Aulmay de Coulanges.*

London, March $\frac{1}{2}$. 1715.

I Receiv'd the Honour of yours of the 20th Inſtant: I can aſſure you had the King himſelf to do with the Sieur *Treacher*, it would not be in his Power to get him adjudged to pay before the Month of *July*, and even in caſe the ſaid (*Treacher*) do not appeal to the Chancery, which 'tis not probable he will do, becauſe in ſuch a Caſe a Merchant entirely loſes his Credit, and beſides he ſhould be obliged to depoſit 300 Pounds, for which I formerly arreſted him, which would not at all ſuit with him: Therefore, Sir, be aſſured that I ſhall do all that can be done, notwithſtanding all his Threats againſt me, for having been, ſays he, ſo bold as to ſue him. I am only ſorry, not to have begun ſooner, and to have ſhewn him any Civility. *Mr.* Harvey *and I ſhall be very much obliged to you, if you can find an opportunity to have Juſtice done him. I am perſuaded, that to deal with him in this manner is no good Policy, and if ever I have the Honour to confer with you, I ſhall convince you, how by neglects (which however are not uſual with Men of your Nation) moſt ſerious Affairs have miſerably miſcarried.* As for News, we hear nothing but an approaching War. 'Tis even pretended that the Emperor is coming again into our Meaſures, but I do not believe it: Nor do I ſee any poſſibility of raiſing Funds for a new War, at a time when People are at their Wits ends to pay the bare Intereſts of the Debts contracted in the laſt. I am very much obliged to you for your intention to ſend me 20 Ells of Cloth of St. *Maur*, by the opportunity of the Marquis *d'Allegre*, or otherwiſe by any other that may offer: I likewiſe offer you whatever there is in this Country, and if it were a thing of ſmall bulk, we have often opportunities of Friends who go over into *France*. Our Parliament will begin their Seſſion very ſoon, they meet this Day to chooſe a Speaker: We are going to ſee what will be the upſhot of all the Threats. I kiſs your Hands, and am——

You may deſire Mr. *Cantillon* to write to Mr. *Arthur*, to deliver to Mr. *George Francia* the Letter of *Attorney* he has in his Cuſtody; for I have reaſons not to demand it my ſelf of the ſaid *Arthur*.

Paris, Mr. *D'Aulmay de Coulanges.*

London, $\frac{\text{March 28th,}}{\text{April 8th,}}$ 1715.

I Have the Honour to tell you that yours of the 2d Inſtant is come to my hands, and that I have given [a] Mr. *H.* an account of the Subject Matter of your Negotiation. He is, as well as my ſelf, the more obliged to you for it, in that we believe we ſtill have occaſion for the Continuation of your good Offices with the [b] D. D. *What you ſay at the end of your Letter, of your having ſpoken conformably to what I had deſired of you, is ſufficient, and therefore every thing ought now to be expected*

[b] *A word is here wanting in the Original.* [c] *The Duke* D'Aumont. [d] *The Duke* D'Aumont. [e] *Mr.* Harvey. [f] *Mr.* Harvey. [g] *Mr.* Harvey.

from

from your ſide of the Water, that is to ſay Explanations, &c. I was adviſed in order to prevent the Sieur *Treacher*'s removing the Law-Suit to Chancery himſelf, in which Caſe he would become Plaintiff, to call him before that Court, that he may anſwer the Interrogatives I ſhall put to him; which I have done, and he muſt anſwer the ſame within a Month at fartheſt, and I ſhall purſue him cloſe: 'Tis the moſt able Lawyer in this Countrey, who does me the Favour to give me this Advice, which will hinder him from Appealing, in caſe he ſhould have a mind to it, which might have kept you in Play ſeveral Years.

We ſee by the King's Speech to his Parliament, that there are yet no Alliances made; and by the Addreſſes of the Lords and Commons, we perceive plainly that they have an itching towards a War; but at the ſame time they give to underſtand, that they know not which way to go about it: And beſides the Party of the *Pacifick* is far more numerous than the others, altho' the others have at preſent the majority of Votes in the Parliament; of which three Parts in four of the Houſe are highly incenſed, and yet more to ſee they pretend to impeach certain Perſons of the laſt Miniſtry, which will infallibly make a great Noiſe: And if the Whigs would follow my Advice, and I were willing to give them a good one, they ſhould lie ſtill. Mr. *Prior* is one of theſe pretended Victims; his Papers are looked over with malicious Eagerneſs; he is taxed with having received great Preſents in *France*; particularly a great ſett of Silver-gilt Plate; I believe that if it be ſo, he is ſo much the richer for it. This is all that occurs at preſent, and that I am without reſerve.

Paris, Mr. *D'Aulmay de Coulanges.*

London, April $\frac{7}{17}$ 1715.

I *Am ordered to tell you from Mr.* Harvey, *that you will oblige him in deſiring Mr.* Le [a] D. D. *from him, to ſend hither ſome Body to fetch the Horſes and Dogs which he has had ſo long, or elſe to give order to ſome Body to take them. Things are here in ſuch a poſture, that great Caution ought to be uſed, not to give Umbrage to thoſe in Power, who may put a wrong Conſtruction upon the leaſt Trifles*, eſpecially ſince the departure of my Lord *Bolingbroke*, who is looked upon here as innocent, and People do not ſee how he could be any ways hurt, notwithſtanding the Superiority of the Low Party in Parliament, which however is divided into two, who terribly croſs each other, one of which Parties will at laſt join with the Tories, if the latter are willing: We may draw Conſequences: The Dutcheſs of *Portſmouth*, who is at preſent here, gives a great deal of Offence, as I am inform'd, by pretending to prove that the late King *James* had poiſon'd his Brother *Charles*; it was not expected, that after ſo many Years Retirement into *France*, ſhe ſhould come hither to revive that vulgar Report, which at ſo critical a Time cannot be for any good Purpoſe.

I have nothing to add to the Affair of your Merchants, but what I have already acquainted you with. On the other hand, I confirm to you all that I have recommended to you to tell the Perſon I wrote to laſt. Kiſſing your Hands, I remain ——

We expect here ſhortly the Marquis *d'Allegre*, for our Ambaſſador at your Court has Orders to take a Character upon him. I hope you will find means to charge ſome Body in the Retinue of the former with the 20 Ells of *Ras de St. Maur*, and 20 Ells of *Taffety*, with blue and white Stripes, for a Woman's Summer Suit; leſs than 20 Ells would do, if it be broader than half Ell, and if it be poſſible, to ſend at the ſame time a Scarf made of a good black Silk pinked, for a Woman of a moderate Size, and ſlender, you will oblige me, and when you ſhall acquaint me with the Price of the whole, I ſhall either pay it to the Perſon who ſhall be charged with it, or ſhall remit it at your choice, *&c.* As for the Scarves, they are ſold ready made at the Palace ——

Since what's above written, the Honour of yours of the 12th Inſtant is come to my Hands. I ſhall cauſe your Letter of Attorney to be got out of Mr. *Arthur*'s Hands. There are at preſent great Debates in the Parliament: There was a Member of the High Party, who had the boldneſs to ſuggeſt, that this preſent Parliament was illegally aſſembled, ſince the King in his Proclamation gave the People to underſtand, that it would be a great Satisfaction to him if they choſe Whigs, which he ſaid is againſt the Fundamental Laws of the Kingdom; whereupon there aroſe high Debates, and by the Majority of Votes, to the great Surprize of the Publick, who expected that that Member ſhould be ſent to the Tower, it was carried by a hundred Voices, that the ſaid Proclamation ſhould be examined; which 'tis thought will cauſe great Diviſions. *When I have any thing particular to impart, I ſhall do it by a ſtrange Hand, and ſubſcribe* James Chrêtien, *which you muſt take notice of, and provided you acquaint me that you have received this preſent Letter, without being opened, I ſhall be eaſy.*

Directed to *Francis Francia*, and dated

SIR, *Paris, April* 24. 1715.

I Have received your two Letters of the 8th and 18th Inſtant. I am very much obliged to you for having removed to the Chancery the Law-Suit I have with *Treacher*, ſince you think it the moſt expeditious way to make an end of it: I ſtill beg of you the continuation of your Care, in order to compaſs the ſame; as alſo to acquaint me how that Affair ſtands at preſent. I reckon that Mr. *Arthur* has by this time delivered to you my general Letter of Attorney, according to the Order he has for it from the Chevalier *Cantillon*, of which you will alſo be pleas'd to inform me.

The Time of the Marquis *d'Allegre*'s departure for *London* is not yet known here. I ſhall not then fail to deſire ſome Body in his Retinue to charge himſelf with the *Ras de St. Maur*, Luteſtring and Scarf which you have deſired of me.

Your laſt was delivered to me very ſafe yeſterday in the Evening: Be eaſy as to that Matter, as well as to whatever Mr. James Chrêtien *may write to me; pray deſire him when he does me the pleaſure to write to me, to be very particular as to Facts, and to be well informed before hand: In all which I rely on your Prudence. If during theſe troubleſome Times Mr.* [b] H. *ſhould think fit to make uſe of Mr.* J. Chrêtien, *he may:* But his Letters ſhould be directed to my ſelf, and I ſhould afterwards make what uſe of them he ſhould think fit. Aſſure him ſtill

[a] *Duke* D'Aumont.

[b] *Mr.* Harvey.

of my readineſs to ſerve him, and that I ſhould be very glad to give him Marks of my Gratitude, for the Trouble he takes, as well as your ſelf, in my Affair with *Treacher*.

When the Character of the Dutcheſs, who is lately gone to *London*, ſhall be well known, People will not be ſurpriz'd at the Part ſhe actually plays there; but I hope it will produce a different Effect from what ſhe expects, and that we ſhall come at laſt to a happy Unravelling.

[a] Mr. *le D. D.* was to ſend about a Fortnight ago one of his Men to *London*, to bring him his Horſes and Dogs. If he is not yet gone, I ſhall not fail preſſing for that Matter.

Pray let us hear from you as often as poſſible, and ſtill believe me moſt perfectly,

SIR,

Your moſt humble,

and moſt obedient Servant,

D'AULMAY.

My Lord Stairs *has not yet taken any Character.*

This is directed to *Francis Francia*, and dated,

SIR, *Paris, May* 1. 1715.

I Have received yours of the 25th paſt, with that of Mr. [b] *H.* for the [c] D. D. which I have ſent to him into the Country, where he is at preſent. At his return, I ſhall not fail telling him what you tell me about what is due to the ſaid Mr. [d] *H*——, and in what manner he deſires the ſame to be remitted to him. Aſſure him that in this, and every thing elſe, I ſhall ever do my utmoſt to do him Service.

By your Letter of the 8th of *April* laſt, you acquainted me with the Care you had taken to remove to the Chancery my Law-ſuit with *Treacher*, by which means he would be obliged to anſwer within a Month, and therefore I hope that in a ſhort Time you will acquaint me with the Concluſion of that Affair, for which I ſhall be very much obliged to you: I little know how Juſtice is adminiſter'd in ſuch a Caſe in *England:* But this I know, that in *France*, that honeſt Fellow would long before now have been brought to Reaſon; however, we muſt wait with Patience to the End.

Pray aſſure Mr. *J. Ch.* that I am, and ſhall be very much obliged to him for what he ſhall write to me: He may likewiſe depend upon it, that I ſhall make good uſe of it; therefore let him continue to let me hear from him the oftenеſt he can; but above all let his News be certain, and very particular.

There's yet no Talk here of the Earl of *Stairs* being near taking his Character. I muſt alſo add, that 'tis not yet known, when the Marquiſs *d'Allegre* will ſet out, but what's believed as certain is, that they will out of hand work upon the Fortification of *Mardyke:* Draw your Conjectures upon it.

I am very impatient to know what paſſes relating to the Proſecution of the late Miniſtry, particularly concerning the Duke of Ormond, *whoſe Name my Wife bears, and is his near Relation, her Name is* Butler *of* Kilcom: That Family may not be unknown to Mr. [e] *H*—— however the Ch. (Sir *Thomas*) *Hanmer* knows it perfectly well.

We have at preſent no important News in this Country, unleſs it be conſiderable Bankrupcies among thoſe called *Agioteurs* (or Stock-Jobbers) of which there are daily a great Number, and ſuch a Scarcity of Money, as paſſes all that can be expreſſed. I am ſtill,

SIR,

Your moſt humble,

And moſt obedient Servant.

Letter from *Francis Francia.*

Paris, Mr. *D'Aulmay de Coulanges.*

London, $\frac{\text{May 30th,}}{\text{June 10th,}}$ 1715.

MY laſt to you was of the Inſtant; this is to tell you, that without loſs of Time you muſt ſend another Letter of Attorney, with a Blank for the Name; for Mr. *Arthur*, after having kept us long at a Bay, ſaying he would look for it, now ſays it is loſt: Be that as it will, you muſt revoke that Letter of Attorney, for we are here in Danger, if *Treacher* ſhould bethink himſelf of asking by what Authority he is Proſecuted, leſt, not being able to produce any Letter of Attorney, this Suit ſhould be diſmiſs'd with Coſt; you therefore ſee the Conſequence: As for the reſt, the Affair is on a good Foot, and I believe he'll not ſtay till he's caſt. Yeſterday in the Evening, being the Anniverſary of the Reſtauration of King *Charles* II. there were here great Riots; nothing was heard among the People but Curſes againſt the preſent Miniſtry, and long live *James* the Third, and the Duke of *Ormond.* This being ſo publick, that it cannot fail reaching your Parts, I acquaint you with it, and aſſure you that

I am, *&c.*

Mr. Harvey *ſalutes you, and bid me tell you, that when there is any thing New, if he cannot write to you himſelf, he will cauſe the Sieur* J. C. *to do it for him.*

This is directed to *Francia*, and dated,

SIR, *Paris, Auguſt* 7. 1715.

AT this very Inſtant I receive your laſt of the firſt Inſtant. I will not ceaſe returning you Thanks for the Care you are willing to take of my Affair, deſiring you ſtill to continue to the End.

You have Reaſon to be angry at the Indolence (or Supineneſs) you expoſtulate about, but be perſuaded 'tis only ſo in Appearance. I even hope that by this Time you have convincing Proofs of it, and that ſuitable Returns are made to the good Diſpoſitions; ſo that with God's Bleſſing upon our Friend's good Cauſe, he will at laſt caſt his Adverſary, *at leaſt no Succours, or powerful Sollicitations ſhall be wanting.* Let me hear, I beſeech you, about it as often as you can; and depend upon it, that by ſo doing you will oblige Perſons, who in a proper Time and Place will be thankful to you for it. The Poſt (going off) preſſes me, therefore I con-

[a] *The Duke* D'Aumont. [b] *Mr.* Harvey. [c] *The Duke* D'Aumont. [d] *Mr.* Harvey. [e] *Mr.* Harvey.

clude, assuring you still, that no Man can be more truly than I am,

SIR,

Your most humble,

And most obedient Servant,

D'AULMAY.

Prisoner. That is wrong translated. In the *French* it is *Gagner sa Cause*, which is *gain his Suit*; and they have translated it, *cast his Adversary.*

Mr. *Cowper.* He talks of powerful Sollicitations on our Side, that is in *France*; and what could that be to a Law-Suit here?

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

SIR, *Paris, August* 10. 1715.

LAST Night I receiv'd your last of the fifth Instant; pray be easy, and e're it be long you'll be satisfied.

The Chief of the Name of our Friend the Abbot, arrived here on Tuesday *Night in good Health. He is very well pleased, and has Reason to be so. He prepares to return Home with all speed, and will carry thither his Friends to spend the Vacation Time. This very Moment I'm going to wait upon him; I reckon to attend him in his Journey, or to be with him soon after his Departure.* Pray continue informing me the oftenest you can, of your Health, and of that of our Friends: You know how dear they are to me, and what Concern I have in them; therefore do not deny me that Favour, nor that of believing me perfectly as I am,

SIR,

Your most humble,

And most obedient Servant,

PAYEN.

Mr. *Cowper.* Tho' this Letter is sign'd *Payen*, yet it comes from *D'Aulmay*; he says the Chief of the Family is arrived here; that is, the Duke of *Ormond.* And that he was to return from thence, and keep his Vacation in *England.* Hitherto the Correspondence was with the Duke *D'Aumont*, but from this Time it is with the Duke of *Ormond.*

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

SIR, Paris, August 21. 1715.

THIS is in Answer to your two Letters of the 12th and 15th Instant. I should have sooner answered the first, had it not been deliver'd to me after the Departure of the last Post. *Our Friend's Law-Suit will shortly, God willing, be ready for Trial, every Thing is preparing for it. The Friend, my Wife's Relation, has read your two Letters, with which he is very well satisfied. He desires you, as well as myself, to let us hear from you as often as you can.* Since his Arrival he has had two Fits of a tertian Ague, of which the Bark has rid him. He was purged Yesterday Morning, and in the Afternoon went to take the Air, so that he is now in perfect Health, and in a Condition to attend his Affairs with full Liberty. I have not heard from Mr. [a] *H.* and I do not believe he has changed his Habitation; at least it is not come to my Knowledge. The King has been indisposed for some Days past, but without Appearance of any ill Consequence. Thanks be to God, who will preserve him to us a long Time in his Mercy.

Half a dozen Souls of *Lower Normandy*, and as many of *Mans*, must needs possess the Body of *Treacher*, and inspire him with all the Chicanes he plays me. I shall write to him by the next Post, in the Stile you advise me, and agreeably to my own Thoughts; for I swear to you, there's nothing I shall leave undone to get my Right of so great a Knave; I hope you will second me, and that you'll give him no Quarter. Pray acquaint me with what you have done upon this last Incident.

Sir, I salute you, and am perfectly,

Your most humble,

And most obedient Servant,

PAYEN.

Mr. *Cowper.* This explains that there was another Cause depending, besides that of the Law-Suit: For he says, our Friend's Cause will soon be ready to be tried, all Preparations are making for it. Now there was no Cause depending in *France*, for this is a *French* Letter from *D'Aulmay*, and it is not pretended that there was any Law-Suit depending on that Side the Water.

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

August 24, 1715.

I Am very much surprized not to have heard from you by the Post that came in Yesterday. Our Friend was at my House expecting the same. We desire you both, Sir, not to let one Post go off without writing to us, and acquainting us with what passes with Relation to our common Friend's Law-Suit. When you see Mr. [b] *H. assure him that all our Friends are perfectly well.* The King's Health grows better and better, Heaven be praised.

I have had so much Business for some Days past, that I could not write to Treacher: I would do it speedily, but I still desire you not to give him any Quarter, and to believe me perfectly,

SIR,

Your most humble,

And most obedient Servant.

PAYEN.

Mr. *Soll. Gen.* This shews a Distinction between the Cause of their Common Friend, and the Cause of *Treacher.*

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated

SIR, *August* 28. 1715.

I Received your Letter of the 22d *Instant. Were I permitted to give you a Detail of all that passes concerning the Affair you know, you would be more easy*

[a] *Mr.* Harvey.

[b] *Mr.* Harvey.

than to me you appear to be, and charge us with leſs Negligence than you do. I know there are favourable Moments, which 'tis dangerous to let ſlip; but then will you not agree with me that 'tis Matter of Prudence to foreſee all Inconveniencies, and in order to that to take ſuch right Meaſures as to be able to ſurmount them all? This is now doing, be perſuaded of it, and that your Friends are more zealous than ever to procure you all the Satisfaction you may deſire, therefore be eaſy ſome time longer. You did me the Pleaſure to acquaint me, that on the 29th paſt, *Treacher* was adjudged to deliver to us his Account within a Fortnight, that he had ſince made a new Chicane, demanding Security for his Charges, and with the Meaſures you were pleas'd to take upon this Demand. I therefore believed that after this we might hope to ſee an End of this Affair, and that nothing now remain'd but to perform the Judgment or Rule of the 29th of *July*, nevertheleſs we are ſtill put off to the Month of *October*. Pray acquaint me with the Cauſe of it.

We are here in a cruel Uncertainty about an Affair of the laſt Importance, God grant it may have a happy Iſſue. Pray continue writing to me every Poſt, and believe that I am ever with all my Heart, Sir, your moſt humble and moſt obedient Servant,

PAYEN.

Mr. *Denton*. This appears to be a Letter in Anſwer to *Francia*'s, wherein he complains that Things are not carried on with Vigour; I know, ſays he, there are favourable Moments that are not to be let ſlip; and then at laſt he concludes with the private Affair of *Treacher*.

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

SIR, *September* 3. 1715.

I Received this very Inſtant your laſt of the 29th paſt, and as the Poſt is going off, I have only Time to write an Anſwer. I did not write to you by the laſt Poſt, neither did I receive any of your Letters. I am extream ſorry for all the Trouble I give you with reſpect to the Law-Suit I have with that Rogue, I ſhall ſtill hope that thro' your Care we ſhall both be ſhortly rid of him.

We have at laſt had the Misfortune to loſe the greateſt of Kings, who, as undoubtedly you know it already, died on Sunday *laſt at a Quarter paſt Eight in the Morning, with all the Sentiments of Religion and Greatneſs that were ever obſerv'd in the greateſt Heroes; and indeed 'tis generally acknowledged, that he never was greater than in the laſt Moments of his Life.* *Monday* Morning my Lord Duke of *Orleans*, accompanied by the Princes of the Blood, and the Dukes and Peers, repair'd to the Parliament, where he was declared Regent of the Kingdom with all the Authority due to that Dignity and his illuſtrious Birth. All *France* is over-joy'd to be under his Government, from which they can certainly expect nothing but happy Days, ſince no Perſon in the World has more Grandeur, Equity, Penetration, and Virtues in general, than that Prince. *The Journey to* Germany *would be proper enough, and I wiſh it may be performed, the rather becauſe for the Reaſons you know; our Meaſures have been ſomewhat ſuſpended, tho' not in the leaſt broke, Things going on ſtill better and better; be perſuaded of it, as alſo that due Notice is taken of your good Will.* In particular [a] Mr. *H*—— muſt undoubtedly be where you were told, for he has not appear'd here. *'Tis true my* [b] D. D. *and* [c] M. B. *are in a Houſe within a ſmall half League of this City, which a private Perſon has lent them, but they receive there all their Friends, with whom they go to dine and ſup every Day; they are both in perfect Health, and their Thoughts are very different from thoſe that are aſcribed to them, I mean that they are ſuch as they ought to be; aſſure their Friends of it.* It is not poſſible for me to ſend to you to Day what you deſire of me, 'twill be for the next Poſt. Let no one ſlip without acquainting me of your Health, for which you know I am more concern'd than any Body elſe, and be perſuaded that I am, more than any Man, Sir, your moſt humble and moſt obedient Servant,

PAYEN.

Mr. *Cowper* junior. This Letter gives an Account of the Death of the *French* King, and tho' Things may be ſuſpended, ſtill they will go on, and it will be for the better.

Mr. *Denton*. The next Letter is not directed to any Body, it came under a Cover, which is loſt; it appears to come from *D'Aulmay*, but not to be directed.

L. C. Baron. Is this one of them that was found in his Houſe?

Mr. *Denton*. This is one of them found there, and owned by him.

[*Clerk reads.*]

SIR, *September* 6. 1715.

YOUR Letter of the ſecond Inſtant was juſt now deliver'd to me. My laſt inform'd you, that 'twas only on the firſt Inſtant we had the Misfortune to loſe the greateſt of Kings, but that for the Comfort of *France*, God had reſerv'd M. the Duke of *Orleans* for our Regent. I cannot write any thing that can be depended upon in relation to what you deſire of me by your two laſt, as ſoon as there is any thing I ſhall inform you of it. Since the Abbot *B*—— came into this Kingdom, he has been very often in the Country; he is ſtill actually there; as ſoon as he is return'd I ſhall not fail ſpeaking to him according to what you write; as I have no Intimacy with any Merchant, and he muſt be one that I can depend upon to make uſe of his Direction, I cannot give it you this Day, but I hope I may by the next Poſt; *in the mean time pray continue writing directly to me, and if you have any truſty Hand, other than your own and your Sons, it would not be amiſs to make uſe of it; I even am of Opinion, that a Key or Cypher for the principal Names which you may ſend me, and of which you ſhould keep a Copy for your own Uſe, would be neceſſary, for I will ingenuouſly own to you that ſuch a Precaution appears to me very neceſſary.* You'll find here enclos'd the Picture you have deſired of me; it being impoſſible to ſend it to you without folding, when you have received it you muſt wet a Cloth, which you'll lay on a Table, and will lay alſo

[a] *Mr.* Harvey. [b] *Duke of* Ormond. [c] *Lord* Bolingbroke.

the Print upon it, which will take the Plaits away. The Post (going off) presses me, and I have but just Time to tell you that I am your most humble, and most obedient Servant,

PAYEN.

Prisoner. My Lord, this Letter is another Hand, and there is no Direction on it.

L. C. Baron. It was found among your Papers, and you own'd it; that is prov'd by the Secretaries.

Prisoner. This was pretended to be stopp'd at the *Post-Office.*

L. C. Baron. No, it was found among your Letters.

Mr. *Soll. Gen.* The next Letter is very particular; he says the Cause of the Common Friend will be at an End in a little Time; but as to his own particular Cause, he was unhappy to have to do with so troublesome a Man.

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

SIR, *Sept.* 14. 1715.

I Did not write to you by the last Post, by reason I did not receive your last Letter, which by the by is without Date, till the Day after its Departure. Nor did I receive any from you by the Post that came in Yesterday, so that you owe me Answers to my two last, which I expect with Impatience, particularly an Answer to my last, by which I sent you what you had desir'd of me. *The Contents of your last without Date have given me a great deal of Satisfaction, as well as to all our Friends, who return you Thanks for it, and have charged me to assure you of it, and desire you to continue. We knew already Part of what you write about our Friend's Cause, which with God's Blessing, will soon end to his Satisfaction, otherwise all Appearances would be very deceitful. As for my own Cause, I cannot forbear telling you, that I am very unfortunate in having to do with so dishonest a Man;* after having trusted my Goods with him, and loaded his Partner with Services and Civilities during his Stay here. But my Comfort is, that you will not give him a Moment's Respite, and that you will at last rid me of his unworthy Chicanes. I could have wished the Abbot had not embark'd me with such People; although I am persuaded he did not do it with any ill Intention, yet I find myself embarrass'd with those Scoundrels, whom I trusted only at his Desire.

The King went the Day before Yesterday to the Parliament to hold his Bed of Justice, where the Regency was confirm'd to the Duke of *Orleans*, with all the Authority which such a Dignity deserves. We have nothing else new at present. If any thing happens I shall not fail acquainting you with it. I am most perfectly, Sir, your most humble, and most obedient Servant,

PAYEN.

As we go at this time pretty often into the Country, be not uneasy if perchance I should fail some Post or other, answering your Letters regularly, which however will not be, except when I shall be absolutely obliged to it.

Here's a Direction which you may use for the future if you think fit. But in case you do, you must conform yourself to this Model, and mark two Strokes both before and after the Word *Paris.*

To Madam, Madam the Widow de *Beaugé*, Merchant, at the *Fair Star*, *Rue Tirechape.* =*Paris*=

Mr. *Att. Gen.* The Correspondence now began to be dangerous, and therefore it was to be directed to a Woman, that there might be the less suspicion.

[*Clerk reads.*]

This directed to *Francis Francia*, and dated,

SIR, *September* 17. 1715.

YOUR last of the 9th Instant, which I should have had on *Friday* last, was not deliver'd to me till *Sunday* in the Evening. I ascribe this Delay only to the Winds, which may have hinder'd the Packet-Boat from having as quick a Passage as usual. I have caused the three Letters which you have directed to me, to be put into the Post-House.

My [a] *D. D.* had already shew'd me the Epitaph you have sent me, which with Gentlemen will ever pass for the Spring of *Cerberus.* I hope also that infamous Author will sooner or later be rewarded according to his Deserts. His Insolence may even be attended with some unexpected Consequences. We have, Thanks be to God, a just and equitable Regent, from whom we may hope every thing, he has already given us Proof of it, by the good Order he has settled in all Affairs, which indeed had a great Occasion for it.

You must undoubtedly have received by this time the Picture you desired of me, and I hope you will acquaint me with it by the next I shall receive from you.

All our Friends are, thank God, in perfect Health, My [b] *D. D.* had some Days ago a slight Fit of an Ague, which had no Consequence. *We are here, as well as you, impatient to attain the End propos'd. But we must take Patience, and be ruled by those who are at the Helm.* I still assure you, Sir, that I am with Sincerity your most humble, and most obedient Servant.

Mr. *Soll. Gen.* We shall conclude the Letters with a very particular one from *D'Aulmay*, which taxes *Francia* with Impatience, and takes notice, that Mr. *Harvey* was eager for going into *France*, but it was the Duke of *Ormond*'s particular Advice, that he should not go, because probably they might come over to him.

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

SIR, *September* 23. 1715.

IN *Answer to your last of the* 16*th Instant, I begin with telling you, that our Friends are much to blame to throw themselves so precipitately into Im-*

[a] *Duke of* Ormond.

[b] *Duke of* Ormond.

patience,

patience, especially [a] M. H. *to whom you shall communicate this Letter as soon as you have receiv'd it, and tell him he must by no Means think of coming hither, as by your last you acquainted me he is preparing to do.* *'Tis my* [b] D. D. *who charges me expresly with what I write to you, and who desires him to stay. He may easily guess at the Reason, which will give you all to understand, that this is not a time to be impatient, but to shew more Resolution than ever.*

Perhaps some Letters for me will be delivered to you; as soon as you have received them, I desire you to forward them to me, either with the Directions I have sent you, or directly with my own.

You know perhaps by this time, that 'tis pretended that there are at *Havre-de-Grace* two Ships on Board of which are Arms, which has alarm'd some People, but without ground. For if that News be true, they must be Arms that are sent as a Present to the King of *Persia*, as I am told; therefore this ought not to make any Body uneasy. As for the rest, Sir, let all of us recommend our selves to God, and hope we shall soon be quiet, you at home after your wise Government, shall have dissipated all the Feuds that disturb the Tranquillity, and we by the paternal and indefatigable Care which my Lord Duke of *Orleans* takes upon him to procure us, the Repose which we have so great Occasion for, and of which we have so long been depriv'd.

You will judge of it by the List I send you of the Councils he has lately establish'd, and which are certainly made up of the most able, and most worthy Persons in the Kingdom. I expect to hear from you, and ever am, Sir, your most humble and most obedient Servant,

PAYEN.

Whereabouts are we with our honest Man? I hope you will acquaint me by your next.

Mr. *Denton*. My Lord, the time when the King was pleas'd to acquaint the Parliament with the Design of the Invasion, was the 20th of *July*.

We have a Copy of the Speech examined.

Then Mr. *Paxton* was sworn.

Mr. *Soll. Gen.* Have you examined this, and is it a true Copy?

Mr. *Paxton*. Yes.

Mr. *Soll. Gen.* Where did you examine it?

Mr. *Paxton*. At the Parliament Office.

Mr. *Hungerford*. What did you examine it by?

Mr. *Paxton*. By the Journal of the House of Lords.

Clerk reads. *Die Mercurii* 20 *Julii* 1715.

His Majesty after conferring with the Lord Chancellor, spake as follows.

My Lords and Gentlemen,

I Have given Direction to my Lord Chancellor to declare to you in my Name and Words, a Matter I think of the greatest Importance.

Then the Lord Chancellor spake as follows;

I have received his Majesty's Commands, to deliver to you in his Majesty's Name this his Majesty's Speech now put into my Hands by his Majesty from the Throne.

My Lords and Gentlemen,

THE Zeal you have shewn for preserving the Peace of my Kingdoms, and your Wisdom in providing so good a Law to prevent all riotous and tumultuous Proceedings, give me great Satisfaction, but I am sorry to find that such a Spirit of Rebellion has discover'd it self, as leaves no Room to doubt, but these Disorders are set on Foot and encourag'd by Persons disaffected to my Government, in Expectation of being supported from Abroad.

The Preservation of our Excellent Constitution, and the Security of our Holy Religion, has been, and always shall be my chief Care; and I cannot Question, but your Concern for these invaluable Blessings is so great, as not to let them be exposed to such Attempts as I have certain Advices are preparing by the Pretender from Abroad, and carrying on at Home by a restless Party in his Favour.

Gentlemen of the House of Commons,

In these Circumstances I think it proper to ask your Assistance, and make no doubt but you will so far consult your own Security, as not to leave the Nation under a Rebellion actually begun at Home, and threatned with an Invasion from Abroad in a defenceless Condition; and I shall look upon the Provision you shall make for the Safety of my People, as the best Mark of your Affection to me.

Sir *J. Jekyll*. My Lord, We shall not trouble the Court nor the Jury, with reading any more Letters; I only take leave to observe shortly upon the Letters which have been read. The Correspondence began with a Desire from *D'Aulnay* to have some Correspondence about Affairs here, because his Wife was related to the Duke of *Ormond*. *Francia* tells him, there was a Discourse about the Marriage of the Pretender with the Arch-Dutchess, which, says he, *is essential to the Interest of your Wife*. *D'Aulnay* writes in Answer, *that there had been some talk of that Marriage but he don't care to come into it*: He thinks *a Party War would be much better*. *Francia* writes again, *that it can't be expected that Persons of Fifty or Sixty Thousand Crowns a Year should run the hazard of losing such Estates, unless more Encouragement were given them*. And that is followed by another Letter from *Francia*, wherein he writes, *that now we are to expect every thing from your side the Water, that is Explications*, &c. Then he desires him if he thinks proper, *that he would change his Name, and write by a strange hand*.

There is this observable in these Letters, that the Prisoner plainly shews his desire that there should be an Assistance for the Pretender from *France*; and so all the Letters taken upon him fall into that Design; nay, he was anxious and impatient for the critical Minute. The Death of the *French* King is taken notice of to be a great Loss, yet he is assured that things will revive again; for that Person that succeeded in the Government, had favourable Thoughts and Intentions.

The Letters that are entered in his Copy-Book speak very plainly; and Gentlemen, what can be the purport of those Letters of the Prisoner's that are not entred, that can't be sought for any where but in those Letters which were sent hither in Answer to them; and he is so far from pretending that these were not Letters sent in Answer to his Letters, that when he came to be examined,

[a] *Mr.* Harvey.

[b] *Duke of* Ormond.

he told what the Deſign of them was; *that it was the Deſign of the Pretender to invade his Majeſty's Dominions*; and therefore it now appears plainly to you, that he did ſollicite Aid and Aſſiſtance in order to an Invaſion from Abroad, and an Inſurrection at Home, in favour of the Pretender, and in order to depoſe his Majeſty.

Mr. *Att. Gen.* We ſhall leave it here, and ſubmit it to your Lordſhip and the Jury, upon the Evidence we have offer'd.

Mr. *Ward.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Council for the Priſoner, and what I ſhall humbly offer to your Lordſhip before we go into our Evidence, is a ſingle Point, we ſhall lay before you and inſiſt upon; a particular Circumſtance in the Indictment, which is ſuch, that conſidering the Circumſtance of my Client, it is impoſſible as the Law ſtands, that he ſhould be guilty in ſuch manner as is charged in the Indictment.

The Priſoner happens to be an Alien born, he was born at *Bourdeaux* in *France*; he came from thence into *England*, and never was Naturaliz'd. He owes therefore no natural Allegiance, nor can be guilty of any Treaſon againſt the King as his natural Liege Lord, as it's laid in this Indictment.

There is a Diſtinction of a double Allegiance, one that is due from a natural born Subject, and the other that is due from an Alien. The latter owes only a local Obedience with reſpect to his Protection, whereas the former owes it in reſpect of his Birth. This is a Diſtinction well known in *Calvin*'s Caſe. It appears, that if an Indictment for Treaſon be againſt an Alien, it muſt be charged to be againſt his Allegiance in general, but not againſt his natural Allegiance. This is taken notice of in a great many Caſes. In the Reports of my Lord *Hobart*, *Vaughan*, and *Keyling*, there are ſeveral Caſes which ſhew this Diſtinction.

In my Lord Chief Juſtice *Holt*'s time, in the Trial of *Cranborn* and *Lowick*, *April* 22. 1696. an Exception was taken to the Indictment; that it was not ſaid *Contra naturalem ligeantiam*; and in that Caſe, *Calvin*'s Caſe was agreed to be Law. It was held, that in caſe of an Alien, he ow'd only a general Allegiance; and it was agreed, that in caſe of an Alien, it muſt not be *Contra naturalem ligeantiam*; and my Lord Chief Juſtice *Holt* ſays, if it were ſo, it would be ill. And it may be given in Evidence, that he is an Alien, in order to acquit him of a Crime, charg'd to be againſt his natural Allegiance; there is none ſuch due.

Mr. *Hungerford.* My Lord, the Objection is founded on a Fact. If the Fact is admitted, we will argue upon it; if not, we will call ſome Witneſſes to prove it.

Then *Simon Francia* was ſworn.

Mr. *Hungerford.* Pray give an Account what you know of the Priſoner, what Countryman he is, and where he was born?

Simon Francia. He is my Brother, he was born in *France* at *Bourdeaux*.

Mr. *Att. Gen.* Are you Elder or Younger than he?

Simon Francia. I am Four Years Elder.

Mr. *Att. Gen.* How then can you remember what was done when you was Four Years old?

Simon Francia. I can't remember the Day of his Birth, but I was bred up with him at *Bourdeaux*, we were all born in the ſame Houſe.

Mr. *Hungerford.* What Age was you of when you firſt remember him?

Simon Francia. I remember him when I was about Six Years old.

Mr. *Hungerford.* And you don't remember that your Father and Mother came to *England* in that time?

Simon Francia. No.

Mr. *Hungerford.* Did your Father and Mother live at *Bourdeaux* when you was about Six Years old?

Simon Francia. Yes.

Then Jaques Gonſales *was ſworn on the Books of* Moſes. *And an Interpreter was ſworn, becauſe the Witneſs ſpoke* Engliſh *very imperfectly.*

Mr. *Hungerford.* Pray give an Account what Countryman the Priſoner is, and where he was born?

Gonſales. The Priſoner is the Son of *George Francia*, and *Mary Gonſales* my Siſter. He was born at *Bourdeaux* the 26th of *March*, *New Stile*, 1675.

Sir *J. Jekyll.* How do you know he was born there?

Gonſales. Becauſe I was preſent when he was born. My Houſe was over-againſt my Siſter's, who was the Priſoner's Mother; afterwards he was baptized in the Church of St. *Andrew*.

Mr. *Hungerford.* We have two or three Witneſſes more, his Godfather and Godmother; but I think it plainly prov'd by theſe Witneſſes, ſo that we need not go any further. Mr. *Attorney*, do you admit it, or ſhall we examine more Witneſſes?

Mr. *Att. Gen.* Prove what you can.

Mr. *Hungerford.* Then Mr. *Attorney*, you admit what we contend for. I am ſure if he be a good *Engliſhman*, he cannot be a falſe Traytor.

Mr. *Att. Gen.* He ſpeaks good *Engliſh*.

Then Emes Lamira *was ſworn.*

Mr. *Hungerford.* Give an Account whether you know where the Priſoner was born?

Lamira. He was born at *Bourdeaux*, I liv'd there when he was born.

Then *Jaques Gonſales* was call'd again.

Mr. *Att. Gen.* How long hath the Priſoner liv'd in *England?*

Gonſales. I can't tell poſitively.

Mr. *Att. Gen.* As near as you can?

Gonſales. I can't tell, for he has liv'd at one part of the Town, and I at the other.

Then *Simon Francia* was call'd again.

L. C. Baron. How long ago did your Brother come into *England?*

Simon Francia. He hath been here twice. He was here about Twenty Years ago, and this laſt time, he hath been here about Six or Seven Years.

L. C. Baron. How long did he ſtay when he firſt came?

Simon Francia. About Eight or Nine Years.

Then *Cecilia Ceres* was ſworn.

Mr. *Hungerford.* What do you know of the Priſoner? What Countryman is he?

Ceres. I went to School with him at *Bourdeaux*.

Mr. *Hungerford.* Where was he reputed to be born?

Ceres. At *Bourdeaux*, in the ſame Street where I was.

Mr. *Hungerford.* How old was he when you knew him firſt?

Ceres. We were both Children.

Mr. *Hungerford.* I think the Place of a Man's Birth can't be better prov'd, it is prov'd by ſome that were in the Room at his Birth, ſome that went

went to School with him, and ſome that knew him there a Child.

Mr. *Att. Gen.* If the Jury ſhould be ſatisfied with this Evidence, it will not acquit the Defendant, the Opinion in *Cranborn*'s Caſe being, that the Word *Naturalem* was not neceſſary to be in the Indictment; and adding an immaterial Word will not therefore make the Indictment bad. If this does not ſatisfy the Defendant's Council, I ſhall inſiſt that this Point be found ſpecially.

Mr. *Juſt. Pratt.* If you inſiſt that you have given a ſufficient Evidence to ſatisfy the Jury, and indeed it is a ſtrong Evidence, Mr. *Attorney* ſays, if the Evidence is to the Satisfaction of the Jury, he is willing to find it ſpecially. Therefore are you willing to leave it to the Jury on that ſingle Iſſue?

Mr. *Hungerford.* That is giving up all the reſt. I would a little enforce and apply this Evidence.

Mr. *Juſt. Pratt.* I believe, if Mr. *Attorney-General* deſires it to be found ſpecially, it was never known to be denied.

Sir *J. Jekyll.* I deſire it may be found ſpecially.

Mr. *Hungerford.* I will be bold to ſay, this Objection is in all the Authorities which we have in the Law touching this Matter, held good: A Man who is not a natural born Subject cannot owe a natural Allegiance: And it is very hard, that without offering any Reaſon, to raiſe a Doubt, but upon bare aſking to have a Matter found ſpecially, it muſt be ſo.

Mr. *Att. Gen.* If you have a mind to it we will debate it with you now.

Mr. *Hungerford.* With all my Heart, I am ready to ſpeak to it now.

Sir *J. Jekyll.* If we were to expect the Judgment of the Court upon it now, I would debate this Matter now, and I ſhould not doubt but to be able to ſatisfy the Court that the Indictment is well fram'd againſt the Priſoner, notwithſtanding he is an Alien born.

Mr. *Hungerford.* I would be glad to hear one Authority to ſupport Sir *Joſeph*'s Opinion.

Mr. *Ward.* May it pleaſe your Lordſhip, I am Council for the Priſoner, who ſtands indicted of High-Treaſon. The Charges in the Indictment (beſides the general Charge of imagining the King's Death) are conſpiring to levy War, ſolliciting Aid from Abroad, and writing Letters for that Purpoſe into Foreign Parts.

What they have gone upon has been a long Courſe of Letters between the Priſoner and *D'Aulmay*, alias *Payen*, at *Paris*. They have produc'd a Copy-book of Letters, which they ſay he wrote, and have read ſome Letters out of it, which we muſt ſubmit to you, whether there is any thing contain'd in them that amounts to Treaſon. They have alſo produc'd Letters to him from *D'Aulmay*, but we muſt ſubmit that likewiſe, whether they can any ways affect him; he can anſwer only for what he wrote himſelf.

We did inſiſt upon it, that they ought not to produce any Letters that were not ſpecify'd in the Indictment, and tho' we were over-rul'd in that, yet your Lordſhip will be pleas'd to conſider the Priſoner under this Diſadvantage, that he ſtands indicted for writing treaſonable Letters, without one Letter ſpecify'd, or the Date, and much leſs the Subſtance of it, ſo that he can't be ſuppos'd to be ready to offer any Evidence, or to give any Anſwer, to explain all the Letters that in the Courſe of his Life he may have wrote, and perhaps ſome of them may be ſo darkly penn'd, as not to be capable of an Explanation on a ſudden.

It may be neceſſary alſo to ſhew your Lordſhip the Difficulties we have been under ſince we were taken up, and that will make it neceſſary to ſhew, that when we were committed, it was to a ſtrict Confinement; we were prohibited from any Body coming to us, and from Pen, Ink, and Paper; no Body had Acceſs to us, unleſs ſome Perſons from the Secretaries Office, to preſs us to ſome Diſcoveries, which we declar'd we could not make. We will ſhew by them that were by at thoſe Times what we were preſs'd to, and that will be an Evidence of our Innocence, when we withſtood ſuch Importunities.

They have offer'd ſome things, which will, I hope, go a great way to ſhew that he was not guilty of Treaſon. My Client was a Stranger, born in *France*, came here to Trade, and his Buſineſs not being very ſucceſsful, he was willing to undertake ſomething of leſs Value, and ſo engag'd in ſending Letters from the Gentleman that has been nam'd, for the Profit of double Poſtage, which is allow'd in thoſe Caſes.

It was obſerv'd by the King's Council as a very ſtrange thing, that a Man ſhould enter in his Book Letters of a treaſonable Nature, we ſay the ſame, and that is a Circumſtance to ſhew that they were not of that nature; beſides, the Entry of a Letter in a Copy-book is not like a Copy that the Law allows to be given in Evidence, that muſt be carefully examin'd; but in thoſe Entries of what a Man writes over to his Correſpondents, there may be Miſtakes in them, and ſuch as a Man's Life, in Caſe of High-Treaſon, may be loſt upon; therefore you can't found ſo great a Certainty upon this Book as upon the Letters themſelves or Copies examined and legally proved.

Another Circumſtance to ſhew how unlikely it was that this was a treaſonable Correſpondence, or any thing that the Priſoner was concern'd to conceal, is, that he never took care of attending at the Poſt-Office, or engaging any one to attend there, to diſpatch or take care of his Letters, but reſted at Home till the Letter Carriers brought them about, or elſe they were left at one *Everald*'s a Watchmaker in the *Strand*, where he had lodg'd, and they have been obſerv'd to lie there on a Table in a common Room for a Week together before they have been call'd for, or they have been ſent to him.

It has been obſerv'd by the King's Council, that towards the latter End of the Correſpondence, when he began to write more openly, that he neglected to enter his Letters in the Book; but there is no reaſon for that Surmiſe, for it appears upon one of the Letters they have produc'd from *D'Aulmay*, that he complains he had not heard from the Priſoner in Three Months Time; and to ſuppoſe thoſe Letters which do not appear, worſe than thoſe which do, is a Preſumption, we hope, will never be admitted in a Caſe of Life.

As the Priſoner himſelf could not apply himſelf to conſider of any Account or Explanation of theſe Letters, much leſs can it be expected that we who are his Council can be of any Service to him in that Point, becauſe we only hear thoſe Letters read that the King's Council think fit to produce; there were others before and after, and thoſe we are Strangers to; whatever there may be in them that may clear up the Expreſſions in thoſe that

are produc'd by the King's Council, we are entirely depriv'd of the Benefit of them; for the Priſoner has not been admitted to peruſe his own Book, or to have recourſe to any of his Papers. The Power of ſeizing Papers, that may be of uſe to a Man in his Defence, ſeems to me ſomething dark; but I ſhall ſay nothing to it in this place.

We ſhall give your Lordſhip an Account of the Priſoner's Character and Circumſtances. He was under low Circumſtances, even to the pawning his Cloaths and Goods. People that are concern'd in Things of this Kind are uſually better ſupported than he ſeems to have been. And we ſhall ſhew that he has at all times given all Inſtances and Proofs of his being quiet under the Government, and well affected to it.

Under theſe Circumſtances, if there was ſtronger Evidence than is in the Copy-book, it would not be ſufficient. I hope, Gentlemen, you have diſtinguiſh'd between thoſe Letters in the Copy-book and thoſe that were ſent to him, which latter, how criminal ſoever they may be, can't be made uſe of to his Prejudice.

If we prove theſe Circumſtances, which is all that can be expected from us, we hope you will not think any thing in theſe Letters a ſufficient Evidence to find him guilty of this Crime. And, Gentlemen, if any of thoſe Letters can have ſuch a Conſtruction, yet, conſidering the nature of the Copy-book, and the manner of keeping ſuch Books (which has fallen more under your Obſervation than mine) and how void of Care he was in managing thoſe Letters that came to him, you will not think it probable that he was engag'd in a Correſpondence of ſuch a nature; and if any thing looks that way, it may either be a Miſtake in him that enter'd the Copies, or might be explain'd, if we were Maſters of the reſt of the Letters, and of the Book.

Mr. *Hungerford.* My Lord, I ſhall take up but a very little of your Time till we have gone through our Evidence, and then ſhall apply my ſelf to make ſome Remarks upon it. But in general, the Accuſation contained in this Indictment is, that this Man has conſpir'd to take away the Life of the King; the Overt-Acts laid are, that he conſpir'd to levy War, and endeavoured to engage Aſſiſtance from Abroad, and wrote Letters, and ſent them to divers Perſons beyond Seas for that Purpoſe.

Gentlemen of the Jury, I am ſure you muſt obſerve, that as to a direct Proof of his intending to take away the truly precious Life of the King, there is none, but what is endeavour'd to be inferr'd from theſe Letters. If there were, I am ſure I ſhould not, and, I believe, none of my Profeſſion would have ſpoke one Word for him. But all that is ſaid ariſes from himſelf. There is no Conſultation appears, but that this Man conſulted with himſelf and his Compting-Houſe to take away the Life of the King. As to any of thoſe Letters, there is nothing in them that looks that Way. And as to what is contained in the Letters received from *France*, they cannot affect him. All that can be inferr'd from them is, that he was privy to what was contained in thoſe Letters: And if that were High-Treaſon, yet it can only amount to Miſpriſion of Treaſon in the Priſoner. You who live in this great Trading City, the moſt eminent for Trade and Commerce in the World, in which, I believe, you are very much concern'd, know that a great Part of the Commerce is carried on by Letters, and all or moſt of them are entered in Books; you muſt have a due Apprehenſion of the Conſequences of ſuch a Tranſaction as this is. To have a Man living in his Houſe in Peace, under the Protection of the King's Laws, to have his Books and Papers taken from him, and thoſe Books and Papers turn'd againſt him, to the Deſtruction of him and his Family.

Mr. *Att. Gen.* I deſire you would forbear inveighing in this Manner. This is not a proper Manner of proceeding.

Sir *J. Jekyll.* You have had an Account that an Information was given to the Secretary of State, of a treaſonable Correſpondence carried on by this Man, and here is an Harangue complaining that his Perſon and Papers are ſeiz'd. You know if there had been an Information given to the meaneſt Officer in the Kingdom, he could not have juſtified himſelf, without doing the ſame Thing.

L. C. Baron. You are not to arraign thoſe Proceedings.

Mr. *Hungerford.* I don't doubt but that noble Lord had Grounds for what he did, but what Grounds he had doth not appear: And ſurely I have a Right to obſerve, that all the Evidence that appears againſt the Priſoner, ariſes from thoſe Letters and Books that were taken away from him.

Mr. *Att. Gen.* Pray Mr. *Hungerford* act within the Bounds of your Profeſſion.

Mr. *Hungerford.* Mr. Attorney, I am to be corrected by the Court, and not by you. I owe Duty to my Lords the Judges, and I ſhall always pay it.

Mr. *Juſt. Tracy.* You ought not to reflect on that Matter of ſeizing the Papers.

Mr. *Hungerford.* I am not underſtood. I ſay all that is offer'd againſt him is from the Papers found in his Cuſtody.

Mr. *Juſt. Pratt.* If that was all that you had ſaid you ought not to have been interrupted; but I never knew in my Life, but what was done in this Caſe was ordinarily done in the like Caſes, and ought to be done, and you ought not to go on with Invectives to the Jury, complaining that his Papers are ſeiz'd, and then that thoſe Papers are turn'd againſt him. When a Correſpondence is carried on by Letters, ought they not to be ſeized? and if they appear to be treaſonable, ought they not to be kept and made uſe of againſt him? We muſt not ſit here to hear Invectives againſt Magiſtrates of the higheſt Quality, for doing that, which if they had not done, they had failed in their Duty.

Mr. *Hungerford.* I have not ſaid any thing to impeach the Legality of what was done. All I ſaid, and do ſay, is, that the Evidence is from the Papers found in his own Cuſtody,

You have heard the Letters read, and you obſerve, that great part of them is about Dogs and Horſes, and a Sum of 130*l.* 4*s.* and about a Suit that was carrying on in the Court of Chancery. As to the Book, I ſhall touch no more upon it now, but I believe we ſhall be able to offer Proof that there is not any Part of it wrote by himſelf. How that will agree with the Evidence already given, we muſt ſubmit. We ſhall likewiſe give ſome Account of ſome Diſcourſes that have been had with the Man himſelf. And, I believe, I need not obſerve to Gentlemen of your Figure and Circumſtances, that the Mr. *Harvey*, who is repreſented by the King's Council, to be the firſt Promoter of, and carried on this treaſonable Corre-

ſpondence, is at Liberty, even without a Trial; and what the Law hath done for him without a Trial, I hope ſhall, by your Juſtice, be done for the Priſoner, now upon his Trial, that is, that he ſhall be acquitted.

Mr. *Ward.* Though it is difficult for us to be put to explain any of thoſe Letters, yet we will call ſome Witneſſes to explain one, which mentions Perſons of 50 or 60 Thouſand Crowns a Year, and ſhew that it was meant of one that was concerned in the Revenue in *France*, and ſuffered by it.

Mr. *Juſt. Pratt.* If you are going to explain that Letter, it will be neceſſary to read it again to the Jury.

Which was done accordingly.

Mr. *Ward.* We will ſhew it was meant of one *George Francia*, who had been concern'd in the Revenue in *France*.

Simon Francia being ſworn.

Mr. *Hungerford.* Did you know *George Francia?*

S. Francia. Yes.

Mr. *Hungerford.* Was he concerned in the Revenue in *France*, and had he any Loſs there?

S. Francia. Yes, he loſt all he had.

Mr. *Hungerford.* By what Occaſion was it?

S. Francia. I don't know.

Mr. *Hungerford.* Was it by his own Management, or depending on others?

S. Francia. I don't know, but I know he had an Eſtate and loſt it all.

Mr. *Ward.* We offer this only as a Sample for the reſt.

Mr. *Att. Gen.* What was this Man worth?

S. Francia. I computed him to be worth Eight or Ten Thouſand Pounds.

Mr. *Att. Gen.* Doth he anſwer the Deſcription in the Letter of a Perſon of Fifty or Sixty Thouſand Crowns a Year?

Sir *J. Jekyll.* Had he any Eſtate in Land?

S. Francia. No, only in Money.

Mr. *Hungerford.* Do you know of any Offers that have been made, or Threats uſed to the Priſoner?

S. Francia. I know of ſome.

Mr. *Hungerford.* By whom?

S. Francia. By Mr. *Buckley.* That if he would ſwear againſt Mr. *Harvey* of *Comb*, he ſhould have a good Reward.

Mr. *Hungerford.* Do you know of any other?

S. Francia. Yes, my Lord *Townſhend* told me he had given my Brother five Guineas, and he would give him more if he would ſwear againſt Mr. *Harvey*.

Mr. *Hungerford.* Where did he tell you ſo?

S. Francia. In the Office at the Cockpit.

Mr. *Hungerford.* Do you know any thing of two Warrants that Mr. *Buckley* brought, one for his Releaſement, and the other for his Confinement?

S. Francia. I don't know any thing of that.

Mr. *Att. Gen.* How came this Diſcourſe between my Lord *Townſhend* and you?

S. Francia. I was ſeveral Times with him at the Office about my Brother.

Mr. *Att. Gen.* I hope it will be proper at this Time that my Lord *Townſhend* and Mr. *Buckley* may be ask'd to this Matter.

Mr. *Juſt. Pratt.* I ſuppoſe you was preſent when this paſt between Mr. *Buckley* and the Priſoner?

S. Francia. It was between my Lord *Townſhend* and me, and Mr. *Buckley* and me.

Mr. *Juſt. Pratt.* Who elſe was by, beſides Mr. *Buckley* and you?

S. Francia. No Body elſe?

Mr. *Juſt. Pratt.* Who was by when that which you mention'd paſt between my Lord *Townſhend* and you?

S. Francia. No Body elſe. The firſt Time I applied to my Lord *Townſhend*, I think there was another Secretary there.

Mr. *Juſt. Pratt.* But at that Time that you ſay this Offer was made, was any Body preſent?

S. Francia. Indeed I don't remember that there was.

Mr. *Cowper.* I think you ſay, the firſt Time you was with my Lord *Townſhend*, there was the other Secretary there?

S. Francia. Yes, there was.

Mr. *Cowper.* Where was this, in what Room?

S. Francia. In the Cockpit.

Mr. *Cowper.* What is your Relation to the Priſoner?

S. Francia. I am his Brother.

Mr. *Hungerford.* You ſay there was another Secretary by, was it the other Secretary of State?

S. Francia. I know not who it was, there was another Gentleman.

Mr. *Att. Gen.* He ſaid another Secretary of State.

L. C. Baron. What did my Lord *Townſhend* ſay to you?

S. Francia. He ſaid he had given my Brother five Guineas, and he would give him more, if he would ſwear againſt Mr. *Harvey*.

L. C. Baron. You ſay at that Time there was another Secretary?

S. Francia. No, no, not at the Time of that Diſcourſe.

L. C. Baron. Nor there was no Body with you and Mr. *Buckley?*

S. Francia. No.

Then *Lucy White* was ſworn.

Mr. *Hungerford.* Was you by, or in hearing, when any Offers were made to the Priſoner.

White. Upon the Seventh of *September* I went to ſee the Priſoner in *Newgate*. He told me Mr. *Buckley* was to be there with him, and deſired me to conceal myſelf in the Room, that I might hear what paſt, and I did ſo. When Mr. *Buckley* came he ſpoke about one *Flint*; and afterwards Mr. *Buckley* ask'd him ſeveral Queſtions about Mr. *Harvey*. He ſaid he knew nothing but that he was innocent. Mr. *Buckley* told him he muſt ſwear right or wrong for the Government; if he would not, he himſelf would ſwear High-Treaſon againſt the Priſoner; for he had taken Money of my Lord *Townſhend*, and done nothing for it.

Mr. *Hungerford.* Did you ſee any thing of two Warrants Mr. *Buckley* had at that Time?

White. No.

Mr. *Hungerford.* Did Mr. *Buckley* ſee you?

White. No, I conceal'd myſelf under the Feet of the Bed.

Mr. *Att. Gen.* You ſay this was the Seventh of *September*. What Year?

White. In the Year 1716.

Mr. *Att. Gen.* Where was he then?

White. In *Newgate*.

Then *Mary Meggiſon* was ſworn.

Mr. *Hungerford.* Do you know of any Offers that were made to the Priſoner, and by whom?

Meggiſon.

Meggiſon. Upon the Twenty Eighth of *September* laſt I was in Mr. *Francia*'s Room, and Mr. *Buckley* came in and told him he ſhould be tried ſuddenly, and there were a great many Witneſſes againſt him; and he would ſwear againſt him, becauſe, ſays he, you have cheated my Maſter of five Guineas, and won't ſwear againſt Mr. *Harvey*.

Mr. *Att. Gen.* Was you in the Room then?

Meggiſon. I ſat upon a little Box at the Bed's Feet, and it was ſo dark he could not ſee me.

Mr. *Att. Gen.* How came you to *Newgate?*

Meggiſon. I have been a great many Times in *Newgate*.

Mr. *Att. Gen.* You dwell there ſometimes, don't you?

Meggiſon. No, I never did.

Mr. *Att. Gen.* Are you a married Woman?

Meggiſon. Yes.

Mr. *Att. Gen.* What is your Husband?

Meggiſon. A Dealer, but he is not in *England* now.

Priſoner. What Room was I in?

Meggiſon. A little dark Room.

Priſoner. What do they call it?

Meggiſon. The Lion's Den.

Priſoner. Every Body knows that Room is a dark Room, that People can't eaſily be ſeen in it.

Mr. *Hungerford.* Did you hear Mr. *Buckley* ſay any thing more?

Meggiſon. Nothing, but that he would bring my Lord *Townſhend* into Court, on purpoſe to influence the Jury by his Preſence.

Mr. *Hungerford.* As to theſe two Witneſſes, we have ſeveral to ſpeak to their Reputations; but I believe you have no doubt as to that.

Sir *J. Jekyll.* I dare ſay no one Perſon in Court believes a Word they ſay.

Then Mr. *Buckley* was called again.

Priſoner. I deſire to know whether you was not with me in the Lion's Den.

Mr. *Buckley.* My Lord, the Priſoner ſent to me by *Revell* the Turnkey, and deſired to ſpeak with me; when I came to him, he ſpoke to me firſt about *Flint*, and deſired he might be releas'd from his ſtrait Confinement; and then about his own Affairs. He thank'd me for my Humanity in coming to talk with him, ſo we parted immediately. I told my Lord *Townſhend* what had paſt; *Flint* had the Benefit of it. He had been confined cloſe, but *Francia* ſpeaking on his behalf, he was releaſed from that Confinement; and that was the Buſineſs I went about. The Room is a little dark Room, but if any Body had been at the Foot of the Bed, I believe I might have ſeen them.

L. C. Baron. Did you ſay thoſe Words?

Mr. *Buckley.* No, my Lord, it is impoſſible I ſhould.

Mr. *Hungerford.* Not impoſſible ſurely?

Mr. *Buckley.* Yes, impoſſible, I appeal to my Character: I entirely and utterly deny it. I deſire that *Revell* may be called.

Mr. *Ward.* We are now in our Evidence.

Mr. *Att. Gen.* If the Priſoner calls a Witneſs that has been called before, and he to make his Evidence entire, appeals to *Revell*, we ought to call him now, for it would have been improper before.

Mr. *Hungerford.* If it be nothing but that he was ſent for Mr. *Buckley*, there is no great Harm in it. Otherwiſe we are in the Courſe of our Evidence.

Then *Revell* was ſworn.

Mr. *Att. Gen.* Do you know the Occaſion of Mr. *Buckley*'s coming to *Francia* in *Newgate?* Give an Account of what you know of it.

Revell. My Lord, Mr. *Francia* called to me one Day, and I think it was when I was in the Chapel, and told me, I believe I can do a Piece of Service to the Government: I believe I can ſuppreſs the publiſhing of the *Shift-Shifted*, I am ſure I can: Pray let me ſpeak with Mr. *Buckley*. Says I, if you would have me, I will go to him, and deſire him to come. When would you ſpeak with him? At any time, ſays he; then I believe the Morning is the beſt to meet with him; and the next Morning I went to him.

Sir *J. Jekyll.* Did you tell him the Occaſion of *Francia*'s deſiring to ſpeak with him?

Revell. Yes.

Sir *J. Jekyll.* Was you in the Room with them?

Revell. No, but afterwards he ſaid to me, I think I have done the Government ſome Service; you don't hear it come out as it us'd to do.

Priſoner. I deſire to know whether Mr. *Buckley* was not angry with you that you did not ſtand at the Door?

Revell. He order'd me to be about the Door, but there came ſome Workmen to ſurvey the Chapel, I was obliged to go with them, and he came out and was angry that I was not there; and after that I ſtood there till they had done, but I did not hear what Diſcourſe paſt.

Then the Lord *Townſhend* ſtood up.

Lord *Townſhend.* My Lord, Mr. *Buckley* came to me, and told me of the Meſſage he had receiv'd from the Priſoner about the *Shift-Shifted*, a ſcandalous Paper that was ſent about the Kingdom. He ask'd me if he ſhould go: I told him I thought it was right to go, but I told him he muſt be cautious, for I did not doubt but that the Priſoner was capable of that Villany I now find he is. He came back to me, and told me what he has now ſaid; and I believe it to be all that paſt between them, for I have always found him faithful and honeſt. I thought it was a Service to put a Stop to that Paper; and I did give ſome Eaſe to that Man that is named.

I am amazed how there can be ſuch Villany as is in the Brother. He came to the Office two or three Times with Petitions. I never ſaid any thing more, than that it was not in my Power to do any thing; that he muſt deal ingenuouſly, tell all that he knew, and ſhew that he would ſpeak all the Truth; that that was the Way to recommend him to the King's Mercy; that I could not do any thing without it. And I believe the manner I treated Mr. *Harvey* will juſtify me, with all that know any thing of it, from the Suſpicion of ſuch Intentions againſt him. All that I did was in regard to the Priſoner's wretched Circumſtances, and before Mr. *Stanhope*; and I never deſir'd any thing of him, but to tell the Truth, and the whole Truth.

Priſoner. You told me I ſhould be hang'd, drawn, and quarter'd; and your Lordſhip told me many a time, Damn you, you Dog, now I have got Mr. *Harvey* in my Clutches, and you will let him go from me. If there was no particular Animoſity againſt me, why ſhould I be diſtinguiſhed, for none were put in Irons for treaſonable Practices, but me.

Lord *Townſhend.* I would not take up your Lordſhip's Time, but only to ſay, that the Warrant for Irons, and to be kept without Pen, Ink, and Paper, was after that Letter had been deliver'd to me, the Contents of which will ſufficiently juſtify the Precautions uſed in that Warrant. I was ſorry to ſee the ill Uſe he made of the Liberty that I had before given him, and I did uſe that Warrant in that manner. Treaſonable Practices were then no more bailable than Treaſon; and it's no new Thing to fetter State-Priſoners under ſuch an Accuſation.

Mr. *Ward.* I beg leave to ask your Lordſhip one Queſtion, Whether you apprehend that *Curtis* deſerv'd any Credit?

Lord *Townſhend.* I can ſay no more, than that he made ſome Diſcoveries, and there was no Proſecution againſt him. I knew nothing of the Man before, and I know nothing more of him now.

Mr. *Ward.* Did thoſe Informations appear to be true?

Lord *Townſhend.* A great Part did, by the Confeſſion of one of the Perſons he accuſed.

Mr. *Hungerford.* As to the two Women that were examined juſt now, there was a Remark made, that their Teſtimony was extraordinary; I have five or ſix People to ſpeak to their Reputation, if it ſticks with Mr. *Attorney.*

Mr. *Att. Gen.* Perhaps ſuch as themſelves; but however call them.

Then Mr. *Everall* was called.

Mr. *Hungerford.* What do you know of *White* or *Meggiſon?*

Everall. I know nothing of them.

Mr. *Ward.* Do you know where the Priſoner's foreign Letters uſed to be left?

Everall. His Letters always came to my Houſe.

Mr. *Ward.* Was he uſually watchful for the coming in of his Letters, as if there was any Thing of Concern in them?

Everall. No, they often uſed to lye ſome time before he call'd for them.

Mr. *Ward.* How long did they uſe to lye?

Everall. Sometimes three or four Days.

Mr. *Ward.* Were they kept up cloſe till he called for them?

Everall. No, they lay in a publick Room, ſo that any one might ſee them.

Then Mrs. *Everall* was ſworn.

Mr. *Hungerford.* What do you know of any Letters directed for Mr. *Francia*; where were they left?

Mrs. *Everall.* They uſed to be brought to our Houſe, and they have lain two or three Days together on a publick Table before they have been fetch'd away.

Mr. *Cowper.* How long ago was that?

Mrs. *Everall.* About ſeven Years ago.

Mr. *Cowper.* Have any been directed to your Houſe of late?

Mrs. *Everall.* No.

Mr. *Ward.* We ſhall now examine ſome Witneſſes to the Copy-Book, to prove that it is not of his Hand-Writing; and I don't doubt but that will have its Weight.

L. C. Baron. He own'd it to be his Copy-Book of his Letters to his Correſpondents.

Mr. *Cowper.* We lay the Streſs upon this, that he ſaid it was his Copy-Book of his Letters to his Correſpondents Abroad.

Mr. *Ward.* But you know Mr. *Buckley* laid a Streſs upon its being his Hand-Writing.

Then one *Raſter* was ſworn.

Mr. *Hungerford.* Shew him the Copy-Book, look upon it, are you acquainted with the Priſoner's Hand-Writing?

Raſter. Yes.

Mr. *Hungerford.* Is any Part of that Book his Hand-Writing?

Raſter. No, I take it to be his Son's, *George Francia*'s: The Priſoner writes a ſmaller Hand. I take no Part of it to be his Hand ſo far as I have gone.

Mr. *Hungerford.* I believe it may be of uſe for all the Witneſſes to look it over; we have four or five to this Point; and if I am rightly inſtructed, there is not one Word in that Book wrote by the Priſoner.

Mr. *Juſt. Pratt.* If it is not his Writing, whoſe do you take it to be?

Raſter. I don't take it to be his.

Mr. *Juſt. Pratt.* Whoſe do you take it to be? Are you acquainted with his Son's Hand?

Raſter. I don't know whether it is his Son's or not.

Mr. *Juſt. Pratt.* Are there any other Perſons that write for him?

Raſter. He had ſometimes.

Mr. *Att. Gen.* Here is a Letter of his own Writing; pray let him look on that, and ſee whether that is his Hand; do you believe that to be his Writing?

Raſter. No, I don't think it is.

Mr. *Att. Gen. Curtis* has prov'd that he own'd that Letter.

Priſoner. What Letter did I own?

Then *Simon Francia* was called again.

Mr. *Hungerford.* What do you ſay to that Book?

S. Francia. There is not one Syllable of his Writing in this Book; I have known his Hand-Writing about twenty Years.

Then *Barwell* was ſworn.

Mr. *Hungerford.* Are you acquainted with the Priſoner's Hand-Writing? Is any of that Book of his Writing?

Barwell. None of it is his Writing.

Mr. *Hungerford.* Do you know what Condition of Health he was in about the latter End of the Year 1714, and 1715?

Barwell. He was ſick.

Mr. *Hungerford.* For a Year before he was taken, what Condition was he in? Was he able to write Letters?

Barwell. He was ſick.

Mr. *Hungerford.* Did he uſe to write Letters in that Time?

Barwell. I don't know.

Mr. *Att. Gen.* Whoſe Hand do you take it to be?

Barwell. How do I know that?

Mr. *Att. Gen.* Are you acquainted with his Son's Hand?

Barwell. No, not at all.

Then *Simon Francia* was called again.

Mr. *Att. Gen.* You have look'd on the Book; whoſe Hand-Writing do you take it to be?

S. Francia. I don't know.

Mr. *Att. Gen.* Do you know his Son's Hand-Writing?

S. Francia. I never had any Correſpondence, or great Acquaintance with him.

Mr. *Att. Gen.* Did you ever ſee him write?

S. Francia.

S. Francia. I don't remember that I did.

Mr. *Ward.* We will trouble you with but one Piece of Evidence more; we will call Dr. *Cade*, who attended him in his Sickneſs. We have offer'd Evidence, that no Part of that Book is his Writing; we will now offer ſome Proof that he was not capable of writing at that Time.

Then Dr. *Cade* was ſworn.

Mr. *Ward.* Pray Doctor, did you attend the Priſoner as his Phyſician at any Time?

Dr. *Cade.* My Lord, I was ſent for to him on the ſecond Day of *November*, 1714. I attended him till the 18th of the ſame Month, and within that Time I viſited him nine Times, I found him in a great deal of Pain, and he was lame in his Hand; ſome time after my coming he grew better.

Mr. *Ward.* Was he confin'd to his Bed?

Dr. *Cade.* Sometimes he kept his Bed, and ſometimes he ſate up.

Mr. *Ward.* You ſay he was in Pain, and lame in his Hand; which Hand was it?

Dr. *Cade.* I don't remember which; nor do I know any thing of him, only at that Time.

Sir *J. Jekyll.* Every one of the Letters were wrote after that Time.

Priſoner. What Condition did you leave me in?

Dr. *Cade.* In a very bad Condition.

Priſoner. Did you not hear of the Condition I was in afterwards?

Dr. *Cade.* I don't remember that I heard any thing of you after that.

Mr. *Ward.* We will call a few Witneſſes to prove what Circumſtances he was in, and that he was well affected to the Government.

Mr. *Hungerford.* By my Inſtructions he appears to be a Foreigners and ſo diſintereſted in thoſe unfortunate Diviſions that are amongſt us: And accordingly there is nothing of *Whig* or *Tory* in his Letters.

Mr. *Att. Gen.* Don't you remember when he came to *Newgate* he wrote he liked his Company, for he found them all *Tories*.

Mr. *Hungerford.* We ſhall ſhew you that he was zealous for the Good of the Kingdom, and was againſt all that was diſadvantageous to Trade in the late Treaty of Peace. That he never went into any publick Places, except to the *Grecian* Coffee-Houſe, which is a Place ſure not tainted with Sedition.

Then Mr. *Everall* was called again.

Mr. *Ward.* How long have you known the Priſoner?

Everall. Several Years.

Mr. *Ward.* Has he been peaceable, and eaſy in his Converſation, with Reſpect to the Government?

Everall. I remember at the proclaiming the Peace he ſaid, he thought the Nation was ruin'd, for he thought it a ſcandalous Peace.

Mr. *Att. Gen.* That is much; for you make him a *Frenchman*, ſure he might have approved it.

Mr. *Hungerford.* This is not what I have in my Brief, but perhaps he may recommend himſelf to your Eſteem by it: He doth not to mine. My Lord, I will take up your Time only with this Remark: The great Foundation of this Evidence is the Confeſſion made by the Man himſelf. Without the Key made by him, this had been applicable to no Body. I remember Sir *Joſeph Jekyll* was pleas'd to ſay, he would not excite the Paſſions of the Jury, but rather appeal to their Judgments, ſo will I. Great Part of this Correſpondence relates to Mr. *Harvey*, and one would have thought they had ſomething extraordinary to have charged on him, conſidering the Length of his Reſtraint; but I need not obſerve to the Jury that he is at large. He was under Reſtraint, nothing could be imputed to him, and he is diſcharged.

L. C. Baron. Francia, have you any Thing more to ſay?

Priſoner. As for my Nativity I have more Witneſſes. I have more Witneſſes as to my Character. I have more Witneſſes to prove that I was a quiet Man, and never diſaffected to the Government.

Then Mr. *John Slater* was ſworn.

Mr. *Hungerford.* What do you know of the Priſoner's Behaviour?

Mr. *Slater.* I have known him about four or five Years. There being a Commiſſion of Bankrupcy againſt him, I was recommended to aſſiſt him in that Commiſſion. I did give him the beſt Aſſiſtance I could, and I ſeveral Times met him, ſometimes at the *Grecian* Coffee-Houſe, and ſometimes at my own Houſe. I took him for a *Frenchman*, he uſed very much to eſpouſe the Intereſt of the King of *France*, which I uſed to chide him for. As for Parties here, I had ſome Diſcourſe with him, and he uſed to think we were a ſtrange People to fall out among ourſelves.

Then *Thomas Richardſon* was ſworn.

Mr. *Hungerford.* What do you know of the Priſoner and his Behaviour?

Richardſon. I have known him five or ſix Years, and I believe I have taken five or ſix Pounds of his Money. When he was ſick he took a Liking to me, and would not be quiet unleſs I came often to ſee him, and I uſed often to ſit with him in an Evening and bear him Company, and it was a great Surprize to me when I heard he was taken up, for he uſed often to drink a Health to King *George*, and hoped he ſhould get up to ſee him, and hoped this would be a quiet Nation again. He was then ſo weak that he could not ſtir Hand or Foot. But he uſed to call me *Vulcan*, and bid me drink King *George*'s Health.

Mr. *Hungerford.* How long is it ſince he was ſo weak that he could not ſtir Hand or Foot.

Richardſon. About a Year and five or ſix Months. And when he got abroad I then was forced to follow him for what he owed me, and I have gone after him ſeveral Times to the *Grecian* Coffee-Houſe.

L. C. Baron. Have you any thing more to offer?

Priſoner. No.

Mr. *Soll. Gen.* My Lord, I muſt beg Leave (by Way of Reply to what has been offer'd, on Behalf of the Priſoner) to ſay, That this is a Cauſe of very great Concern to the King, to the Royal Family, and to the whole Kingdom in general; and I may with Juſtice affirm, that this Day one of theſe two Points muſt be determin'd; either that the Priſoner at the Bar is guilty of High-Treaſon, or that no Man can, as the Law now ſtands, be convicted of holding a foreign, traiterous Correſpondence, if this Evidence be not ſufficient; for here has been the ſtrongeſt Evidence given of ſuch a Correſpondence, as I

believe ever was, or perhaps ever can be given, according to the Nature of the Thing.

The Gentlemen of the Jury will conſider the Nature of the Treaſon, as it is laid in the Indictment, it is for compaſſing and imagining the Death of the King; now, that reſts in the Imagination, and is compleat in the Mind; but there muſt be ſome open or publick Act that muſt appear to you in Proof, to convince you that the Priſoner had that Imagination. There are three Overt-Acts laid in this Indictment, and we have produced Evidence ſufficient for the Proof of two of them, tho' if any one of them be prov'd, it is enough. The firſt is, conſpiring, conſenting and agreeing to raiſe an Inſurrection and Rebellion within this Kingdom, in Favour of the Pretender; and for conſpiring, conſenting, and agreeing to ſollicit and procure from *France*, Arms, Ammunition, Men and Money, to aid and aſſiſt in ſuch Rebellion; and the laſt is for compoſing and writing ſeveral treaſonable Letters, declaring his Intention and Reſolution to levy that War, and to raiſe that Rebellion.

The Evidence that has been given is of two Sorts; it conſiſts firſt, of Letters wrote by the Priſoner himſelf to his Correſpondents in *France*; and ſecondly, of Letters wrote to him by ſuch Correſpondents, ſignifying the Receipt of Letters wrote by the Priſoner to him, touching this traiterous Deſign. For Proof of the Letters wrote by the Priſoner, we have produced his Copy-Book of Letters, wherein they are enter'd, prov'd to be Part his own Hand-Writing, and the reſt his Son's; and indeed, it is a ſurprizing Thing, that that Copy-Book ſhould remain, which indeed is ſo rare a Way to perpetuate the Teſtimony of Treaſon, as I believe the like Evidence is never to be expected again; and it is abſurd to expect, when a Traitor writes into a foreign Country, that he ſhould be able to produce the Original Letters. The Proof of this Copy-Book to be his is beyond doubt; it is proved by his own Confeſſion, before three Witneſſes, and in very ſtrong Terms, *This*, ſays he, *is my Copy-Book of my Letters to my Correſpondents abroad.* Is it poſſible that ſtronger Evidence can be given? Nay, he goes farther, as a Noble Lord inform'd you; for when he was examining the Priſoner, and the Priſoner pretended, that he was only a Conveyer of Letters, but did not write himſelf; ſays he, *As to what I have wrote, I appeal to my own Copy-Book of Letters.* They have brought indeed ſome Witneſſes to ſay, That they believe that the Copy-Book is not of his Hand-Writing, tho' they don't tell you whoſe Hand it is. But that is not material, nor of any Weight, for Copies of Letters are ſometimes enter'd by the Parties themſelves, and ſometimes by their Servants, or others whom they appoint, and that is the ſame thing: but to anſwer that fully, the Priſoner has confeſs'd that part of this Copy-book was of his own Hand-writing, and the reſt of his Son's.

As to the other Letters from *D'Aulmay*, his *French* Correſpondent to him, which are many in Number, we have given the beſt Proof the Thing is capable of; we have produc'd the very Original Letters themſelves, directed to him, with the Poſt-Mark from *France*, found all in his Cuſtody, and confeſſed to be his Letters which he receiv'd from *France*, before three Witneſſes. This ſhews evidently that there was a traiterous Correſpondence, and is a plain Evidence, that the Priſoner ſent thoſe Letters mention'd to be receiv'd in *D'Aulmay*'s Letters to him, to which theſe were Anſwers, and the Letters exactly tally as to Dates, Circumſtances and Subject. If there had been but one of thoſe Letters ſent to the Priſoner, containing treaſonable Matter, it would have been Miſpriſion of Treaſon, if he had not diſcover'd it; but his going on with the ſame treaſonable Correſpondence for Months together, and in ſo many Letters, in every one of which he charges the Priſoner with writing High-Treaſon, and he preſerving all thoſe Letters, concealing and keeping them cloſe; this is a ſtrong Evidence of his Approbation and Aſſent to that Treaſon and traiterous Correſpondence. And ſo it is in the common Caſe, if a Man meet accidentally, not knowing of the Deſign, and light into the Company of Traitors, and hear their Diſcourſe and ſay nothing, if he don't diſcover it, he is guilty of Miſpriſion of Treaſon only, as a bare Concealment; but if he comes a ſecond time into their Company, and meet them again and hear their Conſultations, or the ſame Treaſon is propos'd and talk'd of, and he conceals it, he is guilty of High-Treaſon; becauſe it ſhews a Liking and an Approbation of their Deſign, and ſo it was reſolved in Sir *Everard Digby*'s Caſe. So here, all theſe Letters that came from *D'Aulmay*, and were kept up cloſe by the Priſoner, containing treaſonable Matter, ſhew his Approbation of the Treaſon, and are a ſtrong Evidence, that he ſent thoſe Letters to his Correſpondent *D'Aulmay*, to which theſe are Anſwers: It has been ſaid, that admitting theſe Letters were ſent by *D'Aulmay* to the Priſoner, yet he is not anſwerable for what others write: That, ſurely, is a great Miſtake; for if what he writes be Treaſon, it is his Duty to diſcloſe it; and if he do not, but continue to receive ſuch Letters, this is a clear Proof of his traiterous Correſpondence, and by that he makes the Treaſon his own. They object farther, that the Priſoner was only a Conveyer of Mr. *Harvey*'s and the Duke *D'Aumont*'s Letters; but that this is otherwiſe, appears from the Letters themſelves, for moſt of them relate to himſelf, and are meant of himſelf, and of a Correſpondence with him; for it appears from his own Confeſſion in his Examination prov'd by three Witneſſes, that this *French* Correſpondence held from a little before the late Queen's Death, 'till a few Days before his Examination; which ſhews that the Correſpondence was his own and carry'd on by himſelf.

In the next place we come to conſider the Expoſition and Meaning of theſe Letters, whether the Subject Matter be Treaſon or not; one of the Council for the Priſoner ſaid, there was nothing in them but about Dogs and Horſes; but that is a Miſtake, for thoſe were Mr. *Harvey*'s Letters, which talk'd ſometimes of Dogs and Horſes; but give me leave to ſay, there ſeems even in them to be a good deal of Treaſon, intermixt with the Diſcourſe of Dogs and Horſes. Let us examine ſome of his own Letters, and ſee whether the Subject Matter be not treaſonable. It is not to be expected that Men will in theſe Caſes ſpeak out plain; no, the Treaſon is always to be dreſs'd up in a Cant, and many of theſe Caſes have appear'd in this place. In my Lord *Preſton*'s Caſe, the Overt-Act charg'd there, was ſending treaſonable Letters to *France*, to give the Prince of that Nation an Account of our Strength and Forces

here; thoſe Letters run all in a ſort of Cant, and it was in that Caſe pretended, that the Meaning was uncertain, and that no Body knew what to make of ſome of the Expreſſions in them; but notwithſtanding that, both Judges and Jury took upon them to underſtand them, and he was found Guilty of High-Treaſon.

In the Letter of the 26th of *February*, *D'Aulmay* writes to the Priſoner, and deſires to know ſome News, becauſe the Intereſt of his Wife and Family, which, ſays he, is *Iriſh*, is concern'd in it, his Wife being a *Butler*, and of Kin to the Duke of *Ormond*. *Francia*, in Anſwer to that Letter writes him word, as for News, that he heard there was a Marriage in good forwardneſs between the Prince in *Lorrain* and one of the Arch-Dutcheſſes. " Let me know, *ſays he*, what there " is in it, ſince 'tis eſſential to the Intereſt of your " Wife, that is to ſay, that *Ireland* as well as " *England* was concern'd in the Pretender's Mar- " riage; for every one knows who is meant by " the Prince in *Lorrain*. Now ſee what Anſwer *D'Aulmay* ſends back, he gives his Opinion freely, and thinks that this intended Marriage of the Chevalier *de St. George* (which by the way explains who the Prince in *Lorrain* was) with the Arch-Dutcheſs, would not be a ſure way to bring his Affairs to an happy Iſſue. What was to be done then? *Why*, ſays he, *a Party-War would be much more to his Advantage.* Is not this eaſily to be underſtood? Is not this Party-War a Civil-War, an Inſurrection, a Rebellion? *D'Aulmay* then giving his Opinion, that a Rebellion was the moſt eligible Way; what is the Priſoner's Anſwer? why he cloſes with the Advice, but ſays, *That Perſons of Fifty or Sixty Thouſand Crowns a Year can't with Prudence run the Hazard of loſing ſuch Eſtates, unleſs more Encouragement be given them:* What is this but ſolliciting Aid and Encouragement from *France*, for an Enterprize in which Men of Eſtates muſt run the Riſque of loſing them? It is ſaid Perſons in the Plural Number, not one ſingle Perſon, tho' the Priſoner's Council endeavour'd to put ſuch a Colour upon it; but it is plain in a Party-War many muſt be concern'd.

In his Letter of the 28th of *March*, after he had expreſs'd a great deal of Uneaſineſs and Impatience, the Negligence and Delay of this Aſſiſtance from *France*, not uſual in that Nation, after he had wrote again and again, and wonder'd the Delays were ſo great; at laſt, ſays he, *We are now to expect every thing from your ſide of the Water.* What can be the meaning of this, but that the deſign'd Rebellion here was to be encourag'd from *France*. And this ſurely is as much as can be expected in an Affair of Treaſon, unleſs People were to write out plain, which is never to be expected, unleſs from Fools and Ideots who cannot commit Treaſon. All *D'Aulmay*'s Letters to the Priſoner tally with thoſe of the Priſoner's own, and purſue the ſame Deſign, tho' under a Cant which runs thro' moſt of them, as was in the Lord *Preſton*'s Caſe. In that Caſe there was the Cant of a Law-Suit, as in this; but my Lord Chief Juſtice *Holt*, and my Lord Chief Juſtice *Pollexfen* ſaid, that would not acquit his Lordſhip of Treaſon, if the Jury underſtood them in that Senſe as every Body elſe would. And why Words and Letters are not to be underſtood in Court, as every Body underſtands them out of Court, is a hard Matter to be explain'd.

It was indeed inſiſted by the Council for the Priſoner, that there really was a Cauſe recommended to the Priſoner's Care, that is very true; but then the Diſtinction between this private Cauſe, and the publick Cauſe of the Pretender, appears from many of *D'Aulmay*'s Letters; ſometimes he calls it our Cauſe, ſometimes the Cauſe of our Common Friend, and in a very remarkable Letter of *D'Aulmay*'s, dated from *Paris*, 7 *Auguſt* 1715. he ſays, *The Priſoner was in the right to inveigh againſt that Indolence he reproached them with; but be perſuaded*, ſays he, *'tis only ſo in Appearance. I even hope, that by this time you have convincing Proofs of it, and that we make ſuitable Returns to the good Diſpoſition on your Side, and that at laſt, God bleſſing the juſt Cauſe of our Friend, will let him gain his Suit.* To explain this Letter, the Time is very material, for on the 20th of *July* before his Majeſty inform'd his Parliament, that he had undoubted Intelligence of the Pretender's Deſign to invade theſe Kingdoms from Abroad. And in other Letters he diſtinguiſhes between the private Cauſe, and the Cauſe of the Pretender, and calls it my Cauſe. And in a Letter of the 14th of *September* 1715. *We know already*, ſays he, *what you tell us about the Cauſe of our Friend, which will ſoon end to his Satisfaction, or all Appearances will deceive us*; and then ſays, *as to my own Cauſe, I can't help telling you, that my Fate is very unhappy to have to do with ſo diſhoneſt a Man*; if Treaſon be not meant by thoſe Letters, what is? Let the Priſoner tell us the Meaning of them. Neither he, nor his Council, have offer'd at any other Interpretation, nor have they offer'd to explain but one ſingle Letter in the whole Packet; and that has been obſerv'd was a poor Interpretation, and contrary to the very Grammar and Senſe of the Letter. But what puts this Matter beyond doubt, if there could be any, about the Meaning of theſe Letters, is, that he himſelf tells you in his Examination, in expreſs and poſitive Terms, that the Subject Matter of the Letters that were to be communicated to Mr. *Harvey*, which are the Letters now produc'd in Evidence, *was the Intention of the Pretender to invade his Majeſty's Dominions*; and when he himſelf has allow'd this, who is to gainſay it? Can you have a better Witneſs than himſelf, to the Subject of his own Letters, and to explain his own Meaning?

There have been ſome Reflections offer'd which by no means ought to have been, and I think were very improper on this Occaſion; and it is our Duty to take notice of them when they are offer'd. It was ſaid, by way of Reflection, that firſt of all, the Priſoner's Books and Papers were ſeized, and then they were turn'd upon him, and made uſe of againſt him, as if this was illegal, unuſual, and new; when every Body knows in thoſe Caſes, there can be no other Evidence; and is the ſame that has been done in all Ages paſt, and muſt be done in all Ages to come. I am ſure they have no reaſon to charge the Government with Inclemency; there has been ſhewn, even in this very Caſe, as much Clemency and Tenderneſs as was poſſible. When the Noble Lord, my Lord *Townſhend*, had the firſt Information of treaſonable Practices againſt the Priſoner, he had been juſtified, if he had immediately ſent his Warrant and ſent him to *Newgate* for High-Treaſon; but inſtead of that, he was cautious, and was willing to be further inform'd before he committed him; and therefore he ſends to the Poſt-Office and orders his Letters to be ſtop'd, in which he found

the treaſonable Correſpondence confirm'd; and then he was taken into the Cuſtody of a Meſſenger only, in order to be examin'd. His Lordſhip thereupon gave him all the Opportunities he could deſire, of throwing himſelf at his Majeſty's Feet; but he groſly prevaricated with his Lordſhip, as appears by that Letter wrote to his Wife; wherein he takes notice, that in *Newgate* they were all Tories, and the Majority for the Government, *i. e.* ſent thither upon that Account: "You know, "*ſays he*, why I am here, which can't be a Diſho- "nour to me, be then at eaſe; I have not ſaid "any thing againſt Mr. *Harvey*, nor nothing can "be done to him; he can only be ſuſpected to "be the Pretender's Friend.

And now give me leave to take notice, that in this Letter he gives a further Explanation of this Buſineſs; for he ſays, *According to their Information*, i. e. *the Tories, though every thing ſhould fail, my Lord* Townſhend *could do nothing, for Affairs will be at an end in leſs than a Fortnight.* Now the time is very material, every one knows that the Rebellion was juſt then breaking out; it began in *Scotland* in *September*, and in *England* in *October* following. They have call'd ſome Witneſſes to the Priſoner's Reputation, but they have not proved any thing material on that Head, nor given a tolerable Account of him. But if they had, it would in this Caſe be of little or no weight; when a thing is doubtful, Reputation may ſway a little, but in Caſes where the Evidence is ſo full and plain as in this Caſe, it can have no Signification or Weight. It was obſerv'd by us, that when the treaſonable Correſpondence began to be more plain and full, then the Priſoner deſiſted from entering his Letters in his Copy-book; in Anſwer to which, it was urg'd by the Priſoner's Council, that it was improbable it ſhould be ſo, for that the Correſpondence was entirely interrupted for ſeveral Months together, becauſe as they inſiſted in one of *D'Aulmay*'s Letters, dated 17th *September*, he complains he had not heard from the Priſoner in three Months; but that is grounded on a Miſtake, for the Perſon that uſes that Expreſſion, is not *D'Aulmay*, but another Perſon, and it is wrote in *French* in a Poſtſcript under *D'Aulmay*'s Letter; for in the Beginning of the Letter it ſelf, *D'Aulmay* expreſly ſays, he had received the Priſoner's Letter of the Ninth Inſtant, which ſhews the Correſpondence continued, but was too groſs to enter ſuch Letters in his Copy-book, or to write under the ſame Name; for now, he ſays, when he has any thing material, he would write in a ſtrange Hand, and would ſign it by the Name of *Jacques Chrêtien*, and that Mr. *Harvey* might write under the ſame Name too; but none of theſe Letters appear.

Thus I hope I have anſwer'd every thing that has been materially objected by the Priſoner's Council, and if you, Gentlemen of the Jury, do believe that the Priſoner at the Bar wrote theſe Letters, the Copies whereof have been produced to you, and that thoſe Letters produced from his Correſpondent *D'Aulmay*, were receiv'd by the Priſoner, and that he wrote the Letters therein mentioned, and that he has therein carried on a traiterous Correſpondence, you will acquit yourſelves to your King and Country, and find him Guilty of the High-Treaſon charg'd upon him.

Mr. *Cowper*. My Lord, it may be proper on this Occaſion, Mr. *Sollicitor* having repeated the particular Parts of the Evidence, to take notice of ſome Things, that have appeared in general in the Courſe of this Trial: We think it of Importance to the Publick, that this traiterous Correſpondence ſhould appear in a proper Light, that the deluded Populace may be no longer to ſeek, who were the Perſons that incited, and fomented the late unnatural Rebellion.

The Gentlemen of the Jury will obſerve, that our Evidence begins with a ſecret Information which was given to a Noble Lord who was then Secretary of State, of a traiterous Correſpondence carried on by the Priſoner, and his Accomplices: That Information was not immediately or haſtily relied upon, but Orders were given that all Letters, directed to *Francia* the Priſoner, ſhould be intercepted at the Poſt-Office; accordingly you have heard, that ſeveral Foreign Letters from *France*, directed to the Priſoner, were ſtopp'd, and ſent to the Secretary's Office; thoſe Letters fully diſcloſing the Treaſon, it was thought Time to iſſue a Warrant, and ſend a Meſſenger to ſeize the Priſoner and his Papers; and it is to us wonderful, that one of the Council for the Priſoner ſhould undertake to cenſure that Proceeding, the Neglect of which muſt have been cenſured, if it had not been done: After an Information receiv'd, of ſo vile and dangerous a Conſpiracy, confirmed and made evident by Letters intercepted, was it poſſible for one, entruſted in ſo high a Station, under his Majeſty, to do leſs than to cauſe the Perſon and Papers of the Priſoner to be ſecured?

You have heard, Gentlemen of the Jury, that from the Time of ſeizing the Letters, and Copy-Book of Letters, in the Lodging and actual Cuſtody of the Priſoner, there is a regular and certain Proof, as to the Identity of the Book, and Papers produced at this Time, and given in Evidence; they were carried by the Meſſengers juſt as they were taken, to Mr. *Walpole*, who deliver'd them to Mr. *Buckley*, and the Witneſſes all ſpeak likewiſe, to the Book and Papers themſelves, ſo that there remains no Manner of Diſpute concerning them.

Amongſt theſe Papers, Gentlemen, you will obſerve, there is one Letter that relates to Mr. *Harvey*, which is now produced becauſe it is Evidence againſt the Priſoner *Francia:* He, it ſeems, was to manage Mr. *Harvey*'s Correſpondence, and did ſo for a conſiderable Time, but at laſt Curioſity prevail'd; and it is very remarkable, by what Accident that Original treaſonable Letter happens to appear now in this Place: It ſeems the Priſoner, in Breach of the Truſt and Confidence which was repoſed in him, and to gratify his Curioſity, opened the Letter, and finding he could not ſeal it up, and put it together again in that manner, but that it might be ſuſpected he had opened it; for that Reaſon he himſelf kept the very Original Letter under Mr. *Harvey*'s own Hand. When that Letter comes to be read, it appears to be myſterious, as to the Figures and Numbers made uſe of, inſtead of the Names of Perſons, but the Priſoner's Examination explains it, which ſhews he was Maſter of the Key, and of the Secret.

This Diſcovery was attended with Circumſtances that will have their Weight, in a Cauſe of this Nature, when this Letter found upon the Priſoner, is produced to the Perſon that wrote it, before a Committee of the Lords of the Council, you have heard that he was in the utmoſt Diſ-

order, as indeed well he might, that he expreſs'd himſelf ready to diſcloſe all that he knew; for what Perſon being in his Condition, and ſeeing one of his own Letters, which he believed ſafe in the Hands of his Correſpondents Abroad, would not have believed the Government Maſters of the reſt; I dare ſay *Francia*'s impertinent Curioſity was then unthought of and unſuſpected. I am ſorry, Gentlemen, to mention a particular Accident, which, however, ſerves to ſhew that the Correſpondence was of a dangerous Nature, otherwiſe what Account can be given, that that Gentleman ſhould, in about twelve Hours after, make a deſperate Attempt upon himſelf?

Mr. *Hungerford*. My Lord, I apprehend that nothing of this Matter ought to be mentioned here; whatever Mr. *Harvey* was liable to, he is now at Liberty.

Mr. *Cowper*. I ſay, my Lord, it had that Conſequence, and if it had not been a Diſcovery of the utmoſt Importance, if it had not been thought very dangerous in its Conſequence to himſelf, that Attempt upon himſelf had never been made: But ſo it was, and it is ſo far material, as it was occaſioned by Part of that Correſpondence which the Priſoner was employed to tranſmit to the Conſpirators in *France*.

You have heard, Gentlemen, that *Francia*, when he was firſt examined, capitulated for himſelf; that he promiſed to make a full Confeſſion, and accordingly gave in a firſt, and ſecond Information, which have been read to you; and I dare ſay, when he ſigned thoſe Examinations, he really intended to ſave himſelf by a Diſcovery of his Treaſon; but when he had taken Counſel with his Party and Fellow-Priſoners in *Newgate*, you find by his Letter to his Wife, he changed his Mind, and the Expreſſion is to this Effect, *He hopes he had ſaid nothing that could hurt either himſelf or Mr.* Harvey, *and that he laugh'd at any thing the Government could do to himſelf*.

Your Lordſhip has heard how artificially and maliciouſly it has been inſinuated, that the Noble Lord, the Secretary of State, gave ſome Hopes of Interceſſion to be made in Favour of the Priſoner; I firmly believe, no Man living that knows that Lord, but thinks he would have been better than his Word, if the Priſoner had honeſtly deſerved it. Whatever was ſaid upon that Occaſion, proceeded from the Priſoner's Aſſurances, that he would make a full Confeſſion, that was the Ground and Condition upon which the Priſoner was told he ſhould be recommended to Mercy. But let the World judge, whether that Noble Lord could juſtify it to his King, his Country, or to himſelf, to interpoſe in his Favour, when he came to diſcover by a Letter under the Priſoner's own Hand, that he was reſolved to conceal all that he knew: Surely, the Condition being broke by the Criminal himſelf, it became the Duty of the Noble Lord not to intercede for an obſtinate Offender; one, that was determined to abide every Extremity, rather than do his Duty, by diſcloſing thoſe Treaſons that were latent in his Breaſt; ſo that we owe the Diſcovery which is made by the Examinations to the ſame Providence that has brought to Light the reſt of the Evidence in a ſtrange and wonderful Manner.

After ſo much Time has been ſpent, it would be tedious to obſerve the particular Paſſages of the Letters which have been given in Evidence, only this I would obſerve, that when the Rebellion was not ſo near at hand, there ſeems to be ſome little Caution uſed in penning the Letters which have been read out of the Copy-Book; but as the Time grew near, the Correſpondence alſo grew more warm and open, as may be perceived by the Letters from Abroad; which is the Reaſon, Gentlemen, you find him diſcontinue entering his own Letters in his Copy-Book. It has been ſaid by his Council, Can it be imagined that a Man would copy and enter Letters of a criminal Nature? but Gentlemen, the Queſtion is, Whether he has done it? And you hear it proved by three Witneſſes, that he owned it to be his own Copy-Book of Letters to his Correſpondents Abroad; ſo that there can remain no doubt, but that every Letter in that Book is a Copy of the Original wrote by the Priſoner: Whoever will obſerve the Time when he diſcontinues entering his Letters as formerly, which was juſt as the Rebellion was breaking out, will think it a ſtrong Evidence, if Evidence were wanting, that the Letters enter'd, contained a criminal and traiterous Correſpondence.

Had the Correſpondence been innocent, the ſame Method would have been continued; for the Rebellion had nothing to do with the ſham Law-Suit. But as the Rebellion grew nigh, it became neceſſary to be more expreſs and plain, as appears by all the Letters to *Francia* from abroad; which is the true Reaſon he diſcontinued entering his own Letters. Can any Body that can hear or read, doubt, but that the Priſoner continued to write to his Friend *Payen*? I think there is not one Letter directed to the Priſoner that don't in the firſt Line of it acknowledge the Receipt of the Priſoner's, *Yours of ſuch and ſuch a Date I have received*; and ſome of them acknowledge the Receipt of two Letters from the Priſoner at the ſame Time, which ſhews his Diligence, and proves, that he writ oftener to his Correſpondent than his Correſpondent to him. You ſee, Gentlemen, the Letters from *D'Aulnay*, alias *Payen*, to the Priſoner, make it manifeſt he went on to the laſt in the ſame traiterous Correſpondence; but it can't be expected his Original Letters ſhould be produced. *D'Aulnay*'s Letters plainly intimate the Tenour of the Priſoner's: I will trouble you but with an Inſtance or two amongſt many that might be obſerved.

Of this kind are all thoſe Letters which diſſuaded the Priſoner from being impatient; that give him Aſſurance they are not dilatory; that promiſe him every thing will anſwer his Expectation. All theſe, and many other Expreſſions of the like kind, manifeſt, that he was ſoliciting Aid from *France*, and that he did what in him lay to incite, promote, and encourage an Invaſion from Abroad, and the Rebellion at Home.

This, Gentlemen, is the Nature of the Evidence that has been laid before you: The Diſcovery was accidental, the tracing of it is ſtrange and wonderful. Deep and ſecret are the Councils of Traytors; and yet we ſee, let them be never ſo cautious, whatever Method they may take to diſguiſe their Treaſon, whatever ſubtile Inventions may be uſed to carry on their Conſpiracy, yet the ſame Providence that has placed his ſacred Majeſty upon the Throne of his Anceſtors, will continue to guard and protect him, and to baffle the Devices of his Enemies. Upon the whole Matter, we think we have fully prov'd the Treaſon and the Overt-Act laid in the Indictment.

We think it may reaſonably be concluded from the Evidence, that the Priſoner has conſpired, conſulted, and agreed to raiſe and levy War within this Kingdom, to depoſe and murder the King; that he has written to and received from his Correſpondents Abroad many Letters to procure foreign Aſſiſtance for that Purpoſe; and the Court will inform you, Gentlemen, that this is Treaſon in the Priſoner at the Bar.

L. C. Baron. Gentlemen of the Jury, *Francis Francia* ſtands indicted of High-Treaſon, for compaſſing and imagining the King's Death; contriving to depoſe him from the Throne, and to advance the Pretender to the Crown. And there are laid in the Indictment ſeveral Overt-Acts; one is, that he conſulted and agreed to raiſe an Inſurrection and Rebellion againſt the King: And that for that Purpoſe he wrote Letters to divers Foreigners, to ſollicit and procure Arms, Men and Money, and to cauſe an Invaſion; and cauſed thoſe Letters to be ſent to divers Foreigners in *France*.

This is the Subſtance of the Indictment, and to prove this, it has been ſhewn you how he was taken and ſeized. And Mr. *Smith* tells you, it was upon the Nineteenth Day of *September*, 1715. that he had a Warrant to ſeize him: That he went with another Meſſenger, ſince deceas'd, whoſe Name was *Wilcox*, and found him and a Woman in Bed. The Priſoner in a little time got up. He tells you there was a Cloſet in the Room, the Door whereof he caus'd to be open'd, and in it, upon a Shelf, found a Parcel of Letters lying open in Folio, wrote in *French*, and a Book, that has been produced, lying upon the Deſk. He put up the Letters and the Book together; when he had ſo done, ſays the Priſoner, *What do you take that Book for? That is my Copy-Book of my Letters to my Correſpondents, and there is nothing material in that.* The Meſſenger took notice of a ſort of Writing at the End of it, that he knew it by again, and the Priſoner ſaid, *That was his Son's Writing.* It has been deduced to you, that the Book and the Letters that have been produced to you, are the ſame Book and Letters that were ſeized in the Priſoner's Houſe, and carried to my Lord *Townſhend*'s Office.

Mr. *Walpole* tells you on what Day the Warrant was granted, and that the next Day the Book and Papers were deliver'd to him by the Meſſenger; that he look'd over them with Mr. *Buckley*, and then he carried them to my Lord *Townſhend*; and that the Priſoner owned the Letters upon his Examination before my Lord, and ſaid, *This is my Book of my Letters to my Correſpondents; ſome of them were enter'd by me, and the reſt of them by my Son.* This is prov'd to be the ſame Book; and upon peruſal of the Letters, Mr. *Walpole* proves them to be the ſame that were brought to him by the Meſſenger.

Mr. *Buckley* ſays, that when theſe Letters were brought to the Office, he read ſeveral of them; and that when Mr. *Walpole* went to *Holland*, they were left with him, and he copied ſeveral Paſſages out of them. Mr. *Buckley* was preſent at the Priſoner's Examination, but can't ſay any thing as to the Book's being ſhewn to him, becauſe he was buſy in taking the Examination; but ſays, that *Francia*, upon his Examination, would not be ſworn upon a *New Teſtament*; but took a Book out of his Pocket, and was ſworn upon that, that his Examination was true. He ſubſcribed his Name to it, and it was read over to him. It was objected, that he was refuſed the Liberty of reading it: But there was no ſuch Thing; he might have read it, and it was read to him, and he was never refuſed to read it.

My Lord *Townſhend* informs you, that he having received an Information, that a Correſpondence was carried on between the Duke *D'Aumont*, the late Duke of *Ormond*, and Mr. *Harvey*, and that Letters paſt between them by means of the Priſoner, there were Orders ſent to the Poſt-Office, to ſtop all Letters directed to *Francia*; that the Priſoner being examin'd before my Lord, own'd all theſe Letters. And ſays he, *As to my own Letters, I appeal to my Book which will ſhew them*, theſe are ſo many Evidences, that he own'd this Book to be the Book of his Letters. *What others write to me*, ſays he, *can't affect me; but as for my own Letters I appeal to my Book.* My Lord ſays, there ſeem'd to be a Diſpoſition in him to tell all he knew, and he offer'd to explain the Letters there produced; that at the next Time Mr. *Harvey*'s Letter was produced, and he explain'd the Figures in that Letter; and my Lord *Townſhend* then took him to be ſincere, but he found afterwards, that he had not diſcover'd all he knew. Theſe Letters were laid upon the Table during the Time of the Examination, and were taken back again. The Priſoner ask'd ſeveral Queſtions about Money being given him, and more offer'd to him, by my Lord *Townſhend*. My Lord gave an Account of that, and ſays, that the Priſoner pretended to be in a miſerable Condition, his Wife ſtarving, and he begg'd hard for ſomething, pretending to be miſerably poor; and as he was going away, as meer Alms, my Lord gave him three, or four, or five Guineas, not as any Encouragement to him to ſwear any Thing, but as meer Alms, becauſe he begg'd ſo hard, and pretended to be in ſo miſerable a Condition. Then he deſired to know, whether it was not promis'd him, that his Examination ſhould not be produced againſt him. He was told, that if he was candid there ſhould be no Advantage taken againſt him, and that my Lord would intercede on his Behalf; and if he had been ſo, no doubt, my Lord would have done what he could to incline the King to be favourable to him; but after this, my Lord found he knew a great deal more than he would diſcover. His Wife came indeed to my Lord, and pretended ſhe could prevail upon him to diſcover, if ſhe might be admitted to him; but after this, when he was in *Newgate*, a Letter was found directed to his Wife, in which he ſaid, he met with good Company in *Newgate*, and hoped he had ſaid nothing againſt Mr. *Harvey* which would prejudice him; and upon this, my Lord *Townſhend* did not think him ſo ſincere as he pretended to be at firſt. Mr. *Buckley* proves that Letter to be of his Hand-Writing. In it he deſires his Wife to make herſelf eaſy, *They were all Tories that were there; he had good Company, and the Buſineſs will be at an End in a Fortnight.* What Buſineſs could he mean? Nothing but that about which the Correſpondence was, and *God will aſſiſt us; I know nothing againſt Mr.* Harvey, *he is only ſuſpected to be for the Affair, he was well known to be ſo before*; and *if all were here that are ſo*, he believed *three Parts of the Nation would be there.* So that he had a good Opinion of the Cauſe, and that it would be over in a Fortnight.

This

This Examination was alſo prov'd by Mr. *Stanhope*, who ſays, that the Letter of Mr. *Harvey* annexed to it, was produced at Council to Mr. *Harvey*; that he was in the utmoſt Confuſion, chang'd Countenance, deſir'd to withdraw, and to have liberty to ſpeak to a certain Lord: My Lord *Townſhend*, and Mr. *Stanhope*, both thought him in a good Diſpoſition to diſcover, but that very Night he ſtabb'd himſelf. As to the Examination, he pretended he was not ſuffer'd to read it; but Mr. *Stanhope* ſays, that every thing of Conſideration was repeated more than once or twice; and after the firſt Night's Examination, he repreſented himſelf to be in a miſerable Condition, and thereupon my Lord *Townſhend* did give him ſome Money, what it was he knows not; and this was after he had ſign'd his Examination, and ſhew'd no reluctancy to it; and ſays, that he would not have been denied to have read it, if he had deſir'd it. This Examination being thus proved, it appears to have been taken as fairly and carefully in all reſpects, and with as much Kindneſs to the Priſoner as could be: Things were gone over and over again. It has been read, and there are ſome things in it that explain this Correſpondence, and tell you how it was begun and carried on.

It was begun by means of a Law-Suit that was recommended to him to manage here, and that brought on the Correſpondence between him and the Abbot *Butler*: This begun a little before the Queen's Death, and it continued 'till within a few Days of the Priſoner's Examination. During that Correſpondence he received ſeveral Letters from the Abbot, directed to Mr. *Harvey*, and ſeveral were convey'd to the Abbot from Mr. *Harvey*, which were ſometimes brought by Mr. *Harvey* himſelf, and ſometimes ſent by other Hands. The Priſoner alſo explains the initial Letters and Numbers in Mr. *Harvey*'s Letter, and then tells you, that he believes the Subject Matter of the Letters wrote to Mr. *Harvey*, by *Payen alias D'Aulmay*, was the Deſign of the Pretender to invade theſe Kingdoms; this he could not know unleſs he had been privy to the Deſign. If a Man is privy to a treaſonable Deſign, and contributes to carrying it on, it is not then barely a Miſpriſion: If he comes to the Knowledge of Treaſon, without being otherwiſe concern'd in it, and does not diſcover it to a Magiſtrate, this is Miſpriſion of Treaſon; but if he aſſents to the Treaſon, or acts in carrying it on, it is High-Treaſon.

In the next Examination it is, that he ſhews what the Marks in Mr. *Harvey*'s Letter ſignify: That 22 is the Duke *D'Aumont*, 6 the *French* King, 17 is the Word Tory, and believes that by 8 is to be underſtood the Pretender, and by 9 is to be underſtood his Majeſty. There are ſome Marks that he don't know, but his knowing thus far the Signification of theſe Marks, ſhews that he was privy to the Deſign.

Mr. *Harvey*'s Letter is annex'd to this Examination, and that has been read to you; there are ſome Things remarkable in that Letter, tho' a great part of it ſeems to be about ſome Money that he wanted to be paid him; yet at the end he ſays, *Preſs* 22 *to think of his Friends*; *it will be well for* 6; *all Things look well for* 8, *and in my heart, I think better than ever*; 9, ſays he, *Every Day loſes himſelf, and for the* 24000 *that makes for* 8 *and* 6, that is, for the Pretender and the *French* King. He ſays, that opening the Cover the Letter ſtuck to the Seal, and that was the reaſon that he kept it by him, and did not ſend it forward. If this Man had not been for carrying on the Deſign, it had been his Duty to have carried this Letter to the Secretary of State, he ought to have diſcover'd it to a Magiſtrate; but inſtead of that, he owns, that he has ſince written other Letters that have been read to you.

At the beginning of the Correſpondence *D'Aulmay* deſires to have ſome News, and *Francia* tells him, there was a Diſcourſe of a Marriage in Forwardneſs between the Prince at *Lorrain* and the Arch-Dutcheſs. " Let me know, *ſays he*, what " is in it, for it is for the Intereſt of your Wife, " for he had married a Wife whoſe Name was " *Butler*. *D'Aulmay* writes word again, As for " the Marriage of the *C——r St. G——e*; but it is in Anſwer to the former Letter, and it is known that he was called by the Name of the Chevalier *St. George*; ſo that it muſt be the ſame Perſon. He ſays, there had been ſome talk of that Marriage, but no mention had been made of it lately, *I am of Opinion*, ſays he, *that it will not be a ſure way to bring his Affairs to a happy Iſſue; a Party War would be of more Advantage*. *Francia* writes again to *D'Aulmay*, and complains, that *ſome Letters had not been anſwered, tho' entirely for the Affair*. And what that Affair is, muſt be left to you to judge. *Beſides*, ſays he, *I muſt tell you, that Perſons of Fifty or Sixty Thouſand Crowns a Year won't run the Hazard of loſing ſuch Eſtates unleſs more Encouragement is given them; you will be underſtood if you mention it to that Lord. And I muſt add, that the Misfortune of a certain Perſon is more owing to your Delays on the other Side the Water, than to the Party that is againſt him.* They would have you think, that by Perſons of Fifty or Sixty Thouſand Crowns a Year, was meant a Perſon in *France*, that had ſuffered by being concern'd in the Revenues; but it is plain, it is meant of Perſons here, that would not Hazard their Eſtates: And he adds, *You will be underſtood if you mention this to Duke* D'Aumont.

There are other Letters from the Priſoner; in one he tells *D'Aulmay*, He would adviſe them to ſatisfy Mr. *Harvey*, *I am perſuaded to deal with him as has been done is no good Policy; and if ever I have the Honour to talk face to face with you, I will ſhew you clearly, how unhappily, thro' Negligences, very important Affairs have miſcarried*; this muſt be the Affair of the Pretender, and not of the Law-Suit. The Affair that concern'd Mr. *Harvey*, for Mr. *Harvey* had nothing to do with the Law-Suit, but by his Letter ſhews himſelf to be concern'd for what makes for 8 and 6, that is, for the Pretender and *French* King.

There is another Letter from *Francia*, wherein he writes, *What you tell me at the end of your Letter, of your having ſpoken in the manner I deſir'd you, is ſufficient, and conſequently we are now to expect every Thing from your Side of the Water, that is to ſay, Explications*, &c. I muſt leave it to you, to conſider what he meant by that.

In another Letter he ſays, *I am order'd to tell you, on the part of Mr.* Harvey, *that you will do him a Pleaſure in deſiring the Duke* D'Aumont, *in his Name, to ſend hither ſome Perſons to fetch the Horſes and Dogs he has had ſo long, or elſe to ſend Orders to ſome Body to take them: Affairs are here in ſuch a Situation, that great Precautions muſt be uſed to avoid giving Umbrage to thoſe who are in Power. When I have any thing particular to*

write to you, I will do it by a ſtrange Hand, and will ſign Jacques Chrêtien. *Take Notice of this, and provided you let me know you received this Letter, without its having been opened, I ſhall be eaſy.* There then began to be more Difficulty, and therefore the Correſpondence muſt be carried on in that Name, and in a ſtrange Hand.

In another Letter he writes, *Mr.* Harvey *gives his Service to you, and bid me tell you, when any thing new offers, if he cannot write himſelf, he will get* J. C. *to write for him.* That muſt be *Jacques Chrêtien.*

Then there are other Letters from *D'Aulmay* to *Francia*, which were found in the Priſoner's Cuſtody; and ſeveral of them import his having received Letters from *Francia*. In one of them *D'Aulmay* ſays, *You are in the right to inveigh againſt the Indolence you reproach us with; but be perſuaded, 'tis only ſo in Appearance. I even hope, that by this Time, you have convincing Proofs of it, and that ſuitable Returns are made to the good Diſpoſitions of your ſide.* This grew near the Time of the Rebellion. This Letter was dated the 7th of *Auguſt*, and the Rebellion broke out in *October*. He goes on, *And that at laſt, God Bleſſing the juſt Cauſe of our Friend, will let him gain his Suit; at leaſt, Aſſiſtance and powerful Sollicitations ſhall not be wanting.*

There are other Letters which ſhew he knew the Deſign, and was privy to it; *Our Friend's Cauſe will ſoon be ready, God willing, to be tried.* That could not be the Law-Suit depending on this ſide the Water; for that Letter was wrote from *France*; and he ſays, *All Preparations are making for it. The Friend who is related to my Wife*, that is, the Duke of *Ormond*, *has read your two Letters, and is mightily pleas'd with them.* Which implies, that he had wrote Letters, tho' they are not entered in the Copy-book.

Then he writes upon the 24th of *Auguſt*, under the Name of *Payen*; *I am very much aſtoniſh'd I did not hear from you by the Poſt which arriv'd Yeſterday. Our Friend was at my Houſe expecting it. We both of us deſire you not to let one Poſt go without writing to us, and letting us know all that paſſes relating to the Cauſe of our Common Friend.* That can't be the Cauſe of *Butler*'s or *D'Aulmay*'s Friend that was depending here. There are ſeveral other Letters which have been read to you, which mention both thoſe Cauſes, and ſhew that he made a Diſtinction between them.

On the 14th of *September*, ſays *D'Aulmay*, *The Contents of your laſt without a Date were very agreeable to me, as well as to all our Friends, who give you Thanks for it, and have order'd me to tell you ſo, and to deſire you to continue. We know already Part of what you tell us about the Cauſe of our Friend, which will ſoon end (pleaſe God) to his Satisfaction, or all Appearances would deceive us. As to my own Cauſe, I can't help telling you, that my Fate is very unhappy to have to do with ſo diſhoneſt a Man.*

I think this is the Subſtance of moſt of the Letters that have been read to you, which relate to his Correſpondence, in endeavouring to procure the Pretender to make an Invaſion here.

Upon theſe Letters it has been obſerv'd, that the Cauſe of the Pretender is one, and the Cauſe of the Law-Suit is another; but in all theſe Letters there is plain Mention made of the Pretender; adviſing how to bring it on, and giving Intelligence about it. And theſe Letters being in the Priſoner's Cuſtody, and written to him, and having ſuch Treaſon in them as is mentioned; and he keeping theſe Letters by him, is a great Evidence that he aſſented to the Tranſaction, and to the endeavouring to bring the Pretender over, and to contrive, as well as he could, to carry on the Affair. If he had receiv'd but one Letter, and did not deſign to promote the Cauſe, he ſhould have carried it to the Secretary of State, and then he had done his Duty. But to receive ſo many Letters, and to keep them ſo long, is an Evidence that he aſſented to the Matter, and that he did write ſuch Letters as are mentioned to be received from him.

On the Behalf of the Defendant, there was an Objection made by his Counſel, that the Defendant is an Alien born; and that is an Objection to the Indictment. He is indicted as a natural born Subject, and they have examined ſeveral Witneſſes to prove him an Alien. The Proof is ſtrong, and you will find him an Alien, and ſo that matter muſt be left ſpecially for the Judgment of the Court, and you muſt find the other Fact: And if you believe that he did promote the Invaſion, or conceal and aſſent to that Deſign, that is, a conſpiring the Death of the King, then he will be guilty of the Treaſon charg'd in the Indictment.

It has been objected, that in one of the Letters, the Perſon who wrote thoſe Letters complains, that he had not heard of the Priſoner in three Months; but that is a Miſtake, for that was in a Poſtſcript wrote by another Perſon, and in a different Hand; for the very ſame Letter ſhews, that there were Letters received from him within that Time.

They ſay, there is no direct Proof that he intended the Life of the King; but if he kept a Correſpondence, and promoted the intended Invaſion, that is in Law conſpiring the Death of the King.

They have produced ſome People who have given an extraordinary ſort of Evidence, of what Mr. *Buckley* and my Lord *Townſhend* ſhould ſay about this Matter, as if they promiſed him great Things, if he would ſwear againſt Mr. *Harvey*. *Simon Francia* ſaid, that Mr. *Buckley* told him, if his Brother would ſwear againſt Mr. *Harvey*, he ſhould have a good Reward; and that my Lord *Townſhend* ſaid, he had given him Five Guineas, and he ſhould have more.

Lucy White ſaid, that ſhe was in *Newgate*, and *Francia* deſir'd her to conceal her ſelf when Mr. *Buckley* came: That Mr. *Buckley* told him, he muſt ſwear right or wrong for the Government; and if he did not ſwear againſt Mr. *Harvey*, Mr. *Buckley* would charge him with High-Treaſon, for he had cheated my Lord *Townſhend* of his Money, and done nothing for it.

Mary Meggiſon ſwears, that Mr. *Buckley* ſhould ſay, he would ſwear againſt him, becauſe he had cheated my Lord *Townſhend* of Five Guineas, and would not ſwear againſt Mr. *Harvey*.

Mr. *Buckley* was called again, and he denies it: He ſays there was no ſuch Thing. And it ſeems improbable that a Man of his Credit ſhould talk thus to the Priſoner; therefore the Credit of Mr. *Buckley* muſt be left to you, againſt the Credit of thoſe two Women. He tells you that *Francia* ſent to him, to deſire to ſpeak with him, not about Mr. *Harvey*, but on Behalf of one *Flint*, who is a Priſoner in *Newgate*, and was concern'd in writing the *Shift Shifted*; and

Francia

Francia ſent a Meſſage to Mr. *Buckley*, that he could do a Service in ſuppreſſing it. Mr. *Buckley* went to him, and he deſired ſome Favour on Behalf of *Flint*, which was granted: And Mr. *Buckley* denies he had any Diſcourſe with the Priſoner about Mr. *Harvey*.

Revell was called, and he proves, that *Francia* ſent him to Mr. *Buckley*, to deſire he might ſpeak to him. That he order'd *Revell* to ſtand at the Door, and he did ſo, but did not hear what they ſaid.

My Lord *Townſhend* tells you, that Mr. *Buckley* gave him an Account, that *Francia* had ſent to him, for the Purpoſe which he mentioned before: That my Lord ordered him to go: That he went accordingly, and he gave my Lord an Account what he had done about the Matter, and *Flint* had ſome Favour ſhewn him.

As to *Simon Francia*, my Lord ſays, he was ſeveral Times with him, but my Lord never propoſed any Reward for Swearing againſt Mr. *Harvey*; but told him, his Brother muſt deal openly, and tell all he knew, and that was the way to recommend himſelf to Favour.

As to the two Women, their Credit muſt be left in Oppoſition to my Lord *Townſhend* and Mr. *Buckley*, which of them you will believe, for they deny what the others have ſworn.

Then they call another Witneſs *Everall*, he tells you, that the Priſoner's Foreign Letters were brought to his Houſe; that they lay in an open Window, and ſometimes remained there ſome Days, and any Body might ſee them; and from thence they infer that they muſt be of no great Conſequence: But how can you infer that? Who can tell by the Superſcription of a Letter who it comes from, or what are the Contents of it; but theſe People can't ſay that theſe were all the Letters that were ſent to him.

There is an Objection made to the Book; a Witneſs ſays, he has look'd upon it, and that none of the Book ſeems to be of his Hand-writing; he ſays, *Francia* writes a fuller Hand. *Simon Francia* has look'd upon it, and ſays, not a Syllable is of his Writing; and others tell you, they believe it is not his Hand, and that he was three Months lame of a Rheumatiſm. As for that, it is not material whoſe Writing it is, if it contains the Copies of his Letters, and he has owned before three Witneſſes, That it is the Copy-book of his Letters.

Dr. *Cade* tells you he was ill, and thence they infer, that it is not probable that he ſhould write Letters ſo conſtantly as he did. He tells you, that from the Second of *November* 1714. to the Eighteenth of the ſame Month, he was in pain in one of his Hands, but does not know which of them, nor whether he was able to write: But this was before this Correſpondence by Letters that have been read to you began.

Then they call ſome Witneſſes to his Reputation: One tells you, that in Diſcourſe with him about the late Peace, he ſaid, it would ruin the Nation; that ſort of Evidence is of no Signification. Mr. *Slater* has known him four or five Years; there was a Commiſſion of Bankruptcy againſt him, on which Occaſion he became acquainted with him. He ſays, he always ſeem'd to eſpouſe the Intereſt of the King of *France*, but he always laugh'd at our Parties among our ſelves. Thoſe that were for the Intereſt of *France*, would of Conſequence laugh at our Diviſions.

Richardſon ſays, that he uſed to go to the Priſoner often in his Sickneſs, and knows no harm of him: That *Francia* liked him, and called him *Vulcan*, and bid him drink King *George*'s Health, and drank it himſelf.

This is the Subſtance of the Evidence that has been given on both Sides: Now, if you believe theſe Letters were wrote to him and by him, and that they contain a Correſpondence of a treaſonable Nature, inciting or incouraging any Perſons to levy War againſt the King, or any thing which ſhews that he was privy and aſſenting to it, then he is guilty of High-Treaſon. If you don't believe thoſe Letters were his, or that they don't amount to ſuch a Correſpondence, then you muſt acquit him.

If you find him Guilty, then you muſt alſo find that he was born in *France*, and is an Alien.

Then the Jury withdrew to conſider of their Verdict; and when they returned into Court were called over, and anſwer'd to their Names.

Cl. of Arr. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Arr. Francis Francia, Hold up thy Hand.

Which he did.

Look upon the Priſoner, how ſay you? Is he Guilty of the High-Treaſon whereof he ſtands Indicted, or Not Guilty?

Foreman. Not Guilty.

Whereupon the Priſoner was diſcharg'd.

CLXXXV. *Proceedings in Parliament againſt* Robert *Earl of* Oxford, *upon an Impeachment for* High-Treaſon, *and other* High-Crimes *and* Miſdemeanours, June 24, *&c.* 1717. 3 Geo. I.

THE Earl of *Oxford* having been impeached by the Houſe of Commons, and been confin'd near two Years in the *Tower*, without being brought to a Trial, preſented a Petition to the Houſe of Lords, ſetting forth his long Confinement, ſubmitting his Caſe to their Lordſhips Conſideration, and praying that his Impriſonment might not be indefinite.

Upon this Petition ſome of the Lords urged, That the Impeachment was *ipſo facto* deſtroyed and determin'd, ſince he was not brought to Trial the ſame Seſſion in which he was impeach'd, and that the Prorogation was an actual *Superſedeas* to the whole Proceedings; however, the Vote of the Houſe paſs'd to the contrary, and the Earl of *Nottingham*, who had inſiſted ſtrenuouſly upon it, enter'd his Proteſtation againſt it.

This being over-ruled the Duke of *Buckingham* moved to appoint a ſhort Day for the Earl's Trial, which after ſome Debates was fix'd for the 13th of *June*, and afterwards at the Deſire of the Houſe of Commons was deferr'd till *Monday* the 24th, on which Day the Lords came from their Houſe at twelve o' the Clock in their Robes and went into the Court in *Weſtminſter-Hall*, in their uſual Order.

The Lords being ſeated in their Places, (and the Commons in a Committee of the whole Houſe being in their Seats, and the Managers for the Houſe being alſo in Places appointed for them;)

The Houſe was reſumed.

Then Proclamation was made as follows, *viz.*

Serjeant at Arms. O Yes, O Yes, O Yes! Our Sovereign Lord the King doth ſtrictly charge and command all Manner of Perſons to keep Silence, on Pain of Impriſonment.

Then the Commiſſion for appointing a Lord High-Steward was (after three Reverences made in coming up from the Clerk's Table) preſented to the Lord High-Steward ſitting upon the Woolſack, by the Clerk of the Crown in Chancery on his Knee; and the ſame being brought to the Table, Proclamation was again made for keeping Silence.

William Lord *Cowper.* *L. H. Steward.* My Lords, his Majeſty's Commiſſion is about to be read; your Lordſhips are deſired to attend to it in the uſual Manner, and all others are likewiſe to ſtand up uncovered while the Commiſſion is reading.

Then the ſaid Commiſſion was read (all the Lords and others ſtanding up uncovered) as follows.

GEORGIUS R.

GEorgius, Dei Gratia, Magnæ Britanniæ, Franciæ & Hiberniæ Rex, Fidei Defenſor, &c. Prædilecto & Fideli Conſiliario Noſtro Williel-mo Domino Cowper, Cancellario noſtro Magnæ Britanniæ, Salutem. Cum Robertus Comes de Oxon' & Comes Mortimer, coram Nobis in Parliamento per Milites, Cives & Burgenſes in Parliamento noſtro Aſſemblat' de alta Proditione & aliis Atrociſſimis Criminibus & Offenſis per ipſum Robertum Comitem Oxon' & Comitem Mortimer commiſſ' & perpetrat' in nomine ipſorum Militum Civium & Burgenſium & nomine omnium Communium Regni noſtri Magnæ Britanniæ Impetit' & Accuſat' exiſtit. Nos Conſiderantes quod Juſtitia eſt Virtus Excellens & Altiſſimo Complacens, volenteſq; quod prædictus Robertus Comes de Oxon' & Comes Mortimer de & pro proditione & aliis Criminibus & Offenſis unde ipſe ut præfertur Impetitus & Accuſatus exiſtit coram Nobis in præſenti Parliamento noſtro, ſecundum Legem & Conſuetudinem hujus Regni noſtri Magnæ Britanniæ, & ſecundum Conſuetud. Parliamenti audiatur, examinetur, ſententietur & adjudicetur, cæteraq; omnia quæ in hac parte pertinent debito modo exerceantur & exequantur; ac pro eo quod Proceres & Magnates in præſenti Parliamento noſtro Aſſemblat' Nobis humilime ſupplicaverunt ut Seneſcallum Magnæ Britanniæ pro hac Vice Conſtituere dignaremur: Nos de Fidelitate, Prudentiâ, providâ Circumſpectione & Induſtriâ Veſtris plurimum Confidentes, Ordinavimus & Conſtituimus Vos ex hac Cauſa Seneſcallum Magnæ Britanniæ ad Officium illud, cum omnibus eidem Officio in hac parte debit' & pertinen' hac vice Gerend' Occupand' & Exercend' & ideo vobis Mandamus quod circa præmiſſa diligenter Intendatis & omnia quæ in hac parte ad Officium Seneſcalli Magnæ Britanniæ pertinent & requiruntur hac vice faciatis, exerceatis & exequamini cum effectu. In cujus rei Teſtimonium has Literas noſtras fieri fecimus Patentes, Teſte meipſo apud Weſt' Viceſimo Quarto Die Junii, Anno Regni noſtri Tertio.

Per ipſum Regem propriâ Manu Signat'

Wright.

Then the Herald and Black-Rod, making three Reverences as they came up, preſented, kneeling, the Staff to the Lord High-Steward; who thereupon ſtanding up, made a Reverence to the Lords; and then, being attended by the Herald, Black-Rod, and Purſe-Bearer carrying the

Purſe, proceeded to the Chair placed on the ſecond Step of the Throne.

Who having again made a Reverence to the Lords, he ſeated himſelf in the ſaid Chair, and gave the Staff to the Black-Rod on his Right-Hand, the Purſe-Bearer ſtanding on his Left.

Serj. at Arms. O Yes, *&c.* (as before.)

Lord High-Steward. Make Proclamation for the Lieutenant of the *Tower* of *London* to bring the Priſoner to the Bar.

Serj. at Arms. O Yes, O Yes, O Yes! Lieutenant of the *Tower* of *London*, bring forth your Priſoner to the Bar, according to the Order of the Houſe of Lords to you directed.

Then the Earl of *Oxford* came to the Bar, and kneeled for ſome time.

L. H. Steward. Your Lordſhip may riſe.

Then the Earl of *Oxford* roſe up.

Serj. at Arms. O Yes, *&c.* (as before.)

L. H. Steward. Clerk read the Articles of Impeachment.

The Clerk read the Articles, as followeth.

ARTICLES *of* Impeachment *of High-Treaſon, and other High Crimes and Miſdemeanours, againſt* Robert *Earl of* Oxford *and Earl* Mortimer.

WHEREAS many ſolemn Treaties and Alliances have been formerly entred into between the Crown of *England*, and other Princes and Potentates of *Europe*, for their mutual Safety, and from the Conſiderations of the common Danger, which threaten'd all *Chriſtendom*, from the immoderate Growth of the Power of *France*. And whereas the preventing the Monarchy of *Spain* from coming into the Hands of the Houſe of *Bourbon*, has for many Years been a fundamental Principle and Maxim of Union among the Allies, in order to preſerve a juſt Ballance of Power in *Europe:* And to that end, as the Deſigns of *France* on the Monarchy of *Spain* have from time to time appear'd, new Treaties and expreſs Stipulations have been enter'd into amongſt the Allies, to ſtrengthen themſelves againſt that approaching Danger: And, on this Foundation, a Treaty for an intended Partition, whereby a ſmall Part only of the Dominions of the Crown of *Spain* was allotted to the Houſe of *Bourbon*, was condemned by the Wiſdom of Parliament, as being highly prejudicial, and fatal in its Conſequences to *England*, and the Peace of *Europe:* And whereas the Duke of *Anjou*, Grandſon to the King of *France*, on the Demiſe of *Charles* the Second, King of *Spain*, took Poſſeſſion of the entire Monarchy of *Spain*, whereby the Ballance of Power, the Proteſtant Religion, and the Liberties of *Europe* were threaten'd with immediate Danger; whereupon *Leopold*, then Emperor of *Germany*, his late Majeſty King *William* the Third, of ever-glorious Memory, and the States-General of the *United-Provinces*, finding at that moſt critical Juncture, that a ſtrict Conjunction and Alliance between themſelves was become neceſſary, for repelling the Greatneſs of the Common Danger, from ſo great an Acceſſion of Power to the then common Enemy, did, in the Year of our Lord One Thouſand Seven Hundred and One, make, form, and conclude a new Treaty and Alliance, whereby it was agreed, That there ſhall be and continue between the ſaid Confederates, his ſacred Imperial Majeſty, his ſacred Royal Majeſty of *Great Britain*, and the Lords the States-General of the *United-Provinces*, a conſtant, perpetual, and inviolable Friendſhip and Correſpondence, and that each Party ſhall be obliged to promote the Advantages of the other, and prevent all Inconveniencies and Dangers that might happen to them, as far as lies in their Power: That the ſaid Allies, deſiring nothing more earneſtly than the Peace and general Quiet of all *Europe*, have adjudged that nothing can be more effectual for the Eſtabliſhment thereof, than the procuring an equitable and reaſonable Satisfaction to his Imperial Majeſty for his Pretenſion to the *Spaniſh* Succeſſion, and that the King of *Great Britain* and the States-General may obtain a particular and ſufficient Security for their Kingdoms, Provinces and Dominions, and for the Navigation and Commerce of their Subjects: That the ſaid Confederates therefore ſhall, in the firſt Place, endeavour, by amicable Means, to obtain the ſaid Satisfaction; but if, contrary to their Expectation and Wiſhes, the ſame is not had, the ſaid Confederates do engage and promiſe to one another, that they will aſſiſt each other with all their Forces according to a Specification to be agreed upon in a peculiar Convention for that purpoſe: That the Confederates, in order to the procuring the Satisfaction and Security aforeſaid, ſhall, amongſt other Things, uſe their utmoſt Endeavours to recover the Provinces of the *Spaniſh Low-Countries*, that they may be a Fence and Rampart, commonly called a Barrier, ſeparating and dividing *France* from the *United Provinces*, for the Security of the States-General, as they have ſerv'd in all Times, till of late that the moſt Chriſtian King has ſeiz'd them by his Forces; as likewiſe the Dutchy of *Milan*, with its Dependencies, as a Fief of the Empire, and contributing to the Security of his Imperial Majeſty's hereditary Dominions; beſides the Kingdoms of *Naples* and *Sicily*, and the Lands and Iſlands upon the Coaſt of *Tuſcany* in the *Mediterranean*, that belonged to the *Spaniſh* Dominions, and may ſerve to the ſame Purpoſe, and will be alſo of Advantage to the Navigation and Commerce of the Subjects of the King of *Great Britain*, and of the *United-Provinces:* That in caſe the Confederates ſhall be forced to enter into a War, for obtaining the Satisfaction aforeſaid for his Imperial Majeſty, and the Security of his Majeſty of *Great Britain*, and the States-General, they ſhall communicate their Deſigns to one another, as well in Relation to the Actions of the War, as all other Things wherein the common Cauſe is concerned: That it ſhall not be permitted to either Party, when the War is once begun, to treat of Peace with the Enemy, unleſs jointly, and by a Communication of Counſels; and no Peace ſhall be made, unleſs an equitable and reaſonable Satisfaction for his Imperial Majeſty and the particular Security of the Kingdoms, Provinces, Dominions, Navigations and Commerce for his Majeſty of *Great Britain*, and the States-General, be firſt obtained; and unleſs Care be taken, by fitting Security, that the Kingdoms of *France* and *Spain* ſhall never come and be united under the ſame Government, nor that one and the ſame Perſon ſhall be King of both Kingdoms; and particularly that the *French* ſhall never get into the Poſſeſſion of the *Spaniſh Indies*, neither ſhall they be permitted to ſail thither on the Account of Traffick, directly or indi-

indirectly, on any Pretence whatsoever: And lastly, unless full Liberty be granted unto the Subjects of the King of *Great Britain*, and the States-General, to exercise and enjoy all the same Privileges, Rights, Immunities, and Franchises of Commerce by Sea and Land in *Spain*, the *Mediterranean*, and all Lands and Places which the King of *Spain* last deceased did possess at the Time of his Death, as well in *Europe* as elsewhere, which they used and enjoyed, or which the Subjects of both, or either of them, by any Right acquired by Treaties, Agreements, Customs, or any other Way whatsoever, might have used and enjoyed before the Death of the late King of *Spain*: That at the same Time that the said Agreement or Peace shall be made, the Confederates shall agree amongst themselves about all the Things that they shall think necessary for maintaining the Navigation and Commerce of the Subjects of his Majesty of *Great Britain*, and the States-General, in the Lands and Dominions they may acquire, and that were possessed by the late deceased King of *Spain*, and also in what manner the States-General may be secured by the aforesaid Fence or Barrier. And whereas his said late Majesty King *William*, and the States-General, seriously considering, that *France* was then become so formidable from the Accession of *Spain* to the Duke of *Anjou*, that, in the Opinion of all the World, *Europe* was in Danger of losing her Liberty, and undergoing the heavy Yoke of Universal Monarchy, and that the surest Means of effecting that Design, were to divide the King of *Great Britain* from the States-General, for which Purpose all imaginable Efforts would be made; they therefore thought it necessary to unite in the strictest Manner that was possible, and to that End a Defensive Treaty and Alliance was concluded and entered into between them, in or about the Month of *November*, One Thousand Seven Hundred and One, wherein it was, among other Things, agreed, That in case the said High Allies should be jointly engaged in War, by Reason of this Defensive Alliance before-mentioned in the fifth Article, or on any other Account, there shall be an Offensive, and Defensive, and Perpetual Alliance between them, against those with whom the War shall be, and all their Forces shall be employed by Sea and Land, and they shall act in conjunction or separately, as it shall be agreed between them. That since, in the Alliance with the Emperor made in *September* last, particular Care was taken of the Recovery of the *Spanish Low-Countries*, out of the Hands of the most Christian King, the said Confederates expressly engage to aid one another with all their Forces for the Recovery of the same. And in regard the principal Interest of the said Confederates consists in the Preservation of the Liberties of *Europe*, the beforementioned Treaty with the Emperor shall be faithfully and sincerely executed, and both Sides shall guaranty the same, and use their Endeavours to confirm and render it more strong from Time to Time: That in making Peace, particular Care shall be taken of the Commerce and Traffick of both Nations, as also for their Security, as well in regard to the *Low-Countries*, as the Countries adjacent: That when the War is begun, the Confederates shall act in concert, according to the seventh and eighth Articles of the Treaty of the Third of *March*, in the Year of our Lord One Thousand Six Hundred Seventy Seven-Eight, between *England* and *Holland*, which is hereby renewed and confirmed; and no Peace, nor Truce, or Suspension of Arms, shall be negotiated or made, but according to the ninth and tenth Articles of that Treaty; by which it was agreed, that when the two Allies come once to an open War, it shall be lawful for neither of them afterwards to come to any Cessation of Arms with him who shall be declar'd and proclaim'd an Enemy, without it be done conjointly, and with common Consent: That no Negotiation of Peace shall be set on Foot by one of the Allies, without the Concurrence of the other: That each Ally shall continually, and from Time to Time, impart to the other every thing that passes in the said Negotiation, and shall stipulate with the common Enemy for the same Rights, Immunities, Exemptions and Prerogatives for his Ally, as he does for himself, if so be the said Allies do not agree to the contrary. And whereas the *French* King having got Possession of a great Part of the *Spanish* Dominions, exercised an absolute Authority over that Monarchy, having seized *Milan* and the *Spanish Low-Countries* by his Armies, and made himself Master of *Cadiz*, of the Entrance into the *Mediterranean*, and of the Ports of the *Spanish West-Indies* by his Fleets, every where designing to invade the Liberties of *Europe*, and to obstruct the Freedom of Navigation and Commerce; and instead of giving the Satisfaction that ought justly to be expected, had proceeded to further Violences, and had taken on him to declare the pretended Prince of *Wales* King of *England*, *Scotland*, and *Ireland*, and had also influenced *Spain* to concur in the same Affront; her late Majesty Queen *Anne* taking notice, that she found herself obliged, for maintaining the Publick Faith, or vindicating the Honour of the Crown, and to prevent the Mischiefs which all *Europe* was threaten'd with, to declare War against *France* and *Spain*; did accordingly, in the Month of *May*, One Thousand Seven Hundred and Two, in the most publick and solemn Manner, declare War against *France* and *Spain*; and in the said Declaration, placing her entire Confidence in the Help of Almighty God, in so just and necessary an Undertaking, declared, That she would, in conjunction with her Allies, vigorously prosecute the same both by Sea and Land, being assured of the ready Concurrence of her Subjects, in a Cause they had so openly and heartily espoused. And his Imperial Majesty and their High Mightinesses, pursuant to the Treaties aforementioned respectively, in or about the said Month of *May*, One Thousand Seven Hundred and Two, did likewise declare War against *France* and *Spain*. And whereas the Kings of *Portugal* and *Prussia*, the Electors of *Hanover*, *Saxony*, *Treves*, *Mentz*, Palatine of the *Rhine*, the Duke of *Savoy*, the Prince of *Hesse*, the Dukes of *Wolfembuttle*, *Mecklenburg*, and *Wirtemburg*, the Circles of *Suabia* and *Franconia*, and of the *Upper Rhine*, the Bishops of *Munster* and *Constance*, and other Princes and Powers, being invited by the said Grand Alliance, and relying on the Faith thereof, did afterwards become Parties to the said Confederate War against *France* and *Spain*; and in the Treaty entered into in or about the Month of *May*, One Thousand Seven Hundred and Three, between his Imperial Majesty, the Queen of *Great Britain*, the States-General, and the King of *Portugal*, it is, amongst other things, expressly stipulated, that

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no Peace nor Truce shall be made, but by the mutual Consent of all the Confederates; nor shall any at any time be made, whilst the second Grandson of the most Christian King by the Dauphin, or any other Prince of the Line of *France* continues in *Spain*, nor unless the Crown of *Portugal* shall fully possess and enjoy all the Lands, Kingdoms, Isles, Castles, Cities, Towns, *&c.* with their Territories and Dependencies in *Spain*, or elsewhere, which it now possesses. And in the Treaty of *Nordlingen*, ratify'd by her late Majesty, it is, amongst other things, expresly agreed, that it shall not be allow'd to make particular Treaties, but the Peace shall be jointly treated of, and shall not be concluded without obtaining, as far as is possible, the Re-Union of the Lands belonging to the Circles, and until at least the Security of the associated Circles be absolutely provided for, in the best manner that is possible, and better than it has formerly been. And whereas to give the greatest Strength that was possible to the Union, so necessary to both Nations, her late Majesty and the States by a Treaty in the Month of *June*, One Thousand Seven Hundred and Three, renewed and confirmed all Treaties and Alliances then subsisting between them; and therein it is, amongst other things, expresly and particularly stipulated, that as the said most serene Queen, and the Lords the States-General are now in War with *France* and *Spain*, and are reciprocally bound to assist each other, and mutually to defend, maintain, and preserve their Countries and Subjects in their Possessions, Immunities, and Liberties, as well of Navigation and Commerce, as other Rights whatsoever by Sea and Land, against and in Opposition to all Kings, Princes, and States, and particularly against *France* and *Spain*, to the end a just and reasonable Peace may the better be obtained, that may establish the Repose and Tranquillity of *Europe*, it is agreed between the most Serene Queen of *Great Britain*, and the said Lords the States-General, that neither of the said Allies shall make a Suspension of Arms, or a Peace with *France* or *Spain*, or any other King, Prince, or State, who shall molest or attack either of the said Allies, but in Conjunction and by common Consent. And whereas the said War was for several Years carry'd on with Vigour and Unanimity by her Majesty and her Allies, at a vast Expence both of Blood and Treasure; for the Support of which, on the Part of *England*, many Millions have been granted by Parliament, who, on many Occasions since, continued not only to express their Sense of the Justice and Necessity of the War, but did frequently give their humble Advice to the Throne, that no Peace could be Safe, Honourable, or Lasting, so long as the Kingdom of *Spain* and the *West-Indies* continued in the Possession of any Branch of the House of *Bourbon*. And whereas it pleased Almighty God to grant to the Confederate Arms, under the Command of their Great and Victorious General the Duke of *Marlborough*, such unparallel'd Successes as exceeded even their own Hopes and the Fears of the Enemy; and by the many signal Victories of *Schellenberg*, *Hochstet*, *Audenarde*, and *Ramellies*, as well as by the Conquests of the Electorates of *Bavaria* and *Cologn*, and the Reduction of the *Spanish Netherlands*, and many other great Advantages both by Sea and Land; and by the Wisdom and Unanimity of their Counsels, the Glory of the Confederate Arms, and the Reputation of *Great Britain* in particular, was rais'd to an higher Pitch than in any former Age. And whereas her late Majesty, in Conjunction with her Allies, wisely foreseeing, that whenever the Enemy should be brought to make Overtures of Peace, the surest way to put an End to the War, and prevent *France* from putting in Practice her usual Intrigues, was, by previously insisting on such Conditions from *France*, that nothing might remain to be done in a General Assembly, but to give them the Form of a Treaty; and for these Reasons, a Preliminary Treaty was concluded on, and was afterwards sign'd by the Plenipotentiaries of his Imperial Majesty, of her late Majesty the Queen of *Great Britain*, and of the Lords the States-General of the United Provinces, and afterwards ratified by their Principals; wherein the Interests of the several Allies were adjusted, in order to a General Treaty of Peace with *France*: and therein the Restitution of the *Spanish* Monarchy to the House of *Austria*, being one of the chief Causes for carrying on the War, is laid down as an immutable Foundation among the Allies. And whereas in the Year of our Lord One Thousand Seven Hundred and Nine, the King of *France* having first signify'd his Consent to the Restitution of the *Spanish* Monarchy to the House of *Austria*, sent his Ministers to the *Hague* to treat with the Ministers of the Principal Allies on a General Peace; and in the Conferences held thereupon, the Interests of all the Allies, as adjusted in the said Preliminaries, were positively and expresly agreed to by the Ministers of *France*, and particularly that of the Restitution of the entire *Spanish* Monarchy to the House of *Austria*; and the said Negotiation was afterwards broke, on no other Dispute but on the thirty seventh Article of the Preliminary Treaty, concerning the Time and Manner of evacuating *Spain*. And whereas the Conferences being resumed at *Gertruydenberg*, in the Year of our Lord One Thousand Seven Hundred and Ten, the said thirty seventh Article became the only Subject of the Negotiation which was there set on foot, for the finding out some equivalent by which the same Security might be given to the Allies, as they had by the thirty seventh Article of the said Preliminaries; and tho' it was unquestionable, that before any Negotiation was begun, that while the Preliminaries were treating, that by those Preliminaries themselves, that before the last Negotiation was resumed, and all the while it lasted, the Restitution of *Spain* and the *Indies* was laid down as a firm and immoveable Foundation of the Negotiation, and no Question remain'd concerning it with the Ministers of the Allies or those of *France*, but touching the Security for its Execution: And tho' all reasonable and prudent Overtures were made by the Allies for settling an Equivalent, yet the Conferences were broke off by *France* without any Satisfaction therein. And whereas the sincere Intentions of all the Allies to have settled the Peace of *Europe* on solid and equitable Foundations were notorious and incontestable, and the Rupture of the said Negotiations could only be imputed to the Enemy; her sacred Majesty, in Conjunction with her Allies, renew'd their Resolutions to continue and push the War with Vigour, and to make all possible Efforts, as the only Means left to force a good and general Peace. And her Majesty in her Speech from the Throne on the Fifteenth of

November, One Thouſand Seven Hundred and Nine, taking notice of the Endeavours of the Enemy during the ſaid Negotiations, to amuſe and create Jealouſies among the Allies, declared her Reſentment thereat, and earneſtly recommended the carrying on the War, and a vigorous Proſecution of the Advantages obtained, that ſhe might put the laſt Hand to that great Work of reducing the exorbitant and oppreſſive Power which had ſo long threatned the Liberties of *Europe*. And it having pleaſed Almighty God, after the ſaid Preliminary Treaty, to bleſs the Confederate Army, under the Command of their conſummate General the Duke of *Marlborough*, with new and ſignal Conqueſts, the Reduction of *Tournay*, the Victory of *Taſnieres*, the taking of *Mons* and *Doway*, *Bethune*, *St. Venant* and *Aire*, and the Penetrating the Lines near the *Scarpe*. And whereas, from the proſperous Condition of the Affairs of the Allies, and the Wiſdom, Firmneſs, and Unanimity of their Counſels, nothing remained, in all human Appearance, but that they ſhould reap the Fruits of all their Victories in a ſpeedy, juſt, honourable and laſting Peace; and on the other hand, nothing was left to raiſe the Hopes of the Enemy, whereby to defeat that happy Proſpect, but the Succeſs of their ſecret Endeavours to diſunite the Confederacy. And whereas *Robert* Earl of *Oxford* and Earl *Mortimer*, with other evil-minded Perſons, Enemies to the true Intereſts of their own Country, as well as to the common Liberties and Welfare of *Europe*, having by many wicked Arts and baſe Inſinuations obtain'd Acceſs to her late Majeſty Queen *Anne*, and in or about the Months of *July* or *Auguſt* One Thouſand Seven Hundred and Ten, being admitted into her Councils, and into Places of the higheſt Truſt, and to make way for their wicked Enterprizes, did, by their evil Council and Advice, prevail on her Majeſty to diſſolve a Parliament which had given the moſt unqueſtionable Proofs of their great Wiſdom, and of their true Zeal for the common Cauſe; for which, as well as for the many Marks of Duty and Affection given to her, her Majeſty return'd her hearty Thanks, and expreſs'd her great Satisfaction. And whereas the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others his Accomplices, had formed a treacherous Correſpondence with the Emiſſaries of *France*, by means whereof certain Propoſitions were tranſmitted from *France* to *England*, ſign'd by Monſieur *de Torcy*, Secretary of the King of *France*, in the Month of *April* One Thouſand Seven Hundred and Eleven, to be the Baſis of a Treaty of a General Peace; which Propoſitions, tho' her Majeſty was prevail'd on by the falſe Counſels of the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, to receive as a ſufficient Foundation of a Treaty of a General Peace, and as ſuch to communicate them to the Grand Penſionary and the Miniſters of *Holland*, her Majeſty however was graciouſly pleaſed at the ſame time to declare to them her Pleaſure by her Secretary of State, that being reſolv'd, in making Peace as in making War, to act in perfect Concert with the States, ſhe would not loſe a Moment in tranſmitting a Paper of that Importance; and that tho' the Propoſitions were general, and contain'd an Air of Complaiſance to her Majeſty, and the contrary towards the States; yet that could have no ill Conſequences, as long as her Majeſty and the States underſtood one another, and acted with as little Reſerve as became two Powers ſo nearly ally'd in Intereſt; and that the Penſionary ſhould be aſſured, that that Rule ſhould be inviolably kept on her Part. Which gracious Declaration of her Majeſty, as well as the ſaid Propoſitions, being maturely conſider'd by the Grand Penſionary and the Miniſters of *Holland*, an Anſwer was return'd from them to her Majeſty, full of Duty and Thankfulneſs for the obliging manner in which ſhe was pleas'd to communicate the ſaid Propoſitions, and with the utmoſt Aſſurances of mutual Confidence, ſo neceſſary to prevent the Deſigns of the Enemy; but more particularly that the States deſired, equally with *Great Britain*, to have a general, definitive, and laſting Peace, and declar'd that they were ready to join in all the moſt proper Meaſures to procure it; that the Propoſitions were yet too general, and that the States deſire, as *Great Britain* did, that *France* would explain herſelf more particularly upon the Points therein contain'd, and impart a Plan which ſhe thinks the moſt proper to ſecure the Intereſt of the Allies, and ſettle the Repoſe of *Europe*, after which a more particular Negotiation might be enter'd into. Notwithſtanding all which Premiſes,

ARTICLE I.

He the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, having no Regard to the Honour or Safety of her late Majeſty or her Kingdoms, or to the many ſolemn Engagements ſhe was then under to the old and faithful Allies of this Nation, or to the common Liberties of *Europe*; but, being devoted to the Intereſt and Service of the *French* King, the common Enemy; and being then Lord High-Treaſurer of *Great Britain*, and one of her Majeſty's moſt Honourable Privy Council, contrary to his Oath, and in Violation of his Duty and Truſt, and in Defiance of the Tenour of the ſeveral Treaties afore-mention'd, or ſome of them, as well as of the frequent Advices of Parliament, and the many Declarations of her Majeſty from the Throne; but more particularly in Defiance of the ſolemn and mutual Aſſurances which had been ſo lately renew'd between her Majeſty and the States, to act in perfect Concert with them in making Peace as in making War, did on or about the Months of *July* or *Auguſt* in the Year of our Lord One Thouſand Seven Hundred and Eleven, maliciouſly and wickedly form a moſt treacherous and pernicious Contrivance and Confederacy with other evil-diſpos'd Perſons, then alſo of her Majeſty's Privy-Council, to ſet on Foot a private, ſeparate, diſhonourable, and deſtructive Negotiation of Peace between *Great Britain* and *France*, without any Communication thereof to her Majeſty's Allies, according to their ſeveral Treaties; and was not only wanting in his Duty and Truſt to her Majeſty, by not oppoſing, and, as far as was in his Power, by not adviſing her Majeſty againſt going into any private ſeparate Negotiation with *France*; but in Execution of his Purpoſes aforeſaid, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did adviſe her late Majeſty to ſend *Matthew Prior*, Eſq; directly to the Court of *France*, to make Propoſitions of Peace, without communicating the ſame to her Majeſty's Allies. And accordingly the ſaid *Matthew Prior*, by the Advice and with the Privity of him the ſaid Earl of *Oxford* and Earl *Mortimer*, and other falſe and evil Counſellors, in or about the Months of *July* or *Auguſt*, in the Year

of our Lord One Thouſand Seven Hundred and Eleven, was ſent in a clandeſtine manner from *England* to *France*, and did communicate the ſaid Propoſitions of Peace to the Miniſters of *France*, in which the particular Intereſts of *Great Britain*, as well as the common Intereſt of *Europe*, were ſhamefully betray'd: And in Manifeſtation of his ſaid Deſign to exclude her Majeſty's Allies from their juſt Share in the ſaid Negotiation, an expreſs Article was inſerted in the ſaid Propoſitions, by the Privity and Advice of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, that the Secret ſhould be inviolably kept till allow'd to be divulged by the mutual Conſent of both Parties; although the *French* King had in the Propoſitions ſigned by Monſieur *de Torcy*, and tranſmitted in the Month of *April* preceding, offer'd to treat with the Plenipotentiaries of *England* and *Holland* alone, or jointly with thoſe of the Allies, at the Choice of *England*. By which treacherous and dangerous Advice he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did not only contrive and ſet on Foot a Negotiation of Peace more advantageous to *France* than even *France* it ſelf had aſk'd; but thereby did put it into the Power of the common Enemy to create incurable Jealouſies and Diſcords between her Majeſty and her faithful Allies, and to deſtroy that Confidence which had ſo long and ſo ſucceſsfully been cultivated between them, and which was ſo neceſſary for their common Safety.

ARTICLE II.

That the *French* King laying hold of the ſaid treacherous Overture, ſet on foot in manner aforeſaid, did in or about the Months of *Auguſt* or *September*, in the Year of our Lord One Thouſand Seven Hundred and Eleven, ſend over Monſieur *Meſnager* into *England* to carry on a clandeſtine and ſeparate Negotiation of Peace; which being made known to him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, he did afterwards in the ſaid Month of *September* One Thouſand Seven Hundred and Eleven, ſecretly and unlawfully, without any Colour of Authority, meet, confer, and treat with the ſaid Sieur *Meſnager* on the Negotiations of Peace between *Great Britain* and *France*; and therein he did adviſe and promote the making a private and ſeparate Treaty or Agreement between the ſaid Crowns; which ſaid Treaty or Agreement was afterwards, with the Privity, Conſent, and Advice of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, agreed, concluded on, and ſign'd by the ſaid Sieur *Meſnager* on the part of *France*, and by the Earl of *Dartmouth* and *Henry St. John*, Eſq; two of her Majeſty's principal Secretaries of State, in Behalf of her late Majeſty, by vertue only of her Majeſty's Sign Manual under the Signet, and without the leaſt Knowledge or Participation of the Allies. In which Treaty the immediate Intereſts even of *Great Britain* are given up to *France*, and the Duke of *Anjou* is admitted to be King of *Spain*; an expreſs Stipulation being therein made with the Sieur *Meſnager* in the Name, and (as is therein alledged) purſuant to Powers from King *Philip* as King of *Spain*: Whereby he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did not only aſſume to himſelf Regal Power, in taking upon him to meet and treat with the Enemy without any Authority or Powers from her Majeſty; but did what in him lay to ſubvert the ancient and eſtabliſh'd Conſtitution of the Government of theſe Kingdoms, by introducing illegal and dangerous Methods of tranſacting the moſt important Affairs of the State; and by which private and ſeparate Treaty, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did what in him lay to diſſolve and cancel the many ſolemn Treaties her Majeſty then ſtood engaged in to her good and ancient Allies, and whereby her Majeſty, even before any thing was finally ſettled for the Safety or Advantage of her Kingdoms, was brought to this fatal Dilemma; either to ſubmit to the Dictates of *France* in the Progreſs of the ſaid Negotiation, or, ſo notorious a Breach of National Faith being divulged by the Enemy, from thence to loſe all future Confidence of her good Allies.

ARTICLE III.

That the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, the better to diſguiſe and carry on the aforeſaid private, ſeparate, and dangerous Negotiation, did, together with other evil-diſpos'd Perſons, then in high Truſt under her Majeſty, contrive and adviſe the preparing and forming a Set of General Preliminaries, intituled, *Preliminary Articles on the Part of* France, *to come to a General Peace*; and that the ſame ſhould be ſign'd by the Sieur *Meſnager* only. And the ſame being ſo prepar'd and ſign'd by the ſaid Sieur *Meſnager*, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did, contrary to his Duty and Truſt, impiouſly adviſe her Sacred Majeſty that the ſame ſhould be, and accordingly they were receiv'd by her Majeſty, and communicated to the Miniſters of the Allies then reſiding in *England*, as the Ground of a General Negotiation of Peace; and as if the ſame were the only Tranſactions that had been on this Subject between *Great Britain* and *France*. And to this end, the private Treaty, ſign'd as aforeſaid by the Earl of *Dartmouth* and Mr. *St. John* on the part of *England*, and by the ſaid Sieur *Meſnager* on the part of *France*, was by the evil Advice and Contrivance of him the ſad *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, wilfully and induſtriouſly conceal'd not only from all the Allies, but even from her Majeſty's Council and her Parliament. And he did further adviſe her Majeſty not only to accept the ſaid General Preliminaries, but in her Name and by her Authority to communicate the ſame to the States-General, as a ſufficient Foundation whereupon to open the Conferences of Peace with *France*. And the more effectually to cover from the States-General the pernicious Steps which his evil Influence had engag'd her Majeſty in with the common Enemy; certain Inſtructions were prepar'd, and, by his Counſel and Advice, were ſign'd by her Majeſty, and delivered to the Earl of *Strafford*, her Ambaſſador to the States-General: wherein the ſaid Earl of *Strafford* is directed to repreſent to the Penſionary of *Holland*, and to ſuch others as ſhall be appointed to confer with him, that when her Majeſty had receiv'd in *May* laſt, by his Excellency's Diſpatches, an Account of the Senſe which thoſe among them, who were at that time in the Secret, had of the Overtures made by *France* for ſetting a general Negotiation of Peace again on Foot, and of the Anſwer which it was deſir'd might be return'd to the Propoſitions ſigned by Monſieur *de Torcy*; her Majeſty did immediately acquaint the Enemy, that their Offers were thought

by her and by the States-General neither particular nor full enough; and therefore that her Majesty did insist, that they should form a distinct Project of such a Peace as they were willing to conclude. Whereas no such Instances had been made to the Enemy on her Majesty's Behalf; but on the contrary, notwithstanding her Majesty had declar'd that the Propositions of Monsieur *de Torcy* were thought by her and the States-General neither particular nor full enough, yet without any further Explication from the Enemy, her Majesty was prevail'd on, in manner aforesaid, to send over Propositions to *France* as general and ensnaring, and in all respects as destructive to the Interests of *Great Britain* and her Allies, as the Propositions of Monsieur *de Torcy*. And the said General Preliminaries, communicated to the States in manner aforesaid, were calculated only to amuse and deceive them into a General Negotiation with *France*. And in the Particulars abovesaid, as well as in the several others, the said Instructions contain'd Matters either false or grosly prevaricating and evasive. By which most wicked Counsels of him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, that unquestionable Truth and Sacredness which by the Laws of Nations ought to accompany and constitute the Instructions of Publick Ambassadors to Princes in Friendship and Confederacy against the common Enemy, was most vilely prostituted to the most dangerous Purposes, to deceive and mislead her Majesty's good Allies, in Matters of the greatest Importance to their own Interests and the Interests of these Kingdoms; the Honour of her Majesty's sacred Person, and of the Imperial Crown of these Realms, which had been raised to the highest Pitch of Glory abroad, and had been justly held in Veneration with her good Allies, was scandalously debased and betrayed; and the Royal Hand, by the wicked Arts of him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, was made the Instrument to advance the Interest of the common Enemy.

ARTICLE IV.

That whereas the Earl of *Strafford*, pursuant to the said Instructions, had communicated the Preliminaries signed by Monsieur *Mesnager* only to the States-General, who being justly alarmed at the pressing Instances made on the part of her Majesty, that Conferences should be opened on Propositions as general and uncertain as those so lately offer'd by *France*, and signed by Monsieur *de Torcy*; and their High Mightinesses having been unsuccessful in their Remonstrances to the Earl of *Strafford* against opening the Conferences upon the said Propositions, did send over Monsieur *Buys* their Ambassador to represent to her Majesty, as well the Hazard of meeting the Ministers of *France* before the essential Articles were first settled by special Preliminaries, or at least explained by *France*, and made specifick; as likewise the Advantages to the Enemy, who being but one Body, were influenced by one Council, and directed by one Power; whereas the Confederates consisted of several Powers, whose Interests are not only distinct, but in many Cases contrary to each other, whereby the *French* would have a fair Opportunity to divide the Allies, when it would be impossible for them to break in upon *France*; and further to represent, that the Propositions themselves were in some Instances very prejudicial, particularly in the Articles of Commerce, *Dunkirk*, and the Union of the Crowns of *France* and *Spain*. All which Representations of the said Monsieur *Buys*, by the evil Influence of him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, were render'd ineffectual; but in order to prevail upon the States-General to open the Conferences upon the said general Preliminaries, by the Management and Contrivance of him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, an Occasion was taken to declare to Monsieur *Buys*, at a Committee of Council in her Majesty's Name, her constant Affection and good Disposition to their State, and to the promoting their Interest, and to treat with their High Mightinesses with a perfect Confidence and Harmony: And at the same time he the said *Robert* Earl of *Oxford* and Earl *Mortimer* did then falsly and maliciously declare, or was privy to advising and consenting, that it should be, and so it was declared, in her Majesty's Name, that she had made no separate Treaty with *France*, nor would ever make any before she had fully complied with all Engagements to her Allies, and that each of them should have Opportunity to make good their Pretensions.

By which false, scandalous, and dishonourable Assurances, he the said *Robert* Earl of *Oxford* and Earl *Mortimer* did not only highly dishonour her Majesty, by whose Privity the said separate Treaty with *France* had been before that Time concluded and signed; but their High Mightinesses, the good Friends and antient Allies of her Majesty, were grosly abused, and thereby induced to enter into a Negotiation with *France*, so dangerous in itself, and so fatal in its Consequences.

ARTICLE V.

That her sacred Majesty Queen *Anne* having in due Form of Law, and under her Great Seal, constituted the Right Reverend *John* Lord Bishop of *Bristol*, and the Earl of *Strafford*, her Plenipotentiaries, with full Powers to meet, treat, and conclude with the Plenipotentiaries of the Confederates, and those whom the *French* King shall on his part depute for that purpose, the Conditions of a good and general Peace, that shall be safe, honourable, and as far as is possible, agreeable to the reasonable Demands of all Parties; he the said *Robert* Earl of *Oxford* and Earl *Mortimer* not contenting himself to abuse the Royal Authority, to the Delusion of the States-General, the nearest Allies of the Queen, but intending the Universal Prejudice of his Imperial Majesty, and all the Allies of these Kingdoms; and thereby the more successfully to carry on the Measures of *France*, wherein he was then engaged, contrived and prepared Instructions, or was privy to consenting and advising the same, for her Majesty's said Plenipotentiaries, which she was prevailed upon by the said *Robert* Earl of *Oxford* and Earl *Mortimer*'s evil Counsel to sign, and the same were delivered to the said Plenipotentiaries; wherein among other Things they are instructed to the Effect following, *viz.* If it shall be thought proper to begin by the Disposition of the *Spanish* Monarchy, you are to insist that the Security and reasonable Satisfaction which the Allies expect, and which his most Christian Majesty has promised, cannot be obtained, if *Spain* and the *West-Indies* be allotted to any Branch of the House of *Bourbon:* Whereas the said *Robert* Earl of *Oxford*

and

and Earl *Mortimer* had at that Time privately and treacherouſly negotiated and agreed with the Miniſters of *France*, that *Spain* and the *Weſt-Indies* ſhould remain in a Branch of the Houſe of *Bourbon*; and had prevailed on her ſacred Majeſty to be Party to the ſaid private Treaty, wherein the ſame is neceſſarily implied. And the ſaid Plenipotentiaries are further inſtructed, in caſe the Enemy ſhould object, as the Imperial Miniſters had done, that the ſecond Article of the ſeven ſigned by the Sieur *Meſnager* implies, that the Duke of *Anjou* ſhall continue on the Throne of *Spain*; you are to inſiſt, that thoſe Articles, as far as they extend, are indeed binding to *France*, but that they lay neither us nor our Allies under any poſitive Obligation; whereby the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* baſely entered into a Confederacy and Colluſion even with the Miniſters of the Enemy, and prevailed on her Majeſty to give her Royal Conſent thereto, the more effectually to impoſe on his Imperial Majeſty and all the Allies, and to conceal the ſaid ſecret Negotiations, and the ſeparate Treaty that had then been agreed on between *Great Britain* and *France*. And the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, not only in the Particulars before-mentioned, but in many others contained in the ſaid Inſtructions, has brought a laſting Reproach on the Crown of theſe Realms, and groſly violated the many Treaties wherein her ſacred Majeſty was then engaged to her Allies, to act in perfect Concert with them throughout the Negotiations of Peace.

ARTICLE VI.

That the Conferences of Peace being opened between the Plenipotentiaries of the Allies, and thoſe of the Enemy, for the negotiating a general Peace upon the mutual and moſt ſolemn Engagements amongſt the Allies, not only to act in perfect Confidence with each other, but to promote their common Intereſt, and to obtain from the Enemy all juſt and reaſonable Satisfaction; and a ſpecifick Explanation of the General Preliminaries having been given by the Enemy at *Utrecht*, whereon the Allies delivered their reſpective Demands; by the Artifices of *France*, and the ſecret Encouragement and Concurrence of the Miniſters of *Great Britain*, the Progreſs of the ſaid publick Negotiation was delayed and kept in ſuſpence, under Pretence of the Enemy's refuſing to give their Anſwer in Writing: During which Time, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* again aſſuming to himſelf Regal Power in Derogation of the Royal Authority, to treat of Peace with *France*, which was then delegated under the Great Seal of *Great Britain* to her Majeſty's Plenipotentiaries at *Utrecht*, and for the promoting the Deſigns of the Enemy to the apparent Deſtruction of the common Cauſe of her Majeſty and her Allies, contrary to the known Laws and Conſtitution of this Kingdom, in direct Violation of the ſeveral Alliances her Majeſty then ſtood engaged in, and in Oppoſition to the many Aſſurances given by her Majeſty to act in Concert with her Allies, and in Defiance of the expreſs Inſtructions given to her ſaid Plenipotentiaries, was not only wanting in his Duty to her Majeſty, as far as in him lay to have put an end to, and prevented any further private and unlawful Negotiations with *France*, but did, with others his Accomplices, adviſe, concur, continue, and promote a private, ſeparate, and unjuſtifiable Negotiation of Peace with *France*, directly from *England* to *France*, without any Communication thereof to the Allies; and in ſuch private Negotiations did concert with the Miniſters of the Enemy Terms of Peace highly prejudicial to the Intereſt of her Majeſty and her Kingdoms, and of all her Allies, and whereby the good Effects of the ſaid General Negotiations were entirely defeated.

ARTICLE VII.

That her ſacred Majeſty Queen *Anne* having been prevailed on by the falſe Counſels of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* to accept of a Treaty with *France*, on the Suppoſition that the *Spaniſh* Monarchy ſhould continue in the Poſſeſſion of a Branch of the Houſe of *Bourbon*; and it being acknowledged even by the *French* King in the General Preliminaries ſigned by Monſieur *Meſnager*, that the Exceſs of Power from the Re-union of the Crowns of *France* and *Spain* would be contrary to the good and general Repoſe of *Europe*: He the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* having nothing ſo much in view as the aggrandizing the common Enemy, yet always intending to cover the Iniquity of his Heart under ſpecious Pretences and falſe Appearances, did wickedly and treacherouſly adviſe and carry on a private and ſeparate Negotiation with *France*, on the Subject of a Renunciation of his Right to the Kingdom of *France* by the Duke of *Anjou*, and that ſuch Renunciation ſhould be the Security againſt the Re-union of the two Kingdoms. And by the Influence of his evil Counſels her Majeſty was prevailed on to accept and finally to conclude and ratify a Treaty of Peace with *France*, wherein the ſaid Renunciation is taken as a ſufficient Expedient to prevent the Miſchiefs that threaten'd all *Europe*, in caſe the Crowns of *France* and *Spain* ſhould be united upon the Head of one and the ſame Perſon; although he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* well knew, that a Memorial had been, during the ſaid ſeparate Negotiation, tranſmitted by Monſieur *de Torcy*, Secretary of State and Miniſter to the *French* King, to one of her Majeſty's Principal Secretaries of State; whereby it was declared, that the ſaid Renunciation would be null and invalid by the Fundamental Laws of *France*, which Laws were looked upon as the Work of him who had eſtabliſhed all Monarchies, and which he only could aboliſh; and that no Renunciation therefore could deſtroy it: And if the King of *Spain* ſhould renounce, they would deceive themſelves that ſhould receive it as a ſufficient Expedient to prevent the Miſchiefs propoſed to be avoided. By which falſe and treacherous Counſels, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did not only betray the Intereſts of the common Cauſe into the Hand of the moſt formidable Enemy, but wilfully and maliciouſly abuſed the Power and Influence which he had obtained with her Majeſty, ſo far as to engage her ſacred Majeſty, and the Honour of the Imperial Crown of theſe Kingdoms, to become Party with *France* in ſo fatal a Deceit.

ARTICLE VIII.

That her late Majeſty Queen *Anne* having on the Seventh Day of *December*, in the Year of our Lord

Lord One Thouſand Seven Hundred and Eleven, earneſtly recommended it from the Throne, that Proviſion might be made for an early Campaign, in order to carry on the War with Vigour, and as the beſt way to render the Treaty of Peace effectual; in order to which, vaſt Supplies were granted, and Magazines provided at a great Expence for an early Campaign; and in purſuance thereof, her Majeſty having ſent her Generals, *Lumley* and *Cadogan*, to give early Aſſurances to her Allies of her ſincere Intentions, and likewiſe expreſly inſtructed her General, the Duke of *Ormond*, not only to renew the ſame Aſſurances and declare her Reſolutions of puſhing on the War with the utmoſt Vigour, but to concert with the Generals of the Allies the proper Meaſures for entering on Action; and the Confederate Army, which at that Time was the fineſt and ſtrongeſt that had been in the Service during the whole Courſe of the War, and provided with all Neceſſaries to act with Vigour, having march'd, according to the Reſolution taken in Concert with her Majeſty's General, almoſt up to the Enemy, with a great Superiority both as to the Number and Goodneſs of Troops, and animated with a noble Courage and Zeal to acquit themſelves bravely; ſo that in all human Appearance, and with the divine Aſſiſtance, which had appear'd ſo viſibly for them on many other Occaſions, they would have been able, either by Battle or Siege, to have gained great Advantages over the Enemy, to have better'd the Affairs of the Allies, and to have facilitated the Negotiations of Peace: And the Miniſters of *France* having frequently and earneſtly repreſented to the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others his Accomplices, during their ſecret Negotiations, their juſt Apprehenſions from the Bravery and good Diſpoſition of the Confederate Army; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* being truly informed of the ſure Proſpect which, by the Bleſſing of God, the Army of the Confederates then had, of gaining new Conqueſts over the Army of *France*, and whereby they would have been enabled to have forced Terms of Peace, ſafe, honourable, and laſting: In order to diſappoint thoſe comfortable Expectations of the Allies, and to give Succeſs to his ſecret Negotiations with the Miniſters of *France*, was privy to, conſenting and adviſing, together with other falſe and evil Counſellors, and together with them did adviſe and conſent, that an Order ſhould be ſent in her Majeſty's Name, to the Duke of *Ormond* in *Flanders*, to avoid engaging in any Siege, or hazarding a Battle, till further Orders; although nothing had then been ſettled in the ſaid private Negotiations for the Intereſt and Security of *Great Britain*; and although *Philip* King of *Spain* at that Time had not conſented to the Renunciation of his Right to the Crown of *France*. And not contenting himſelf with having obtained that fatal Step, ſo highly advantageous to the Cauſe of *France*, but being wickedly determin'd to do all that in him lay to diſſolve the whole Confederacy, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, with others, was privy to, and did conſent and adviſe, that Orders ſhould be ſent to the Biſhop of *Briſtol*, one of her Majeſty's Plenipotentiaries then at *Utrecht*, to take the firſt ſolemn Opportunity to declare to the *Dutch* Miniſters, that her Majeſty look'd on herſelf from their Conduct to be then under no Obligation whatſoever to them: Which two Declarations giving juſt Alarms to all the Allies, they repreſented to the Biſhop of *Briſtol* their general Diſſatisfaction, and the inexpreſſible Conſternation they were all in; that theſe Proceedings were the unavoidable Ruin of *Europe*: They urged Religion, Liberty, and the Faith of Treaties, to ſhew the Enormity of this Uſage; and the States expreſſed their Uneaſineſs on no account ſo much, as that they could not come to the Knowledge of their own Lot. Which Repreſentations the Biſhop of *Briſtol* did, at the Inſtance of the Allies, ſignify to one of her Majeſty's Principal Secretaries of State; but their High Mightineſſes finding that all Applications to the Miniſters of *Great Britain*, and in particular to the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, were of no avail againſt *France*, and for the Intereſt of the common Cauſe, thought it neceſſary, in a manner the moſt moving and reſpectful, to addreſs directly to her Majeſty by a Letter of the Fifth of *June*, One Thouſand Seven Hundred and Twelve; therein expreſſing their great Surprize and Affliction at the two Declarations aforementioned; and finding it difficult to conceive how ſuch Declarations, ſo prejudicial to the common Cauſe, given ſo ſuddenly without their Knowledge, and undoubtedly too without the Knowledge of the other Allies, could agree and conſiſt with the Nature of an Alliance, and with thoſe Aſſurances and Engagements her Majeſty had ſo lately made; and not knowing how to reconcile it with the great Goodneſs and Kindneſs which her Majeſty had always honoured them with, and not being able to conceive how ſuch a ſudden Change could happen with reſpect to them, having carefully examined their own Conduct, and finding nothing therein that could have given Ground to her Majeſty's Diſſatisfaction; and having repreſented the viſible and immediate fatal Conſequences of the ſaid two Orders, not only to the common Intereſt of her Majeſty and the States, but to the whole Confederacy and to the Proteſtant Religion; they beſeeched her Majeſty, with all the Reſpect, and all the Earneſtneſs they were capable of, that ſhe would not perſiſt in the Declarations made by the Biſhop of *Briſtol*, and would be pleaſed to revoke the Orders given to the Duke of *Ormond*; and would authorize him to act according to Occurrences, and as the Exigency of the War, and the Advancement of the common Cauſe ſhould require. Notwithſtanding which, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* being acquainted with the ſaid Repreſentations of the States, was not only wanting in his Duty to her Majeſty, and to his Oath, and the great Truſt repoſed in him, in not adviſing, as he ought to have done, her ſacred Majeſty to have hearken'd to the ſaid ſeveral Inſtances made to her; but perſiſting in his deſperate and deſtructive Meaſures for the Advancement of the Intereſt of the common Enemy, did afterwards adviſe her Majeſty to diſregard and reject the ſame; and did countenance, encourage, adviſe, and promote the ſaid private, ſeparate, and wicked Negotiations with *France*, without any Participation of the Allies, contrary to all her Majeſty's Engagements, and to the apparent Ruin of the common Cauſe. By which ſeveral wicked and perfidious Counſels, the Progreſs of the victorious Arms of the Confederates was ſtopped, and an Opportunity loſt for conquering the Enemy, the moſt

favourable, in the Opinion of all the General Officers and the Quarter-Maſters of the Allies, who were ſent out to view the *French* Camp, and whereby all Hopes of Confidence between her Majeſty and her Allies was entirely deſtroyed, and the *French* King made abſolute Maſter of the Negotiations of Peace, and the Affairs of *Europe* given into his Hands.

ARTICLE IX.

That to impoſe upon the Allies the fatal Neceſſity of ſubmitting to the Terms of *France*, and in order thereto to leave the whole Confederate Army at the Mercy of the common Enemy, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* was privy and conſenting to a ſecret and ſeparate Concert with the Miniſters of *France*, without the Knowledge of the Allies, for the ſeparating the Troops in her Majeſty's Pay from the reſt of the Confederate Army: For the effecting whereof, inſtead of preventing as far as in him lay ſo fatal a Step, he was not only wanting to adviſe againſt ſo unwarrantable a Proceeding, but did conſent to and adviſe her Majeſty, that the Duke of *Ormond*, and all the Troops then in her Majeſty's Pay, or ſuch of them as would obey his Orders, ſhould ſeparate themſelves from the Army of the Confederates: And having notice that the Generals of the Auxiliaries, paid by her Majeſty, whoſe Honour and Conſciences would not permit them to abandon the Confederates, and leave them as a Sacrifice to *France*, but for the Sake of the common Intereſt of *Europe*, and according to the true End and Deſign of their Conventions, did refuſe to withdraw with the Duke of *Ormond*, without particular Orders from their reſpective Maſters; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, being then Lord High-Treaſurer of *Great Britain*, and one of her Majeſty's moſt Honourable Privy Council, in Violation of his Oath, and the Duty and Truſt repoſed in him, did take upon himſelf an arbitrary and illegal Power, to refuſe and put a Stop to the Pay and Subſidies due on account of the ſaid foreign Troops, although they were entitled thereto by the Conventions entered into with her ſacred Majeſty, and by expreſs Proviſion made by Act of Parliament for the Payment of the ſame. By which fatal Separation, which purſuant to his evil Counſels was afterwards made, great Numbers of the Confederate Troops, who had before, on many Occaſions, ſignaliz'd themſelves in the Defence of the Cauſe of *Europe*, ſoon afterwards, at the unfortunate Action of *Denain*, fell as Sacrifices to the Fury and Revenge of *France*; the Siege of *Landrecy* was raiſed, the important Towns and Fortreſſes of *Queſnoy*, *Bouchain*, and *Douay* were retaken by the *French* Army; and not only the Fortune of the War, but the Fate of *Europe* decided in Favour of *France*.

ARTICLE X.

That in further Execution of his pernicious Deſigns to compleat the Deſtruction of the common Cauſe of *Europe*, and to render it impracticable for her Majeſty to reſume the War againſt *France*, in Conjunction with her Allies, or to recover the Union with her Majeſty's old and faithful Allies, ſo neceſſary to the Preſervation of theſe Kingdoms; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, then Lord High-Treaſurer of *Great Britain*, did carry on and concert with the Miniſters of *France*, a private and ſeparate Negotiation for a general Suſpenſion by Sea and Land, between *Great Britain* and *France*; and to that end among others, did adviſe her Majeſty to ſend over *Henry* Viſcount *Bolingbroke*, one of her Principal Secretaries of State, to the Court of *France*, with Powers to ſettle the ſaid Suſpenſion. In purſuance of which, a deſtructive Treaty of Suſpenſion was made in *France*, on the Nineteenth of *Auguſt*, N. S. One Thouſand Seven Hundred and Twelve, by the ſaid *Henry* Viſcount *Bolingbroke*, on the Part of her ſaid Majeſty, for four Months, without the Knowledge or any Participation of the Allies; and before any Terms of Peace were ſettled with the Enemy, either for *Great Britain* or the Allies. By which evil Counſels, the expreſs Terms of ſeveral of the aforementioned Treaties were expreſly contravened and broken, the good Friends and antient Allies of her Majeſty and theſe Kingdoms were totally deprived of the juſt Aſſiſtance to which they were thereby entitled, and were left expoſed to the Inſults of the common Enemy; and the ſacred Ties of Union and Friendſhip between her Majeſty and her Allies being cut aſunder, her Majeſty's Perſon and Government, the Safety of her Kingdoms, and of the Proteſtant Succeſſion to the Crown of theſe Realms, were left expoſed to the Enterprizes of her moſt formidable Enemy.

ARTICLE XI.

That whereas the States-General of the *United Provinces* were, in or about the Months of *September* or *October*, in the Year of our Lord One Thouſand Seven Hundred and Twelve, in Poſſeſſion of the ſtrong and important Town and Fortreſs of *Tournay*: And whereas the *French* King had, during the Courſe of the ſaid private, ſeparate, and traiterous Negotiation between him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, and the Miniſters of *France*, ſignified his Conſent to the Miniſters of *Great Britain*, that the ſaid Town and Fortreſs of *Tournay* ſhould remain to the ſaid States-General as Part of their Barrier: And whereas her Majeſty, in her Inſtructions of *December* the Twenty-third, One Thouſand Seven Hundred and Eleven, to her Plenipotentiaries at *Utrecht*, had expreſly directed them to inſiſt with the Plenipotentiaries of *France*, in the General Congreſs, that towards forming a ſufficient Barrier for the States-General, *Tournay* ſhould remain to their High Mightineſſes; and did afterwards declare herſelf conformably thereunto, in her Speech to both Houſes of Parliament, on the Sixth of *June*, One Thouſand Seven Hundred and Twelve, in which ſhe communicated to them the Terms whereon a Peace might be made. And whereas for ſeveral Years before, and till the ſaid Months of *September* and *October*, in the Year of our Lord One Thouſand Seven Hundred and Eleven, there was open War between her late Majeſty and the *French* King; and the ſaid War continuing for all the ſaid Time, and afterwards, the ſaid *French* King and his Subjects were Enemies to her Majeſty: He the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, then Lord High Treaſurer of *Great Britain*, and a

Subject

Subject of her Majesty's, not considering the Duty of his Allegiance, but having altogether withdrawn the cordial Love, and true and due Obedience, which every true and faithful Subject owed to her said Majesty; and designing to give Aid and Succour, and to adhere to the said *French* King, did in or about the Months of *September* or *October*, One Thousand Seven Hundred and Twelve, during the said War, falsly, maliciously, wickedly, and traiterously aid, help, and assist, and adhere to the *French* King, then an Enemy to her late Majesty: And in Execution and Performance of his aiding, assisting, and adhering, maliciously, falsly, and traiterously did counsel and advise the said Enemy, in what manner and by what Methods the said important Town and Fortress of *Tournay*, then in the Possession of the States-General, might be gained from them to the *French* King, contrary to the Duty of his Allegiance, and the Laws and Statutes of this Realm.

ARTICLE XII.

That whereas her late Majesty Queen *Anne*, not only in pursuance of the Treaties she stood engaged in to her good Allies, and in particular to his Imperial Majesty, for the Recovery of the Monarchy of *Spain* to the House of *Austria*, thereby to preserve a due Ballance of Power in *Europe*, but also from her just Resentment against the Duke of *Anjou*, who then stiled himself King of *Spain*, and who, in Defiance of her Majesty's Title to the Crown, acknowledged the Pretender as King of *Great Britain*; and on these just Foundations her Majesty had, in vindication of the Honour of the Crown, and in justice to her People, at a vast Expence of Blood and Treasure, and on the earnest and repeated Advices of her Parliament, prosecuted a vigorous War against the Duke of *Anjou*: And whereas, in the Years of our Lord One Thousand Seven Hundred and Ten, One Thousand Seven Hundred and Eleven, and One Thousand Seven Hundred and Twelve, the said open, bloody, and expensive War was carried on between her said late Majesty Queen *Anne*, and the said Duke of *Anjou*, and during all the time aforesaid, the said War did continue, and for all that time the said Duke of *Anjou*, and the Subjects of *Spain* adhering to him, were Enemies of her late Majesty: He the said *Robert* Earl of *Oxford* and Earl *Mortimer*, then Lord High Treasurer of *Great Britain*, and one of her Majesty's Privy-Council, and a Subject of her said Majesty, not considering the Duty of his Allegiance, but having withdrawn his true Obedience from her said late Majesty, did at several times, in the said Years of our Lord, One Thousand Seven Hundred and Ten, One Thousand Seven Hundred and Eleven, and One Thousand Seven Hundred and Twelve, falsly, maliciously, wickedly, and traiterously aid, help, assist, and adhere to the said Duke of *Anjou*, then an Enemy to her said late Majesty; and in the Execution and Performance of his said aiding, helping, assisting and adhering, and in Confederacy and Combination with the then Enemies of her late Majesty, and with divers other wicked and evil disposed Persons, did, at several times, in the Years aforesaid, advise and counsel the Enemies of her late Majesty; and in such counselling and advising, did concert with them, and did promote the yielding and giving up *Spain* and the *West-Indies*, or some part thereof, to the said Duke of *Anjou*, then in Enmity with her Majesty, against the Duty of his Allegiance, and the Laws and Statutes of this Realm.

ARTICLE XIII.

That whereas the Riches, Power, and Strength of these Kingdoms depend entirely on the flourishing Condition of Trade and Navigation, and her late Majesty Queen *Anne* having due Regard thereto, as well as to the just Expectations of her People, after the vast Expences they had so cheerfully undergone in Support of the War, did, on the first Opening the Conferences for a General Peace, declare from the Throne to both Houses of Parliament, on the Seventh of *December* One Thousand Seven Hundred and Eleven, that she would endeavour, that after a War which had cost so much Blood and Treasure, the Nation might find their Interest in Trade and Commerce improved and enlarged by a Peace: And on the Sixth of *June* One Thousand Seven Hundred and Twelve, when she was pleased to communicate the Terms on which a General Peace might be made, did declare, that nothing had mov'd her Majesty from steddily pursuing the true Interest of her own Kingdoms, and that the Terms of Peace obtained for her own Subjects were such, as she had Reason to expect would make her People some Amends for the great and unequal Burden which they had laid under through the whole Course of the War; and hoped that none of the Confederates would envy her Share in the Glory and Advantage of the Peace; and afterwards declared to both Houses of Parliament her Satisfaction in the near View she had of a Peace; since it would, in some measure, recompense her Subjects for the vast Expence: And after the Conclusion of the Treaty of Peace and Commerce with *France*, did declare from the Throne, on the Ninth of *April* One Thousand Seven Hundred and Thirteen, that the many Advantages she had obtained for her Subjects, had occasioned much Opposition and long Delays to the Peace; but it afforded her great Satisfaction, that her People will have it in their Power, by degrees, to repair what they had suffered during so long and burthensome a War. Whereupon both Houses of Parliament did from time to time express their grateful Acknowledgments to her Majesty for her great Care and Concern for the Welfare of her People. And whereas at the setting on Foot, and the Progress of the said private, separate, and pernicious Negotiations between the Ministers of *Great Britain* and *France*, it was laid down as a Principle, on the part of *Great Britain*, never to be departed from, that *France* should consent to adjust the Interests of *Great Britain* in the first place, that the Ministers of *Great Britain* might thereby be enabled to engage the Queen to make the Conclusion of the General Peace easy to *France*; and on this plausible Pretence it was insisted on by the Ministers of *Great Britain*, to remit the Discussion of the particular Interests of the Allies to General Conferences; and throughout the whole Course of the said separate Negotiation, all imaginable Concessions were not only made by the Ministers of *Great Britain* for a real Advantage of the Interests of *France* against the Allies, but all Measures were enter'd into and concerted between them, that even the Ministers of *France* could dictate, in order to strengthen their Hands, and

to enable them to impoſe the Terms of a General Peace: He the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, having nothing in view thro' the whole Courſe of the ſaid Negotiation, wherein he was wickedly and principally engaged in Concert with *France*, but the final Deſtruction of his Country; and to that end the ſacrificing the Commerce of *Great Britain* to the Aggrandiſement of *France*, was not only wanting in his Duty to her Majeſty, in not inſiſting on in all Events, and not procuring, in the firſt place, the moſt certain and ſtrict Securities imaginable for the Safety and Advantage of the Commerce of theſe Kingdoms; but did adviſe her late Majeſty, that in the Propoſition ſent by his Privity and Advice, by Mr. *Prior* to *France*, and alſo in the ſaid private and ſeparate Treaty, ſigned on the Seven and Twentieth of *September*, One Thouſand Seven Hundred and Eleven, wherein the Preliminary Demands for *Great Britain*, more particularly were intended to be adjuſted with *France*, the Demands for *Great Britain*, in point of Commerce, ſhould not only be made in looſe, general, and inſufficient Terms, but that the Liberty of Fiſhing, and Drying of Fiſh on *Newfoundland* ſhould be expreſly given up to *France*, tho' the Reſtitution of that ſmall part of the Iſland, which *France* had taken during the War, was therein referred to be diſcuſs'd to General Conferences. And having, by his wicked Artifices, engaged her Majeſty in the ſaid private Treaty with *France*, without any Security for the Commerce of *Great Britain*, he did artfully and cunningly contrive with the Miniſters of *France* to keep in Suſpence all Matters that concerned the Commerce of *Great Britain*, until, by means of his wicked and pernicious Counſels aforemention'd, *France* was become Maſter of the Negotiations, and the chief Advantages for the Commerce of *Great Britain* by that means remaining unſettled: And the Miniſters of *France* afterwards diſputing the moſt eſſential Articles which had been in agitation, and in particular that fundamental Principle of treating and being treated as *Gens Amiciſſima*, and endeavouring to elude what had been agreed on in the ſaid private and ſeparate Negotiation, for the ſuppoſed Advantage of *Great Britain*; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, under pretence of removing a Difficulty then depending, by an Expedient advantageous to *Great Britain*, did treacherouſly adviſe the ninth Article of the Treaty of Commerce with *France*, a Bill for the rendering whereof effectual was afterwards rejected by the Houſe of Commons, as highly prejudicial and deſtructive to the Commerce of theſe Kingdoms: But yet for the ſake of gaining that deſtructive Article for *Great Britain*, as if the ſame had been advantageous, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, in Defiance of the expreſs Proviſion of an Act of Parliament, as well as in Contempt of the frequent and earneſt Repreſentations of the Merchants of *Great Britain*, and of the Commiſſioners for Trade and Plantations, did adviſe her Majeſty finally to agree with *France*, that the Subjects of *France* ſhould have liberty of Fiſhing and drying Fiſh on *Newfoundland*; and did alſo adviſe her Majeſty to make a Ceſſion to *France* of the Iſle of *Cape Breton*, with liberty to fortify the ſame, altho' the Iſle of *Cape Breton* was part of the antient Territories of the Crown of *Great Britain*; and her Majeſty had declared from the Throne, that *France* had conſented to make an abſolute Ceſſion of *Nova Scotia*, or *Arcadia*, whereof *Cape Breton* is part, to her Majeſty. And the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, intending in all Events to ſecure to *France* the Advantages relating to the Fiſhery of *Newfoundland* and to *Cape Breton*, did, in conjunction with the Miniſters of *France*, adviſe her Majeſty to conſent, that the ſame ſhould be made an Article in the Treaty of Peace between *Great Britain* and *France*: whereas the only Advantages in Trade, pretended to be ſtipulated for *Great Britain*, being inſerted in the Treaty of Commerce, were to depend on certain Conditions to be made good by Act of Parliament; and purſuant to, and by the Influence of the ſaid evil Counſel of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, her ſacred Majeſty was adviſed to ratify the ſaid Article in the ſaid Treaty of Peace and the ſaid Treaty of Commerce. By means of which pernicious Counſels, the good Intentions of her ſacred Majeſty to have obtained for her People advantageous Terms of Commerce were entirely fruſtrated, the Trade and Manufactures of *Great Britain*, as far as in him lay, rendered precarious, and at the Mercy of the Enemy, and that beneficial Branch of Trade, always eſteemed the great Support of the Naval Power, and the chief Nurſery of the Seamen of *Great Britain*, yielded up to the Subjects of *France*: and the only Pretence for the avowed and notorious Violation of Treaties, and the carrying on the Meaſures of *France*, *viz.* the adjuſting firſt the Intereſts of *Great Britain*, thro' the whole Courſe of the ſaid private and ſeparate Negotiations, terminated at laſt in the Sacrifice of the Commerce of *Great Britain* to *France*, without the leaſt Shadow of Advantage in Trade procured for theſe Kingdoms.

ARTICLE XIV.

That he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did, in concert with other evil and falſe Counſellors, even without any Application from his Royal Highneſs the Duke of *Savoy*, and after the *French* King had, in the Courſe of the ſaid private and ſeparate Negotiations, conſented that the Kingdom of *Sicily* ſhould remain to the Houſe of *Auſtria*, form a Project and Deſign to diſpoſe of the Kingdom of *Sicily* to the Duke of *Savoy* from the Houſe of *Auſtria*: And to effect that his unjuſt, diſhonourable, and pernicious Project, he did adviſe her Majeſty to give Inſtructions, among other things, to *Henry* Viſcount *Bolingbroke*, then appointed her Ambaſſador to *France*, to demand in her Majeſty's Name, of the *French* King, the Kingdom of *Sicily* for his ſaid Royal Highneſs. And a Treaty of Peace being afterwards made between the *French* King, his Royal Highneſs, and the Duke of *Anjou*, wherein a Ceſſion is made to his Royal Highneſs of the Kingdom of *Sicily*, without any Concurrence or Participation of his Imperial Majeſty; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did baſely and ſcandalouſly adviſe her Sacred Majeſty to conſent to the ſame, by an Article inſerted in the Treaty of Peace between her Majeſty and the *French* King. And afterwards, by his Privity and Advice, her Majeſty was prevailed on to aſſiſt his Royal Highneſs againſt the Emperor then in Alliance with her Majeſty, with a part of her Royal Fleet at her own Expence, in order to put him in Poſſeſſion of the ſaid Kingdom of *Sicily*. Whereby the greateſt Injuſtice was done to his Imperial Majeſty, in di-

rect Violation of the Grand Alliance, and contrary to her Majeſty's frequent Declarations from the Throne, and her plain and full Inſtructions to her Plenipotentiaries at *Utrecht*, for obtaining his juſt and reaſonable Satisfaction; and whereby National Faith, and the Honour of the Crown, was vilely betray'd, and the Naval Power of theſe Kingdoms, and the Supplies granted by Parliament for reducing the common Enemy, were perfidiouſly employ'd againſt the great and faithful Allies of this Kingdom.

ARTICLE XV.

That whereas the Dignity and Support of the Imperial Crown of theſe Realms has in all Ages greatly depended on the Wiſdom and Truth of the Communications made from the Throne, eſpecially in Parliament, as the ſure and only means whereby the Kings and Queens of this Realm can receive the ſincere and faithful Advice of their People in Matters of the higheſt Importance, and which by the Fundamental Laws and Conſtitution of this Government ought to be inviolably obſerv'd as the Sacred Band of the Duty and Affection of Subjects to their Sovereign. And whereas by the moſt ancient and known Laws of this Kingdom it is indiſpenſably incumbent on the great Officers of State that ſurround the Throne, to maintain as far as in them lies the Sacredneſs of the Royal Word on all Occaſions; it being moſt apparent that the greateſt Diſhonour to the Throne, and the greateſt Danger to theſe Kingdoms muſt inevitably enſue, whenever that Fountain of Truth by wicked Counſels ſhall be in any degree corrupted, and thereby loſe its juſt Influence and neceſſary Authority. And whereas the Power of making Peace and War, one of the ancient, undoubted, and moſt important Prerogatives of the Crown, has been always exercis'd by the Sovereigns of theſe Realms, with the ſtricteſt Regard to the Honour of the Crown and the Welfare of the People; and for that end they have in great Wiſdom in all Ages taken the Advice of Parliament on ſuch weighty Occaſions. And whereas her late Majeſty Queen *Anne* declar'd from the Throne her gracious Intentions to communicate the Terms of Peace to her Parliament, for their deliberate and ſerious Advice therein, wiſely foreſeeing that the Safety of her Perſon and Government, of the Proteſtant Succeſſion to the Crown, which ſhe had neareſt her Heart, and of the Proteſtant Religion, and of the Liberties of *Europe*, did inevitably depend on the happy Concluſion of the ſaid Negotiations: He the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, then Lord High-Treaſurer of *Great Britain*, having taken on himſelf throughout the ſaid Negotiations a moſt arbitrary and unwarrantable Authority, and the chief Direction and Influence in her Majeſty's Councils; and moſt wickedly deſigning to proſtitute the Honour of the Crown, and the Dignity of Parliaments, and not only totally to deprive her Majeſty of the wholeſome and neceſſary Advice of her Parliament in ſo great a Conjuncture, but by miſrepreſenting the moſt eſſential Parts of the Negotiations of Peace, to obtain the Sanction of Parliament to his traiterous Proceedings, and thereby fatally to deceive her Majeſty, her Allies, her Parliament, and her People; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* was not only wanting in the Diſcharge of that Duty to his Sovereign which became his high Station, by not adviſing againſt, and as far as in him lay in all Events by not preventing even any Intimation from the Throne to the Parliament, which was not conformable to the exacteſt Truth and Impartiality; but taking Advantage of his ready Acceſs to her her Majeſty, and his exorbitant Influence in her Councils, did prepare, form, and concert, together with other falſe and evil Counſellors, ſeveral Speeches and Declarations to be made by her Majeſty from the Throne to her Parliament, on the Subject of the ſaid Negotiations of Peace, and did adviſe her Majeſty to make the ſame to her Parliament: And particularly, by means of his falſe and evil Counſels, her Majeſty did, amongſt other things, on the ſeventh of *December*, One Thouſand Seven Hundred and Eleven, declare from the Throne in the words, or to the effect following: *That notwithſtanding the Arts of thoſe who delight in War, both Place and Time are appointed for opening the Treaty of a General Peace. Our Allies, eſpecially the States-General, whoſe Intereſt I look upon as inſeparable from my own, have by their ready Concurrence expreſs'd their Confidence in me.* Whereas it was then notorious to all *Europe*, and the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others his Accomplices, well knew, that the principal Allies of her Majeſty, and particularly the States-General, then had in the ſtrongeſt and moſt preſſing manner repreſented not only to her Majeſty's Miniſters in *Holland*, but afterwards by a Miniſter of their own directly to her Majeſty, the Inſecurity and Danger to the Common Cauſe, by entring into general Negotiations with *France* on the Propoſitions ſign'd by Monſieur *Meſnager*; and alſo their firm Opinion of the fatal Conſequences that might enſue thereon: And altho' they had ſtill great Apprehenſions concerning the Method of opening the Conferences, and the Conſequences that might happen thereupon; yet being wrought on by the Menaces and other extraordinary Methods uſed with them by her Majeſty's Miniſters, and relying on the ſolemn Aſſurances and Declarations of her Majeſty to ſupport the Intereſt and Concern of their State, and to act in perfect Confidence and Harmony with them; they did at laſt, with the greateſt Reluctance, conſent to enter upon a General Negotiation of Peace with *France*. And in the ſame Speech her Majeſty was prevail'd on by the evil Counſels of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, to declare in the words, or to the effect following: *That the Princes and States which have been engag'd with us in this War, being by Treaties entitled to have their ſeveral Intereſts ſecur'd at a Peace; I will not only do my utmoſt to procure every one of them all reaſonable Satisfaction, but I ſhall alſo unite with them in the ſtricteſt Engagements for continuing the Alliance, in order to render the General Peace ſecure and laſting.* And in her Meſſage of the ſeventeenth of *January* following, her Majeſty again expreſſes the Care ſhe intended to take of all her Allies, and of the ſtrict Union in which ſhe propos'd to join with them. Whereas by the evil Influence of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, her Majeſty was not only induced to enter into a private Negotiation with *France*, excluſive of her Allies; but the ſame was in like manner carry'd on by him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others. And the ſeveral Intereſts which the Allies were intitled to by their Treaties, were not only not ſecured to them

them by the Peace, nor any reaſonable Satisfaction given to them, but the main Intereſts of her principal Allies, eſpecially of his Imperial Majeſty, were by the wicked Practices of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, given up to *France*; and no Engagements were obtained for continuing the Alliance, in order to render the general Peace ſecure and laſting. And her Majeſty having on many former Occaſions expreſs'd her Reſolutions never to make Peace with *France* and *Spain*, ſo long as *Spain* and the *Weſt-Indies* remain'd in the Houſe of *Bourbon*; ſhe was prevail'd upon by the Advice of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, to declare herſelf, in Anſwer to an Addreſs of the Houſe of Peers, the Eleventh of *December*, One Thouſand Seven Hundred and Eleven, to the Effect following, viz. *I ſhould be ſorry any one could think I would not do my utmoſt to recover* Spain *and the* Indies *from the Houſe of* Bourbon. Whereas it is moſt manifeſt, that the leaving the Kingdom of *Spain* and the *Indies* in the Houſe of *Bourbon* was the Foundation of the private and ſeparate Treaty between *Great Britain* and *France*, which had been before that Time ſigned even with her Majeſty's Conſent; and the ſame fundamental Reſolution was immutably obſerved between them to the Concluſion of the Peace. And her Majeſty having frequently declared from the Throne, that her Reſolutions in entering into the ſaid Negotiations were to obtain a general, good, and laſting Peace, and the Plenipotentiaries at *Utrecht* being inſtructed to treat with *France* conformably to that End, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, in order to remove the juſt Suſpicions which had been conceived of his private and ſeparate Negotiations with *France*, did adviſe her Majeſty to make this further Declaration in her ſaid Meſſage of the Seventeenth Day of *January*, That the World will now ſee how groundleſs thoſe Reports are which have been ſpread Abroad by Men of evil Intentions to ſerve the worſt Deſigns; as if a ſeparate Peace had been treated, for which there has not been the leaſt Colour given: Whereas a private and ſeparate Negotiation had been carried on for five Months together between *Great Britain* and *France*; and during that Time private Propoſitions had been ſent from *England*, and a private Treaty with a Miniſter of *France* ſigned, even by her Majeſty's Privity, excluſive of all the Allies, before the ſaid Declaration made by her Majeſty: And private and ſeparate Meaſures were thenceforth carried on by the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and his Accomplices, on Behalf of her Majeſty, with the Miniſters of *France*, even to the Concluſion of the Peace with *France*. Her Majeſty was further prevailed on by the wicked Advice of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, in her Speech of *June* the Sixth, One Thouſand Seven Hundred and Twelve, to declare, that to prevent the Union of the two Crowns, ſhe would not be content with what was Speculative, but inſiſted upon ſomething Solid: And in the ſame Speech to the Effect following, *videlicet*, The Nature of the Propoſal for a Renunciation is ſuch, that it executes itſelf, and *France* and *Spain* are thereby more effectually divided than ever: Whereas the Miniſters of *France* had before that Time aſſured the Miniſters of her Majeſty, that to accept of the Expedient propoſed on her Majeſty's Behalf, would be to build on a ſandy Foundation; and that the Renunciation would be null and void by the fundamental Laws of *France*; and that they would deceive themſelves, who accepted it as an Expedient to prevent the Union of the two Crowns. And not only in the Particulars before-mentioned, but in many others contained in the ſaid ſeveral Speeches and Meſſages made and ſent to her Parliament, even while the ſaid Negotiations of Peace with *France* were depending, the moſt eſſential Points relating to Peace and Commerce, and which concerned the Intereſt, as well of the Allies as of *Great Britain*, were groſly miſrepreſented. By all which wicked, treacherous, and unexampled evil Counſels he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did moſt baſely, ungratefully, and ſcandalouſly abuſe the Favour of his Royal Miſtreſs, and by means of her Authority did miſlead her Parliament into groundleſs and fatal Reſolutions; and thereby not only prevented the juſt Advice of the Parliament to her Majeſty in that critical Juncture, but obtained the Approbation of Parliament to his myſterious and dangerous Practices; and did not only deprive her Majeſty of the Confidence and Affection of her Allies, but expoſed her Majeſty and her People to the Contempt of the common Enemy.

ARTICLE XVI.

That whereas the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* having on all Occaſions uſed his utmoſt Endeavours to ſubvert the antient eſtabliſhed Conſtitution of Parliaments, the great and only Security of the Prerogative of the Crown, and of the Rights, Liberties and Properties of the People, and being moſt wickedly determined at one fatal Blow as far as in him lay to deſtroy the Freedom and Independency of the Houſe of Lords, the great Ornament and neareſt Support of the Imperial Crown of theſe Realms, and falſly intending to diſguiſe his miſchievous Purpoſes under a pretended Zeal for the Prerogative of the Crown; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, on or about the Months of *December* or *January*, One Thouſand Seven Hundred and Eleven, whilſt the Houſe of Lords were under an Adjournment, and had Reaſon to expect that on their next Meeting Matters of the higheſt Importance would be communicated to them from the Throne, they having ſome few Days before given their humble Opinion and Advice to her Majeſty, that no Peace could be ſafe or honourable to *Great Britain* or *Europe*, if *Spain* and the *Weſt-Indies* were to be allotted to any Branch of the Houſe of *Bourbon*; being then Lord High-Treaſurer of *Great Britain*, and one of her Majeſty's Privy Council, and aſſuming to himſelf an arbitrary Direction and Controul in her Majeſty's Councils, contrary to his Duty and his Oath, and in Violation of the great Truſt repoſed in him, and with an immediate Purpoſe to render ineffectual the many earneſt Repreſentations of her Majeſty's Allies againſt the ſaid Negotiations of Peace, as well as to prevent the good Effects of the ſaid Advice of the Houſe of Lords; and in order to obtain ſuch further Reſolutions of that Houſe of Parliament on the important Subject of the Negotiations of Peace, as might ſhelter and promote his ſecret and unwarrantable Proceedings, together with other falſe

and evil Counſellors, did adviſe her Majeſty to make and create twelve Peers of this Realm, and Lords of Parliament; and purſuant to his deſtructive Counſels Letters Patents did forthwith paſs, and Writs iſſued, whereby twelve Peers were made and created; and did likewiſe adviſe her Majeſty immediately to call and ſummon them to Parliament; which being done accordingly, they took their Seats in the Houſe of Lords on or about the Second of *January*, One Thouſand Seven Hundred and Eleven, to which Day the Houſe then ſtood adjourned. Whereby the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did moſt highly abuſe the Influence he then had with her Majeſty, and prevailed on her to exerciſe in the moſt unprecedented and dangerous Manner that valuable and undoubted Prerogative, which the Wiſdom of the Laws and Conſtitution of this Kingdom hath entruſted with the Crown for the rewarding ſignal Virtue and diſtinguiſh'd Merit. By which deſperate Advice he did not only, as far as in him lay, deprive her Majeſty of the Continuance of thoſe ſeaſonable and wholſome Counſels in that critical Juncture, but wickedly perverted the true and only End of that great and uſeful Prerogative to the Diſhonour of the Crown, and the irreparable Miſchief to the Conſtitution of Parliaments. All which Crimes and Miſdemeanours were committed and done by him the ſaid Earl againſt our late Sovereign Lady the Queen, her Crown and Dignity, the Peace and Intereſt of this Kingdom, and in Breach of the ſeveral Truſts repoſed in him the ſaid Earl, and he the ſaid Earl of *Oxford* and Earl *Mortimer* was Lord High Treaſurer of *Great Britain*, and one of her Majeſty's Privy Council during the Time that all and every the Crimes before ſet forth were done and committed. For which Matters and Things, the Knights, Citizens, and Burgeſſes of the Houſe of Commons in Parliament aſſembled, do, in the Name of themſelves and of all the Commons of *Great Britain*, impeach the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* of High-Treaſon, and other High Crimes and Miſdemeanours in the ſaid Articles contained. And the ſaid Commons by Proteſtation ſaving to themſelves the Liberty of exhibiting at any Time hereafter, any other Accuſations or Impeachment againſt the ſaid Earl, and alſo of replying to the Anſwers which the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* ſhall make to the Premiſes, or any of them, or any Impeachment or Accuſation that ſhall be by them exhibited, according to the Courſe and Proceedings of Parliament, do pray that the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* be put to anſwer all and every the Premiſes; and that ſuch Proceedings, Examinations, Trials and Judgments may be upon them, and every of them had and uſed, as ſhall be agreeable to Law and Juſtice. And they do further pray and demand, that the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* may be ſequeſtred from Parliament, and forthwith committed to ſafe Cuſtody.

Further Articles of Impeachment of High Crimes and Miſdemeanours, againſt Robert *Earl of* Oxford *and Earl* Mortimer.

ARTICLE I.

THAT whereas in or about the Month of *January*, in the Year One Thouſand Seven Hundred Ten-Eleven, a dangerous and deſtructive Expedition had been projected and ſet on foot, under Pretence of making a Conqueſt on the Poſſeſſions of the *French* King in *North America*, but with a real Deſign to promote his Intereſts, by weakening the Confederate Army in *Flanders*, and diſſipating the Naval Force of this Kingdom, as well as for the Sake of the private Intereſts and corrupt Gain of the Promoters of the ſaid Expedition, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, being then one of her late Majeſty's Privy Council, and one of the Commiſſioners of her Majeſty's Treaſury, was not only wanting in his Duty to her late Majeſty, by wilfully and induſtriouſly abſenting from the Meetings of other Perſons, then in high Truſt under her Majeſty, wherein the ſaid Expedition was concerted, and by not adviſing her Majeſty againſt, and doing what in him lay to have prevented the putting the ſame in Execution, but did, contrary to his Oath, and the high Truſt then repoſed in him, adviſe her Majeſty to conſent to the making an Expedition for the conquering *Canada* and the City of *Quebeck* on the River of St. *Laurence* in *North America*; and in Execution of his ſaid evil Counſels, he did further adviſe her Majeſty to give Orders for detaching ſeveral Battalions of the Forces then in the Service of her Majeſty, in Conjunction with her Allies in *Flanders*, and to ſend the ſame with a large Squadron of Men of War on the ſaid Enterprize; although the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* well knew, that the ſaid Project or Expedition having been frequently deliberated on and maturely conſidered, a ſhort Time before, in a Committee of Council, was then laid aſide as dangerous and impracticable. And a Demand being made at the Treaſury on or about the Months of *May* or *June*, One Thouſand Seven Hundred and Eleven, for the Sum of Twenty-eight Thouſand Pounds or thereabouts, on Pretence of Arms and Merchandize ſaid to be ſent on the ſaid Expedition to *Canada*, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* being then Lord High Treaſurer of *Great Britain*, and one of her Majeſty's Privy Council, tho' he well knew, or had Reaſon to ſuſpect, that the ſame was an unjuſt and exorbitant Demand, and a great Abuſe on her Majeſty and the Publick, and ſuch as ought not to have been complied with, was not only wanting in his Duty to her Majeſty, in not giving his humble Advice againſt the ſaid Demand, or at leaſt in not repreſenting to her Majeſty the Grounds of ſuch his Suſpicion, but did, contrary to his Oath and his Duty, adviſe her Majeſty, that the ſaid Sums ſhould be iſſued and paid; and did accordingly counterſign a Warrant to the Paymaſter of her Majeſty's Forces for the Payment of the ſame, purſuant to which the ſame was iſſued and received. And in further Violation of his Oath, his Duty, and Truſt, and with the moſt corrupt Deſign to prevent the Juſtice due to her Majeſty and the Nation, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, being then Lord High Treaſurer of *Great Britain*, and exerciſing a moſt unexampled arbitrary Power, not only in her Majeſty's private Councils, but extending his evil Influences to the great Council of the Nation; after the ſaid Expedition had proved unſucceſsful, and it had been diſcover'd to him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, that the Nation had been cheated of above Twenty Thouſand Pounds

Pounds on that Account, did moſt ungratefully and corruptly employ his wicked Arts, and the Credit which he had gained by his many falſe and crafty Inſinuations and Practices, to keep the Houſe of Commons from examining that Affair. And in or about the Month of *Auguſt*, One Thouſand Seven Hundred and Fourteen, in a Letter or Memorial under his Hand to her late Majeſty, he did preſume, not only to inſinuate the ill Opinion he therein pretended always to have had of the ſaid Expedition, but did declare the Suſpicions he had of the great Injury and Abuſe done to her Majeſty and the Publick, in the Demand of the ſaid Twenty eight Thouſand Pounds, even at the Time when the ſame was made, and that the Publick had been cheated of above Twenty Thouſand Pounds on that Account; and in the ſaid Memorial did preſume further to declare to her Majeſty, that he was forced to uſe all his Skill and Credit to keep the Houſe of Commons from examining that Affair in the laſt Parliament; thereby vainly, but moſt wickedly, recommending himſelf to the Continuance of her Majeſty's Favour, by the Succeſs of his moſt profligate Meaſures. By all which unparallel'd Corruptions and moſt dangerous Councils and Practices of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, the good and faithful Allies of her Majeſty were deprived of the Aid of her Majeſty's Troops to which they were entitled by their Conventions, and the Confederate Army in *Flanders* was greatly diminiſhed, to the apparent Advantage of the common Enemy: The Publick Money, granted by Parliament for reducing the Power of *France*, and which was expreſly appropriated for other ſpecial Services, was arbitrarily and illegally miſapplied and embezzled, and an heavy Debt incurr'd on the Nation, not only ſitting the Parliament, but even in Contempt and Defiance of a Repreſentation made by the Houſe of Commons to the Throne, even whilſt the ſaid Expedition was concerting; and whereby the higheſt Injuſtice was done, in ſuppreſſing an Enquiry ſo juſt to her Majeſty and her People, and a laſting Reproach and Scandal brought on that Houſe of Commons, of which he boaſts, as having been wrought on by his corrupt Influence not to examine into ſo high and ſo ſcandalous an Abuſe.

ARTICLE II.

That the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, not contented with the high Employments and Places of Honour and Profit beſtowed on him by her late Majeſty, nor with the large and exceſſive Gains by him made by the Incomes and Profits of the ſaid Employments, on or about the Month of *October*, One Thouſand Seven Hundred and Eleven, whilſt the Nation was engaged in a moſt expenſive War againſt *France* and *Spain*, for preſerving the Liberties of *Europe*, and greatly exhauſted with the Supplies and Taxes for carrying on the ſame, and was under ſuch heavy Debts as were impoſſible to be ſatisfied, without the utmoſt Frugality or laying grievous Taxes upon the Commons of *Great Britain*: Contrary to his Oath and his high Truſt, and making a moſt diſhonourable and ungrateful Uſe of the ready Acceſs he had to her late Majeſty, did prevail on and adviſe her Majeſty to ſign a Warrant to himſelf, being then Lord High Treaſurer of *Great Britain*, for the iſſuing and Payment of the Sum of Thirteen Thouſand Pounds to *John Drummond*, Eſq; or his Aſſigns, for ſuch ſpecial Services relating to the War, as her Majeſty had directed: And the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, on or about the Twenty-fourth Day of *November* following, in purſuance of the ſaid Warrant under her Majeſty's Sign Manual, did ſign a Warrant for the Payment of the ſaid Thirteen Thouſand Pounds for ſuch ſpecial Services of the War, as her Majeſty had directed; although no ſpecial Services had been, or were at any Time afterwards directed by her Majeſty, to which the ſaid Monies were to be applied. And the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, having privately deſired leave of the ſaid *Drummond* to ſtrike ſome Tin-Tallies in his the ſaid *Drummond*'s Name, he did, purſuant thereto, direct that Orders amounting to the Sum of Thirteen Thouſand Pounds ſhould be charged in the Regiſter of the Exchequer on the Monies ariſing by Sale of Tin, in the Name of the ſaid *John Drummond*; and though the ſame were accordingly ſtruck in the Name of the ſaid *Drummond*, in or about the Month of *November*, One Thouſand Seven Hundred and Eleven, they were not deliver'd out to the ſaid *Drummond*, but were kept in the Treaſury Chamber, or elſe were in the Power or Cuſtody of the Earl, till about the End of *January* following, when the ſaid *Drummond* having occaſion, as the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* well knew, to go into *Holland*, at the Deſire and Requeſt of the ſaid Earl, he indorſed his Name on the ſaid Orders, and the ſame were left, by his Privity, Direction, or Conſent, in the Hands of Mr. *John Taylor*, a Clerk of the Treaſury; and the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* having afterwards got Poſſeſſion of the ſaid Orders, did in or about the Month of *June*, One Thouſand Seven Hundred and Twelve, ſend an Order in Writing to the ſaid Mr. *Taylor* to deliver the ſaid Tallies to a Servant of the ſaid Earl, which was done accordingly, the ſaid Indorſements not being at that Time fill'd up: And the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* having by theſe corrupt and ſcandalous Methods got the ſaid Tallies and Orders into his own Hands, did afterwards fill up Aſſignments of the ſaid Orders for Twelve Thouſand Pounds, Part of the ſaid Thirteen Thouſand Pounds, to himſelf, and the remaining Part to ſuch other Perſons as he thought fit; and did afterwards in or about the Months of *Auguſt*, *October*, and *November*, One Thouſand Seven Hundred and Thirteen, at ſeveral Times, diſpoſe of the ſaid Orders and Tallies to his own private Uſe and Advantage. And to cover the ſaid ſcandalous Embezzlements, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did afterwards, as he pretends, adviſe and prevail on her Majeſty, on or about the Fourteenth of *December*, One Thouſand Seven Hundred and Thirteen, to ſign a Warrant prepared by himſelf, wherein after the Recitals of his own good, faithful, and acceptable Services, which had tended to the Quiet, Safety and Proſperity of her Majeſty and her Realms, though accompanied with great Difficulties on himſelf, and Hazards to him and his Family; and that her Majeſty was reſolved to beſtow upon him a Sum of ready Money: But the ſaid Earl repreſenting to her Majeſty, that the Arrears then due to her Servants and Tradeſ-

men were very great and preſſing, her Majeſty did therefore agree and determine that he ſhould have, to his own Uſe, the ſaid ſeveral Sums, amounting to Thirteen Thouſand Pounds comprized in the Orders aforeſaid: It was directed that the ſaid *John Drummond* ſhould aſſign the ſaid Orders, and the whole Right and Benefit thereof to the ſaid Earl and his Aſſigns; although the ſaid Earl had privately and clandeſtinely procured from the ſaid *Drummond* an Aſſignment of the ſaid Orders near two Years before the ſaid Warrant, and had fraudulently and corruptly diſpoſed and converted them to his own Uſe, without her Majeſty's Privity or Conſent, ſome time before her Majeſty was prevailed on to ſign the ſaid Warrant. And though the laſt mentioned Warrant, if any ſuch there be, was not communicated to the ſaid *Drummond* by the ſaid Earl during her Majeſty's Life, nor was the ſame counterſigned nor entered in the Treaſury, yet he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, even after his ſaid Corruption had been diſcovered in Parliament, did preſume, without the Privity of the ſaid *Drummond*, to ſend the ſaid Warrant to the Commiſſioners of his Majeſty's Treaſury, deſiring that the ſame might then have been entered in the Treaſury; but the ſame was with great Honour and Juſtice refuſed to be ſo entered. By which moſt vile and ſcandalous Corruption, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* was guilty of the moſt notorious Breach of his Oath and Truſt, as Lord High-Treaſurer of *Great Britain*, of the higheſt Abuſe of her Majeſty's Goodneſs, and Embezzlement of her Treaſure, and of the greateſt Injuſtice and Oppreſſion of other of her Majeſty's Subjects.

ARTICLE III.

That whereas by the eſtabliſhed and known Laws of this Kingdom, the Allowances or Appointments for the Maintenance and Support of Ambaſſadors, Envoys, Plenipotentiaries, and other Publick Miniſters of the Crown in foreign Courts, ought to be aſcertained in due Form of Law, as well in Honour as in Juſtice to the Imperial Crown of theſe Realms: And whereas the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, in or about the Month of *July* or *Auguſt*, One Thouſand Seven Hundred and Twelve, ſent *Matthew Prior*, Eſq; an Inſtrument and Creature of his own, into *France*, for the carrying on his ſeparate and dangerous Negotiations; and did afterwards in the Month of *November*, One Thouſand Seven Hundred and Twelve, by his evil Counſels prevail on her late Majeſty, without the Privity of, or any Communication with her Allies, to ſend the ſaid *Matthew Prior* as her Majeſty's Plenipotentiary to the *French* King, with Inſtructions to treat and conclude Matters of the higheſt Importance, relating to the general Negotiations of Peace: But the ſame was a treacherous and wicked Contrivance of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, for the more effectually carrying on and promoting his private, ſeparate, and dangerous Practices with the Miniſters of *France*, and the Enemies of her Majeſty and her Kingdoms; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* not regarding his Oath, or his high Truſt, or the Laws of the Kingdom, did moſt corruptly and ſcandalouſly combine with the ſaid *Matthew Prior* for the defrauding her Majeſty of very great Sums, under the Colour of his ſaid Employments in *France*; and to that End the ſaid Earl did contrive that the ſaid *Matthew Prior* ſhould be ſent into *France*, with the Character aforeſaid, but without any ſettled Appointments or Allowances: But in the Stead and Lieu thereof, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did give the ſaid *Matthew Prior* an unlimited Credit, and did promiſe to anſwer and pay ſuch Bills as the ſaid *Prior* ſhould draw on him during his Reſidence in *France*; purſuant to which Contrivance and corrupt Agreement he the ſaid *Matthew Prior* did, between the Twenty-ſeventh of *Auguſt*, in the Year One Thouſand Seven Hundred and Twelve, New Stile, and the Tenth of *July*, One Thouſand Seven Hundred and Fourteen, or thereabouts, at ſeveral times draw Bills of Exchange, to the Amount of Twelve Thouſand Three Hundred and Sixty Pounds, or thereabouts, on him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, which he being then Lord High Treaſurer of *Great Britain*, did adviſe and prevail upon her Majeſty to ſign Warrants for the Payment of, and did counterſign the ſame, although the ſaid *Prior* was no way intitled to any ſuch Allowances by Reaſon of his ſaid Employment, and the ſame greatly exceeded the Allowance even of an Ambaſſador of the Crown of *Great Britain*. And the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did, in the Years One Thouſand Seven Hundred and Twelve, One Thouſand Seven Hundred and Thirteen, and One Thouſand Seven Hundred and Fourteen, without any Colour or Authority, but for the further promoting his corrupt and wicked Purpoſes, prevail on and adviſe her Majeſty to ſign Warrants, which were counterſigned by himſelf, for the Payment of the Sum of Five Thouſand Five Hundred and Sixty Pounds, or thereabouts, to the Uſe of *Thomas Harley*, Eſq; a near Relation and Emiſſary of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, out of the Monies appropriated to the Uſe of her Majeſty's Civil Liſt: And did in like manner, at ſeveral Times in the Years aforeſaid, moſt illegally, fraudulently, and corruptly iſſue, or direct, or adviſe the Direction and Payment of other large Sums of Money, to other Perſons out of her Majeſty's Treaſury: By which moſt illegal and ſcandalous Management, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* has introduced a Practice highly prejudicial to, and utterly inconſiſtent with the Conſtitution of this Kingdom, and of the moſt pernicious Conſequence, by opening a Way for the moſt dangerous Corruptions; and was not only guilty of a notorious Breach of his Oath, but entered into the moſt baſe and ſcandalous Combination with the Perſons above-mentioned, and others, under the Pretence and Colour of promoting her Majeſty's Service, to defraud her Majeſty of the Publick Money, which he was entruſted with the Management of for the Support of the Honour and Dignity of the Crown.

ARTICLE IV.

That whereas the Revenues ariſing to the Crown from the hereditary Exciſe and Poſt-Office, or ſome Parts thereof, were, by vertue of Letters Patents of the late King *James* the Second, charged with and made liable to certain Annuities or year-

ly Sums, in Truſt for, or to the Uſe of *Mary*, the Conſort of the ſaid King *James* the Second, but the ſaid Revenues were afterwards, by ſeveral Acts of Parliaments, granted and ſettled for the Support of the Royal Houſhold, and of the Honour and Dignity of the Crown; or for other publick Uſes, without any ſaving or exception of the ſaid Letters Patents. And whereas by an Act made in the Twelfth Year of her late Majeſty's Reign, the Sum of Five hundred thouſand Pounds was granted to her late Majeſty for the Diſcharge of divers Arrears of Salaries, Diet-Monies, and other Allowances, and ſundry Debts for Preemptions, Proviſions and other Cauſes, which had been then incurred and grown due to her late Majeſty's Servants, Tradeſmen and others, and were occaſioned by ſeveral extraordinary Expences ſince the Act for the better Support of her Majeſty's Houſhold, and of the Honour and Dignity of the Crown. And the ſaid Sum of Five hundred thouſand Pounds was expreſly appropriated to the Uſes aforementioned, in Aid of the ſaid Revenues or Branches which were appointed for the Support of her Majeſty's Houſhold, and of the Honour and Dignity of the Crown. And whereas by an Act made in the Thirteenth and Fourteenth Years of his late Majeſty King *William* the Third, it was Enacted, that for preventing traiterous Correſpondence between his Majeſty's Subjects and the pretended Prince of *Wales*, or his Adherents, that if any of the Subjects of the Crown of *England*, from and after the firſt Day of *March*, One Thouſand Seven hundred and One, ſhould within this Realm, or without, hold, entertain, or keep any Intelligence or Correſpondence in Perſon, or by Letters, Meſſages, or otherwiſe, with the ſaid pretended Prince of *Wales*, or with any Perſon or Perſons employed by him, knowing ſuch Perſons to be ſo employed, or ſhould by Bill of Exchange, or otherwiſe, remit or pay any Sum or Sums of Money for the Uſe or Service of the ſaid pretended Prince of *Wales*, knowing ſuch Money to be for ſuch Uſe or Service, ſuch Perſon ſo offending being lawfully convicted, ſhould be taken, deemed, and adjudged to be guilty of High-Treaſon, and ſhall ſuffer and forfeit as in Caſes of High-Treaſon. He the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* having, by the means of the ſaid *Matthew Prior*, held a private and unlawful Correſpondence with the ſaid Conſort of the late King *James* the Second, then reſiding in *France*, and being determined ſecretly to promote, as far as in him lay, the Intereſt of the Pretender, but yet contriving to avoid the ſaid Penalty of High-Treaſon: And the ſaid Conſort of his late Majeſty King *James* the Second having empowered Abbot *Gaultier* (a Popiſh Prieſt, and buſy Emiſſary between *Great Britain* and *France*, during the ſaid private and ſeperate Negotiations of Peace, and who was particularly entruſted as the common Agent between the Miniſters of *Great Britain* and *France*, in tranſacting the moſt ſecret Affairs relating to the Pretender) to concert with the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* the ſettling the Payment and Remittance of a very great yearly Sum out of her Majeſty's Treaſure into *France*, under colour and pretence of the ſaid Letters Patents; and the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* having held frequent clandeſtine Conferences with the ſaid Abbot *Gaultier*, on the Subject aforeſaid, and having, by his evil Counſels, ſacrificed to *France* the common Intereſts of *Europe*; and being reſolved that the firſt Fruits of the Peace with *France* ſhould be an Offering made, by his immediate Procurement, to the neareſt and moſt avowed Adherent to the Pretender, tho' at the great Expence of the Honour and Safety of her Majeſty and her People, did, ſoon after the Concluſion of the Peace with *France*, agree and undertake to procure the Payment of the yearly Sum of Forty ſeven thouſand Pounds and upwards, to or to the Uſe of the ſaid Conſort, during her Life; and in execution of his ſaid Purpoſe did afterwards, on or about the 23d of *December*, One Thouſand Seven Hundred and Thirteen, being then Lord High Treaſurer of *Great Britain*, and of her Majeſty's Privy Council, adviſe her late Majeſty to ſign a Warrant to himſelf, in the Words or to the Effect following, *viz.* Anne R. *Whereas our late Royal Father King* James *the Second, by Letters Patents under his Great Seal, bearing date on or about the 28th Day of* Auguſt, *One Thouſand Six Hundred and Eighty Five, did Grant unto* Lawrence *Earl of* Rocheſter, Henry *Earl of* Peterborough, Sidney *Lord* Godolphin, Robert Worden, *Eſq*; *and Sir* Edward Herbert, *Kt. (who are all ſince deceas'd) divers Annuities, or yearly Sums, amounting to Thirty ſeven thouſand three hundred and twenty eight Pounds, Thirteen Shillings and Seven Pence to hold to them and their Heirs, during the Life of his then Royal Conſort* Mary, *now Queen Dowager, in Truſt for her; and by other Letters Patents, bearing date on or about the 3d of* December, *One Thouſand Six Hundred Eighty Six, did alſo grant unto the ſaid Queen a farther Penſion or yearly Sum of Ten Thouſand Pounds to hold during her natural Life, all which were made payable in ſuch manner as in the ſaid ſeveral Letters Patents is more fully expreſt. Our Will and Pleaſure now is, and we do hereby Direct, Authorize and Command, that you cauſe Payment to be made to the Heirs of ſuch of the ſaid Truſtees as was the longeſt Liver of ſo much as ſince the 25th Day of* March *laſt*, 1713, *is incurred or grown due on the ſaid Annuities or yearly Sums, amounting to Thirty ſeven thouſand three hundred twenty eight Pounds, thirteen Shillings and ſeven Pence, and to the ſaid Queen Dowager or her Aſſigns, of ſo much as ſince the ſaid 25th Day of* March *laſt, is incurred or grown due on the ſaid Annuity of ten thouſand Pounds, according to the purport of the ſeveral Grants, or Letters Patents above recited, as alſo of what ſhall hereafter become due and payable upon the ſaid ſeveral Annuities Quarterly, during the Life of the ſaid Queen Dowager; and for ſo doing, this ſhall be your Warrant. Given at our Court at* Windſor-Caſtle, *the twenty third Day of* December, *One Thouſand Seven Hundred and Thirteen, in the Twelfth Year of our Reign.* And did afterwards, on or about the twenty fourth of *December* following, ſign a Warrant to the Auditor of the Receipt of her Majeſty's Exchequer, requiring him to make and paſs Debentures for paying to ſuch Perſon or Perſons as is, are, or ſhall be authorized to receive the ſame, the Sum of nine thouſand three hundred thirty two Pounds, three Shillings and four Pence three Farthings, for one Quarter, incurred upon the ſaid ſeveral yearly Sums therein mentioned, from *Lady-day* One Thouſand Seven Hundred and Thirteen, to *Midſummer* following, and appointed the ſame to be ſatisfied out of the Sum of five hundred thouſand Pounds, appropriated by an Act paſſed the then laſt Seſſion of Parliament, for or towards Payment of ſuch Debts and Arrears as were therein mentioned. And another

ther Warrant to the ſaid Auditor to make and paſs Debentures for paying to the ſaid Queen, or to her Treaſurer or Receiver, the Sum of two thouſand five hundred Pounds for one Quarter, incurr'd on the ſaid Penſion of ten thouſand Pounds *per Ann.* from *Lady-day*, One Thouſand Seven Hundred and Thirteen, to *Midſummer* then laſt paſt, and appointed the ſame to be ſatisfied out of the Sum of five hundred thouſand Pounds, appropriated by an Act paſſed the then laſt Seſſion of Parliament, for or towards Payment of ſuch Debts and Arrears as were therein mentioned. And the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, on or about the twentieth of *July*, One Thouſand Seven Hundred and Fourteen, being then Lord High Treaſurer of *Great Britain*, and of her Majeſty's Privy Council, having corruptly and deceitfully, in further Violation of his Oath, and his high Truſt, adviſed her late Majeſty to ſign a Warrant, directing the Payment of one thouſand Pound Sterling to *Daniel Arthur*, Eſq; for Monies expended by him for her Majeſty's ſpecial Service, and the ſame being accordingly iſſued and received by him the ſaid *Arthur* out of her Majeſty's Treaſure, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* being then Lord High Treaſurer of *Great Britain*, did give private Direction to the ſaid *Arthur* to pay the ſaid Sum of one thouſand Pounds to the ſaid Abbot *Gualtier*, or to his Uſe, purſuant to which Direction the ſaid *Arthur* did pay or cauſe to be paid the ſaid Sum of one thouſand Pounds to the ſaid Abbot *Gualtier*, or to his Uſe; whereby the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did moſt wickedly betray the Honour of her late Majeſty, and the Imperial Crown of theſe Realms, in adviſing her, under Colour of the ſaid Letters Patents, and without the Advice of her Council or her Parliament, to direct the iſſuing of the Revenue, provided by Parliament for the Support of the Honour and Dignity of the Crown, to the Uſe and Benefit of the open and avowed Adherent of the Pretender; and did not only defraud her Majeſty of the ſaid Sum of one thouſand Pounds, but did moſt arbitrarily, illegally, and corruptly adviſe the Embezzlement and Miſapplication of ſo much of the ſaid Sum of five hundred thouſand Pounds, in Contempt and Defiance of the expreſs Appropriation of an Act of Parliament.

ARTICLE V.

That whereas by the ancient and undoubted Laws of this Kingdom, no Perſon, being a natural born Subject of this Realm, or within any of the Dominions thereunto belonging, and having committed and being under the Guilt of High Treaſon, ought to be received within this Kingdom, as a publick Miniſter, or with any Character from any Foreign Prince, State, or Potentate. And whereas ſome time in the Year One Thouſand Seven Hundred and Thirteen, one *Patrick Lileſh*, ſtiling himſelf, and commonly known by the Name of Sir *Patrick Lawleſs*, an *Iriſh* Papiſt (who had ſerved with the late King *James* the Second in the War in *Ireland*, againſt his late Majeſty King *William* the Third of ever glorious Memory, had follow'd the ſaid King *James* into *France*, and continued in the moſt open and avowed manner in his Intereſts and Service, and in Rebellion againſt his ſaid Majeſty King *William*, and had bore high Commiſſion againſt, and had been in open Arms againſt her late Majeſty Queen *Anne* in the late War in *Spain*) did come into this Kingdom, and pretended to have and did take on himſelf the Character of a Miniſter ſent from King *Philip* of *Spain*, to her late Majeſty, to treat of Matters of the greateſt Importance to the Honour and Safety of her Majeſty and her Kingdoms; and having given notice of the ſame to *Robert* Earl of *Oxford* and Earl *Mortimer*, then Lord High Treaſurer of *Great Britain*, and of her Majeſty's Privy Council, and who then aſſumed to himſelf the Supreme Direction in her Majeſty's Councils; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* was not only wanting in his Duty to her Majeſty, in not adviſing her Majeſty againſt receiving and admitting the ſaid *Lileſh* alias *Lawleſs* in the Quality aforeſaid, but did, together with other falſe and evil Counſellors, adviſe her Majeſty to receive and admit him as a Miniſter from his ſaid Catholick Majeſty; and the ſaid Earl did preſume frequently to meet, conſer and negotiate the moſt important Affairs of the Nation with the ſaid *Lileſh* alias *Lawleſs* in the Quality aforeſaid. And the better to conceal his ſaid illegal and dangerous Meaſures from her ſaid Majeſty, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* was privy to, conſenting, and adviſing that the ſaid *Lileſh* alias *Lawleſs* ſhould be introduced to her ſaid Majeſty, and ſhould be received and treated by her Miniſter, under the falſe and diſguiſed Name of *Don Carlo Moro*. And the Houſe of Lords, ſome time in the Month of *April*, One Thouſand Seven Hundred and Fourteen, having notice of the ſaid dangerous Attempt of the ſaid *Lileſh* alias *Lawleſs*, on or about the Ninth of the ſaid Month, made an humble Addreſs to her Majeſty, that ſhe would be graciouſly pleaſed to iſſue her Royal Proclamation, commanding all proper Officers and Magiſtrates to make diligent Search for, and to apprehend all Popiſh Prieſts, and to put the Laws in Execution againſt them; and likewiſe to enquire after, and apprehend all ſuch Perſons as have ſerved in Arms againſt her Majeſty, or their late Majeſties King *William* and Queen *Mary*, and who were then within the Kingdom, contrary to Law, to the End that they might be brought to Juſtice. To which her Majeſty was graciouſly pleaſed to return an Anſwer to the Effect following, *viz.* That ſhe would give Orders purſuant thereto, and a Proclamation did accordingly iſſue. And on the ſaid ninth Day of *April*, the Houſe of Lords (having under their Conſideration what further Security could be provided for ſtrengthening the Proteſtant Succeſſion in the Houſe of *Hanover*) came to the following Reſolution, viz. *That no Perſon, being a Natural born Subject of* Great Britain, *or within any of the Dominions thereunto belonging, and who having traiterouſly ſerved againſt her Majeſty, ought to be received as a Publick Miniſter, or with any Character within this Kingdom:* Notwithſtanding which, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, having no regard to the Safety of her Majeſty's Perſon, or to the Security of the Proteſtant Succeſſion; and ſetting himſelf in utter Defiance not only of the ſaid Advice and Reſolution of the Houſe of Lords, but of her Majeſty's Aſſurances to that Houſe of Parliament, and of her Royal Authority and Command, by her Proclamation under the Great Seal: Inſtead of doing what in him lay to have apprehended and brought, or cauſing the ſaid *Lileſh* alias *Lawleſs* to be brought to Juſtice, did afterwards,

wards, on or about the Fifteenth Day of *March*, One Thouſand Seven Hundred and Fourteen, moſt wickedly and traiterouſly adviſe her Majeſty to ſign a Warrant, directing the Payment of one thouſand Pounds Sterling to *Daniel Arthur*, Eſq; for ſpecial Services, which being accordingly iſſued and received by the ſaid *Arthur*, he the ſaid Earl did privately and corruptly direct the ſaid *Arthur* to pay the ſame, and accordingly the ſaid one thouſand Pounds was paid to the Uſe of the ſaid *Lileſh* aliàs *Lawleſs:* And the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did at other Times, in a fictitious and ſcandalous manner, direct the Payment of other conſiderable Sums of Money out of her Majeſty's Treaſure, to the ſaid *Lileſh* aliàs *Lawleſs*, which were accordingly paid to him; altho' it was notorious, that the ſaid *Lileſh* aliàs *Lawleſs* had not only traiterouſly ſerv'd in Arms againſt her Majeſty, but had been the Miniſter or Agent of the Pretender at the Court of *Madrid*; and was under ſtrong Suſpicions of being ſent into *England*, tho' under the Pretences aforeſaid, ſecretly to promote the Intereſt of the Pretender in theſe Kingdoms. By all which corrupt and evil Counſels he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did moſt baſely and ungratefully expoſe the Perſon of her Sacred Majeſty, did what in him lay to enervate and render ineffectual the Advice of Parliament, and her Majeſty's moſt ſolemn Declarations, in a matter of the neareſt Concern to her Majeſty and Kingdoms, and by countenancing, in the moſt corrupt and ſcandalous manner, the ſecret Emiſſaries of the Pretender, did greatly encourage his open Adherents, to the apparent Danger of the Proteſtant Succeſſion to the Imperial Crown of theſe Realms.

ARTICLE VI.

That whereas her late Majeſty Queen *Anne*, after ſeveral unſucceſsful Attempts, in Conjunction with her Allies, to eſtabliſh his preſent Imperial Majeſty on the Throne of *Spain*, being inform'd, that the People of *Catalonia* were inclined to caſt off the Yoke impos'd upon them by the *French*, and to return to the Obedience of the Houſe of *Auſtria*; and her Majeſty being deſirous to maintain and improve that good Diſpoſition in them, and to induce them to put the ſame ſpeedily in Execution, did ſend *Milford Crow*, Eſq; to them, with neceſſary Powers and Inſtructions to carry on ſo great a Work, for the Advantage of her Service, and the Good of the Common Cauſe; and to that End to treat with the *Catalans*, or any other People of *Spain*,, about their coming into the Intereſt of King *Charles* the Third, his preſent Imperial Majeſty, and joining with her Majeſty and her Allies againſt the Common Enemy; and her Majeſty, after her gracious Aſſurances to aſſiſt them with Men and Money, was pleaſed to authorize her ſaid Miniſter to give them her utmoſt Aſſurances, to procure the Eſtabliſhment of all ſuch Rights and Immunities as they had formerly enjoy'd under the Houſe of *Auſtria*; and that for their further Satisfaction, ſhe had ſent for Powers from King *Charles* the Third, for confirming the ſame, and was willing to become Guarantee that it ſhould be done: Nevertheleſs on this expreſs Condition, that they ſhould receive the ſaid King *Charles* as lawful King of *Spain*, and utterly renounce the Houſe of *Bourbon*. And, together with the ſaid Inſtructions, her Majeſty was pleaſed to ſign and cauſe to be deliver'd to her ſaid Miniſter, Credential Letters to the Nobility, Magiſtrates, and all other Officers Civil and Military of *Catalonia*, deſiring them to depend on the Promiſes he ſhould make them in her Name. And in her Majeſty's Inſtructions to the Earl of *Peterborow* and Sir *Cloudeſly Shovel*, in or about the Month of *May*, One Thouſand Seven Hundred and Five, they are order'd to uſe their utmoſt Endeavours to induce the *Catalans* to join with them in their Undertaking, and to aſſure them of her Majeſty's Support, and to promiſe them, in the Queen's Name, that ſhe would ſecure them a Confirmation of their Rights and Privileges from the King of *Spain*, that they might be ſettled on a laſting Foundation to them and their Poſterity. And in caſe Perſuaſions ſhould not prevail, and the *Catalans* ſhould not make a ſuitable Return to thoſe kind Offers, they were order'd to annoy their Towns on the Coaſts of *Spain*, and to reduce them by Force. And, in Conformity to theſe Inſtructions, a *Manifeſto*, or Declaration was prepared, by the Privity and Advice of *Robert* Earl of *Oxford* and Earl *Mortimer*, then one of her Majeſty's principal Secretaries of State, and deliver'd to the ſaid Earl of *Peterborow*, full, on the one Hand, of the Aſſurances aforementioned, and on the other hand, of Menaces to them, in caſe they declin'd her Majeſty's Overtures, which *Manifeſto* was afterwards publiſh'd by him the ſaid Earl of *Peterborow* in *Catalonia:* And whereas the Nobility, Clergy, and the whole Principality of *Catalonia*, and the Inhabitants of the Iſle of *Majorca*, relying on the Faith of thoſe Royal Aſſurances, did utterly abandon the Houſe of *Bourbon*, and acknowledged King *Charles* the Third, his preſent Imperial Majeſty, for their lawful Sovereign, and did join their Arms with thoſe of her Majeſty and her Allies, againſt the Duke of *Anjou*; and it having pleaſed Almighty God ſo far to bleſs her Majeſty's pious and generous Undertaking, as by moſt ſignal Succeſſes, in a ſhort time, to deliver the Principality of *Catalonia* from the heavy Yoke of *French* Bondage; and great Supplies having been granted by Parliament, for the reducing the whole Kingdom of *Spain* to the Obedience of the Houſe of *Auſtria*; the Arms of her Majeſty and her Allies were attended with vaſt Succeſſes, having twice enter'd the Capital City of that Kingdom, and obtain'd many other ſignal Conqueſts, to the great Advantage of the Common Cauſe: And thro' the whole Progreſs thereof, the Bravery and Firmneſs of the *Catalans* being always remarkable, thereby, as well as from the repeated Aſſurances given to them from time to time, in her Majeſty's Name, by every General and Miniſter ſent from *Great Britain* to *Spain*, the Hearts of that brave People were united under the ſtrongeſt Tyes of Affection and Gratitude to her Majeſty; and they were juſtly held in the ſtricteſt Dependance on the continuance of her Royal Protection; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, being an Enemy to the Common Liberty of *Europe*, and having traiterouſly enter'd into Conſpiracies for ſubjecting the whole *Spaniſh* Monarchy to the Houſe of *Bourbon*, and deſigning moſt maliciouſly the utter Ruin and Deſtruction of the ancient Rights, Liberties and Privileges of the *Catalans*, who had made ſo glorious a Stand for the Preſervation of them, did, together with other falſe and evil Coun-

ſellors, form a moſt diſhonourable, wicked, and cruel Contrivance, not only for abandoning the *Catalans* to the Fury and Revenge of the Duke of *Anjou* and his Adherents, but for the final Extirpation of all their Rights, Liberties, and Privileges. And in Execution of that his Intention, during the private, ſeparate, and pernicious Negotiation of Peace, which was carry'd on between him and the Miniſters of *France*, and before any Negotiation of Peace was ſet on Foot, in due Form of Law, between the Crowns of *Great Britain* and *Spain*, did adviſe her Majeſty to give Directions to the Lord *Lexington*, her Ambaſſador to the Court of *Spain*, to acknowledge the Duke of *Anjou* King of *Spain*, but was greatly wanting in his Duty to her Majeſty, in not adviſing her to give Inſtructions to her ſaid Miniſter, at the ſame time peremptorily and abſolutely to inſiſt on the ſecuring the *Catalans* Liberties at the Concluſion of the Peace. And altho' the private, ſeparate and treacherous Practices of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, in Combination with the Miniſters of *France*, did afterwards, on or about the Fourteenth of *March* One Thouſand Seven Hundred and Thirteen, neceſſitate his preſent Imperial Majeſty to conclude a Treaty for the evacuating *Catalonia*, (whereof her Majeſty was Guarantee,) without any expreſs and poſitive Stipulation for the *Catalans* Liberties, (his Imperial Majeſty relying, in that reſpect, on her Majeſty's Declaration, to interpoſe for them in the moſt effectual manner, and on the Promiſes of the *French* King to join his Endeavours for the ſame Purpoſe.) And altho' her ſacred Majeſty did, both before and after, frequently declare by her Miniſters in *Spain*, that ſhe thought herſelf under the ſtrongeſt Tyes of Honour and Conſcience, not to abandon a People whom the Neceſſities of the War had obliged her to draw into her Intereſt. And tho' the *French* King did not join his Endeavours for the Purpoſes aforeſaid; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, together with other falſe and wicked Counſellors, having from time to time amuſed and deceived the diſtreſs'd *Catalans*, with groundleſs Hopes of her Majeſty's effectual Interpoſitions in their Favour, thereby engaging them in a more obſtinate Defence of their Territories againſt the Duke of *Anjou*, was not only highly wanting in his Duty to her Majeſty, by not doing what in him lay, as a faithful Miniſter, to have prevented the Concluſion of the Treaty of Peace with *Spain*, till juſt and honourable Conditions were ſecured for the *Catalans*, but did falſly, maliciouſly, and treacherouſly adviſe her Majeſty to conclude a Peace with the King of *Spain*, without any Security for the ancient and juſt Rights, Liberties and Privileges of that brave, but unhappy Nation. And did further adviſe her Majeſty to ſend Sir *James Wiſhart*, her Admiral, with a large Squadron of Men of War, at a great Expence, to favour the ſaid King of *Spain* in the Siege of *Barcelona*, the Capital City of *Catalonia*, and with expreſs Inſtructions, that in caſe the Inhabitants of *Majorca* ſhould refuſe the Terms that ſhould be offered them by the Duke of *Anjou*, to employ his Squadron, in countenancing and aſſiſting all Attempts that ſhould be made, for reducing them to a due Obedience. By which moſt vile and deteſtable Counſels, her ſacred Majeſty, contrary to her moſt pious Intentions, the Faith of Nations, and the Duties of Religion, and Humanity it ſelf, and contrary to her ſolemn and repeated Aſſurances, was prevailed on to abandon a diſtreſſed People, drawn in, and engaged by her own Invitation, into an open War with the Duke of *Anjou*, for the Preſervation of the Liberties of *Europe*, and the Commerce of *Great Britain*. And the Perſons, Eſtates, Dignities, Rights, Liberties and Privileges of the *Catalans* were given up as a Sacrifice to the implacable Reſentment of their enraged and powerful Enemy; and the Honour of the *Britiſh* Nation, always renown'd for the Love of Liberty, and for giving Protection to the Aſſerters of it, was moſt baſely proſtituted; and a free and generous People, the faithful and uſeful Allies of this Kingdom, were betray'd, in the moſt unparallel'd manner, into irrevocable Slavery: And, in Conſequence of which moſt diſhonourable and perfidious Councils, the moſt execrable Hoſtilities, Burnings and Plunderings were committed upon them, throughout their whole Province, without ſparing the Effuſion of innocent Blood, and without the Diſtinction of Age or Sex; and that unfortunate People were afterwards forc'd to undergo the utmoſt Miſeries of a Siege in their Capital City of *Barcelona*; during which great Multitudes of them periſhed by Famine and the Sword, many of them have ſince been executed: And great Numbers of the Nobility of *Catalonia*, who were for their Conſtancy and Bravery, in Defence of their Liberties, and for their Services in Conjunction with her Majeſty and her Allies, had, in all Honour, Juſtice and Conſcience, the higheſt Claim to her Majeſty's Protection, are now diſperſed in Dungeons, throughout the *Spaniſh* Dominions; and not only the *Catalan* Liberties extirpated, but by thoſe wicked Counſels of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, *Catalonia* it ſelf is almoſt become deſolate.

All which Crimes and Miſdemeanors were committed and done by him the ſaid Earl, againſt our late Sovereign Lady the Queen, her Crown and Dignity, the Peace and Intereſt of this Kingdom, and in Breach of the ſeveral Truſts repoſed in him the ſaid Earl.

And he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* was either Commiſſioner of the Treaſury, or Lord High Treaſurer of *Great Britain*, and one of her Majeſty's Privy Council, during the time that all and every the Crimes before ſet forth were done and committed.

For which Matters and Things, the Knights, Citizens and Burgeſſes of the Houſe of Commons in Parliament aſſembled, do, in the Name of themſelves, and of all the Commons of *Great Britain*, further impeach the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* of other High Crimes and Miſdemeanors in the ſaid Articles contained. And the ſaid Commons by Proteſtation, ſaving to themſelves the Liberty of exhibiting at any time hereafter any other Accuſations or Impeachments againſt the ſaid Earl, and alſo of replying to the Anſwers which the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* ſhall make to the Premiſes, or any of them, or to any Impeachment or Accuſation that ſhall be by them exhibited, according to the Courſe and Proceedings of Parliament, do pray, that the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* be put to anſwer all and every the Premiſes; and that ſuch Proceedings, Examinations, Trials and Judgments may be upon them, and

every of them had and uſed, as ſhall be agreeable to Law and Juſtice.

L. H. Steward. Read the Anſwer to the Impeachment.

The Clerk reads the Anſwer.

The Answer *of* Robert *Earl of* Oxford *and Earl* Mortimer, *to the Articles exhibited by the Knights, Citizens and Burgeſſes in Parliament aſſembled, in the Name of Themſelves, and of all the Commons of* Great-Britain, *in Maintenance of their Impeachment againſt him for High-Treaſon, and other High-Crimes and Miſdemeanours, ſuppoſed to have been by him committed.*

THE ſaid Earl, ſaving to himſelf all Advantages of Exception to the ſaid Articles, and of not being prejudiced by any Words, or want of Form in this his Anſwer; and alſo ſaving to himſelf all Rights and Privileges belonging to him as one of the Peers of this Realm, for Anſwer to the ſaid Articles ſaith: He admits *many ſolemn Treaties and Alliances have been formerly entered into, between the Crown of* England, *and other Princes and Potentates of* Europe, *for their mutual Security, and to prevent the immoderate Growth of the Power of* France, *which might prove dangerous to the neighbouring Princes and States*; and that therefore it was laid down as a fundamental Principle and Maxim of Union amongſt the Allies, *That* France *and* Spain *ſhould never come and be united under the ſame Government, and that one and the ſame Perſon ſhould not be King of both thoſe Kingdoms*; and he apprehends, that the principal View and Aim of the Allies was to ſettle and maintain an equal Ballance of Power in *Europe*; and, ſince the Conjunction of *Spain* to the Dominions of *France* might poſſibly enſue from the Duke of *Anjou*'s being poſſeſſed of that Crown, the diſpoſſeſſing him was deſir'd, as the moſt likely Means to prevent that Conjunction; and for the ſame Reaſon the Union of *Spain* with the *Empire* muſt have been equally fatal, and the Prevention of it equally the Deſign of the Alliance; nor could the Continuance of *Spain* in the Houſe of *Bourbon* be in any Reſpect prejudicial to the Allies, if the Union of that Crown with *France* could be prevented. As new Dangers of ſuch Union have been apprehended, new Treaties and Stipulations have been entered into among the Allies, to obviate ſuch Dangers, and particularly the Treaty for an intended Partition ſeems to have been concluded upon that View; and though he acknowledges the Wiſdom of Parliament in condemning that Treaty, as prejudicial and fatal in its Conſequences to *England*, and the Peace of *Europe*, yet, he preſumes, it was not condemn'd, becauſe Part of the Dominions of the Crown of *Spain* were thereby allotted to the Houſe of *Bourbon*; but becauſe ſuch conſiderable Parts of thoſe Dominions, as the Kingdoms of *Naples* and *Sicily*, the Province of *Guipuſcoa* and other Territories were allotted to that Branch of the Houſe of *Bourbon*, to whom the Crown of *France* was to deſcend, which might have been a great and dangerous Addition to the then formidable Strength of that Crown; and becauſe it was made againſt the repeated Remonſtrances of *Charles* the Second, then King of *Spain*, who declared by his Ambaſſador, *That ſuch Partition-Treaty could have no other Effect, than to force* Spain *to throw itſelf into the Arms of* France, *to prevent the diſmembring of the* Spaniſh *Monarchy*. And, that it had this Conſequence, appear'd upon the Death of that Prince, who ſeems to have been induced by that Conſideration to bequeath the entire Monarchy of *Spain* to the Duke of *Anjou*, a younger Branch of the Houſe of *Bourbon*; who accordingly, upon the Demiſe of the ſaid King *Charles* the Second, took Poſſeſſion of the Monarchy of *Spain*. But this Acceſſion of the Duke of *Anjou* to the Crown of *Spain* did not produce the Alliance, in the Article mentioned, between *Leopold*, then Emperor of *Germany*, his late Majeſty, King *William* the Third of ever-glorious Memory, and the States-General, as immediately neceſſary at that Juncture: For King *William*, as well as the States-General, acknowledged the Duke of *Anjou* as King of *Spain*; thereby allowing, that the Duke of *Anjou*'s Enjoyment of the Monarchy of *Spain*, while he was but a younger Branch of the Houſe of *Bourbon*, was not deſtructive of the Liberties of *Europe*, or the Preſervation of a due Ballance of Power. And afterwards, when the *French* King had ſeiz'd the *Spaniſh Netherlands*, King *William*, by Advice of Parliament, came into the Aſſiſtance of the States, as an Auxiliary only, by ſending, upon their Requeſt, Ten Thouſand Men, which *England* was obliged by Treaties to furniſh, in Caſe the States were attacked; after which, many Conferences paſſed at the *Hague* betwixt the Miniſters of *England* and the States, and thoſe of *France*, in order to find out ſome Expedient, by which, upon a reaſonable Diviſion of the Dominions of *Spain*, a new War might be prevented; and the States, in the Courſe of thoſe Conferences, often aſſerted, *That, though they had acknowledged* Philip *King of* Spain, *yet ſuch an Acknowledgment was not contrary to the Demand of a reaſonable Satisfaction to be given to the Emperor for his Pretenſions to the* Spaniſh *Succeſſion*; which was, in Effect, to declare, *that the Satisfaction demanded for the Emperor was ſuch, as would leave* King Philip *in Poſſeſſion of* Spain. But thoſe Conferences broke off, about *Auguſt*, One Thouſand Seven Hundred and One, without Effect; and in *September* following, King *William* entered into the Grand Alliance with the Emperor, and the States-General; whereby it was agreed, *That, in the firſt Place, Endeavours ſhould be uſed by amicable Means to obtain the Satisfaction deſired for the Emperor*, who probably, at that Time, would have accepted a very eaſy Compoſition for his Pretenſions: But when the *French* King acknowledged the *Pretender* as King of *England* (which not long after happened) his Majeſty King *William*, and the Parliament of *England*, juſtly provoked by this Affront, reſolv'd to enter into the War which had been begun by the Emperor alone, in *Italy*, the Year before; and the late Queen mentions this Indignity, as the chief Motive of her engaging in it, as appears by her Declaration of War againſt *France* and *Spain* in *May*, One Thouſand Seven Hundred and Two. The ſaid Earl admits the ſeveral Treaties ſet forth in the Preamble to the ſaid Articles, and that ſuch Advice was given by Parliament, and ſuch Speeches were made from the Throne, as in the ſaid Preamble are mentioned; but, for more Certainty, begs leave to refer himſelf to the very Treaties, Addreſſes of Parliament, and Speeches, when they ſhall be produced: And he humbly hopes, your Lordſhips will allow him to obſerve,

that thoſe Treaties manifeſtly ſhew, that the Deſign of the Allies, in endeavouring the Recovery of *Spain* from the Houſe of *Bourbon*, was to prevent the Union of thoſe two Potent Kingdoms in one and the ſame Perſon. In the Grand Alliance in One Thouſand Seven Hundred and One, the avow'd Ends are, the procuring an equitable and reaſonable Satisfaction to his Imperial Majeſty for his Pretenſions to the *Spaniſh* Succeſſion, the Security of the Dominions of the King of *Great Britain*, and States-General, with the Navigation and Commerce of their Subjects, and the preventing the Union of *France* and *Spain* under the ſame Government. And the Territories and Provinces, pointed out in the Fifth Article, were the fartheſt Views of that Alliance; whereby it was thought, his Imperial Majeſty would receive the utmoſt Satisfaction, which he could reaſonably demand, for his Pretenſion to the *Spaniſh* Succeſſion. No mention is made of the Recovery of the whole Monarchy of *Spain* to the Houſe of *Auſtria*, either in the Grand Alliance, or in the Defenſive one made the ſame Year between his Majeſty King *William* and the States-General: And when, in the Treaty between the Emperor, the Queen of *Great Britain*, and the States-General, on the one Part, and the King of *Portugal* on the other, about *May*, One Thouſand Seven Hundred and Three, it was concerted to place Arch-duke *Charles*, the preſent Emperor, upon the Throne of *Spain*, he was then but a younger Branch of the Houſe of *Auſtria*; and there is great Reaſon to believe that the Queen, as well as other Princes of *Europe*, and, in particular, the King of *Portugal*, did not think a Treaty to procure the Crown of *Spain* for the Arch-duke, when a younger Branch of the Houſe of *Auſtria*, did lay an Obligation of procuring that Monarchy for him, when he became firſt of that Houſe, and was elected Emperor; ſince the Imperial and Hereditary Dominions, join'd to the whole *Spaniſh* Monarchy, would have given ſuch an Exceſs of Power to one Prince, as would have been formidable to *Europe*, and a Means to deſtroy that Ballance of Power which her Majeſty, in all her Treaties, had conſtantly labour'd to preſerve: And it is a known and an allow'd Rule by the Law of Nations, in Reference to Leagues between Princes, that if there happens a material Change in what was the principal Ground and Cauſe of the Treaty, the Obligation thereof ceaſes. If therefore, in the Preliminary Articles in One Thouſand Seven Hundred and Nine, and afterwards in the Conferences at *Gertruydenberg*, a Ceſſion of the *Spaniſh* Monarchy to King *Charles* the Third, who was then younger Brother to the Emperor, was thought reaſonable to be inſiſted on; yet the ſaid Earl humbly ſubmits to your Lordſhips great Judgment, whether there was equal Reaſon for inſiſting on ſuch Ceſſion, when King *Charles* the Third was become Head of that Houſe, and had Poſſeſſion of the Empire and all the hereditary Countries of *Auſtria*, as a Condition, without which no Peace ſhould be made. The States-General were ſo far from admitting, or yielding that the Monarchy of *Spain* ſhould in all Events be given to the Houſe of *Auſtria*, that he, the ſaid Earl, hath heard, they refus'd to admit it to be inſerted as a Condition of their Barrier-Treaty, when propoſed by her Majeſty's Ambaſſador at the *Hague*, and choſe rather to put a Stop to the Proceedings of that Treaty, and hazard the Advantages they thereby expected, than comply with that Propoſal. The Advice of Parliament is of great Weight, to which her late Majeſty always gave, and he the ſaid Earl always paid, a juſt Regard; and he doubts not but the Houſe of Peers had proper Inducements when they gave their Advice to the Throne, *That no Peace could be ſafe, honourable, or laſting, ſo long as the Kingdom of* Spain *and the* Weſt-Indies *continued in the Poſſeſſion of any Branch of the Houſe of* Bourbon. But, if he may be permitted to offer his humble Conjecture concerning the Motives of that Advice, he conceiveth it might proceed from an Apprehenſion of a future Union of thoſe two Crowns as likely to enſue, in Caſe *Spain* ſhould continue in the Poſſeſſion of any who might become Heir to the Crown of *France*, and that even the Conjunction of the Empire and *Spain* would be leſs dangerous than ſuch a Union. But when her Majeſty communicated to her Parliament, the Sixth of *June* One Thouſand Seven Hundred and Twelve, the Terms upon which a Peace might be made, and thereby inform'd them, *That* France *had been brought to offer, that the Duke of* Anjou *ſhould, for himſelf and his Deſcendants, renounce for ever all Claim to the Crown of* France; *and at the ſame time the Succeſſion of the Crown of* France *was to be declared, after the Death of the then Dauphin and his Sons, to be in the Duke of* Berry *and his Sons, in the Duke of* Orleans *and his Sons, and ſo on to the reſt of the Houſe of* Bourbon; *and that the Succeſſion to* Spain *and the* Weſt-Indies, *after the Duke of* Anjou *and his Children, was to deſcend to ſuch a Prince as ſhould be agreed upon at a Treaty of Peace, for ever excluding the reſt of the Houſe of* Bourbon; both Houſes of Parliament, by their reſpective Addreſſes to her Majeſty, in the ſame Month, expreſſed their entire Satisfaction: And as the Houſe of Commons deſired her Majeſty *to proceed in the Negotiations then depending for obtaining a ſpeedy Peace*; ſo that the Houſe of Lords aſſured her Majeſty, *That they entirely relied on her Majeſty's Wiſdom to finiſh that great and good Work.* And after her Majeſty had concluded a Peace on thoſe Terms, both Houſes of Parliament ſeverally congratulated her Majeſty on the Concluſion of the Peace; and alſo join'd in an Addreſs of the Twenty-ſecond of *April*, One Thouſand Seven Hundred and Fourteen, expreſſing their *juſt Senſe of her Majeſty's Goodneſs to her People in delivering them by a ſafe, honourable, and advantageous Peace with* France *and* Spain, *from the heavy Burthen of a conſuming Land-War, unequally carried on, and become at laſt impracticable.* He the ſaid Earl acknowledges, that her Majeſty was pleaſed about *Auguſt*, One Thouſand Seven Hundred and Ten, to re-admit him, among others, to a Place in her Council, and to require his Service in Offices of Truſt; to which he ſubmitted purely in Obedience to her Majeſty's Commands, with great Reluctance from the Proſpect of the Difficulties with which he was likely to ſtruggle. But as he never ask'd any Employment, nor us'd any wicked Arts, or baſe Inſinuations, to obtain the ſame from her Majeſty; ſo in all Employments, with which her Majeſty was pleaſed to honour him, he ſincerely endeavour'd to diſcharge his Duty with the utmoſt Integrity, having always, with the trueſt Zeal, deſired and endeavour'd, as far as he could, to promote the Honour and Service of her Majeſty, whoſe Aim he knew to be the

Welfare of her Kingdoms, in the firſt Place, and as far as ſhe judged it conſiſtent with that, the common Good of her Allies. In or about the Month of *September*, One Thouſand Seven Hundred and Ten, her Majeſty (whoſe undoubted Prerogative it was) thought fit to diſſolve the Parliament then in being, and to call a new One. In the Year One Thouſand Seven Hundred and Eleven, Propoſitions were made by *France* to her Majeſty for a Peace, without the Contrivance or previous Knowledge of the ſaid Earl: Her Majeſty, out of her Affection for her People, having it much at her Heart to eſtabliſh Peace in her own Days, expreſſed her Concern for the Diſappointment of former Negotiations, and her earneſt Deſire to put a ſpeedy End to the War, and to the Effuſion of Chriſtian Blood, and to eaſe her Subjects from the heavy Burthen of their Taxes. The ſaid Earl doth acknowledge, that he thought a Peace was very much for the Intereſt and Advantage of *Great Britain:* And, in his humble Opinion, the moſt favourable Juncture for obtaining advantageous Terms of Peace, was immediately after the ſignal Victories gained by her Majeſty's Arms, in the Year One Thouſand Seven Hundred and Six. For, after the Reduction of the Dominions of the Electors of *Bavaria* and *Cologne*, with other important Conqueſts in *Germany*; after the entire Deſtruction of Three great Armies of *France*, in *Flanders*, *Spain*, and *Piedmont*; after the Allies had recover'd the *Spaniſh Netherlands*, *Milan*, and other Territories in *Italy*; it might have been hoped, from the great Diſtreſs in which the Enemy then was, a juſt and reaſonable Peace would have been obtained; ſince ſo much was at that Time gained from the Enemy, and ſo much more in all Probability would have been yielded by them, as would have fully anſwered the Ends of the Grand Alliance. Peace was at that Time ſought by the Enemy; and the ſaid Earl, who had the Honour to be one of the Principal Secretaries of State, owns he then adviſed the accepting of it. And he humbly begs leave to obſerve, that the War had been continued upon ſo unequal a Foot, that the Burthen of it annually encreaſed, and, at the Time when theſe Propoſals were made by *France*, was become almoſt inſupportable. It had indeed been ſtipulated by the Grand Alliance, that the Allies ſhould aſſiſt one another with all their Forces, according to a Specification to be agreed on in a particular Convention for that Purpoſe: But it doth not appear any ſuch Convention was made, otherwiſe than as the Houſe of Commons were inform'd by one of the Principal Secretaries of State to his late Majeſty King *William*, that by the Proportions adjuſted with the States, *England* was to furniſh two Parts of five by Land, and the States the other three; and *England* was to furniſh five Parts of eight by Sea, and the States the other three: But the States not always allowing themſelves to be under an Obligation to furniſh ſuch Proportions, gave occaſion to *England*'s bearing an unequal Part in the War, with reſpect to the Allies. The States had that prudent Regard to the frugal ordering of their Affairs, that they frequently inſiſted, they ought not to be preſſed beyond their Ability, and made themſelves the ſole Judges of what came within the Compaſs of it, and by that means avoided the ſupplying any Quota, or Proportion, which they thought improper for them to furniſh. In the mean time the Charge of the War was greatly increaſed upon the Subjects of *Great Britain:* In the Year One Thouſand Seven Hundred and Two, it was under Four Millions; from thence it gradually increaſed till the Year One Thouſand Seven Hundred and Six, the Charge of which Year amounted to above Five Millions and an Half; and ſtill advancing, till the Year One Thouſand Seven Hundred and Eleven, it was then grown to near Seven Millions; and, at the ſame time, there was a Debt contracted, not provided for by Parliament, amounting to Seven or Eight Millions; the very Intereſt of which, and other Debts, wherein the Nation was involved, amounted to Three Millions *per Annum*; and the Revenues of *Great Britain* were under ſuch Anticipations, that it was found difficult to raiſe above Two Millions and an Half for the growing Service, to be paid within the Compaſs of the Year. So that, when the Duties and Difficulties upon Trade, and the Continuance of the Taxes upon Land, which had lain ſo heavy above Twenty Years, are conſidered, the ſaid Earl believes it could not be thought for the publick Intereſt to prolong the War, without an abſolute Neceſſity. During this Time the States had managed with ſo good Oeconomy, that the ſaid Earl hath not heard of any additional Duty laid by them upon Trade, from the Year One Thouſand Seven Hundred and Two, to the Year One Thouſand Seven Hundred and Eleven. And what Acquiſitions were made upon the Continent, during the Continuance of the War; though at the Expence of *Britiſh* Blood and Treaſure, accrued to the Share of the Allies; and the *Dutch*, being under no Prohibition of Commerce with *France*, had a further Advantage of the *Britiſh* Merchants, in reſpect to a free Trade. Although the Princes of the Empire were engaged by previous Treaties to furniſh their Quota's to the common Cauſe, yet when they were often preſſed to do it, they alledged in Excuſe, *That thoſe Troops which they were obliged to furniſh at their own Expence, were in the Pay of the Crown of* Great Britain. The Emperor left it to her Majeſty to provide for thoſe Troops, which by the *Portugal* Treaty, in the Year One Thouſand Seven Hundred and Three, he was to furniſh. The King of *Portugal* not only neglected the Proportion of Twelve Thouſand Foot and Three Thouſand Horſe, which by the ſaid Treaty he was to provide at his own Expence, but even refuſed to permit the Eleven Thouſand Foot and Two Thouſand Horſe, for which he had a Subſidy from her Majeſty, to be paid by Muſters, according to an Article of that Treaty; and, when preſſed to furniſh his full Number of Troops, alledged his Inability, for want of that Part of the Subſidies which the States ought to have paid him: So that almoſt the whole Charge of the War in *Spain* was left upon her Majeſty; the States having ſent few or no Troops thither, after the Battle of *Almanza*; and all the other Allies being likewiſe defective in their Proportions. This was the Condition of Affairs, with reſpect to the Charge of the War; nor did there appear, from the then Situation of Affairs, any more promiſing Proſpect, with regard to the Event: For, although it had pleaſed God to bleſs her Majeſty's Arms with wonderful Succeſs, at which the ſaid Earl moſt ſincerely rejoiced, yet it did not appear, that after the Year One Thouſand Seven Hundred and Six, our Succeſſes in

other

other Parts had countervailed our Losses in *Spain*; for after two great Battles, wherein we had been there defeated, after our Forces had been twice obliged to retire from *Madrid*, and after the taking the *British* Troops at *Bribuega*, the Recovery of *Spain*, (which was the main Article that retarded the Conclusion of the Peace at *Gertruydenberg*) seemed almost desperate, especially since the *French* in the Year 1711, by their plentiful Vintages and Harvests, had well nigh recovered the Effects of the Famine; and since some of the Allies at the same time made pressing Instances for recalling part of their Troops, as they had done frequently during the course of the War; from whence it appears how just the Grounds were, upon which both Houses of Parliament represented to her Majesty, *That the War had been unequally carried on, and was at last become impracticable.* And the said Earl humbly hopes, he shall not be thought to have designed any Disservice to his Country, if, in such a Condition of Affairs, he did not dissuade her Majesty from hearkening to the Overtures of Peace made to her from *France*; or if, during the Negotiations, he endeavoured, by Corresponding, with her Majesty's Knowledge and Approbation, in any Courts concern'd therein, to rectify any Mistakes, or contribute in any Measure towards the Conclusion of a general Peace. But the said Earl believes, that, in all the Negotiations towards such Peace, the Allies had such Knowledge and Communication of all Measures therein taken by her Majesty, as the Treaties her Majesty was engaged in required: That the Propositions transmitted from *France* about *April* 1711, were immediately communicated to the Pensionary and Ministers of *Holland:* That her Majesty did at the same time, assure them of her Resolution to act in Concert with them, in making Peace as in making War. That when the States had expressed their Desires to be equal with those of *Great Britain* for a general and lasting Peace, and had declared, that they were ready to join in proper Measures to procure it, and desired *France* might explain itself more particularly upon the Points contain'd in those Propositions; her Majesty endeavour'd to obtain such Explanations, and afterwards communicated them to the States: And if her Majesty thought it not expedient to proceed in the Method of a Preliminary Treaty, which had proved so ineffectual in the Year 1709 and 1710, but thought it might be sufficient, upon Articles signed by a Minister of *France*, by his Sovereign's Command, to open Conferences for a Peace; the said Earl humbly hopes, that this Proceeding will appear to be so far from being an unreasonable Deviation from the Methods of former Transactions in that kind, that it will be justified by many Precedents of such Treaties. The said Earl can affirm, that, during the whole Negotiation, so far as he was concerned, he acted with a sincere Intention to obtain a general Peace for the Welfare and Honour of her Majesty and her Kingdoms, and such as might give reasonable Satisfaction to her Allies, and answer all the Obligations her Majesty was under, by any Treaties with any of the Confederates; and is not conscious to himself that he hath, in any respect, transgressed that Duty, which, as a Privy Counsellor, or Officer of State, he did owe to her Majesty, or to the Publick. He is not insensible that many of the Articles, wherewith he stands charged, are complicated with such Circumstances, Aggravations and Inferences, as may render it difficult for him to acknowledge some Facts alledged, without acknowledging, or seeming at least to acknowledge those Circumstances or Inferences. And, as he is not conscious to himself of being guilty of any Crime he stands charged with, so he takes it to be agreeable to the common Course of Proceedings of this Nature, and to your Lordships Justice, that he should not admit any Circumstances which may tend to the Accusation of himself. He therefore begs leave that he may be allowed to distinguish between the Acts themselves, and the Inferences drawn from them; and that wherever he acknowledges any Fact, he may not be understood to acknowledge those Consequences which are in the Articles deduced from it, unless it shall appear that that Consequence was the Aim and Design of the said Earl, or is the necessary Result of any Act he hath done.

In answer to the First Article, the said Earl saith, that he always had the greatest Regard to the Honour and Safety of her late Majesty and her Kingdoms, to all the Engagements she was under to the Allies of this Nation, and to the common Liberties of *Europe*, that he never was devoted to the Interest or Service of the *French* King; that he is not conscious to himself of having acted, whilst he had the Honour to be her late Majesty's *High Treasurer*, or one of her most Honourable Privy Council, contrary to his Oath, or in Violation of his Duty, and Trust, or with Disregard to, much less Defiance of any Treaties in the said Article mentioned, the Advices of Parliament, her Majesty's Declarations from the Throne, or any mutual Assurances which had been made or renewed between her Majesty and the States, to act in perfect Concert with each other in making Peace as in making War: And he utterly denies, that in or about the Months of *July* or *August* One Thousand Seven Hundred and Eleven, or at any other Time, he did form any Contrivance or Confederacy to set on Foot a private, separate, dishonourable or destructive Negotiation of Peace between *Great Britain* and *France*; nor doth he know of any such Contrivance or Confederacy formed by any of her Majesty's Privy Council, or that such Negotiation was at any time set on Foot. But the said Earl saith, he doth believe, that about the Month of *April* One Thousand Seven Hundred and Eleven, her late Majesty did receive from *France* some Proposals, in order to set on Foot a Treaty for a general Peace, signed by Monsieur *de Torcy*, Secretary of State to the most Christian King, which, as he believes, were immediately communicated by her Ambassador in *Holland* to the States-General: Whereupon, as he has been informed, they thanked her Majesty for her Confidence in them, declared themselves to be weary of the War, and ready to join in any Measures her Majesty should think proper for obtaining a good Peace, and that they hoped her Majesty would bring the *French* to explain more particularly the several Points contained in the above-mentioned Proposals, or to that Effect; and that after such Request her Majesty sent *Matthew Prior*, Esq; to the Court of *France*, in order to obtain as full and ample an Explanation as he could of the first general Offers: But the said Earl denies that he did advise her Majesty to send the said Mr. *Prior* to the Court of *France*, to make Propositions of Peace, without communicating the same to her Allies; or that the said Mr. *Prior* did,

by his Advice or Privity, communicate any Propoſitions to the Miniſters of *France*, wherein the Intereſts of *Great Britain*, or the common Intereſt of *Europe* were betray'd; nor doth the ſaid Earl know, that the ſaid Mr. *Prior* had any Power to communicate Propoſitions to the Miniſters of *France*, which betrayed either the Intereſts of *Great Britain*, or the common Intereſt of *Europe*. Therefore the ſaid Earl inſiſts, that there is no Ground to charge him with the treacherous or pernicious Contrivances in this Article mentioned. And if any Article was inſerted in any Propoſitions to be communicated by the ſaid Mr. *Prior*, that the Secret ſhould be inviolably kept till allowed to be divulged by the mutual Conſent of both Parties; yet the ſaid Earl denies that ſuch Article was inſerted by his Advice; and if any ſuch there was, he cannot however believe it was deſigned to exclude her Majeſty's Allies from their juſt Share in the ſaid Negotiations, and hopes he may be allowed to obſerve, that in caſe any Inſtructions were given for not divulging Propoſitions which concerned *Great Britain* in particular, the ſame were far from manifeſting ſuch Deſign as is beforementioned, ſince it is well known to be the undoubted Right of every Member of a Confederacy to demand particular Advantages for themſelves, not inconſiſtent with their Alliances, and which are not to take place but on the Concluſion of a General Peace: And it has been uſual for thoſe to whom the firſt Overtures of Peace are made, to make Demands for themſelves in the firſt place, as the States particularly did in the Negotiations at the *Hague* in the Year One Thouſand Seven Hundred and Nine, and at *Gertruydenberg* in the Year One Thouſand Seven Hundred and Ten. And tho' he apprehends that an Agreement not to divulge the Propoſitions without the mutual Conſent of both Parties, could not be to the Prejudice of the Allies; yet he believes, that in order to prevent any unreaſonable Jealouſies among them, even thoſe Propoſitions which related to *Great Britain* in particular, were communicated to them; and that it will likewiſe appear, that the Propoſitions ſigned by Monſieur *de Torcy*, and tranſmitted in the Month of *April* One Thouſand Seven Hundred and Eleven, in the ſaid Articles mentioned, whereby it is ſaid, the *French* King offered to treat with the Plenipotentiaries of *England* or *Holland* alone, or jointly with thoſe of the Allies, at the Choice of *England*, were Propoſals relating only to the manner of Treating, when the Conferences ſhould be opened; and that her Majeſty was ſo far from taking upon her to treat ſingly for the Allies, that ſhe choſe to have all the Parties admitted to the Congreſs, where they might have an Opportunity of treating and adjuſting their reſpective Intereſts; that being, in her Opinion, the faireſt Method of proceeding, moſt advantageous to the Confederates, and moſt likely to prevent Jealouſies and Diſcords among them. And the ſaid Earl ſaith, that he doth not know that any Negotiation of Peace was contriv'd or ſet on Foot by any Perſons employ'd in her Majeſty's Service, which was in any reſpect more advantageous to *France* than *France* had aſked, or which had a Tendency to give the Enemy a Power to create Miſunderſtandings between her Majeſty and her Allies, or to deſtroy the Confidence between them.

In anſwer to the Second Article, the ſaid Earl ſaith, that he believes Monſieur *Meſnager*, a Subject of the *French* King, did ſome time in the Year One Thouſand Seven Hundred and Eleven, with her Majeſty's leave, come into the Kingdom of *Great Britain*, and bring with him a Letter from the ſaid *French* King to her late Majeſty, acknowledging her Majeſty Queen of *Great Britain*, and likewiſe expreſſing a Deſire to re-eſtabliſh Peace with her, and that he was furniſhed with full Powers from the ſaid *French* King for that Purpoſe. The ſaid Earl further ſaith, that it hath been the uſual and allowed Practice in moſt Nations, eſpecially in *England*, for Privy Counſellors by verbal Orders from the Sovereign to confer within the Realm with Miniſters of foreign Princes, and he conceives ſuch Practice to be agreeable to the Laws of this Realm: And that full Powers are uſually granted to Miniſters who are ſent abroad for the Juſtification of Perſons with whom they ſhall treat, rather than to juſtify ſuch Miniſters themſelves. And the ſaid Earl denies, that he did in the Month of *September* One Thouſand Seven Hundred and Eleven, or at any other time, ſecretly and unlawfully, or without Authority, confer or treat with the ſaid Sieur *Meſnager* on the Negotiations of Peace between *Great Britain* and *France*, or that he did adviſe or promote the making a private and ſeparate Treaty or Agreement between the ſaid Crowns: But he hath been informed, and doth believe, that there was a Paper ſtiled, *The Anſwer of* France *to the Preliminary Demands of* Great Britain *more particularly*, ſigned by Monſieur *Meſnager* only, to which was ſubjoined a Declaration of the Queen's Acceptance of thoſe Preliminary Articles, as Conditions his moſt Chriſtian Majeſty conſented to grant, which were to be reduced into the uſual Form of Treaties, and explained after the moſt clear and moſt intelligible manner, to the common Satisfaction of *Great Britain* and *France*, and this only in caſe of a general Peace: And this Declaration, or ſome other Declaration to the like effect, he believes might be ſigned by the Lord *Dartmouth* and Mr. Secretary *St. John*, as in the ſaid Article is ſet forth. But the ſaid Earl muſt crave leave to ſubmit it to the Judgment of your Lordſhips, whether a Paper of that ſort (if any ſuch there was) containing Offers from *France*, which were not to take effect but in caſe of a general Peace, can be called a ſeparate Treaty. He believes the Allies had early Knowledge and Participation of the ſaid Propoſals from the Miniſters of *Great Britain*; but denies that the Intereſts of *Great Britain* were thereby given up to *France*, or the Duke of *Anjou* admitted to be King of *Spain*; ſince in the Declaration annexed to the ſaid Propoſals he believes it is expreſſed, that her Majeſty might in Juſtice expect the Securities and Advantages mentioned in thoſe Propoſals, what Prince ſoever he ſhould be to whom the Monarchy of *Spain* ſhould be allotted; and the ſaid Earl, recollecting as well as he can what were her Majeſty's Views at that time, is perſuaded that her Majeſty had then a Proſpect, that the Monarchy of *Spain* would fall to the Share of another Prince. The ſaid Earl denies, that by his Privity, Conſent, or Advice, any private or ſeparate Treaty or Agreement, whereby the Intereſts of *Great Britain* were given up to *France*, or the Duke of *Anjou* was admitted to be King of *Spain*, was agreed, concluded, and ſigned by the Sieur *Meſnager* on the part of *France*, and by the Lord *Dartmouth* and *Henry St. John*, or either

either of them, in Behalf of her late Majeſty; much leſs did the ſaid Earl, at any Time, aſſume to himſelf Regal Power, or take upon him to meet and treat with the Enemy without Authority from her Majeſty, or do any thing to ſubvert the ancient and eſtabliſhed Conſtitution of the Government of theſe Kingdoms, or introduce any illegal or dangerous Methods of tranſacting the Affairs of State. And the ſaid Earl further ſaith, that he did never aim at, or endeavour by any ſeparate Treaty to diſſolve or cancel any of thoſe ſolemn Treaties, in which her Majeſty ſtood engaged to her Allies, nor was he privy to any Treaty, whereby the Queen was brought under a Dilemma, either to ſubmit to the Dictates of *France* in the Progreſs of this Negotiation, or to loſe the Confidence of her Allies.

In anſwer to the Third Article, the ſaid Earl denies, that to diſguiſe, or carry on any private, ſeparate, or dangerous Negotiations, he did contrive or adviſe the preparing and forming the Set of General Preliminaries in the Article mention'd, intitled, Preliminary Articles on the Part of *France*, to come to a general Peace; or any other Set of general Preliminaries of like Nature; or that the ſame ſhould be ſigned by the Sieur *Meſnager*; or that he did adviſe her ſacred Majeſty, that the ſame ſhould be received by her Majeſty: But the ſaid Earl hath been informed, that certain Articles, called Preliminary Articles on the Part of *France*, to come to a general Peace, ſigned by the Sieur *Meſnager* only, were receiv'd by her Majeſty, and believes the ſame might be communicated to the Miniſters of the Allies then reſiding in *England*, as a Ground whereon the Confederates might treat or negotiate concerning a general Peace; but whether the ſame were communicated as the only Tranſactions that had been on that Subject, between *Great Britain* and *France*, the ſaid Earl knows not: But ſince it is termed impious Advice, and contrary to the Duty and Truſt of a Miniſter of State of *Great Britain*, to adviſe the receiving ſuch Articles; the ſaid Earl, from his Concern for the Honour of her late Majeſty's Adminiſtration, and the future Welfare of theſe Kingdoms, doth ſubmit, Whether it is criminal for ſuch Miniſter to adviſe the receiving Articles from a Miniſter of a Prince in War, containing Propoſals for giving reaſonable Satisfaction to *Great Britain* and all her Allies, and which being ſigned by the Miniſter of that Prince only, were not intended to bind any other. And ſince Preliminary Articles are no eſſential Step towards a general Negotiation, (there being, as he believes, but few Inſtances where any Matters of Importance have been ſettled before the opening of general Conferences) the ſaid Earl doth not conceive, That if any Miniſter of State had adviſed her Majeſty to accept the Preliminaries or Offers from *France*, ſaid to be ſigned by Monſieur *Meſnager* the Twenty Seventh Day of *September*, One Thouſand Seven Hundred and Eleven, as the Foundation of a Treaty, he had thereby offended againſt any known Law, ſince the Proceedings upon ſuch Preliminaries could not be more unſafe than proceeding without any at all. The ſaid Earl denies, that any Treaty, ſigned by the Earl of *Dartmouth* or Mr. *St. John*, or either of them, on the Part of *England*, and the Sieur *Meſnager* on the Part of *France* (if any ſuch there be) was induſtriouſly concealed from the Allies, her Majeſty's Council, or Parliament, by his Advice or Contrivance; or that he diſſuaded her Majeſty from laying any ſuch Treaty before her Allies, her Council or Parliament; or that he adviſed her Majeſty to receive the ſaid general Preliminaries, or to communicate the ſame in her Name, or by her Authority, to the States-General, as a ſufficient Foundation whereon to open the Conferences of Peace with *France*. The ſaid Earl hath been informed, and doth believe, that there were certain Inſtructions prepared and ſigned by her Majeſty, and delivered to the Earl of *Strafford*, her Majeſty's Ambaſſador to the States-General, wherein the ſaid Ambaſſador might be directed to repreſent to the Penſionary of *Holland*, and ſuch others as ſhould be appointed to confer with him, in ſuch manner as is ſet forth in this Article, or to the like Effect; but he denies, that the ſaid Inſtructions were prepared, ſigned, or deliver'd by his Advice: Nevertheleſs the ſaid Earl believes, the ſaid Inſtructions were well warranted by the Truths of ſuch Facts, as in the ſaid Article are ſet forth to be contained in thoſe Inſtructions, ſince the ſaid Earl hath had credible Information, that after her Majeſty had received an Account of the Senſe of ſome Perſons in *Holland*, concerning the Overtures made by *France*, for the ſetting a general Negotiation of Peace on foot, very preſſing Inſtances were made on her Majeſty's Behalf, with the Enemy, to explain the firſt Offers made by Monſieur *de Torcy* more particularly, and to form a diſtinct Project of ſuch a Peace as they were willing to conclude; and that ſuch Inſtances had Effect, will appear from the Preliminaries ſaid to be ſigned by Monſieur *Meſnager*, *September* the Twenty-ſeventh One Thouſand Seven Hundred and Eleven, wherein ſeveral Explications are made, and many Particulars of Moment are contained, which were not in the Propoſitions of Monſieur *de Torcy*: Wherefore the ſaid Earl apprehends, that the Propoſitions ſaid in this Article to be ſent over to *France*, (if any ſuch were ſent) were not ſo general as the Propoſitions of Monſieur *de Torcy*, nor in any reſpect enſnaring, or deſtructive to the Intereſts of *Great Britain* or the Allies: But yet the ſaid Earl believes that her Majeſty, at the ſame Time ſhe did communicate the ſaid Preliminaries to the States-General, did likewiſe order her Ambaſſador to acquaint them, that ſhe judged thoſe Articles did not contain ſuch particular Conceſſions as *France* would probably be obliged to make in the Courſe of the Negotiations, or to that Effect. If therefore her Majeſty did, for the Good and Eaſe of her People, endeavour to prevail with her Allies to enter into a Negotiation of Peace, and did communicate the ſaid Preliminaries to them, with that View, the ſaid Earl cannot be induced to believe, that the ſaid general Preliminaries, communicated to the States by her Majeſty in manner aforeſaid, were calculated to amuſe and deceive them; nor doth the ſaid Earl know or believe, that her Majeſty's Inſtructions to her ſaid Ambaſſador, either in the Particulars aboveſaid, or in any other, contained Matters falſe, prevaricating, or evaſive.

And the ſaid Earl muſt take the Liberty to affirm, that in the late Negotiations of Peace, as well as in all other publick Tranſactions of State, as far as he was concerned, he acted with the higheſt Regard to the Honour of her Majeſty, and with the utmoſt Zeal for the Welfare both

of her and her People, and is not conſcious to himſelf that he ever gave any Counſels, whereby the Truth and Sacredneſs which ought to conſtitute and accompany the Inſtructions of publick Ambaſſadors to Princes in Friendſhip and Confederacy, againſt the common Enemy, were in any wiſe proſtituted, or the Honour of her Majeſty and of the Imperial Crown of theſe Realms in any ſort debaſed or betrayed: And he humbly hopes no Inſtance can be given, wherein the Royal Hand of her late Majeſty was made the Inſtrument to advance the Intereſt of the common Enemy.

In anſwer to the Fourth Article, the ſaid Earl doth not remember what Repreſentations were made by Monſieur *Buys* to her Majeſty in relation to the Propoſitions in the ſaid Article mentioned, but ſaith, that if any Repreſentations were made, the ſame were not rendered ineffectual by any Influence of the ſaid Earl; And the ſaid Earl doth admit, that at a Committee of Council there might be made ſome Declaration in her Majeſty's Name to Monſieur *Buys* to the Effect in the ſaid Article mentioned; but doth not admit that any ſuch Declaration was made by him the ſaid Earl, or by his Management or Contrivance. And the ſaid Earl believes, that what was ſo declared to the ſaid Monſieur *Buys*, was agreeable to Truth, and to the real Sentiments and Intentions of her Majeſty; nor doth he know wherein the ſaid Articles, ſigned by Monſieur *Meſnager*, and accepted by the Lord *Dartmouth* and Mr. *St. John*, if any ſuch were then ſigned, were inconſiſtent with ſuch Declaration, or how her Majeſty was thereby diſhonoured, or her Allies abuſed, or that any Negotiation entered into with *France* was either dangerous in itſelf, or fatal in its Conſequences.

In anſwer to the Fifth Article, the ſaid Earl admits, that her ſacred Majeſty Queen *Anne* did in due Form of Law, and under her Great Seal, conſtitute the Right Reverend *John* Lord Biſhop of *Briſtol*, and the Earl of *Strafford* her Plenipotentiaries, with full Powers to meet, treat and conclude with the Plenipotentiaries of the Confederates, and thoſe whom the *French* King ſhould on his part depute for that Purpoſe, the Conditions of a good and general Peace, that ſhould be ſafe, honourable, and as far as was poſſible, agreeable to the reaſonable Demands of all Parties, and believes Inſtructions were prepared and delivered to them, wherein they were inſtructed, among other Things, to the Effect in the ſaid Article ſet forth; and is firmly perſuaded, that when the ſaid Plenipotentiaries were ſo inſtructed to inſiſt, that *Spain* and the *Weſt-Indies* ſhould not be allotted to the Houſe of *Bourbon*, no Treaty had been negotiated and agreed, that *Spain* and the *Weſt-Indies* ſhould remain in a Branch of that Houſe: And he has Reaſon to believe, that at the Time when the ſaid Inſtructions were given to her Majeſty's ſaid Plenipotentiaries, there was juſt Ground to believe, that King *Philip* would be induced to abandon *Spain* and the *Weſt-Indies*, and content himſelf with the Dominions of *Savoy* and the Kingdom of *Sicily*: And he believes he may ſo far depend on his Memory, as to ſay, that he heard the late Queen declare, ſhe believ'd the Proſpect King *Philip* had of ſucceeding to the Crown of *France*, would be an Inducement to him to be eaſy with that Allotment. And it ſeemed probable, that the Addition of the Dominions of *Savoy* to the Crown of *France*, in Caſe King *Philip* ſhould ſucceed to it, would be eſteemed by the *French* Court as a Thing more to be deſired by them, than that *Spain* and the *Indies* ſhould remain in the Poſſeſſion of a younger Prince of the Houſe of *Bourbon*, under the Condition of his renouncing the Right he would have to the Crown of *France*, if the eldeſt Branch ſhould fail. Theſe ſeem to him to have been her Majeſty's Views at the Time when the ſaid Inſtructions were given to the Biſhop of *Briſtol* and the Earl of *Strafford*; and he therefore believes, that whoever contrived or prepared the ſame, did prepare them conformable to her Majeſty's real Sentiments, and was far from any Thought or Deſign to abuſe the Royal Authority, delude the States-General, prejudice his Imperial Majeſty, or any of the Allies, or to carry on the Meaſures of *France*: And if King *Philip* afterwards upon Information, that the then *Dauphin* was likely to live, or at the preſſing Inſtances of the *Spaniards*, and Influence of *Spaniſh* Counſels, or upon any other Motives, refuſed to accept of *Savoy* and *Sicily*, and choſe rather to renounce the *French* Monarchy; he thinks no Perſon who acts in the Service of the Crown can be ſafe, if it may be charged on him as a Crime, that he adviſed Inſtructions, which by intervening Circumſtances afterwards became improper. But he the ſaid Earl doth not admit, that he contrived or prepared the ſaid Inſtructions, or was conſenting or adviſing to the contriving or preparing of them, or prevailed on her Majeſty to ſign them; much leſs that he abuſed the Royal Authority, to the Deluſion of the States-General, or intended the Prejudice of his Imperial Majeſty or any of the Allies, or was engaged to carry on the Meaſures of *France*, or had, when the ſaid Inſtructions were prepared, negotiated or agreed with the Miniſters of *France*, that *Spain* and the *Weſt-Indies* ſhould remain in a Branch of the Houſe of *Bourbon*, or had prevailed on her Majeſty to be Party to any private Treaty, wherein the ſame is neceſſarily implied. If the Plenipotentiaries were inſtructed, in Caſe the Enemy ſhould object, that the Second Article of the Seven, ſigned by Monſieur *Meſnager*, implied the Duke of *Anjou* ſhould continue on the Throne of *Spain*, to inſiſt that thoſe Articles were binding to *France*, but laid neither the Queen nor her Allies under any Obligation, the ſaid Earl doth not apprehend how an Inſtruction to her Majeſty's Plenipotentiaries, to make a juſt Anſwer to a falſe Inference, that might happen to be drawn by the Enemy from the Words of ſuch an Article, can be interpreted an entering into a Confederacy or Colluſion with the Miniſters of the Enemy; or that her Majeſty's Conſent to ſuch Inſtructions could imply any Deſign to impoſe on his Imperial Majeſty or the Allies, or to conceal any Negotiations between *Great Britain* and *France*. But the ſaid Earl is confident it will not appear by any of his Actions on the ſtricteſt Scrutiny, that he ever entered into any Confederacy or Colluſion with the Miniſters of the Enemy, or prevailed on the Queen to give her Conſent thereto, or had any Deſigns to impoſe upon his Imperial Majeſty, or any of the Allies, or ever was privy to any ſecret Negotiations or ſeparate Treaty between *Great Britain* and *France*, whereby either in the before-mentioned

tioned, or in any other Particulars, any Reproach could be brought on the Crown of theſe Realms, or any Treaties wherein her Majeſty was engaged to her Allies were violated.

In anſwer to the Sixth Article, the ſaid Earl doth admit, that after the Conferences of Peace between the Plenipotentiaries of the Allies, and thoſe of the Enemy, for negotiating a general Peace were opened, wherein he is perſuaded her Majeſty and her Miniſters did act in perfect Confidence with the Allies, in order to promote their common Intereſt, and to obtain from the Enemy all juſt and reaſonable Satisfaction; the Progreſs of the ſaid Negotiation was delayed by Debates, concerning the Enemy's Refuſal to give their Anſwer in Writing to the Demands of the Allies; but he doth not know that any of the Miniſters of *Great Britain* did, by any Encouragement or Concurrence, contribute thereunto: And if, during that time, her Majeſty thought fit to authorize any of her Miniſters to write or negotiate upon any particular Points relating to the Peace, directly from *England* to *France*, in order to facilitate the general Negotiations of Peace, which he the ſaid Earl doth not admit to have been done by his Privity; yet he the ſaid Earl doth not apprehend, that by the Conſtitution of the Kingdom, or any Law in being, the Queen was debarr'd from doing ſo; or that by conſtituting the ſaid Plenipotentiaries, ſhe had ſo far delegated to them her Royal Authority, as to be diſabled, without revoking their Commiſſion, to treat or negotiate any Matters conducing to that End, in ſuch other manner as ſhe ſhould think fit. The ſaid Earl ſaith, that he did not adviſe, contrive, or promote any private, ſeparate, or unjuſtifiable Negotiation with *France*, nor doth he know any Negotiation relating to the Peace was carried on without Communication thereof to the Allies. And the ſaid Earl denies that he ever aſſumed Regal Authority, or that he treated of Peace with *France* in any manner that could be liable to ſuch Imputation, or did promote the Deſign of the Enemy to the Deſtruction of the Common Cauſe of her Majeſty, or of her Allies, contrary to the Laws or Conſtitution of this Kingdom, or in Violation of any of the Alliances her Majeſty ſtood engaged in, or of the Aſſurances given by her Majeſty, or of her Inſtructions to her Plenipotentiaries; or that any Terms of Peace were by him at any time concerted, prejudicial to the Intereſt of her Majeſty, or her Kingdoms, or Allies, or whereby the good Effects of the general Negotiation were defeated.

In anſwer to the Seventh Article, the ſaid Earl ſaith, that he never adviſed her late Majeſty to accept of a Treaty with *France*, on a Suppoſition that the *Spaniſh* Monarchy ſhould continue in the Poſſeſſion of a Branch of the Houſe of *Bourbon*; nor did he adviſe, or carry on any private or ſeparate Negotiation with *France*, on the Subject of a Renunciation to be made by the Duke of *Anjou*, of the Right he might have to the Kingdom of *France*, and that ſuch Renunciation ſhould be the Security againſt the Re-union of the two Kingdoms: Or that by his Counſels her Majeſty was prevailed on to accept, and finally to conclude and ratify a Treaty of Peace with *France*, wherein the ſaid Renunciation is taken as a ſufficient Expedient to prevent the Miſchiefs that threatned all *Europe*, in caſe the Crowns of *France* and *Spain* ſhould be United upon the Head of one and the ſame Perſon: Nor doth he know, that during the ſaid Negotiation, any ſuch Memorial, as in the ſaid Article is ſet forth, was tranſmitted by the ſaid Monſieur *de Torcy* to any of her Majeſty's Principal Secretaries of State: But he the ſaid Earl doth freely acknowledge, that if he had been called upon to give his Opinion concerning the leaving of *Spain* and the *Weſt Indies* in the Poſſeſſion of a Branch of the Houſe of *Bourbon*, and accepting the Renunciation of his Right to the Kingdom of *France* by the Duke of *Anjou*, he doth not at preſent ſee any Reaſon why he might not have been of Opinion for leaving *Spain* and the *Weſt-Indies* to the preſent Poſſeſſor, and accepting the Renunciation, rather than have continued the War ſo burthenſome to the People, and ſo impracticable upon the Foot on which it then ſtood, eſpecially ſince all Endeavours to remove him by Treaties or Force had ſo long proved ineffectual. And in caſe any ſuch Memorial as is ſet forth in the ſaid Article, was ſent by any Miniſter of *France* to the Secretary of the late Queen, he ſhould look upon the ſame as a Proof of the Earneſtneſs of the Court of *France* to avoid ſuch Renunciation, which might more effectually prevent all poſſibility of annexing the Crown of *Spain* to that of *France*. But whatever Inducements might be for ſuch a Memorial (if any ſuch was tranſmitted) the ſaid Earl doth affirm, that he never gave any Counſels by which the Intereſt of the Common Cauſe could be betray'd into the Hands of the Enemy; nor doth he think it was poſſible by any Power and Influence, to engage her Majeſty to become Party with *France* in any Deceit; but whatever Credit he at any time had by her Favour, he always uſed it with the utmoſt Sincerity for her Service, and the Good of her People.

In anſwer to the Eighth Article, the ſaid Earl believes, that her late Majeſty Queen *Anne* did, on the Seventh Day of *December*, in the Year of our Lord One Thouſand Seven Hundred and Eleven, recommend it from the Throne, that Proviſion might be made for an early Campaign, in order to carry on the War with Vigour, and as the beſt way to render the Treaty of Peace effectual; and he doth believe, that in order thereto Supplies were granted, and Magazines provided at a great Expence for an early Campaign, and that in purſuance thereof her Majeſty might ſend ſome General Officers to explain her Intentions to her Allies; and likewiſe inſtructed her General the Duke of *Ormond* to declare her Reſolutions of carrying on the War, and to concert with the Generals of the Allies the proper Meaſures for entering upon Action: And he doth believe, that the Confederate Army was provided with all Neceſſaries: But whether the ſaid Army had approached, or how near they had approached to the Enemy; whether they had any, or what Superiority, as to the number of Troops; or what likelihood there was, that they would have been able, either by Battle or Siege, to have better'd the Affairs of the Allies, or to have facilitated the Negotiations of Peace, the ſaid Earl is not able to ſay: But it muſt be obvious to every one, that any Miſcarriage or Diſaſter on the part of the Allies, at ſuch a Juncture, muſt have been fatal to them: And though the Divine Aſſiſtance had been very remarkable in the many Victories her Majeſty's Forces had obtained, yet her Majeſty's

Piety was ſo great, that it is not likely ſhe ſhould, without the greateſt Neceſſity, have been willing to have tempted that Providence which had been ſo ſignal in her Favour, by hazarding the Blood of her Subjects at a time when ſhe had ſo near a Proſpect of the Concluſion of a Peace: And the ſaid Earl believes it might be owing to this Piety of the Queen, and her Knowledge of ſome important Matters then depending, that Directions were ſent to the Duke of *Ormond* (if any ſuch were ſent) to avoid engaging in any Siege, or hazarding any Battle till further Orders; which he ſuppoſeth her Majeſty might do upon any Cauſes ſhe thought proper, as well as the Deputies of the States, who, as the ſaid Earl hath been informed, have often refuſed to engage in Siege or Battle, upon ſuch Ground as they alone thought fit, when their own Generals, and the Generals of the other Allies, were of Opinion they had a viſible Advantage of the Enemy, and might engage in ſuch Siege or Battle with great Probability of Succeſs. But he doth affirm that the Miniſters of *France* never repreſented to him or to any others, as far as he knows, during any Negotiation, any Apprehenſions they had from the Bravery and good Diſpoſition of the Confederate Army; nor was he ever informed of any ſure Proſpect which it is alledged the Army of the Confederates then had of gaining new Conqueſts over the Army of *France*, or whereby they would have been enabled to have forced any better Terms of Peace than there was at that time likelihood of: But on the contrary he has been informed, that the Forces of *France* were ſuperior in Number to thoſe of the Confederates, eſpecially in Horſe. However the ſaid Earl doth not admit, that he did adviſe or conſent that any Order ſhould be diſpatched in her Majeſty's Name to the Duke of *Ormond* to the aforementioned Effect; nor had he any View or Deſign to diſappoint the Expectations of the Allies, or to give Succeſs to any ſecret Negotiations with the Miniſters of *France*. The ſaid Earl likewiſe denies, that he did conſent or adviſe that Orders ſhould be ſent to the Biſhop of *Briſtol*, one of her Majeſty's Plenipotentiaries then at *Utrecht*, to declare to the *Dutch* Miniſters, that her Majeſty looked on her ſelf, from their Conduct, to be then under no Obligation whatſoever to them. He doth not know what Alarm the Allies might take, or what Repreſentations they made to the Biſhop of *Briſtol* of their Diſſatisfaction or Conſternation, but doubts not the ſaid Biſhop would readily repreſent what they deſired, tho' ſuch Repreſentation made by his Lordſhip, if any ſuch there was, fell not under the Knowledge of the ſaid Earl, nor doth he admit that any Application of that kind was made to him. And in caſe the States-General made ſuch Addreſs directly to her Majeſty, by a Letter of the Fifth Day of *June*, as in the ſaid Article is ſet forth, he the ſaid Earl not being acquainted therewith, could neither adviſe her Majeſty to hearken to the Inſtances therein made, nor to diſregard or reject the ſame. He ſaith, he never entered into Meaſures for the Advancement of the Intereſt of the common Enemy, or countenanced, encouraged, adviſed, or promoted any Negotiations with *France* without Participation of the Allies, or contrary to her Majeſty's Engagement, or to the Ruin of the Common Cauſe; nor is he conſcious to himſelf, that he ever gave any Counſels, by which the Progreſs of the victorious Arms of the Confederates was ſtopped, or any Opportunity loſt for conquering the Enemy, or which had any Tendency to deſtroy the Confidence between her Majeſty and her Allies, or make the *French* King Maſter of the Negotiations of Peace, or which could put the Affairs of *Europe* into his Hands.

In anſwer to the ninth Article, the ſaid Earl denies he was privy or conſenting to any Concert with the Miniſters of *France* for the ſeparating the Troops in her Majeſty's Pay from the reſt of the Confederate Army; and not being privy to any ſuch Concert, he hopes it will not be imputed to him as any want of Duty, that he did not adviſe againſt ſuch a Proceeding. He denies alſo, that he ever entertained the leaſt Deſign of impoſing upon the Allies any Neceſſity of ſubmitting to the Terms of *France*, or of leaving the Confederate Army to the Mercy of the Enemy, or that he did conſent or adviſe her Majeſty that the Duke of *Ormond* and the Troops in her Majeſty's Pay, or ſuch of them as would obey his Orders, ſhould ſeparate themſelves from the Army of the Confederates. The ſaid Earl hath been informed, and believes it to be true, that the Imperial General, and ſome other Generals, did propoſe to the Duke of *Ormond* in *June* or *July*, in the Year One Thouſand Seven Hundred and Twelve, to decamp from the Ground where they lay, and to proceed towards *Landrecy*, in order to form the Siege of that Place, and that the Duke of *Ormond* thought it not proper to conſent thereto, and gave notice to the ſaid Generals, that if they decamped they muſt not expect him to follow them. And the ſaid Earl believes, Inſtances may be given where Generals of other Potentates in the Alliance have refuſed to comply with what has been propoſed to them by her late Majeſty's General. The ſaid Earl hath likewiſe heard, that, notwithſtanding ſuch Notice from the Duke of *Ormond*, the ſaid Generals ſeparated themſelves and their Forces from the ſaid Duke, and marched towards *Landrecy* without him, and that the ſaid Duke continued for ſome time in his former Camp after ſuch Separation: And that the Generals of the Auxiliary Troops paid by her Majeſty, although required by the ſaid Duke of *Ormond*, under whoſe Command they then were, to continue with him, and to obey his Orders, refuſed ſo to do. He the ſaid Earl ſuppoſes it might proceed from her Majeſty's Reſentment of that Inſtance of Diſobedience in the Auxiliary Troops to the Commands of her General, that ſhe did not think fit immediately to pay the Arrears of thoſe Forces which had ſo obſtinately withdrawn themſelves from her General, and marched without him towards *Landrecy*, as not apprehending herſelf obliged by any Conventions, or the Proviſion of any Act of Parliament, ſo to do. But whatever might be the Cauſes or Occaſions of her Majeſty's Reſentment, the ſaid Earl ſaith, that he being in the Office of High Treaſurer under her Majeſty, could not, by the Duty of his Place, iſſue out any Monies without a proper Warrant or Authority from her Majeſty; and denies that he ever received any Warrant or Authority from her Majeſty for iſſuing any Sum or Sums of Money for or towards the Pay or Subſidies on account of the ſaid Foreign Troops who had ſo ſeparated, without which the iſſuing or directing any Monies for the Payment of them had been a Violation of his Duty. And the ſaid Earl denies, that he did at any time refuſe or put

a ſtop to any ſuch Pay or Subſidies; but on the contrary, when the Miniſters of the Princes to whom thoſe Forces belonged did apply for the Payment of the ſaid Troops, the ſaid Earl deſired them to make Application to her Majeſty for the neceſſary Warrants in order thereunto. And as the ſaid Earl had no Notice of any Separation intended between her Majeſty's Forces and thoſe of the Allies before the ſame was made; ſo he abſolutely denies, that by his Advice or Counſel, or with his Privacy, any ſuch Separation was made: And humbly apprehends that he ought not in Juſtice to be charged with any Conſequences of it. He believes, that the Forces of ſome of the Allies were engaged in the unfortunate Action of *Denain*, and that the Siege of *Landrecy* was raiſed, and the Towns of *Queſnoy*, *Bouchain*, and *Douay* were ſome time after re-taken by the *French* Army: But whether thoſe Diſaſters might not have been prevented by a Compliance with the Meaſures her Majeſty had taken for the common Good, the ſaid Earl ſubmits to your Lordſhips.

In anſwer to the Tenth Article, the ſaid Earl denies that he did carry on, or concert with the Miniſters of *France*, a private or ſeparate Negotiation for a general Suſpenſion by Sea and Land between *Great Britain* and *France*; or that he did adviſe her Majeſty to ſend over *Henry* Viſcount *Bolingbroke* to the Court of *France*, with Powers to ſettle ſuch Suſpenſion; but hath been informed, and believes it may be true, that about the Nineteenth of *Auguſt* One Thouſand Seven Hundred and Twelve, *N. S.* a Suſpenſion of Arms was agreed on in *France* by the ſaid Viſcount *Bolingbroke* on her Majeſty's part for four Months; but whether ſuch Agreement was made without the Knowledge or Participation of her Majeſty's Allies, or how far the Terms of Peace were then ſettled with *France*, either for *Great Britain*, or the Allies, the ſaid Earl is not able to ſet forth: But from the Information he hath received of that Affair, believes it will appear, that the ſaid Suſpenſion was a Continuation only of a former Agreement for a Ceſſation of Arms, which had been not only communicated to the Allies, but into which they had been invited; and believes her Majeſty might be induced to deſire ſuch Ceſſation, as was uſual amongſt Princes and States in War during Negotiations of Peace, by which means the *Britiſh* Merchants enjoy'd a free Trade, and had an Opportunity of carrying the Merchandizes of other Countries to ſeveral Parts of *Europe*, as the *Dutch* had done during the War; and therefore the ſaid Earl doth not conceive that her Majeſty, by the ſaid Suſpenſion, did in the leaſt intend the Violation of any Treaties between her and her Allies, or to deprive them of any Aſſiſtance to which they were entitled, or expoſe them to the Inſults of the common Enemy: Nor doth he diſcern how theſe Conſequences could enſue, without the Default of the Allies themſelves; much leſs how the Ties of Union and Friendſhip between her Majeſty and them were cut aſunder, or her Majeſty's Perſon or Government, or the Safety of her Kingdoms, or the Proteſtant Succeſſion, were expoſed thereby. But the ſaid Earl aſſures himſelf, that he ſhall never ſtand chargeable with any Conſequences of ſuch Suſpenſion which he never adviſed; nor did he the ſaid Earl ever entertain the leaſt Thought or Deſign of occaſioning the Deſtruction of the Common Cauſe of *Europe*, or hindering her Majeſty from reſuming the War againſt *France*, in Conjunction with her Allies, if it had been ſo thought fit, or of weakening the Union between her Majeſty and them.

In anſwer to the Eleventh Article, the ſaid Earl ſaith, he believes it to be true, that in or about the Months of *September* or *October* One Thouſand Seven Hundred and Twelve, the States-General were in Poſſeſſion of the Town and Fortreſs of *Tournay*; and that her Majeſty, in her Inſtructions of *December* the Twenty Third, One Thouſand Seven Hundred and Eleven, to her Plenipotentiaries at *Utrecht*, did direct 'em to inſiſt with the Plenipotentiaries of *France*, in the general Congreſs, that towards forming a Barrier for the States-General, *Tournay* ſhould remain to the States; and doth believe the *French* King did at one time incline thereto: But doth not know that her Majeſty in her Speech in the ſaid Article mentioned, did declare herſelf as in the ſaid Article is ſet forth. The ſaid Earl admits, that until and after the Months of *September* and *October* One Thouſand Seven Hundred and Eleven, there was open War between her late Majeſty and the *French* King; and that during ſuch War, the *French* King and his Subjects were Enemies to the late Queen: But the ſaid Earl hath been informed, and believes, that full Powers were given by her Majeſty, and the States-General of the United Provinces, to their reſpective Miniſters, and by the *French* King to his Miniſters, to negotiate and treat of Peace between her Majeſty and the States-General, and ſaid *French* King; upon which Negotiations a Peace was afterwards concluded between them; during which Negotiations he hath heard, that the *French* King did inſiſt upon the yielding up the Town and Fort of *Tournay* by the States to him; and the ſaid States-General deſired her Majeſty's Interpoſition with the *French* King on their behalf; and that at ſuch Requeſt her Majeſty interpoſed her beſt Offices on behalf of the States-General, and did at laſt prevail, that the ſaid Town and Fortreſs of *Tournay* ſhould be, and he believes the ſame is continued to the States-General as part of their Barrier. But the ſaid Earl abſolutely denies that he did deſign to give Aid, or Succour, or to adhere to the *French* King; or that he did in or about the Month of *October* One Thouſand Seven Hundred and Twelve, or at any other time, during the ſaid War, aid, help or aſſiſt, or adhere to the ſaid *French* King; or, that he did ever counſel or adviſe the ſaid Enemy in what Manner, or by what Methods the ſaid Town and Fortreſs of *Tournay*, or either of them, might be gained from the States-General to the *French* King, in Manner and Form as in the ſaid Article is charged. On the contrary, he the ſaid Earl did uſe his beſt Offices to preſerve the ſaid Town and Fortreſs of *Tournay* to the States-General. But the ſaid Earl ſaith, that during the Negotiations of the late Peace, he had the Honour to be one of her Majeſty's Privy-Council; and whatſoever Counſel or Advice he gave, relating to any Terms of the ſaid Peace, he acted therein as a Privy-Counſellor and Miniſter of State, and no otherwiſe: And doth inſiſt, that for any Privy-Counſellor, or Miniſter of State, during the Negotiations of Peace, to adviſe or negotiate, concerning the yielding or giving up any Town, Province or Dominion, upon the Concluſion of the Peace, as part of the Terms and Conditions of ſuch Peace, is not High Treaſon by

any

any Law of this Realm; and that ſuch Conſtruction might hereafter deprive the Crown of the Advice and Aſſiſtance of ſeveral Members of the Privy-Council, in Matters of the greateſt Importance, by deterring them from giving ſuch Advice as, by their Oaths, and the Duty of their Place, they are obliged to do; would overthrow all means of reſtoring Amity between Princes, and render the Law, in caſe of High Treaſon, uncertain, which by reaſon of its being the moſt penal, ought to be moſt plain; and would be highly dangerous and deſtructive to the Lives and Liberties of the Subject.

In anſwer to the Twelfth Article, the ſaid Earl (not admitting that her late Majeſty Queen *Anne* ſtood engaged by Treaties in manner as in the ſaid Article is alledged, but referring himſelf to the Treaties, when they ſhall be produced) for anſwer, denies, that he did in any of the Years One Thouſand Seven Hundred and Ten, One Thouſand Seven Hundred and Eleven, One Thouſand Seven Hundred and Twelve, or at any other time, aid, help, aſſiſt, or adhere to the Duke of *Anjou*, in the ſaid Article named, or adviſe or counſel any of the Enemies of her ſaid late Majeſty, or concert with any of them, or promote the yielding or giving up of *Spain* and the *Weſt-Indies*, or any Part thereof to the ſaid Duke of *Anjou*, in Manner and Form as in the ſaid Article is alledged. And the ſaid Earl ſaith, as in his Anſwer to the Eleventh Article he hath already ſaid, that during the Negotiations of the late Peace, he had the Honour to be one of her ſaid late Majeſty's Privy-Council, and whatever Counſel or Advice he gave, relating to any Terms of the ſaid Peace, he acted therein as a Privy-Counſellor and Miniſter of State, and no otherwiſe; and inſiſts as in his Anſwer to the Eleventh Article he has inſiſted.

In anſwer to the Thirteenth Article the ſaid Earl admits, that the flouriſhing Condition of Trade and Navigation contributes much to the Riches, Power and Strength of theſe Kingdoms; and believes, that her late Majeſty had a juſt Regard thereto, and a ſincere Deſire to obtain ſome Advantages therein for her People; and did make the ſeveral Declarations from the Throne ſet forth in this Article: And that both Houſes of Parliament did, from time to time, expreſs their grateful Acknowledgments to her Majeſty, for her great Care and Concern for the Welfare of her People; and believes her Majeſty might think it reaſonable, conſidering the Share and Burthen ſhe and her People had ſuſtained in the War, that *France* ſhould, in the firſt Place, adjuſt the Intereſts of *Great Britain*, which were to be ſecured on the Concluſion of a general Peace: But the ſaid Earl doth not know or believe that at the ſetting on foot, or in the Progreſs of any Negotiation between the Miniſters of *Great Britain* and *France*, it was laid down as a Principle that *France* ſhould, in the firſt place, conſent to adjuſt the Intereſts of *Great Britain*, to the Intent that the Miniſters of *Great Britain* might thereby be enabled to engage the Queen to make the Concluſion of the Peace eaſy to *France*; nor doth he know that any Conceſſions were made by the Miniſters of *Great Britain*, with intent to promote the Intereſts of *France* againſt the Allies; or that any Meaſures were entered into or concerted between them, in order to ſtrengthen the Hands of the *French*, or to enable them to impoſe the Terms of a general Peace. And the ſaid Earl doth abſolutely deny that he was engaged, in Concert with *France*, in any Negotiation deſtructive to his Country, or that he ever had the leaſt Imagination or Thought tending that way, or to the ſacrificing the Commerce of *Great Britain* to the Aggrandiſement of *France*: But on the contrary, he hath always had the moſt real and ſincere Deſires to ſecure and advance the Commerce of *Great Britain*, and to preſerve his Country, in whoſe Service he hath been always ready to ſacrifice himſelf, and every private Intereſt whatſoever. And the ſaid Earl is not conſcious to himſelf of any want of Duty, either in not inſiſting upon, or not procuring the moſt certain Securities that could be obtained for the Safety and Advantage of the Commerce of theſe Kingdoms. And the ſaid Earl doth not admit, that he did adviſe her late Majeſty, that any Propoſition ſhould be ſent by Mr. *Prior* to *France*; or that any private or ſeparate Treaty, or the Preliminary Articles, which are ſaid to be ſigned the Twenty Seventh Day of *September* One Thouſand Seven Hundred and Eleven, ſhould be ſigned. But the ſaid Earl hath been informed, and believes, that in a Paper intitled, *The Anſwer of* France *to the Demands of* Great Britain *more particularly*, it is ſaid, *that the entire Reſtitution of* Newfoundland, *and of the Bay and Streights of* Hudſon, *was demanded for the* Engliſh: And that the *French* King's Anſwer was, *That the Diſcuſſion of that Article ſhould be referred to the general Conferences of the Peace, provided the Liberty of fiſhing and drying of Codfiſh upon the Iſle of* Newfoundland *ſhould be reſerved to the* French. And the ſaid Earl conceives that Paper was not concluſive, but was to be the Subject of future Conferences, wherein the whole Matter might be entirely conſidered; and conſequently that the entring into Conferences on that Paper, was not the yielding to the *French* the Liberty of fiſhing and drying Fiſh on *Newfoundland*, which they inſiſted on. And the ſaid Earl denies, that he adviſed the Demands for *Great Britain*, in Point of Commerce, ſhould be made in looſe, general, or inſufficient Terms; or that he adviſed the Liberties inſiſted on by the *French* ſhould be given up to *France*, as in the ſaid Article is alledged: And he believes that when it is conſidered what Advantages were likely to enſue to the Commerce of *Great Britain* by the *Aſſiento* Contract, and the Liberty of Trading to the *Spaniſh Weſt-Indies* by the Ceſſion of *Arcadia*, the Bay and Streights of *Hudſon*, the Iſland of St. *Chriſtopher*, *Newfoundland*, the Iſland of St. *Peter*, with other adjacent Iſlands; by the Demolition of *Dunkirk*, and the Ceſſion of *Port-Mahon* and *Gibraltar*, it will not be thought the Commerce of *Great Britain* was neglected by her Majeſty, in the late Treaties of Peace. And as the ſaid Earl doth not know that *France* was at any time Maſter of the Negotiations, ſo he denies that he did engage her Majeſty in any private Treaties with *France*, without Security for the Commerce of *Great Britain*; or that he did contrive, with any of the Miniſters of *France*, to keep in Suſpence any Matter that concerned the ſaid Commerce, or that he was any ways inſtrumental to the preventing any Advantages of the ſaid Commerce from being ſettled, or that he endeavoured to elude any thing that had been agreed on in any Negotiations for the Benefit of *Great Britain*. And although the ſaid Earl doth not admit, that

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he adviſed the Ninth Article of the Treaty of Commerce with *France*, yet he begs leave to obſerve, that nothing is poſitively ſtipulated in that Article, but the whole is conditional, and left to be determined by the Wiſdom of Parliament; and hopes it will never be thought an Act of Treachery, to refer any Article of any Treaty to the Judgment and Conſideration of Parliament; whatever Judgment the Parliament ſhall think fit to make thereon. And the ſaid Earl denies, that he adviſed her Majeſty to agree with *France*, that the Subjects of *France* ſhould have Liberty of Fiſhing, and Drying Fiſh on *Newfoundland*: But the ſaid Earl believes, that what her late Majeſty agreed with *France*, relating thereto, will not ſeem unreaſonable, if it be conſidered, that the *French* long ago claim'd a Right to, and were in Poſſeſſion of great Part of *Newfoundland*; and that they were allowed to continue in Poſſeſſion thereof by the Crown of *England*, in a Treaty made at *Whitehall* in the Year One Thouſand Six Hundred and Eighty-Six; and in another Treaty made at *Ryſwick*, in the Year One Thouſand Six Hundred Ninety Seven. And the ſaid Earl doth not know that ſuch Agreement of her Majeſty is contrary to the expreſs Proviſion of any Act of Parliament, ſince he preſumes the Act made in the Tenth and Eleventh Years of the Reign of King *William* the Third, intitled, *An Act to encourage the Trade to Newfoundland*, cannot reaſonably be intended, or conſtrued to extend to any Part of the Iſland, other than what was at the Time of making that Act in the Poſſeſſion of the *Engliſh*. And the ſaid Earl is informed, that at that Time the Part of *Newfoundland*, where the Subjects of *France* are, by the Treaty of *Utrecht*, allowed the Liberty of Fiſhing, and drying Fiſh, was not in the Poſſeſſion of the *Engliſh*. The ſaid Earl denies, that he adviſed her Majeſty to make a Ceſſion to *France* of the Iſle of *Cape Breton*; or that he adviſed her Majeſty to conſent, that what is agreed in the Treaty of *Utrecht*, concerning the Fiſhery of *Newfoundland*, or *Cape Breton*, ſhould be made an Article of that Treaty: However, the ſaid Earl doth not know that *Cape Breton* was Part of the Territories of the Crown of *Great Britain*; nor doth he apprehend, that her Majeſty, who in her Speech from the Throne declared, that *France* had conſented to make an abſolute Ceſſion of *Annapolis*, with the reſt of *Nova Scotia*, or *Arcadia*, ſhould be underſtood to ſpeak of *Cape Breton*, which is no Part of that Continent, but an Iſland diſtinct from it. The ſaid Earl further ſaith, he conceives, that the only Advantages in Trade, ſtipulated for *Great Britain*, did not depend on Conditions to be made good by Act of Parliament: On the contrary, he doubts not to make it appear, that many Advantages in Trade were ſtipulated for *Great Britain*, in the late Treaties of Peace and Commerce, which have been enjoyed by the Subjects of *Great Britain*, ſince the Concluſion of the ſaid Treaties, notwithſtanding the Parliament hath not thought fit to make any Act to enforce the Ninth Article of the Treaty of Commerce with *France*. And the ſaid Earl denies, that by his Counſels, the good Intentions of her ſacred Majeſty to have obtained for her People advantageous Terms of Commerce were fruſtrated, or the Trade or Manufactures of *Great Britain* render'd precarious, or at the Mercy of the Enemy; or any beneficial Branch of Trade yielded up to the Subjects of *France*. And as the ſaid Earl diſowns the being concerned in any Violation of Treaties, or in carrying on the Meaſures of *France*, or in any Negotiation which could terminate in the Sacrifice of the Commerce of *Great Britain* to *France*; ſo he obſerves, with great Satisfaction, the flouriſhing Condition of the Trade and Navigation of theſe Kingdoms, ſince the Concluſion, and by Means of the late Peace; in the great Encreaſe of the Number and Tonnage of Shipping, of the Exportation of the Woollen Manufactures, the Fiſh, and other Produce of this Kingdom; in Conſequence whereof, the Cuſtoms have been greatly advanced, near three Millions of Gold and Silver hath been coined, and the Exchange has been all along in the Favour of *England*, to and from all Parts of *Europe*.

In anſwer to the Fourteenth Article, the ſaid Earl doth not admit that he formed any Project, or Deſign, for diſpoſing the Kingdom of *Sicily* to the Duke of *Savoy*, from the Houſe of *Auſtria*; or that he did adviſe her Majeſty to give any ſuch Inſtructions to *Henry* Viſcount *Bolingbroke*, as in the ſaid Article mentioned, or to conſent to any Treaty wherein a Ceſſion is made of the ſaid Kingdom to his Royal Highneſs without any Concurrence or Participation of his Imperial Majeſty; nor doth he admit that her Majeſty was prevailed on, by his Advice, to aſſiſt his ſaid Royal Highneſs with her Fleet, againſt the Emperor, in order to obtain the Poſſeſſion of that Kingdom. But in Juſtification of her Majeſty's Proceedings, in relation to the ſaid Kingdom, the ſaid Earl doth beg leave to obſerve, that by the Grand Alliance, it was agreed, among other Things, that the Confederates ſhould uſe their utmoſt Endeavours to recover the Kingdom of *Sicily* out of the Hands of the Enemy; and that the principal Ends for endeavouring the Recovery of *Sicily* were, that his Imperial Majeſty might have a reaſonable Satisfaction for his Pretenſion to the *Spaniſh* Monarchy; and that the Trade and Navigation of the Subjects of *Great Britain* and *Holland* might thereby be better ſecured. Since therefore the Empire, and Hereditary Countries of *Auſtria*, were now fallen to *Charles* the Third, who at the Time of that Treaty was a younger Branch of that Houſe: Since ſeveral Towns in the *French Flanders*, which were not in the Poſſeſſion of King *Charles* the Second, at the Time of his Death, together with *Spaniſh Flanders*, *Milan* and *Naples*, might ſeem a reaſonable Satisfaction for his Imperial Majeſty's Pretenſions to the *Spaniſh* Succeſſion: And ſince the Trade and Navigation of the Subjects of *Great Britain* and *Holland* would be as effectually ſecured, by the Diſpoſition of the Kingdom of *Sicily* to the Duke of *Savoy*, as if the ſaid Kingdom had fallen to the Share of the Emperor: And greater Difficulties would be likely to ariſe, in obtaining the Diſpoſition thereof to the Houſe of *Auſtria*, than to that Duke, in as much as King *Philip* might be more eaſily induced to yield it to the Duke of *Savoy*, than to ſo potent a Prince as the Emperor; and there were Grounds to believe that all, or moſt of the Princes and States of *Italy*, were ſo apprehenſive of the growing Power of the Houſe of *Auſtria* in *Italy*, that they would ſuffer any Extremities, rather than ſubmit that *Sicily*, together with *Milan* and *Naples*, ſhould be

in the Hands of the Emperor, the ſaid Earl doth not diſcern how any Project to diſpoſe the ſaid Kingdom to that Duke could be thought unjuſt, diſhonourable, or pernicious, or an Act of Injuſtice to his Imperial Majeſty, or Violation of the Grand Alliance: Nor doth the ſaid Earl remember, in what reſpect it was contradictory to any Declaration of her Majeſty, or the Inſtructions ſhe had given her Plenipotentiaries: And in Caſe her Majeſty thought fit, afterwards, to employ any Part of her Fleet to aſſiſt that Duke, her good and faithful Ally, to take Poſſeſſion of that Kingdom from the Enemy, in Conſideration of the ſaid Duke's ſteady Adherence to the Confederacy, and great Sufferings by ſuch Adherence; he the ſaid Earl is not able to diſcover why ſuch Aſſiſtance might not be given to the ſaid Duke, as well as to any other of her Allies whatſoever. And ſince it is allowed by this Article, that the then Duke of *Savoy* never made any Application, in order to obtain the ſaid Kingdom for himſelf, it ſeems an Evidence at leaſt, that the Perſon or Perſons who adviſed the late Queen to agree to ſuch Allotment, did not act upon any private Intereſt, or had any other View than the Preſervation of a Ballance of Power in *Europe*, and the Security of the Trade and Navigation of the Subjects of *Great Britain* and *Holland*; and cannot reaſonably be thought, upon a fair and candid Interpretation, to have been guilty of betraying the National Faith, or Honour of the Crown, or employing the Naval Power of theſe Kingdoms, or the Supplies granted by Parliament, againſt an Ally of this Kingdom.

In anſwer to the Fifteenth Article, the ſaid Earl ſaith, he is and always was of Opinion, that the Word of the Sovereign is ſacred, and that all Communications from the Throne to Parliament ought to be true, and that it becomes all Miniſters of State, as far as in them lies, to maintain the Honour of the Crown, in ſuch Caſes, with the utmoſt Exactneſs; nor doth the ſaid Earl know that he hath, at any Time, been defective in his Duty, in this Particular, or ever took upon himſelf any arbitrary or unwarrantable Authority, much leſs the chief Direction and Influence in her Majeſty's Counſels: Nor did he ever proſtitute the Honour of the Crown or Dignity of Parliament, by miſrepreſenting any Part of the late Negotiations of Peace, to deceive either her Majeſty, her Allies, her Parliament, or her People; nor did ever prepare, form, or concert, or adviſe her Majeſty to make any Speech or Declaration from the Throne, to her Parliament, that was not conformable to Truth. He believes her Majeſty might make ſeveral Speeches from the Throne to her Parliament, at the ſeveral Times in the ſaid Article mentioned, to which the ſaid Earl refers; and particularly, that her Majeſty did, on the Seventh of *December*, One Thouſand Seven Hundred and Eleven, declare, that her Allies, eſpecially the States-General had, by their ready Compliance for opening a Treaty of a general Peace, expreſſed their Confidence in her; but the ſaid Earl not admitting there were ſuch Repreſentations as ſuggeſted in this Article, begs leave, in Vindication of the Honour of his Royal Miſtreſs, who was a Princeſs of ſtrict Piety and Truth, to obſerve, that the States-General ſent over Monſieur *Buys* to her Majeſty, with Letters full of Aſſurances of their Reſpect for her Perſon, and their Reſolutions not to ſeparate themſelves from her; and likewiſe ſignified by him, to her Miniſters, their Readineſs to concur with her Majeſty. And the ſaid Monſieur *Buys*, immediately upon his Arrival at *London*, delivered Paſſports for the *French* Miniſters to come to *Utrecht*; and at a Meeting of ſeveral Lords of the Council, ſhewed his Approbation of ſending circular Letters to invite the reſt of the Allies to the general Congreſs: And the ſaid Monſieur *Buys* exhibited full Powers for preparing and ſigning a new Treaty, whereby her Majeſty and the States ſhould be mutually engaged to each other in making War and Peace, to guarantee the Peace when made, and to invite the reſt of the Allies into ſuch Guarantee; all which Matters and Tranſactions being previous to the Seventh of *December*, One Thouſand Seven Hundred and Eleven, her Majeſty might juſtly regard the aforeſaid authentick Acts and Aſſurances, as greater Proofs of the Confidence the States had in her, and of their Readineſs to concur with her, than any Repreſentations or Reports before that Time; and that the ſaid Declaration of her Majeſty from the Throne was founded upon the ſtricteſt Truth. And the ſaid Earl believes, that every one who impartially conſiders the Steps taken in the late Negotiations of Peace, the Length of the Treaty, the ſeveral Letters from one of her Majeſty's Principal Secretaries of State to her Plenipotentiary at *Utrecht*, the Ratification of the Engagement ſigned by her Miniſters and Monſieur *Buys*, the Eighteenth of *December* One Thouſand Seven Hundred and Eleven, and her exhorting the States to ratify the ſame; her preſſing Inſtances to the Princes and States of the Empire, and the many other Acts which were done by her Majeſty's Orders during that Tranſaction for the Service and Satisfaction of her Allies, will readily acknowledge, that her Majeſty did her utmoſt to procure for her Allies, and in particular for his Imperial Majeſty, all reaſonable Satisfaction; and to unite with them in the ſtricteſt Engagements, to render the Peace ſecure and laſting, agreeable to her Speech of the ſaid Seventh Day of *December*, and her Meſſage of the Seventeenth of *January* following, in this Article mention'd: And if by any extraordinary Demands or groundleſs Jealouſies of any of the Allies, or other Accidents, her Majeſty was not able to obtain for them all the Advantages ſhe deſired, this will not derogate from the Truth and Sincerity of her Majeſty's Expreſſions. And it is evident her Majeſty did procure them ſo great Satisfaction, that the Allies did all ſign the Peace at the ſame Time with her Majeſty, excepting only the Emperor; and even his Intereſts were ſo far adjuſted, that what remained in diſpute was not thought ſufficient to delay ſo great and good a Work: And it is well known the Emperors of *Germany* have frequently declined ſigning their Treaties of Peace at the ſame Time with their Allies. But that her Majeſty was induced by any Influence of the ſaid Earl to enter into any Negotiation with *France*, excluſive of her Allies; or that the ſaid Earl carried on any ſuch Negotiation; or that the Intereſt of the ſaid Allies, or in particular of the Emperor, were, by any Practices of his, given up to *France*, he utterly denies. And when it is conſidered, that much *Britiſh* Blood and Treaſure had been ſpent to recover *Spain* and the *Weſt-Indies* from the Houſe of *Bourbon*, that an expenſive

penſive War had for many Years continued, which her Majeſty ſtill ſupplied with new Recruits and redoubled Expence; that her Armies, and thoſe of the Allies, had been beaten in *Spain*; that Prince *Eugene* had declared, that Forty Thouſand Men, and Four Millions of Crowns *per Annum* would be neceſſary for carrying on that War, and that his Maſter could ſupply no more than a Fourth Part of that Charge; that it was found by long Experience, how averſe the People of *Spain* in general were to ſubmit themſelves to the Houſe of *Auſtria*; that her Majeſty diſcerned the Charge of renewing the War in *Spain* would be a Burthen too great for her Subjects, and that there was little Probability of its being ſucceſsful; that the hereditary Countries were then, by the Death of the Emperor *Joſeph*, fallen to King *Charles*, who was ſoon after choſen Emperor (by which Event the Intereſt of the Princes and States of *Europe* were changed;) it cannot be doubted but that her late Majeſty had, at the Time when ſhe made the aforeſaid Declaration, done her utmoſt to recover *Spain* and the *Weſt-Indies* by Force of Arms: And the moſt ſhe could do afterwards, was by way of Negotiation, wherein ſhe inſiſted with that Earneſtneſs on King *Philip*'s quitting *Spain*, that *France* complied with her Majeſty's Propoſals: But when King *Philip* could not be prevailed on to give up *Spain*, her Majeſty thought his Renunciation of the Crown of *France*, as Circumſtances then ſtood, the moſt practicable, if not the only Method left to prevent the Union of thoſe two Monarchies. But the ſaid Earl doth not think it probable, that the leaving *Spain* and the *Weſt-Indies* to the Houſe of *Bourbon*, was the Foundation of the Preliminary Articles ſigned by Monſieur *Meſnager*, and of the Declaration annexed, which had been ſigned by the Lord *Dartmouth* and Mr. *St. John*, with her Majeſty's Conſent (and which the ſaid Earl ſuppoſes is what is called the private Treaty in this Article) ſince he believes it was then thought more likely that the Crown of *Spain* might fall to ſome other Prince. And the ſaid Earl doth not obſerve, how her Majeſty can be charged with uttering any Falſity in her Meſſage of the Seventeenth Day of *January*, wherein ſhe takes notice, how groundleſs the Reports were that had been ſpread of a ſeparate Peace being treated, for which Report there was not then, nor at any other Time, the leaſt Foundation; ſince only ſome few Points were adjuſted, relating to the particular Intereſts of her own Kingdoms, and even thoſe were to have no Effect but upon the Concluſion of a general Peace, and were likewiſe, before ſuch Concluſion, communicated to the Allies. And the ſaid Earl denies, that thenceforth, or at any Time, there were carried on, by him, any ſeparate Meaſures with the Miniſters of *France*; nor doth he conceive, that the Propoſal about the Renunciation was merely ſpeculative, but that it was of ſuch a Nature as would execute itſelf, and keep the Crowns of *France* and *Spain* more effectually divided than ever; if it be conſidered, that it did not conſiſt only in a Renunciation to be made by *Philip*, then in Poſſeſſion of the Crown of *Spain*, of his contingent Right to that of *France*; but that there was a Title to the Crown of *France* thereby given to the Duke of *Orleans*, and after him to the reſt of the Princes of the Houſe of *Bourbon*, who could not be preſumed to want the Will, nor would be likely to want the Power, to take Poſſeſſion of the Crown of *France*, by Vertue of ſuch Title, in Oppoſition to a Prince at ſuch a Diſtance, and who had ſolemnly renounced all his Pretenſions to it. Nor can the ſaid Earl think, the Declaration of any Miniſter of *France*, againſt ſuch Expedient (if any ſuch were made) a ſufficient Ground for her Majeſty to decline it. The ſaid Earl therefore muſt beg leave to repeat, that he is not able to diſcover, from any Thing that appears in thoſe Speeches, that in the Particulars aforementioned, or any other, the eſſential Points relating to Peace and Commerce, or which concerned the Intereſts, as well of the Allies as of *Great Britain*, were miſrepreſented by her Majeſty; nor doth he know or believe, that any Inſtance can be given wherein he abuſed the Favour of his Royal Miſtreſs, to whom he did always bear and pay the moſt ſincere Veneration and Duty; or wherein he did miſlead her Parliament into any groundleſs or fatal Reſolution, or prevented their Advice to her Majeſty, or obtained their Approbation to any dangerous Practices, or whereby her Majeſty could be ever deprived of the Confidence of her Allies, or expoſed to Contempt.

In anſwer to the Sixteenth Article the ſaid Earl doth inſiſt, that by the Laws and Conſtitution of this Realm, it is the undoubted Right and Prerogative of the Sovereign, who is the Fountain of Honour, to create Peers of this Realm, as well in time of Parliament, as when there is no Parliament ſitting or in being; and that the Exerciſe of this Branch of the Prerogative is declared in the Form or Preamble of all Patents of Honour, to proceed *ex mero motu*, as an Act of mere Grace and Favour; and that ſuch Acts are not done, as many other Acts of a publick Nature are, by and with the Advice of the Privy-Council; or as Acts of Pardon uſually run, upon a favourable Repreſentation of ſeveral Circumſtances, or upon Reports from the Attorney-General, or other Officers, that ſuch Acts are lawful or expedient, or for the Safety or Advantage of the Crown; but flows entirely from the beneficent and gracious Diſpoſition of the Sovereign. He farther ſays, that neither the Warrants for Patents of Honour, the Bills or other Ingroſſments of ſuch Patents are at any time communicated to the Council, or the Treaſury, as ſeveral other Patents are; and therefore the ſaid Earl, either as High Treaſurer or Privy-Counſellor, could not have any Knowledge of the ſame: Nevertheleſs, if her late Sacred Majeſty had thought fit to acquaint him with her moſt gracious Intentions of creating any Number of Peers of this Realm, and had aſked his Opinion whether the Perſons whom ſhe then intended to create, were Perſons proper to have been promoted to that Dignity? he does believe he ſhould have highly approved her Majeſty's Choice; and doth not apprehend that in ſo doing he had been guilty of any Breach of his Duty, or Violation of the Truſt in him repoſed; ſince they were all Perſons of Honour and diſtinguiſhed Merit, and the Peerage thereby was not greatly encreaſed, conſidering ſome of thoſe created would have been Peers by Deſcent, and that many Titles of Honour were then lately extinct. And the ſaid Earl believes many Inſtances may be given, where this Prerogative hath been exerciſed by former Princes of this Realm in as extenſive a manner; and parti-

cularly in the Reigns of King *Henry* the Eighth, King *James* the Firſt, and his late Majeſty King *William*. The ſaid Earl begs leave to add, that in the whole Courſe of his Life he hath always loved the eſtabliſhed Conſtitution, and in his private Capacity, as well as in all publick Stations, when he had the Honour to be employed, hath done his utmoſt to preſerve it, and ſhall always continue ſo to do.

In anſwer to the further Articles of Impeachment exhibited againſt the ſaid Earl: As to the Firſt of theſe Articles he ſaith, that he believes, in or about the Month of *January*, One Thouſand Seven Hundred and Ten, an Expedition was projected, for making a Conqueſt of the City *Quebeck*, on the River of St. *Laurence*, *Canada*, or other Poſſeſſions of the *French* King in *North America*; but denies he adviſed her Majeſty either to conſent to the making ſuch Expedition, or to give Orders for detaching any Battalions of the Forces in her Majeſty's Service in *Flanders*, or to ſend any ſuch Battalions, or any Squadron of Men of War on the ſaid Enterprize: But having heard that the ſaid Project, or ſome Expedition of the like Nature, had been ſome time before conſidered in a Committee of Council, and afterwards laid aſide for that Time, and not being fully apprized of the whole Project, nor ſo well verſed in the Affairs of that Part of the World as others, who had more Opportunity of knowing them; and leaſt the Expedition might not at that Time prove ſo feaſible or advantageous as others of better Knowledge in thoſe Matters than himſelf did expect, he did all that he apprehends his Duty required to prevent the putting the ſame in Execution, and expreſſed his Concern at it to ſome Perſons about the Queen. And having ſo far ſhewn his Opinion of the ſaid Deſign at that Time, believes it would not have been thought proper for him to have appeared at the Meetings, where the Methods only of carrying on the Expedition were to be adjuſted; of which Meetings there had been but few, before a Misfortune befel him, which confined him to his Bed. But the ſaid Earl denies, that he knew the ſaid Expedition was dangerous or deſtructive, nor did he hear that it was laid aſide formerly by a Committee of Council, as dangerous or impracticable, but only as improper in the Circumſtances of Affairs at that Time: Nor doth the ſaid Earl know or believe the ſaid Expedition was ſet on foot with any deſign to promote the Intereſt of the *French* King, or to weaken the Confederate Army in *Flanders*, or to diſſipate the Naval Forces of this Kingdom. And when others of her Majeſty's Council, better acquainted with that Affair, did judge it to be proper and practicable, he did not think it became him, upon the Strength of his own ſingle Judgment, further to oppoſe an Expedition, which if it had ſucceeded, moſt certainly would have given a great and ſenſible Blow to the Settlements and Trade of *France* in that part of the World. And the ſaid Earl, with good Reaſon, is perſuaded your Lordſhips will not think it unfit that her Majeſty ſhould take the Opinion of thoſe who better underſtood Affairs of that Nature; or, that your Lordſhips can judge the ſaid Earl in that Reſpect to have been wanting in his Duty to her Majeſty; but hopes it will be rather an Evidence of his Fidelity to the Queen and his Country, that he ſo far diſcouraged what in his own Judgment he was diffident of. However he is ſatisfied, that thoſe of her Majeſty's Council who did approve the Expedition, acted therein with a ſincere Deſire for the publick Good, notwithſtanding the ill Succeſs it was attended with; which might chiefly be owing to Delays by contrary Winds, and other unforeſeen Accidents. And he doth not believe, that her Majeſty's Allies did ſuffer any Prejudice, or the common Enemy receive any Advantage by the detaching of Forces from *Flanders* to ſerve on this Enterprize; and is informed, that to prevent any ſuch Danger, her Majeſty's General who commanded at that time in *Flanders*, had Orders for providing other Forces in their Place, if he judged it neceſſary. And the ſaid Earl doth acknowledge, that the Sum of twenty eight thouſand Pounds, or thereabouts, was demanded at the Treaſury about *June* One Thouſand Seven Hundred and Eleven, on account of Arms, Accoutrements, Goods, and Merchandize, ſaid to be ſent on the ſaid Expedition to *Canada*; but he ſaith, that he was ſo far from adviſing her late Majeſty that the ſaid Sum ſhould be iſſued and paid, that on the contrary, he put a ſtop to the Payment of the ſame, until he had done all he could at that time to examine into the Expenditure of the ſaid Money: But being then High Treaſurer of *Great Britain*, and having received her Majeſty's Orders to pay the ſaid Sum, and not being able, with his utmoſt Precaution then, to diſcover any juſt Cauſe why it ſhould not be paid; he did afterwards, in Obedience to thoſe Orders, and according to the Duty of his Place, counterſign a Warrant to the Paymaſter of her Majeſty's Forces for the Payment of the ſame, purſuant to which, he believes the ſame was iſſued and received. And as to that Part of the ſaid Article, which charges the ſaid Earl with employing his Arts or Credit to keep the Houſe of Commons from examining that Affair; he begs leave to ſay, that whatever Suſpicions he might entertain in his own Mind, he did not upon Examination find, that there was ſufficient Proof to juſtify the laying them before either Houſe of Parliament. And although he had been informed, that the Papers relating to that Expedition were laid before the laſt, and have been all along in the Power of the preſent Houſe of Commons, yet he hath not heard that any Fraud hath been made out in that Affair, notwithſtanding the Gentlemen who had them under their Inſpection neither wanted Abilities to make the utmoſt Diſcoveries, nor could be ſuppoſed to be prevented therein by any Influence of the ſaid Earl: And he hopes it will not be imputed to him as a Fault, if he had uſed any Skill or Credit to keep the Houſe of Commons from examining this Affair at that Juncture, when by an unſeaſonable Enquiry, before a proper Proof could be had, the Fraud, if any ſuch there were, would be likely for ever to eſcape unpuniſhed. But the ſaid Earl denies that he ever exerciſed or or had any arbitrary Power or Influence, either in her Majeſty's private Council, or the great Council of the Nation, or entertained any Deſign to prevent the Juſtice due to the Queen or the Nation, or that any Diſcovery had been made to him, further than what might give Suſpicion to one who was always jealous (as became him) of any Miſapplication of the publick Treaſure. And the ſaid Earl ſaith, that he is not conſcious, that by any Letter or Memorial to her Majeſty, he hath acted contrary to his Duty; but humbly hopes he

may be allowed to obſerve, that it would be a Matter of particular Hardſhip, and what ſeems to him inconſiſtent with the Rules of Government, and without Precedent, if the moſt ſecret and intimate Papers and Letters, wrote to that moſt renowned and pious Princeſs, her late Majeſty, by her own ſpecial Command, and for her own private Peruſal, ſhould be imputed to any as a Crime; and if any Quotation from any ſuch Letter or Paper could be alledged againſt the ſaid Earl, he doubts not but there might appear from other of her Majeſty's private Papers what would juſtify him in many Particulars wherewith he is charged, and would give further Proof (if it were needful) how tender and affectionate her Majeſty was to all her Subjects.

In anſwer to the ſecond additional Article the ſaid Earl doth admit, that about *October* One Thouſand Seven Hundred and Eleven, her late Majeſty did ſign a Warrant directed to him, then her Treaſurer of *Great Britain*, for the iſſuing and Payment of the Sum of Thirteen Thouſand Pounds to *John Drummond*, Eſq; in the Article named; and that on or about the Twenty Fourth of *November* following, in purſuance of the ſaid Warrant, under her Majeſty's Sign Manual, he the ſaid Earl did ſign a Warrant for the Payment of the ſaid Thirteen Thouſand Pounds, but for more certainty, begs leave to refer to the ſaid ſeveral Warrants when the ſame ſhall be produced: And the ſaid Earl takes the Words [*for ſpecial Services of the War*] to have been inſerted by Miſtake of the Clerks; for he abſolutely denies that he gave any Direction for thoſe Words, or any other of like Import, to be inſerted: And he believes all the Clerks of the Treaſury know, that the Monies which aroſe from the Sale of Tin were the Queen's proper Money for the Support of her Houſhold, and ſuch Occaſions as ſhe ſhould pleaſe to direct, and not appropriated to the Services of the War; altho' ſometimes it hath been practiſed that Loans have been taken upon Tin Tallies for the Services of the War, and other publick Services, and afterwards repaid to the Civil Liſt, which might poſſibly give occaſion for ſuch Miſtake. And the ſaid Earl ſaith, that having been acquainted with the Services the ſaid Mr. *Drummond* had performed, by Order of the late Earl of *Godolphin*, in borrowing Money upon Tin at a low Intereſt, the ſaid Earl aſked Mr. *Drummond*'s Conſent that a Sum in Tin-Tallies might be ſtruck in his Name, and with ſuch Conſent did direct, that Orders amounting to the Sum of Thirteen Thouſand Pounds ſhould be charged in the Regiſter of the Exchequer, on the Monies ariſing by the Sale of Tin, in the Name of the ſaid Mr. *Drummond*, who afterwards, before his going to *Holland*, endorſed the ſaid Orders at the ſaid Earl's Requeſt, and left them in the Treaſury; but how long it was before the ſaid Orders were endorſed, or how long they remained afterwards in the Treaſury, the ſaid Earl doth not particularly remember; but doth not acknowledge that the ſaid Orders and Tallies came afterwards to his own Hands, and were diſpoſed for his own Uſe. But in order to lay the true State of this Affair before your Lordſhips, the ſaid Earl humbly repreſents, that upon his firſt attending the late Queen, after his being wounded, her Majeſty had the Goodneſs to tell him, that ſhe deſigned him a Sum of Money: Upon which he repreſented to her Majeſty the bad Condition of her Civil Liſt: But ſeveral times after her Majeſty aſked him, why he did not find a way for receiving the Money ſhe intended him, and bring the neceſſary Warrant for that Purpoſe? He ſtill urged the ſame Reaſon againſt it, and for near Six Months made no Step in it, till at laſt her Majeſty was pleaſed to ſay, ſhe was reſolved to have it done. And as her Majeſty had, in Matters of her Bounty, made uſe of Tin-Tallies for other Perſons, ſhe was pleaſed to mention the ſame herſelf, and ordered proper Warrants to be prepared for the Sum which her Majeſty of her Royal Bounty intended him: That after her Majeſty had ſo poſitively ſignified her Royal Pleaſure, to beſtow ſuch Mark of her Favour upon the ſaid Earl, the ſaid Tallies and Orders were ſtruck in Mr. *Drummond*'s Name, with her Majeſty's Knowledge, and at the ſaid Earl's Nomination; and from that time the ſame were kept under the ſaid Earl's Direction for his Uſe. And the ſaid Earl was adviſed, that nothing further was requiſite to be done, after the Aſſignment of the ſaid Mr. *Drummond*, for ſecuring the ſaid Earl's Intereſt in the ſaid Tallies, till an Accident happened which made it neceſſary for further Security, to have the ſaid Warrant as a Declaration of Truſt, which was accordingly ſigned by her Majeſty, and is to the Effect following.

ANNE *R.*

WHereas in the Year of our Lord One Thouſand Seven Hundred and Eleven, in Conſideration of the many good, faithful, and acceptable Services which before that time had been performed unto us, by our Right Truſty and Well-beloved Couſin and Counſellor Robert *Earl of* Oxford *(then and now our High Treaſurer of* Great Britain; *which Services have tended to the Quiet, Safety, and Proſperity of us and our Realms, tho' the ſame were accompanied with great Difficulties upon himſelf, and Hazards to him and his Family. And particularly reflecting upon the impious Attempt made upon his Life: We did then fully reſolve, as a particular Mark of our Favour, and of our Gracious Acceptance of the ſaid Earl's Services, to beſtow upon him a Sum in ready Money. But the ſaid Earl repreſenting to us, that the Arrears then due to our Servants and Tradeſmen, chargeable upon our Civil Liſt, were very great and preſſing, we did therefore agree and determine, that the ſaid Earl ſhould have to his own Uſe the ſeveral Sums amounting to Thirteen Thouſand Pounds, compris'd in certain Orders of Loan bearing date in or about the Eleventh Day of* December *One Thouſand Seven Hundred and Eleven, in your Name, and charged upon the Regiſter in our Exchequer on the Monies ariſing by Sale of our Tin, which Orders are not yet in Courſe of Payment. Now we do hereby declare and make known, that the ſaid ſeveral Sums amounting to Thirteen Thouſand Pounds, contained in the ſaid Orders, and the Intereſt thereof due and to be due, are, and ſhall be the proper Monies of the ſaid Earl of* Oxford. *And we do hereby direct and authoriſe you to Tranſfer and Aſſign the ſaid Orders, and the whole Right and Benefit thereof, to the ſaid Earl and his Aſſigns, or to ſuch Perſon or Perſons as he ſhall appoint in that behalf. And in caſe any the Monies due, or to be due, or payable upon the ſaid Orders ſhall come to your Hands; in ſuch Caſe our Pleaſure is, that you forthwith pay over the ſame to the ſaid Earl, his Executors, Adminiſtrators, or Aſſigns, to his and their own Uſe and Behoof, without any Account to be therefore rendered to us, our Heirs,*

Heirs, or Succeſſors. And this our Warrant, or an atteſted Copy thereof, ſhall be your ſufficient Warrant and Diſcharge for ſo doing.

Given at our Court at *Windſor-Caſtle* the Fourteenth Day of *December*, in the Twelfth Year of our Reign, *Anno Dom.* 1713.

To our Truſty and Well-beloved
John Drummond, *Eſq*;

And the ſaid Earl believes the ſaid Warrant was drawn by Mr. *Lowndes* Secretary to the Treaſury, and by what means the ſame was omitted to be entered in the Treaſury he knows not: But upon hearing there was a Diſcourſe about the ſaid Thirteen Thouſand Pounds in Tin-Tallies, he ſent a Copy of the ſaid Warrant to the Officers of the Treaſury, without ſignifying any Deſire to have the ſame entered, well knowing it received its Authority from the Sign Manual, which wanted no additional Force from any Entry thereof in the Treaſury-Books. And the ſaid Earl ſaith, that her Majeſty was pleaſed, of her mere Goodneſs and Bounty, and of her own free Will to give him the ſaid Sum of Money in Reward of his faithful Services, and for his Sufferings in her Service. And the ſaid Earl ſaith, that the ſaid Grant, according to the Diſcount upon thoſe Tallies at that time, amounted to the Sum of ten thouſand Pounds, or thereabouts; wherein he acknowledgeth the great Bounty of her Majeſty, and takes notice, that Grants much larger have been made from the Crown to other Miniſters of State, while the Neceſſities of the Crown have been equally preſſing. And the ſaid Earl doth not know that in this or any other part of his Adminiſtration, he ever was guilty of any Corruption, or any Breach of his Oath or Truſt as High Treaſurer of *Great Britain*; or that he did in any Manner abuſe her Majeſty's Goodneſs, or make an ill Uſe of his Acceſs to her Majeſty, or embezzle the publick Treaſure; or did at any time knowingly injure or oppreſs her Majeſty's Subjects; but on the contrary, the ſaid Earl ſaith, that he managed the publick Money in the moſt frugal Manner, in order to leſſen, as much as might be, the Charge of the War; and to eaſe, if he could, the Commons of *Great Britain* from all grievous Taxes. And in further Vindication of himſelf againſt all the Imputations of Avarice or Corruption inſinuated in this Article, the ſaid Earl ſaith, that in every Employment to which he was called by her Majeſty's Favour, he was always contented with the accuſtomed Incomes and Profits of the ſaid Employments, without endeavouring to encreaſe his Gain by unwarrantable or extraordinary Perquiſites; that whilſt he was in any Office of Truſt about her Majeſty, he never abuſed that Truſt in making any manner of Profit or Advantage to himſelf, either by the Diſpoſal of Places in his own Gift, or by the Recommendation of Perſons to her Majeſty for ſuch as were granted immediately by herſelf; that neither in nor out of Place did he ever receive any Penſion from the Crown; that as he came with clean Hands into her Majeſty's Service, ſo went not only with clean but almoſt with empty Hands out of it, having ſpent therein moſt part of the Profits which accrued to him from the Places he enjoyed; ſo that at this time, notwithſtanding all the Advantages he received from them, and the extraordinary Bounty of the Queen to him, in this Article mentioned, he can with great Truth affirm, that his private Fortune hath received very inconſiderable Addition thereby.

In anſwer to the Third Additional Article the ſaid Earl ſaith, that *Matthew Prior*, Eſq; being employed by her Majeſty at the Court of *France*, Warrants were ſigned in the uſual Form for Payment of ſeveral Sums of Money to the ſaid Mr. *Prior*, which he believes from the Twenty Seventh of *Auguſt* One Thouſand Seven Hundred and Twelve, to the Tenth of *July* One Thouſand Seven Hundred and Fourteen, might amount to the Sum of Twelve Thouſand Three Hundred and Sixty Pounds, as in the ſaid Article is ſet forth; and he believes he did pay, or cauſe to be paid at ſeveral times the ſaid Sums, purſuant to the Authority he had from her late Majeſty for that purpoſe, which he conceives was not only lawful, but a Duty incumbent on him. He further ſaith, that he doth not know that by any Law there ought to be certain Appointments or Allowances for the Maintenance and Support of Ambaſſadors, Envoys, Plenipotentiaries, and other publick Miniſters of the Crown in foreign Courts; but that her Majeſty was at Liberty to vary ſuch Appointments, and the manner of paying them, as ſhe in her Wiſdom ſhould think fit, out of any Funds appropriated to the Civil Liſt. He doth believe, that there are ſeveral Inſtances where Perſons employed to negotiate Matters of Importance, as Ambaſſadors or Plenipotentiaries, have been allowed one thouſand five hundred Pounds for their Equipage; one hundred Pounds a Week for their ordinary Entertainment, and one thouſand ſix hundred Pounds for Extraordinaries, and likewiſe further Sums for Services performed by ſpecial Order: And if the ſaid Mr. *Prior* had been paid upon that Foot, he would have been entitled to a greater Sum from the Crown, for the time wherein he was employed by her Majeſty as aforeſaid, over and above all diſburſements for ſpecial Services. And the ſaid Earl ſaith, that he takes the ſaid *Matthew Prior* to have been ſent by her Majeſty into *France* for her Majeſty's Service, and in order to carry on the Negotiations of a general Peace; but denies that he was any Creature of the ſaid Earl, or ſent by the ſaid Earl into *France*, or that he carried on any Negotiations of the ſaid Earl, or that her Majeſty was prevailed on by his Counſels to ſend the ſaid *Matthew Prior* as her Plenipotentiary to the *French* King, without the Privity of or any Communication with the Allies, or that the ſaid Earl uſed the leaſt Contrivance for carrying on or did carry on or promote any dangerous Practices with the Miniſters of *France*, or the Enemies of her Majeſty or her Kingdoms, or that he did at any time combine with the ſaid *Matthew Prior* to defraud her Majeſty of any Sum of Money whatſoever, under Colour of his Employment; or that the ſaid *Matthew Prior* was ſent into *France* with the Character aforeſaid; without any ſettled Appointment or Allowance for any ſuch End; or that he the ſaid Earl did give the ſaid *Matthew Prior* an unlimited Credit, or promiſed to pay him any Bills whatſoever, other than what he ſhould be duly authoriſed to pay; or that any Bills of Exchange, in the ſaid Article mentioned, were drawn in purſuance of any ſuch Contrivance. The ſaid Earl ſaith, that *Thomas Harley*, Eſq; having been twice ſent by her late Majeſty to the Court of *Hanover*, he the ſaid Earl being then High Treaſurer of *Great Britain*, paid

or cauſed to be paid to the ſaid Mr. *Harley* the Sum of five thouſand five hundred and ſixty Pounds, or thereabouts, by Authority from her Majeſty, and according to the Duty of his Office, out of Monies appropriated to the Uſe of the Civil Liſt. And he believes, that if Mr. *Harley* had received an Allowance in Proportion to what hath been paid to Ambaſſadors, it would have amounted to a greater Sum. But denies, that the ſaid Sum of five thouſand five hundred and ſixty Pounds, or any Part of it, was paid without Authority, or for promoting any wicked Purpoſes of the ſaid Earl, or that he did either illegally or fraudulently iſſue, or direct, or adviſe the Direction or Payment of any Sum or Sums of Money out of her Majeſty's Treaſury, to any Perſon whatſoever, or that he ever entred into any Combination with the Perſons abovementioned, or any other Perſon whatſoever, to defraud her Majeſty of any of the publick Money which he was entruſted with the Management of.

In anſwer to the fourth additional Article, the ſaid Earl denies, that he ever held any Correſpondence with *Mary* the late Conſort of the late King *James* the Second, either by the Means of Mr. *Prior*, or by any other Means whatſoever, or that he ever intended, or had the leaſt Deſign any way to promote the Intereſt of the *Pretender*; nor doth the ſaid Earl know or believe that Monſieur *Gaultier*, in the ſaid Article named, was entruſted or employed as an Agent between any of the Miniſters of *Great Britain* and *France*, in tranſacting any Affairs relating to the *Pretender*; and denies that he the ſaid Earl had any Conferences with him the ſaid Monſieur *Gaultier* on that Subject: Nor doth the ſaid Earl know or believe that he the ſaid Monſieur *Gaultier* was empowered to concert with him the ſaid Earl, particularly the ſetling any Payment or Remittance of the Annuities hereafter mentioned, or any other yearly Sum to be paid or remitted out of her Majeſty's Treaſury into *France*: Neither had the ſaid Earl the leaſt Deſign, that any of the Fruits or Advantages of the Peace ſhould be made an Offering to any Adherent of the *Pretender*; nor did he agree or undertake to procure the Payment of the yearly Sum of forty ſeven thouſand Pounds, or any other yearly Sum, to the Uſe of the ſaid late Conſort, during her Life. But the ſaid Earl doth admit, that the late King *James* the Second by Letters Patents under the Great Seal of *England*, bearing Date on or about the Twenty Eighth Day of *Auguſt*, in the Year One Thouſand Six Hundred and Eighty Five, granted unto *Lawrence* Earl of *Rocheſter*, *Henry* Earl of *Peterborough*, *Sidney* Lord *Godolphin*, *Robert Worden*, Eſq; and Sir *Edward Herbert*, Kt. (who are all ſince deceaſed) divers Annuities or yearly Sums of Money, amounting to thirty ſeven thouſand three hundred twenty eight Pounds thirteen Shillings and ſeven Pence, payable out of the Hereditary Duty of Exciſe, and the Poſt-Office, and other Revenues in the ſaid Letters Patents mentioned, to hold to them and their Heirs, during the Life of the ſaid Conſort, in truſt for her: And by other Letters Patents, bearing date on or about the Third Day of *December*, in the Year One Thouſand Six hundred and Eighty Six, alſo granted unto the ſaid Conſort a further Penſion, or yearly Sum of ten thouſand Pounds, to hold during her natural Life; whereby the ſaid Revenues ariſing from the Hereditary Exciſe and Poſt Office, and other the Revenues in the ſaid Letters Patents mentioned, became charged with, and were liable to the ſaid Annuities or yearly Sums, as in this Article is mentioned. And the ſaid Earl doth admit, that the ſaid Revenues were by ſeveral Acts of Parliament granted and ſettled during the Life of his late Majeſty King *William* the Third, for the Uſe and Service of his Houſhold and Family, and for other his neceſſary Expences and Occaſions; and after his Demiſe, during the life of her late Majeſty Queen *Anne*, were appointed to be for the Support of her Houſhold, and of the Honour and Dignity of the Crown; but ſaith, that in the ſame Act of Parliament whereby the ſaid Revenues are ſo appointed, there is a general Saving to all and every Perſon or Perſons of all ſuch Rights, Titles, Eſtates, Intereſts, Claims, and Demands whatſoever, of, in, or to, or out of the ſaid Revenues and Hereditaments, or any of them, as they, or any of them had, or ought to have had before the making the ſaid Act, as fully, to all Intents and Purpoſes, as if the ſaid Act had never been made. And the ſaid Earl doth admit, that an Act of Parliament was made in the Twelfth Year of her late Majeſty's Reign, whereby the Sum of five hundred thouſand Pounds, for the Cauſes therein mentioned, was to be applied in Aid of the Revenues or Branches which were appointed for the Support of her Majeſty's Houſhold, and of the Honour and Dignity of the Crown, for or towards the paying and diſcharging ſuch Arrears of Salaries, Wages, Diet-money, and other Allowances, and ſuch Debts for Emptions, Proviſions, and other Cauſes, as ſhould appear to be due and owing to her Majeſty's Servants, Tradeſmen, and others. But the ſaid Earl ſaith, he hath heard that the ſaid late Conſort of the late King *James* the Second, eſteeming herſelf to be entitled by the Laws of *England*, by vertue of the ſaid Letters Patents, to the ſeveral Sums of Money therein mentioned, did, by Letter of Attorney, impower and authoriſe the ſaid Monſieur *Gaultier* to demand and receive for her only Uſe, Benefit, and Behoof, all Sums of Money which from and after the Feaſt of the *Annunciation* of the Bleſſed Virgin *Mary*, One Thouſand Seven Hundred and Thirteen, were become due and payable upon the ſeveral Annuities, amounting to thirty ſeven thouſand three hundred and twenty eight Pounds thirteen Shillings and ſeven Pence, and the other Annuity or yearly Sum of ten thouſand Pounds, and to give Acquittances and Diſcharges for the Monies he ſhould ſo receive to her only Uſe and Behoof as aforeſaid; and that thereupon he the ſaid Monſieur *Gaultier* applied himſelf to her Majeſty for the Payment of the Monies which were incurred or grown due on the ſaid ſeveral Annuities, from the ſaid Twenty Fifth Day of *March* One Thouſand Seven Hundred and Thirteen, and that her Majeſty was pleaſed to ſign a Warrant, directed to him the ſaid Earl, being then her Majeſty's High Treaſurer, or the High Treaſurer or Commiſſioners of the Treaſury for the time being, in the Words or to the Effect in the ſaid Article ſet forth; but for more Certainty refers himſelf to the ſaid Warrant, when the ſame ſhall be produced. And that in Obedience to her Majeſty's Commands ſignified by the ſaid Warrant, he the ſaid Earl did direct two ſeveral Warrants to the Auditor of the Receipt of the *Exchequer*, to the Effect in the ſaid Article ſet forth; but for more Certainty refers to the ſaid ſeveral Warrants when

the ſame ſhall be produced. But he denies he adviſed her Majeſty to ſign the ſaid Warrant of the twenty third of *December* one thouſand ſeven hundred and thirteen; but when ſuch Warrant was brought to him, and he knew that the Jointure of the ſaid Conſort had been confirmed by Act of Parliament; and had heard that by ſome private Article of Agreement at the Treaty of *Ryſwick*, Proviſion had been made in relation to it; and the Legality of the Demand not being doubted by her Majeſty's Council learned in the Law, the ſaid Earl thought it his Duty to pay Obedience to it. And the Sum of five hundred thouſand Pounds intended to be raiſed by the ſaid Act of the Twelfth Year of her Majeſty's Reign, together with a great additional Sum in Tallies, being deſign'd for diſcharge of her Majeſty's Debts, the ſaid Earl thought himſelf ſufficiently authoriſed to direct that the ſaid Sum of Money mentioned in the ſaid Warrants, which he was adviſed was a Debt from her Majeſty, ſhould be paid out of the ſaid five hundred thouſand Pounds: Yet the Sum in the ſaid Warrants mentioned, or any part thereof, was not paid out of the ſaid appropriated Sum of five hundred thouſand Pounds, or otherwiſe; but the whole Sum of five hundred thouſand Pounds was applied to other Uſes for which it was appropriated. And the ſaid Earl humbly hopes, that he hath not hereby betrayed the Honour of her late Majeſty, or the Imperial Crown of theſe Realms, or acted contrary to his Duty. And the ſaid Earl doth acknowledge, that the ſaid Monſieur *Gaultier* coming into *England* with Letters of Credence from the *French* King to her late Majeſty, after having reſided ſome time in *England*, her Majeſty was pleaſed, before his Departure hence, to direct a Preſent ſhould be made to the ſaid Monſieur *Gaultier*, as hath been uſual in like Caſes to publick Miniſters: And he believes her ſaid Majeſty was the rather inclined to make ſuch Preſent to the ſaid Monſieur *Gaultier*, becauſe the ſaid Earl hath heard, and takes it to be true, that the ſaid *Gaultier* had been inſtrumental with the *French* King to obtain the Delivery and Releaſe of thoſe poor Proteſtants who had ſuffered aboard the Gallies on account of their Religion, whoſe Reſcue from Slavery her Majeſty, out of her known Zeal to the Proteſtant Religion, and out of her wonted Piety and Compaſſion to the Confeſſors in ſo good a Cauſe, had much at Heart, and had prevailed therein beyond Expectation; it being what by his Majeſty King *William* had been attempted in vain, and was thought by many impoſſible ever to be obtained: And the good Offices of the ſaid *Gaultier* in that Affair having been very acceptable to her Majeſty, ſhe was pleaſed to encreaſe his Preſent in reſpect thereof, and therefore ordered it to be paid in the ſame manner as had been done to others, whoſe Preſent her Majeſty thought fit to augment. And for this end her Majeſty, about the time in this Article mentioned, did ſign a Warrant directing the Payment of one thouſand Pounds Sterling to *Daniel Arthur*, Eſq; in the ſame Article mentioned, to the Intent it might be paid to the ſaid Monſieur *Gaultier* on the account aforeſaid. And the ſaid Earl believes the ſaid Monies were iſſued and paid accordingly, and doth not apprehend he hath therein acted contrary to his Duty.

In anſwer to the Fifth additional Article, the ſaid Earl doth admit the Sovereign of this Realm may refuſe to receive any natural born Subject who hath committed, and is under the Guilt of High Treaſon, as a publick Miniſter, or with any Character from any Foreign Prince, State, or Potentate: And that where ſuch Perſon is known to be guilty of ſuch Crime, it may in moſt Caſes be fit ſo to do: But the ſaid Earl apprehends that the Sovereign is the proper Judge whom to refuſe or receive with ſuch Character. The ſaid Earl believes that a Perſon ſtiling himſelf, or commonly known by the Name of *Lileſh* or *Lawleſs*, did about the Year one thouſand ſeven hundred and twelve, or one thouſand ſeven hundred and thirteen, come into *England* with Letters of Credence to her Majeſty from the King and late Queen of *Spain*, and Authority to treat about carrying *Britiſh* Merchandizes to the *Spaniſh Weſt-Indies*; and that her Majeſty was pleaſed to admit ſuch Perſon with ſuch Letters of Credence; and before his return to *Spain* was pleaſed to order, for the Uſe of ſuch Perſon, the Sum of one thouſand Pounds, to be paid out of the Monies appropriated to the Civil Liſt, which the ſaid Earl, in Obedience to ſuch Orders, cauſed to be paid, and humbly apprehends it was his Duty ſo to do. But the ſaid Earl believes, that when the ſaid *Lileſh* or *Lawleſs* was ſo admitted, he was generally thought to be a natural *Spaniard*, and that from the Advantages of thoſe Licences which he brought for carrying the *Britiſh* Merchandizes to the *Weſt-Indies*, he expected a much larger Preſent: However, the ſaid Earl denies that he knew, or was informed, before the Arrival of the ſaid *Lawleſs* in *England*, any thing of his coming hither, nor after his Arrival did he ſee him, or know of his being here before he had been introduced to her Majeſty, it being uſual for publick Miniſters to be introduced by thoſe Servants of her Majeſty to whoſe Office it belongs, as matter of Duty and common Diſpatch, without conſulting therein other Miniſters of State. And upon the Notice taken of this Affair formerly in the Houſe of Peers, it appeared that the noble Lord who introduced the ſaid *Lawleſs* to the Queen, by vertue of his Office, did it as of Courſe, and did not then know he was other than a Native of *Spain*. And the ſaid Earl ſaith, that of a long time after he had been ſo introduced, the ſaid Earl neither knew nor heard that he was other than a natural *Spaniard*: But when the ſaid Perſon had continued in *England* a conſiderable time, there was a Rumour, and the ſaid Earl was afterwards informed that he was a Native of *Ireland*, and departed out of that Kingdom in his Youth, and had ſince been in the *Spaniſh* Service; but doth not know, nor was informed, that he had committed or been guilty of High Treaſon, or that he had ſerved the late King *James* the Second in the War in *Ireland* againſt King *William* the Third, or had followed the ſaid King *James* the Second into *France*, or been in his Intereſt or Service, or had been in Rebellion againſt King *William*, or in Arms againſt the late Queen. And the ſaid Earl having no notice of the ſaid Perſon's Arrival before his being admitted to her Majeſty, nor any Knowledge of any Crime he was guilty of, ſubmits whether it ſhall be imputed to him as any want of Duty, that he did not adviſe her Majeſty againſt admitting or receiving him in the Character aforeſaid, or that he did, by her Majeſty's Authority, meet, confer, or negotiate with him concerning any Affairs about which he was authoriſed to treat (in caſe he had

had ſo done, which however the ſaid Earl doth not admit) or that by Authority from her Majeſty he paid the ſaid Sum of One Thouſand Pounds to the ſaid *Daniel Arthur*, which after came to his Uſe. But the ſaid Earl doth deny, that he adviſed her Majeſty to ſign the Warrant for Payment of the ſaid One Thouſand Pounds, or gave any Directions for Payment thereof contrary to what was intended by her Majeſty. And the ſaid Earl admits, that ſome other Sums of Money (which might amount in the whole to Nine Hundred and Fifteen Pounds, or thereabouts) were paid in Satisfaction of Monies advanced to the ſaid *Lawleſs*, as Part of the Monies agreed to be advanced to his Catholick Majeſty by the *Aſſiento*-Contract: But denies that he directed the Payment of any other Monies whatſoever out of her Majeſty's Treaſury to the ſaid *Lileſh* aliàs *Lawleſs*, or knows that any other Monies were paid to him, beſide the aforementioned Sum of One Thouſand Pounds, and the Monies paid in Satisfaction of what was advanced to him towards the Part due to his Catholick Majeſty by the ſaid *Aſſiento* Contract. And the ſaid Earl never aſſumed the ſupreme Direction in her Majeſty's Councils, neither was he adviſing that the ſaid Perſon ſhould be introduced to her Majeſty, or ſhould be received or treated by her Miniſters under the diſguiſed Name of *Don Carlo Moro*, or ſhould at all be received as a publick Miniſter here. And the ſaid Earl doth acknowledge, that the Houſe of Lords with commendable Zeal made ſuch Addreſs, and came to ſuch Reſolution, and that her Majeſty made ſuch Anſwer, and iſſued ſuch Proclamation, as in the ſaid Article is mentioned. And as the ſaid Earl had always the higheſt Regard to the Safety of her Majeſty's Perſon, the Security of the Proteſtant Succeſſion, and Advice and Reſolutions of the Houſe of Peers; ſo he denieth, that he had the leaſt Knowledge, that the ſaid *Lileſh* aliàs *Lawleſs*, had ever been Miniſter or Agent of the Pretender at the Court of *Madrid*, or the leaſt Suſpicion that he was ſent into *England* to promote the Intereſt of the Pretender in theſe Kingdoms, nor is he conſcious to himſelf, that he hath done any Thing to expoſe the Perſon of her moſt ſacred Majeſty; to enervate or render ineffectual the Advice of Parliament, or her Majeſty's Declaration; to countenance any Emiſſary of the Pretender, or encourage his Adherents, to the Danger of the Proteſtant Succeſſion as by Law eſtabliſh'd in the ſerene Houſe of *Hanover:* But on the contrary is perſuaded his Conduct in that Affair is ſo well known, as not to need any further Juſtification; but if it ſhould at any Time be thought neceſſary, he is able to produce thoſe Proofs of it, which are the beſt Authority in the World for his Vindication.

In anſwer to the Sixth additional Article, the ſaid Earl hath been informed, and doth believe it may be true, that after ſeveral unſucceſsful Attempts by her late Majeſty, in Conjunction with her Allies, to eſtabliſh his preſent Imperial Majeſty upon the Throne of *Spain*, Inſtructions in Writing were given to *Mitford Crow*, Eſq; about the Seventh Day of *March*, One Thouſand Seven Hundred and Five, taking notice her Majeſty had been informed, that the People of *Catalonia* were inclined to caſt off the Yoke impoſed on them by the *French*, and to return to the Obedience of the Houſe of *Auſtria*; and that her Majeſty, deſiring to maintain and improve that good Diſpoſition in them, and to induce them to put the ſame ſpeedily in Execution, had made choice of him to carry on ſo great a Work, for the Advantage of her Service, and the Good of the common Cauſe, as was the making a Treaty with the *Catalans* or any other People of *Spain*, for the Purpoſe aforeſaid; and that the ſaid *Mitford Crow* was thereby empower'd to give the *Catalans*, or other *Spaniards*, Aſſurances of her Majeſty's utmoſt Endeavours to procure the Eſtabliſhment of all ſuch Rights and Immunities, as they had formerly enjoyed under the Houſe of *Auſtria*, and the Confirmation of ſuch Titles as had been conferr'd on any of them by the Duke of *Anjou:* And that for their further Satisfaction, her Majeſty had ſent to King *Charles* the Third for Powers for confirming the ſame to them, and was willing, if they inſiſted on it, to become Guarantee that it ſhould be done. And the ſaid Earl hath been likewiſe informed that her Majeſty, in a Commiſſion granted to the ſaid *Mitford Crow*, expreſſed, that ſhe thought fit to enter into a Treaty with the Principality of *Catalonia*, or any other Province of *Spain*, on Condition they would acknowledge and receive *Charles* the Third as lawful King of *Spain*, and utterly abdicate the Houſe of *Bourbon*, and join their Forces with her Majeſty's; and that her Majeſty was pleaſed alſo to ſign and deliver to the ſaid *Mitford Crow* Credential Letters, directed to the Nobility, Magiſtracy, and other Officers of *Catalonia*, or any other Province of *Spain*, deſiring them to give Faith to every thing the ſaid *Mitford Crow* ſhould tell them in her Majeſty's Name: And that Inſtructions were likewiſe given to the Earl of *Peterborow* and Sir *Cloudeſly Shovel*, about the Time and to the Effect in the ſaid Article mentioned; and that a Manifeſto or Declaration was afterwards publiſh'd by the ſaid Earl of *Peterborow*, to the Effect in the ſaid Article ſet forth: But the ſaid Earl denies, that ſuch Manifeſto or Declaration was prepared by his Advice or Privity. And the ſaid Earl believes it may be true, that ſome Part of the Nobility, Clergy, and Inhabitants of the Principality of *Catalonia*, and alſo of the Inhabitants of the Iſland of *Majorca*, did afterwards acknowledge King *Charles* the Third (now Emperor) for their lawful Sovereign, and did join their Arms with thoſe of her Majeſty and her Allies againſt the preſent King of *Spain*; but by what Motives they were induced thereunto, the ſaid Earl doth not know. And the ſaid Earl doth acknowledge, that for ſome Time the Arms of her Majeſty and her Allies in *Spain* were attended with conſiderable Succeſſes, in which the Bravery of the *Catalans* appear'd, and the Forces of the Confederates twice entered the capital City of that Kingdom; by which ſignal Conqueſts, and the great Supplies that have been granted by Parliament for their Aſſiſtance, the ſaid People were under the higheſt Obligations of Gratitude to her Majeſty: But the Advantages thoſe Succeſſes had given King *Charles* the Third being loſt, her Majeſty found the Burthen of that War very heavy to her Subjects, the Conqueſt of *Spain* for the preſent Emperor impracticable, and after the Acceſſion of the Empire and Deſcent of the Hereditary Countries to him, eſteemed inconſiſtent with the Intereſt of many of her Allies, and therefore thought it neceſſary for the Good of her

People, and the Tranquillity of *Europe*, to enter into Negotiations for a general Peace. But the ſaid Earl denies that he entered into any Conſpiracy for ſubjecting the *Spaniſh* Monarchy to the Houſe of *Bourbon*, or ever had the leaſt Deſign of the Ruin or Deſtruction of any of the Rights, Liberties, or Privileges of the *Catalans*, or that he ever formed any Contrivance for abandoning them to the Fury or Revenge of the Duke of *Anjou*, or his Adherents; or for the Extirpation of any of their Rights, Liberties, or Privileges; or that he adviſed her Majeſty to give Directions to the Lord *Lexington* to acknowledge the Duke of *Anjou* King of *Spain*, before any Negotiation of Peace was ſet on foot in Form of Law, between the Crowns of *Great Britain* and *Spain*. On the contrary the ſaid Earl ſaith, that by Letters and Papers ſent by one of her Majeſty's Principal Secretaries of State to the Lord *Lexington*, it will appear, that after her Majeſty had hearkened to the Propoſals for a general Peace, for the Good of her own People, and her Allies, ſhe uſed her beſt Endeavours for obtaining the Liberties of the *Catalans*, at the Concluſion of the Peace, and that his Lordſhip was directed peremptorily and abſolutely to inſiſt thereon: Nor doth the ſaid Earl know or believe, that any Orders were ever ſent from or given by her Majeſty, to any of her Miniſters, to recede from that Demand; or that the ſaid Lord *Lexington* ever deſiſted from making the utmoſt Efforts he could for obtaining it. And if from any Meaſures of the *Catalans*, or of his Imperial Majeſty, or from any other Cauſe, her Majeſty's Endeavours had not their full Effect; the ſaid Earl conceives it cannot be imputed to any Neglect of her Majeſty, or any Want of Duty in him the ſaid Earl. He believes, that about the Time in the ſaid Article mentioned, his Imperial Majeſty did enter into a Convention or Agreement for evacuating *Catalonia*; and that her Majeſty, out of Inclination to perform her beſt Offices to the Emperor, was prevail'd on to become one of the Guarantees thereof; but denies, that his Imperial Majeſty was neceſſitated by any Practices of the ſaid Earl to make any ſuch Convention, and is ignorant for what Cauſes his Imperial Majeſty, whom it moſt concerned, omitted, in ſuch Convention, to make expreſs and poſitive Stipulations for the Liberties of the *Catalans*. If it proceeded from any Dependence upon the Declaration of her Majeſty, to interpoſe her beſt Offices on their Behalf, and the Promiſes of the *French* King to join his Endeavour therein; he is confident it will appear, her Majeſty's beſt Offices were employed in that Affair, when it is conſider'd what repeated Inſtances ſhe made by her Miniſters, and in the moſt pathetick Manner to obtain for them the Privileges they deſir'd. And that her Majeſty, by her earneſt Interpoſition, did obtain a Grant and Confirmation to all the Inhabitants of *Catalonia*, of a perpetual Amneſty and Oblivion of all that was done in the late War, the full Poſſeſſion of all their Eſtates and Honours, and a further Grant of all their Privileges which the Inhabitants of both *Caſtiles* (who of all the *Spaniards* were moſt dear to the King of *Spain*) enjoy'd, or might at any Time after have or enjoy; whereby the *Catalans*, if they obtained not all the antient Privileges they pretended to, received however in Compenſation thereof, the Advantage of trading directly to the *Weſt-Indies*, and other Privileges, to which they were never before intitled. And the Houſe of Peers, upon Conſideration of ſeveral Papers laid before them, relating to this Affair, in Purſuance of their Addreſs to her Majeſty in that Behalf, expreſſed their utmoſt Thankfulneſs and Satisfaction for her Majeſty's repeated and earneſt Endeavours for preſerving to the *Catalans* the full Enjoyment of all their juſt and antient Liberties. And it is probable her Majeſty had prevailed to obtain for them the antient Privileges and Liberties, in the largeſt Extent, if they had waited the Event of her gracious Interpoſitions in their Favour, and not determined to carry on the War by themſelves againſt King *Philip*, after the Emperor had ſigned the Convention for evacuating their Country, which incenſed the King of *Spain* in the higheſt Degree, and was look'd upon by him as the moſt obſtinate Rebellion. However, the ſaid Earl ſaith, he never amuſed the *Catalans* with any Expectations whatſoever, nor in any degree contributed to engage them in any obſtinate Defence againſt the Duke of *Anjou*; nor adviſed her Majeſty to conclude a Peace with *Spain* without Security for the antient Rights, Liberties and Privileges of that People; or to ſend Sir *James Wiſhart* with a Squadron of Men of War, for the Purpoſes in the ſaid Article mentioned: But believes her Majeſty might think herſelf obliged, by being Guarantee to the ſaid Convention, for the evacuating of *Catalonia*, to ſend the ſaid Sir *James Wiſhart* into the *Mediterranean* with a Squadron of Men of War, although he knows not the Orders or Inſtructions given on that Occaſion; and humbly apprehends, that he cannot, in Juſtice, be charged with any Conſequences from that unhappy People's Refuſal to comply in their Submiſſion to the King of *Spain*, upon the Terms her Majeſty had ſtipulated for them.

Thus the ſaid Earl has laid his Caſe before your Lordſhips, wherein he hopes he hath fully anſwered the ſeveral Articles exhibited againſt him: Yet, leſt there ſhould be any Omiſſion in his Anſwer, which may be made uſe of to his Prejudice, he ſays, he is not guilty of all, or any of the Matters contained in the ſaid Articles, or any of them, in Manner and Form as they are therein charged againſt him; and humbly hopes that your Lordſhips will excuſe any Imperfections, or Defects in the ſaid Anſwer, with regard to Expreſſion or Form; and impute whatever of that Kind may appear, to the great Weakneſs of Body, and ill State of Health which the ſaid Earl now labours, and hath for ſome Months paſt labour'd under; and that your Lordſhips will be induced to make all farther due Allowances in his Favour, from the following Conſiderations, which relate to the Nature of the Charge in general, and the Difficulties with which his Defence of himſelf, againſt the Particulars contained in that Charge, is, and muſt be attended.

Moſt of the Articles, with which he ſtands charged, relate entirely to the Negotiations of Peace lately concluded at *Utrecht*; he doubts not but your Lordſhips will conſider, that he muſt of neceſſity be under great Difficulties, in giving a full and particular Account of ſuch a great Variety of Facts as are contained in theſe Articles; that ſeveral of theſe Facts concern Tranſactions with the Miniſters of Foreign States, who cannot be produced as Witneſſes in his Defence, be their Teſtimony never ſo material; that many

Steps and Proceedings in an Affair of this Nature, where the Intereſts of ſeveral Parties, not only ſeparate from, but ſome of them alſo contrary to each other, are to be adjuſted, do require great Secrecy and Addreſs in the Management; and that in Treaties between Enemies, ſuch Terms are often propoſed, and ſuch Arguments uſed, as carry a different Appearance from the real Intentions of thoſe that treat: Upon which Accounts, it muſt be very difficult to ſet every thing that paſt in the late Negotiations, with regard to the Enemy, and to the Allies, in a clear Light, and to juſtify every Step that was taken towards conducting them to the End propoſed; eſpecially ſince the Account of thoſe Tranſactions, and of the Reaſons on which they were founded, cannot, as he conceives, be duly cleared, but by inſpecting the entire Series of Letters and Papers, which paſſed, during the Continuance of theſe Tranſactions, and by comparing together ſuch Paſſages in them, as might give Light to each other, and to the Whole: All which Letters and Papers are (as he is inform'd) now in the Poſſeſſion of the Honourable Houſe of Commons; nor was it thought fit, upon his humble Application to your Lordſhips, that he ſhould be indulged with a Copy of them.

He hopes it may not misbecome him, on this Occaſion, to obſerve to your Lordſhips, that the Houſe of Commons, by being poſſeſſed of thoſe Papers, have a fuller View of the whole Progreſs, and of all the ſecret Steps of that Negotiation, than perhaps was even in the like Caſe imparted to any Houſe of Parliament; and they have therefore all the Advantage poſſible towards forming the Charge againſt him upon the Articles of his Impeachment; whereas he (the ſaid Earl) being deſtitute of all Aſſiſtance from thoſe Papers, is under great and particular Diſadvantages towards making his Defence, in the Points whereof he there ſtands accuſed; and he is therefore humbly aſſured, that, as your Lordſhips, on the one Side, will not expect from him any ſuch Proofs of his Innocence, as can only be drawn from a Peruſal of thoſe Papers; ſo, on the other, you will not admit of all, or any of thoſe Articles, as made good againſt him, unleſs the Accuſations therein contained, be ſupported by the cleareſt and moſt unqueſtionable Evidence, of which the Nature of the Facts is capable.

He ſubmits it likewiſe to your Lordſhips Conſideration, whether in a Negotiation, drawn out into a great Length, where the Advice of all thoſe in high Truſt about her Majeſty was to be taken, and where ſeveral Perſons were to be entruſted with the Management of what was agreed upon, he can, with any Colour of Equity, be made anſwerable for adviſing and conducting the Whole?

He deſires alſo farther to obſerve, that every Thing, with which he is charged, was done in the Reign of a gracious Princeſs, now deceaſed, who, by Reaſon of the perfect Knowledge ſhe had of the ill State of Affairs at Home, of the Advances made towards Peace from Abroad, and of the Commands, which ſhe at ſeveral Times laid on her Servants, had been the beſt, and indeed could be the only competent Judge, whether ſhe was fraudulently dealt with, led by ill Advice into Meaſures which ſhe did not direct, and approve, or made an Inſtrument of ſacrificing the Intereſts of her Kingdoms to the Enemy. It is with great Grief that he finds ſuch Things ſuggeſted, as ſeem to lay a Stain upon the Character of ſo excellent a Queen, whoſe Memory he is confident will be for ever dear to this Country: And therefore he takes leave, in the moſt ſolemn Manner, to aſſure your Lordſhips, that as far as he knows, or can remember, every thing relating to the Tranſactions of Peace was communicated to her late Majeſty, and maturely conſidered by her, before any Thing was determined thereupon; nor was any Step taken, but in Purſuance of ſuch Determination.

As to the Peace in general, he the ſaid Earl thinks he has very good Reaſon to ſay, that the Queen had nothing more at Heart, than to procure ſo great a Bleſſing for her People; and that, when it was obtained, ſhe had this Satisfaction in herſelf, that ſhe had taken the moſt proper Meaſures to juſtify her Conduct, both toward her Allies and toward her own Subjects: For, upon a Review of her Majeſty's whole Proceeding, in relation to War and Peace, he believes it will appear, and hath in Part appeared by the Anſwer of the ſaid Earl, to the ſaid Articles, that, as her Majeſty entered further into the War than ſhe was obliged by any Treaties ſubſiſting at the Time of her Acceſſion to the Throne, ſo ſhe contributed more Men and Money towards the carrying it on afterwards, than ſhe was engaged to provide by any ſubſequent Treaties: That her earneſt Deſires of Peace being twice fruſtrated, when ſuch Conditions might have been obtained, as would have fully anſwered all the Ends for which War was at firſt declared; that, all our Succeſſes and Victories ending in the annual Increaſe of the Charge of *England*, without any further Aſſiſtance from our Allies, and her Kingdoms being exhauſted to ſuch a Degree (notwithſtanding the great Advantages obtained by her Arms) that ſhe was not able to continue the War, upon the Foot it then ſtood, one Year longer; whilſt her Allies refuſed to continue it, upon thoſe equal Conditions, to which they were by Treaties obliged: She was at laſt conſtrained, in Compaſſion to her People, to hearken to the Overtures of Peace then made her from *France*, without relying further on the vain Hopes of gaining more advantageous Terms, by protracting the War a Year longer. She had carried it on, for ſome Time, under that Proſpect, without reaping the Benefits propoſed, even at Junctures that ſeemed moſt favourable to her Demands, and to the Pretenſions of her Allies: She had indeed, by that means, raiſed the Glory of her Arms; but ſhe could not think this a ſufficient Recompence for the encreaſing Miſeries of her People; and therefore reſolved to lay hold of the Opportunity, then offered to her, of ending the War by a Peace, if it might be obtained upon Terms every way juſt, ſafe and honourable: And thoſe who were then employed in her Majeſty's Councils, thought themſelves obliged to ſecond her good Intentions in this Caſe, and to obey her Commands with all readineſs.

The ſaid Earl preſumes, on this Occaſion, to mention to your Lordſhips the Saying of as wiſe a Man, and as great a General as the laſt Age produced, the Duke of *Parma*; when *France* was in a far lower Condition than now, being almoſt equally divided between two contending Parties, and *Spain* was at the Height of its Glory, and he himſelf at the Head of a *Spaniſh* Army,

Army, ſupporting one of thoſe Parties, after *Paris* itſelf had been beſieged by the other; it was his Opinion (and the Advice he gave to his Maſter the King of *Spain*, was grounded upon it) That, if *France* were to be got only by reducing its Towns, the World would be ſooner at an End than ſuch a War. The Queen ſeemed at this Time, with better Reaſon, to frame the like Judgment; and it was therefore her Pleaſure, and a great Inſtance (as the ſaid Earl conceives) of her Wiſdom and Goodneſs, to think of ſecuring a Peace while ſhe appeared able to carry on the War (her Armies being full and numerous) and before the exhauſted Condition of her Kingdoms, and the Impoſſibility, on her Side, of maintaining ſo diſproportioned an Expence, was diſcovered by her Enemies. At this Juncture the Queen entered upon a Negotiation of Peace, with Circumſtances of great Honour to herſelf; *France* applying to her firſt, on this Account, previouſly owning her Title, and acknowledging the Right of the Proteſtant Succeſſion; two chief Grounds, upon which the Declaration of the laſt War was built. And to the Allies, it was conducted in the ſame manner as all Treaties of Peace in Confederacies have ever been, and according to the known Laws of Nations in ſuch Caſes; the firſt Motion, and the ſeveral Steps of it, as faſt as they ripened into Propoſals fit for Conſideration, being without delay communicated to the States-General.

By the Terms of this Peace, as all reaſonable Satisfaction and Security due to any of the Allies, by Treaty, were obtained for them by the Queen, and their juſt Pretenſions effectually ſupported; ſo larger Advantages were actually procured for *Great Britain* in particular, than ever had been demanded before, in any Treaty, or Negotiation between this and any other foreign State. The ſaid Earl craves leave, on this Occaſion, to appeal to your Lordſhips, whether all the Ends for which the War was entered into have not, by this Treaty, been fully attained? Whether it does not appear, by the beſt of Proofs, Experience, that the Kingdoms of *France* and *Spain* are by the Conventions of this Treaty moſt effectually ſeparated? And whether any other Expedient could have been ſo ſucceſsful to this Purpoſe, as that whereby it is now happily brought about? Whether the Ballance of Power in *Europe* be not now upon a better Foot than it has been for an Hundred Years paſt? Whether the Advantages that have accrued to *Great Britain*, by this Treaty, do not appear, and have not appeared in the Security of the Proteſtant Succeſſion, and in his Majeſty's peaceable Acceſſion to the Throne, with the univerſal Applauſe of his Subjects, in the Additions made to our Wealth by the great Quantities of Bullion lately coined at the Mint, by the vaſt Increaſe of Shipping, employed ſince the Peace, in the Fiſhery, and in Merchandize, and by the remarkable Riſe of the Cuſtoms upon Import, and of our Manufacture, and the Growth of our Country, upon Export? For the Proof of which Particulars he refers himſelf to thoſe Offices and Books, wherein an Authentick Account of them is contained.

And as the Terms of the Peace were in theſe and other Reſpects manifeſtly profitable to *Great Britain*; ſo the ſaid Earl begs leave humbly to remind your Lordſhips, that they were communicated to the Parliament, and with their Concurrence, agreed on; that the Peace, thus concluded, was afterwards highly approved by both Houſes; that ſolemn Thanks were rendered to God for it, in all our Churches, as well as in the Churches of the *United Provinces*; and that her Majeſty received, on this Subject, the hearty and unfeigned Congratulations of her People, from all Parts of her Dominions.

Theſe being the real Effects, and this a true Repreſentation of her Majeſty's Conduct in the Affairs both of War and Peace; the ſaid Earl ſees not how he, or any others then in her Majeſty's Service, can be juſtly charged with betraying the Intereſts of their own Country, and of the Allies, by negotiating and promoting that Peace, which then was, and (as he hath good Grounds to believe) ſtill continues to be very acceptable and advantageous to theſe Kingdoms. And, if the Peace itſelf be not condemned, and it be not even charged upon the ſaid Earl as a Crime, that he adviſed her Majeſty to conclude that Peace, (neither of which appear to him from the Articles) he humbly conceives, it is a particular and extraordinary Hardſhip upon him, that rough Draughts and Eſſays towards a Peace, with other Preliminary Steps in a Negotiation, all leading to an End, which he looks upon to be juſt and profitable, and which is not in any of the Articles alledged to be otherwiſe, ſhould be brought into ſo many diſtinct Heads of Accuſation againſt him. For ſuppoſing that, in the Proceſs of ſo nice and difficult an Affair, ſubject to divers unforeſeen Obſtructions and Events, any improper Steps had been taken, which the ſaid Earl doth not admit, but altogether, on his Part, denies; yet, if Things were at laſt conducted to a right Iſſue, and ended in an honourable and advantageous Peace, there can be (as he conceives) no juſt Ground to find fault with the Meaſures made uſe of to compaſs it, becauſe they ſeemed, before the Accompliſhment, to have a different Tendency; eſpecially if it be conſidered, that ſcarce any Peace hath been made by a Confederacy, where leſs Occaſion was adminiſter'd for Jealouſy among the ſeveral Parties, and leſs Reaſon given to complain, that every Nicety, required by the Letter of ſuch an Alliance, was not ſtrictly obſerved. And therefore he humbly hopes, that no Steps taken for obtaining a Peace, approved by the Wiſdom of former Parliaments, ſhall by any ſucceeding Parliament be accounted criminal, unleſs it can be made appear, that thoſe Steps were taken contrary to the Queen's Orders, or upon corrupt Views of private Advantage: But that no Charge of this Nature can be made good againſt him, he preſumes to affirm, with great Aſſurance; nor does he know of any other Perſons, juſtly chargeable upon either of theſe Accounts.

And as a further Proof, that thoſe who had the Honour to ſerve her Majeſty in the Negotiations of Peace, acted with upright Views and Intentions, and without being conſcious to themſelves of any Failure in their Duty, either to their Queen, or their Country; the ſaid Earl craves leave to obſerve to your Lordſhips, that they never attempted to cover their Actions from publick Cenſure by any Pardon, or Indemnity, though they had very good Reaſon to believe, that, had they judged or imagined themſelves to have wanted ſuch Security, it might (through the Goodneſs of the Queen) have eaſily been obtained.

Nor can he think it an Obſervation unfit to be made, that, in few of the Articles which concern the Negotiations of Peace, the Charge is founded on any Breach of the Laws of *Great Britain*; but it is in moſt of them chiefly on the ſuppoſed Infraction of certain Treaties and Alliances with foreign Princes, or States; and he conceives that ſuch Infractions of Publick Treaties, where they do not particularly affect the Intereſts of *Great Britain*; being cognizable by the Laws of Nations only, and not by thoſe of the Realm, are not wont to be examined into here at home, and proſecuted as Criminal, but upon the Complaint of ſome Prince or State, pretending by that means to be injured, and lodging ſuch Complaint in ſome reaſonable Time with the Prince, by the Advice of whoſe Miniſters and Servants ſuch Injury is ſuppoſed to have been done. But he knows not, that any ſuch Steps have been taken, ſince the Peace, by any of the Powers concerned: On the contrary, he believes, that all the Allies, except the Emperor and Empire, made their Peace with the Enemy at the ſame Time the Queen did; and that none of them did afterwards complain to her Majeſty (who ſurvived the ſaid Peace a Year and almoſt four Months) of any Hardſhips impoſed upon them in it; that the Princes of the Empire, who contributed very little to the War, might have concluded their Peace upon reaſonable Terms, at the ſame Time the other Allies did; and would probably have done it, if the Emperor, on his Part, had been willing to ſign together with them, which, he is informed, at the Concluſion of any general Peace, has been ſeldom done; and particularly at the ſeveral Concluſions of the Peace of *Munſter*, that of *Nimeguen*, and that of *Ryſwick* was not practiſed. And he ſubmits it to your Lordſhips Conſideration, whether the Emperor, having had all reaſonable and equitable Satisfaction made him for his Pretenſions to the Succeſſion of the *Spaniſh* Monarchy, according to the Terms of the Grand Alliance, could have any juſt Reaſon to complain of the Queen's Miniſters, or thoſe of her Allies, for concluding a Peace, without inſiſting (on his Account) upon impoſſible Conditions; eſpecially, when no Proviſion was made, or offered to be made, to reimburſe her Majeſty any Part of thoſe vaſt Sums ſhe had already expended, in Support of his Pretenſions: whilſt he failed of ſupplying his Quota, almoſt in every Part of the War, notwithſtanding his new and great Acquiſitions. But whether the Emperor, or any other of the Allies, had any juſt Ground of Complaint, or not, ſtill the ſaid Earl preſumes to inſiſt, that it ought to have been ſignified to the Queen; who, upon ſuch Complaint, had ſhe found any of her Servants juſtly blameable, as diſobeying her Orders, or miſleading her by their Advice, into unjuſtifiable and diſhonourable Meaſures, might have puniſhed them forthwith as their Offences deſerved: But nothing of this kind having been done, he humbly leaves it to be conſidered by your Lordſhips, Whether the Silence of the Powers concerned doth not carry in it a ſtrong Preſumption, either that they had no real and juſt Ground of Complaint, in relation to the Terms of the Peace itſelf, or at leaſt did not look upon the Miniſters of the Queen as any ways liable to Blame on that Account; and therefore he muſt again beg leave to expreſs to your Lordſhips his Concern, that he ſhould be charged as a Criminal by the Laws of this Land, for ſuppoſed Breaches of Treaties with foreign States, which never were complained of, as ſuch, by thoſe States themſelves, during the Life of her Majeſty.

He deſires farther to obſerve to your Lordſhips, that where-ever he is charged with carrying on a private and ſeparate Negotiation, 'tis all along underſtood, with regard only to the States of the United Provinces; no Step, that was communicated to them, being cenſured, upon this Account: Whereas all the other Allies had, by Vertue of their Treaties with the Queen, a like Right to a Communication of Councils; and her Majeſty was under no Stipulations to act more in Concert with any one, than with all of them.

He does indeed allow it to have been moſt agreeable to Reaſon, and to the Intereſts of State, that the Queen ſhould act in a cloſer Conjunction with *Holland*, than with any other of her Allies, becauſe that, next to *Great Britain*, *Holland* bore the greateſt Share in the Charge of the War: But then, he hopes it will be allowed alſo, that the States being more intereſted in the Succeſs of the War than *England*, and that *England* having ſubmitted to a greater Share of the Burthen, in order to procure, not only a fitting Security for the States, but ſuch as brought great Advantages to them, though no Benefit to *England*; it was very reaſonable for the Queen to take care of the Intereſt of her own Kingdoms ſome other Way: And, ſince the Advantages ſhe demanded from the Enemy, were ſuch as ſhe might obtain without any Prejudice to the States, it was as lawful for her to negotiate this Matter without communicating it originally, and in the firſt Riſe of it, to them, as it was for her, and the States, to concert their mutual Intereſts together, without the immediate and expreſs Participation of the other Allies; which, being known to be done, without a Deſign to defeat any of the main Ends of the Alliance, was never complained of by any of the Confederates.

And as for the Matters concerted previouſly with *France*, for the particular Intereſt of *England*, without the original Intervention of *Holland*, the States were ſo far from proteſting againſt her Majeſty's Meaſures, and condemning her Conduct in this Reſpect, that their Miniſter proffer'd ſeveral Times, in their Name, to have led the Way, in the moſt difficult Part of the whole Negotiation, and to have done his utmoſt to facilitate the Concluſion of it, provided his Maſters might have a Share in the *Aſſiento* Contract, and Trade to the *Spaniſh Weſt-Indies*; one of thoſe Advantages, which *France* had diſcovered its Willingneſs ſhould be allowed previouſly and entirely to *England*.

Theſe few general Obſervations the ſaid Earl has thought fit to add in the Cloſe of his Anſwer to the ſeveral Articles of his Impeachment; not only in his own neceſſary Vindication, but alſo in Defence of her late Majeſty's Conduct in the negotiating and concluding a Peace, the perfecting of which ſhe eſteemed the greateſt Happineſs of her Reign. Upon Review of the Two and Twenty Articles with which he is charged, as he is not conſcious of any Offence committed by him, with reſpect to any one of them, ſo it is with a particular Concern and Surprize that he reflects on theſe two, wherein he is accuſed of High

Treaſon,

Treaſon, for endeavouring to procure *Tournay* to *France*, and ſo deprive the States of that intended part of their Barrier; and for procuring *Spain* and the *Weſt Indies* to the Duke of *Anjou*, upon his Renunciation of the Crown of *France*, referring himſelf to what he has ſaid in his Anſwer to both theſe Articles, he here further aſſures your Lordſhips (and thinks it is ſufficiently known both at home and abroad) that his Opinion and Endeavour, as Occaſion offer'd, always were for *Tournay*'s remaining, as it now does, to the States-General. And as to the latter, he doubts not but that what has lately happen'd in *France*, is a convincing Proof to your Lordſhips, and to all the World, that the Renunciation was the beſt Expedient that could have been propoſed towards hindering the two Kingdoms from being united under one and the ſame Monarch; that that Branch of the Treaty which relates to this Expedient, has fully anſwered its End, and made good the Character given of it by the Queen, *That it would execute it ſelf*; and therefore, that whoever adviſed this Method of ſeparating the two Crowns, was ſo far from being guilty of any traiterous Deſign, that he eminently promoted the Welfare of *Great Britain* and the Good of *Chriſtendom*.

The ſaid Earl, with all the Aſſurances of an innocent Man, begs leave to repeat, that as well in this, as in all other Affairs of State, in which he had the Honour to be employed by her late Majeſty, he ever acted according to the beſt of his Skill and Judgment, with ſincere Deſires and Intentions to ſerve the Publick, and without any View to his own private Advantage. As he was in ſeveral great Stations under her Majeſty, he came into all of them by her own ſpecial Command, without his ſeeking or deſiring them, and he ſerv'd her in all with the utmoſt Reſpect, Zeal, and Faithfulneſs. And while he continued in thoſe Stations for many Years, it was with great Wonder and Pleaſure that he obſerved, how her Majeſty's whole Thoughts, Endeavours, and Time were divided between her Duty to God, and her Love to her People; whoſe Good and Security ſhe preferred always to her own Eaſe, and often hazarded her Health, and Life itſelf to procure it. He knew that the moſt effectual way for one to recommend himſelf to her good Opinion, was to act upon the ſame Principles of Juſtice, and Love to his Country that ſhe did: And as ſhe abhor'd the Thoughts of any thing Burthenſome or Injurious to her People; ſo ſhe often expreſſed herſelf with the greateſt Satisfaction and Delight, when ſhe reflected on the Advantages obtained by her for her own Subjects, and the Quiet and Repoſe ſhe had gained for *Europe*, by that juſt and honourable Peace, for which, as the preſent Age doth, ſo Generations to come will, bleſs the Memory of that Excellent and Renowned Queen.

OXFORD.

L. H. Steward. Read the Replication of the Houſe of Commons.

The Clerk read the Replication as followeth.

The Commons REPLICATION *to the Anſwer of* Robert *Earl of* Oxford *and Earl* Mortimer.

THE Commons have conſider'd the Anſwer of *Robert* Earl of *Oxford* and Earl *Mortimer*, to the Articles of Impeachment exhibited againſt him, by the Knights, Citizens, and Burgeſſes in Parliament aſſembled; and do with Aſtoniſhment obſerve, that the ſaid Earl, inſtead of giving a reaſonable and pertinent Anſwer to the juſt and heavy Charge brought againſt him by the Commons of *Great Britain*, has preſum'd not only to deny his adviſing and being concern'd in any Matters of State, in the Articles charged againſt him; tho' confeſſed to be done under an Adminiſtration, wherein he was notoriouſly the firſt Miniſter and chief Director: But has alſo joined therewith a falſe and malicious Libel; laying upon his Royal Miſtreſs the Blame of every thing, which, by impoſing upon her, he had effected againſt her Honour, and the Good of his Country; thereby attempting to reflect upon the Honour and Juſtice of the Houſe of Commons, and to caſt an Odium upon their Proceedings againſt him, as tending to aſperſe the Memory of the late Queen.

But the Commons are of Opinion, that if it were poſſible to add to the heavy Load of Guilt, in which the Treaſons and other moſt flagitious Crimes, committed by the ſaid Earl, have already involv'd him; this baſe and ungrateful Attempt, to impute them to his Royal Miſtreſs, muſt bring ſuch a new Weight of Infamy upon him, and ſo juſtly provoke the Indignation of the Commons, that they might think themſelves oblig'd to demand your Lordſhips immediate Juſtice, for this unwarrantable Attempt upon the Honour of the late Queen, and the Proceedings of Parliament.

But the Commons being ſenſible that the Treaſons and other Crimes whereof the ſaid Earl ſtands impeached, and the Neceſſity of bringing him to ſpeedy and exemplary Juſtice, require that all Occaſions of Delay ſhould be avoided; and not doubting that your Lordſhips will in due time vindicate the Honour of the late Queen, and of the Commons of *Great Britain*, and the Juſtice of their Proceedings: The Commons do aver their Charge againſt the ſaid Earl of *Oxford* and Earl *Mortimer* for High Treaſon, and other High Crimes and Miſdemeanors, to be true; and that the ſaid Earl is guilty of all and ſingular the Articles and Charges therein reſpectively contained, in ſuch manner as he ſtands impeached; and that the Commons will be ready to prove their Charge againſt him, at ſuch convenient Time as ſhall be appointed for that Purpoſe.

L. H. Steward. Robert Earl of *Oxford* and Earl *Mortimer*, it has been uſual before the Commons proceed, to ſay ſomething from this Place to Perſons in your Lordſhip's preſent Condition; partly by way of Exhortation to a reaſonable Confidence in the great Honour, Juſtice, Wiſdom, Integrity and Candour of their Judges, their Peers, the Houſe of Lords in Parliament aſſembled; and partly by way of Direction, to aſſiſt them in their Behaviour and Conduct during the Courſe of their Trial.

But conſidering the many great Offices your Lordſhip has borne in the State, your long Experience and known Learning in all Parliamentary Proceedings, I cannot but think it would ſeem improper for me to be ſpeaking to your Lordſhip in that manner.

Wherefore I proceed barely to acquaint your Lordſhip and others whom it may concern, with ſuch Orders as the Lords have made, which 'tis fit ſhould be taken Notice of thus early in this Trial.

1. Your Lordſhip, and all other Perſons who have Occaſion to ſpeak to this Court, muſt addreſs your Speech to the Lords in general, and not to any Lord in particular.

2. Your Lordſhip's Council may be preſent at the Bar, in order to be heard to any Point or Matter of Law, if ſuch ſhall ariſe on either of the Articles for High Treaſon, and that you may make your full Defence by Council, if you think fit, on the Articles for High Crimes and Miſdemeanors, as well on Matters of Fact as of Law.

3. That your Witneſſes are to be examin'd on Oath as well to the Articles for High Treaſon, as thoſe for High Crimes and Miſdemeanors.

L. H. Steward. My Lords, the Diſtance between this Place and the Bar is ſo great, that I hope your Lordſhips will excuſe me, if I go to the Table for the better hearing what ſhall be ſaid during this Trial.

Lords. Ay, ay.

Then the Lord High Steward went down, and ſeated himſelf by the Table.

Serj. at Arms. O yes, *&c.* (as before.)

L. H. Steward. Gentlemen of the Houſe of Commons, you will be pleas'd now to proceed.

Mr. *Stanhope.* My Lords, the Diſtance of the Lord High Steward from this Place, may have been the Occaſion, that we have miſtaken ſomething that fell from thence; we do therefore deſire to avoid all Miſtakes (and I believe we might be miſtaken) for we underſtood my Lord High Steward, that Council ſhould be allowed the Priſoner at the Bar, as well to the Defence of the High Treaſon, as to the High Crimes and Miſdemeanors; it is poſſible we miſapprehended his Lordſhip, but we hope his Lordſhip will be pleaſed to explain it to us.

L. H. Steward. To prevent Miſtakes, I repeat what I ſaid, and it is this, That Council for the Lord (the Priſoner at the Bar) may be preſent at the Bar, in order to be heard to any Matter or Point of Law (if any ſuch ſhall ariſe) relating to the High Treaſon, and likewiſe to make that Lord's full Defence on the Articles of Impeachment of High Crimes and Miſdemeanors, as well in Matters of Fact, as Matters of Law.

Mr. *Hampden.* MY Lords, the Commons of *Great Britain* in Parliament aſſembled, out of indiſpenſable Duty to their Country, and Zeal for the Preſervation of the *common Liberties of Europe*, have brought to your Lordſhips Bar *Robert* Earl of *Oxford* and Earl *Mortimer*, late High Treaſurer and a Privy Counſellor of this Kingdom, charged with the higheſt Crimes and Miſdemeanors, by him committed and done againſt the Perſon, Crown and Dignity of his Sovereign, the Peace and Intereſt of this Kingdom, and in Breach of the ſeveral Truſts repoſed in him.

The Commons in their Charge ſet forth, the many ſolemn Treaties and Alliances which had been entered into between the *Crown* of *England*, and other *Princes* and *Potentates* of *Europe*, for their mutual Safety, from the Conſiderations of the common Danger which then threaten'd all Chriſtendom from the *immoderate Growth* of the *Power* of *France*.

They likewiſe take Notice to your Lordſhips of the proſperous and flouriſhing Condition which the *Liberties* of *Europe* were in when, under theſe Treaties and Alliances, it pleaſed Almighty God to bleſs the Confederate Arms under the Command of their *Great* and *Victorious General* the *Duke* of *Marlborough*, with ſuch a Series of Succeſſes, as far exceeded their own Expectations, and by the Wiſdom and Unanimity of their Counſels, the Glory of the Confederate Arms, and the Reputation of *Great Britain* in particular, was rais'd to a higher Pitch than in any former Age.

That in this proſperous Condition of Affairs, the *Priſoner* at the *Bar*, with *other evil-minded Perſons*, Enemies to the true Intereſt of their Country, as well as to the common Liberties and Welfare of *Europe*, did by many wicked Arts and Inſinuations obtain Acceſs to her late Majeſty Queen *Anne*, got into her *Councils* and into Places of the higheſt Truſt, to make way for his and their pernicious Enterprizes, *form'd a treacherous Correſpondence* with the *Emiſſaries* of *France*, and gave *falſe* and *deſtructive Councils* to her *Majeſty*.

The particular Articles exhibited by the Commons, to which proper Evidence will be apply'd, contain a Charge,

That this Great Perſon at the Bar, having no Regard to the Honour or Safety of his Sovereign or theſe Kingdoms, wherewith he was entruſted, or to the many ſolemn Engagements with the old and faithful Allies of this Nation, but being devoted to the Intereſt and Service of the *common Enemy*, did, by private and ſecret Negotiations in Breach of all *publick Faith*, maliciouſly and wickedly cultivate and improve the Demands of the Enemies of his Country, more to their Advantage than they themſelves could have ever hoped for.

That by clandeſtine and ſecret Negotiations with the Enemies of *England*, he gave up the particular Intereſt of his own Country: That he aſſum'd to himſelf *Regal Power*, and in a time of *open War* took upon himſelf to meet and treat with the Enemy, without any Authority or Power from his *Sovereign*, and did what in him lay to ſubvert the *ancient* and *eſtabliſhed Conſtitution* of this Kingdom.

That he conceal'd the Advice and pernicious Influence whereby he had engaged his Sovereign and proſtituted her Honour, which had been rais'd to the higheſt Pitch of Glory abroad, and been juſtly held in Veneration with her Allies; and the Royal Hand was by the wicked Arts of the Priſoner at the Bar, made the Inſtrument to advance the Intereſt of the common Enemy.

That by deceitfully amuſing the Allies of the Crown of *Great Britain*, and by private, ſeparate and unjuſtifiable Negotiations, enter'd into, and carry'd on by the Priſoner at the Bar, a laſting Reproach was brought upon this Nation, and the publick Faith of many Treaties, wherein *England* was engaged in the moſt ſacred and ſolemn Manner, was notoriouſly Violated, and the faithful Allies of the Crown Amus'd and Deceiv'd.

That the Priſoner at the Bar did in the moſt fatal Manner Impoſe upon and Delude his *Sovereign* in accepting a pretended Expedient from the Enemy, which the Enemy at the ſame time declar'd to be Null and Void. *That* the moſt unjuſtifiable and deſtructive Meaſures were taken by him to diſſolve the whole Confederacy, without any Regard to *Religion*, *Liberty*, or the *Faith* of *Treaties*; and in Conſideration of his wicked Advice, great Numbers of the Confederate Troops, who had on many Occaſions ſignaliz'd themſelves in the Defence of the Cauſe of *Europe*, were given up as a

Sacrifice

Sacrifice to the Fury and Revenge of the Enemy.

My Lords, *The* Commons in their Charge set forth the particular Measures concerted and taken by the *Prisoner* at the Bar, to complete the Destruction of the Common Cause of *Europe*, and the *Protestant Succession* to the *Crown* of these *Realms*. And they Charge

That the Prisoner now before your *Lordships* did *traiterously Aid*, *Assist*, and *Adhere* to the *Enemies* of his *Queen* and *Country*, and advis'd and promoted the giving up to those Enemies the *important Town* and *Fortress* of *Tournay*, together with *Spain* and the *West-Indies*.

That he *Sacrificed* the Trade and Commerce of *Great Britain* to its common Enemy without the least Shadow of Advantage procur'd to these Kingdoms, and *Betray*'d the National *Faith* and Honour of the *Crown*, employing against his *Imperial Majesty* (the Great and Faithful Ally of this Kingdom) the *Naval Power* of the *Crown*, and the Supplies granted by *Parliament*, in direct Violation of the *Grand Alliance*, and contrary to *her* Majesty's repeated Declarations from the Throne, and *her* plain and full Instructions to her *Plenipotentiaries* at *Utrecht*.

That he took upon himself to Exercise the most arbitrary and unwarrantable Authority; assuming to himself the chief Direction and Influence in her late *Majesty's Councils*, and most wickedly prostituted the Honour of the *Crown*, and the Dignity of Parliaments, totally depriving her Majesty of the wholsome and necessary Advice of her Parliament, and Misrepresenting the most Essential Parts of the Negotiations of Peace, to obtain the *Sanction* of *Parliament* to his wicked and pernicious Proceedings, thereby fatally Deceiving her *Majesty*, her *Allies*, her Parliament, and her People, by several false Speeches and Declarations, concerted and advis'd by him, to be made by her *Majesty* from the Throne to her *Parliament* on the Subject of the said *Negotiations* of *Peace*; and by such wicked and unexampled *evil Council*, he did most ungratefully *abuse* the Favour of his *Royal Mistress*, and by means of her Authority misled her *Parliament* into Groundless and Prejudicial Resolutions; and thereby not only prevented the *just Advice* of the *Parliament* to her *Majesty* in that *CRITICAL JUNCTURE*, but obtained the Approbation of *Parliament* to his *MYSTERIOUS* and *DANGEROUS PRACTICES*; and did not only Deprive her *Majesty* of the Confidence and Affection of her *Allies*, but Expose her *Majesty* and her People to the Contempt of the *Enemy*.

That he has us'd his utmost Endeavours to *Subvert* the *Ancient Constitution* of *Parliaments*, the Great and only Security of the *Prerogative* of the *Crown*, and of the Rights, Liberties, and Properties of the People, and most wickedly attempted to destroy the Freedom and Independency of this *Noble House*, the *great Ornament and neareſt Support of the Crown*; disguising his mischievous Intentions, under pretence of *Superior Zeal* for the *Prerogative* of the *Crown*, but by his false Advice her *Majesty* was depriv'd of the *seasonable* and *wholsome Councils* of her *Parliament*, and the *Prerogative* perverted to the Dishonour of the *Crown*, and the irreparable *Mischief* to the Constitution of *Parliaments*.

My Lords, *The* Commons have further charg'd the *Noble Lord* with Corruptions, in illegally misapplying Monies appropriated by *Parliament*, and with preventing any Parliamentary Enquiry into the same, to the Reproach and Scandal of Parliaments, in *Breach* of his *Trust*, the highest Abuse of the Goodness of *his Sovereign*, and the greatest Injustice and Oppression of *her Subjects*, and that he defrauded her late Majesty of the *Publick Money* with which he was entrusted for the Support of the Honour and Dignity of the *Crown*.

That this *Great Person* did assume to himself the Supreme Direction in her late *Majesty's Councils*, and did introduce to her *Majesty* for a *pretended publick Minister*, a *TRAYTOR* in Disguise named in the Articles; and gave such *Traytor* several considerable Sums out of her Majesty's Treasure, in a Fictitious and Scandalous manner; such Person being sent into this Kingdom under false Pretences, secretly to promote the Interest of the *PRETENDER*, whereby the Prisoner at the Bar did ungratefully expose the Person of her Majesty, and notoriously encourage the *Adherents* of the *Pretender*, to the apparent Danger of the Protestant Succession to the Imperial Crown of these Realms. And,

Lastly, That this *Great Person* at the Bar did, by the most false and wicked Councils and Practices, *Betray* and give up as a *Sacrifice* to the implacable Resentments of their enrag'd and powerful Enemy, a *Free and Generous People*, the *faithful* and *useful Allies of this Kingdom*, the brave *CATALANS*: who by the Evil Measures concerted and taken by the Prisoner at the Bar, were *Betray'd* into irrecoverable Slavery, and the *Honour* of the *British* Nation, always *Renown'd* for the Love of *Liberty*, and for giving Protection to the *Distress'd Asserters* of it, therein most basely prostituted by the pernicious and detestable Council of the *Prisoner* at the Bar.

Thus your Lordships have a View of the Guilt in which the Treasons and other Crimes committed by the Prisoner at the Bar have involv'd him: And it is with Astonishment the Commons observe, that his Defence is an Attempt to asperse the Memory of his *Royal Mistress* with the Blame of what was transacted during his Administration, which by imposing upon her he had effected against her Honour, and the Good of his Country; thereby attempting to reflect upon the Justice of the House of Commons, and to cast an *Odium* upon their Proceedings against him. But we doubt not your Lordships Vindication of the Honour of her late *Majesty*, and the Proceedings of the Commons in this Prosecution.

The Commons think it their Duty to express their utmost Abhorrence of the traiterous and wicked Proceedings of the *Prisoner* at the *Bar*, and to shew their Resentment against him, as the Author and Promoter of them.

They have found him Abusing and Betraying the Honour of his *Royal Mistress*, into whose Favour he had insinuated himself for the most destructive and wicked Purposes. They have found him insidiously dividing and weakening Us and our *Allies*: *Betraying our Councils*; *traiterously giving up our strong Holds*, *Fortresses and Defences of* Europe, and *her* most Wealthy and Flourishing Countries to the *Common Enemy* in time of *OPEN WAR*: And contriving and effecting the Dissolution of the greatest and most noble Confederacy that ever formed and united in Defence of the *Protestant Interest*, and the glorious Liberties of *Europe*.

They have found him attempting to deprive these Kingdoms of the only Blessing left to their Hopes,

and

and which, by the Providence of God only, they now enjoy the moſt auſpicious Government of his *preſent Majeſty*, the *Greateſt* and *Beſt* of *Princes*, whoſe Magnanimity, Wiſdom, Piety, and other princely Virtues have fill'd the *Imperial Throne* of *Great Britain* with a Luſtre unknown in any former Age. In this Attempt the *Noble Lord* at the Bar wickedly endeavour'd to Defeat us of our happy Proſpect of laſting Felicities, in a long Succeſſion of *Proteſtant Princes* in the *Royal Line* of his moſt *Excellent Majeſty*, the moſt Illuſtrious *Prince* and *Princeſs* of *Wales*, and their *Iſſue*, eminently endow'd with all Graces and Accompliſhments for making a generous and free People happy: On the Continuance of which Succeſſion, next under God, all that is Dear and Valuable to us entirely depends.

My Lords, *The* Commons juſtly Reſent and Deteſt the Reproach brought upon the Faith and Honour of their Country, by the great Evil Miniſter at the Bar: But they promiſe themſelves your Lordſhips will ever be a *Terror* to all *Evil Miniſters*, how *Great ſoever*; and that your *Lordſhips* can never fail to do Juſtice to your injur'd Country, upon all *Perfidious Counſellors*, who lie in wait to deſtroy our *Religion*, *Laws* and *Liberties*.

Sir *Joſeph Jekyll*. My Lords, by the Commands of the Houſe of Commons, I appear to make good that Part of the Charge againſt the Noble Lord at the Bar, which is contain'd in the firſt Article.

Here the Lord *Harcourt* moved to adjourn to the Houſe of Lords.

L. H. Steward. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. Steward. This Houſe is adjourn'd to the Chamber of Parliament.

And being adjourned accordingly, the Lords and others return'd in the ſame Order they went down.

And the Houſe being Reſum'd, this Queſtion was moved and ſtated,

That the Commons be not admitted to proceed in order to make good the Articles againſt *Robert* Earl of *Oxford* and Earl *Mortimer* for High Crimes and Miſdemeanors, till Judgment be firſt given on the Articles for High-Treaſon:

And a Debate enſuing thereupon,

The previous Queſtion was put, whether that Queſtion ſhall be now put?

It was Reſolved in the Affirmative.

And the main Queſtion being accordingly put, *viz.*

That the Commons be not admitted to proceed, in order to make good the Articles againſt *Robert* Earl of *Oxford* and Earl *Mortimer* for High Crimes and Miſdemeanors, till Judgment be firſt given on the Articles for High-Treaſon?

It was Reſolved in the Affirmative.

Ordered, That the ſaid Reſolution be communicated to the Commons by the Lord High Steward.

A Meſſage was ſent to the Houſe of Commons by Mr. *Browning* and Mr. *Orlebar*, two Maſters of the Court of Chancery, to acquaint them, that the Lords are now about going down into *Weſtminſter-Hall*.

The Meſſengers return'd, and acquainted the Houſe, that they had delivered their Meſſage, and that the Commons were preparing to go immediately into *Weſtminſter-Hall*.

Then the Houſe was again adjourn'd into *Weſtminſter-Hall*; and the Lords being there ſeated, and the Houſe reſumed, the Lord High Steward acquainted the Managers for the Commons, that their Lordſhips had come to a Reſolution, that the Commons be not admitted to proceed in order to make good the Articles againſt *Robert* Earl of *Oxford* and Earl *Mortimer* for High Crimes and Miſdemeanors, 'till Judgment be firſt given on the Articles for High-Treaſon.

Sir *William Thomſon*. My Lords, the Managers for the Commons conceive it to be the undoubted Right of the Commons to proceed in their own Method in Maintenance of the Articles exhibited by them; and do apprehend that this Reſolution of your Lordſhips may be of ſuch fatal Conſequence to the Rights and Privileges of all the Commons of *Great Britain*, that they cannot take upon them to proceed any further, without reſorting to the Houſe of Commons for their Direction herein.

L. H. Steward. Is it your Lordſhips pleaſure to Adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Then the Houſe adjourned to the Chamber of Parliament. And being Reſumed,

The Earl of *Oxford* was Order'd to be Remanded to the *Tower*, and to be brought again to the Bar in *Weſtminſter-Hall* to Morrow at Eleven o' Clock in the Forenoon, in order to proceed further on the Trial of the ſaid Earl.

Die Martis 25 Junii, 1717.

THE Houſe of Lords being met as uſual in the Chamber of Parliament, it was there Ordered, that a Meſſage be ſent to the Houſe of Commons to acquaint them that the Lords have Ordered *Robert* Earl of *Oxford* and Earl *Mortimer* to be brought to the Bar of their Houſe in *Weſtminſter-Hall* this Day at Eleven o' Clock in the Forenoon, in order to proceed further on the Trial of the ſaid Earl.

And a Meſſage was ſent accordingly by Mr. *Holford* and Mr. *Lovibond*, two of the Maſters of the Court of Chancery.

A Meſſage was ſent from the Houſe of Commons by Mr. *Carter* and others, that the Commons having taken into their Conſideration their Lordſhips Reſolution communicated to their Managers relating to the Proceedings on the Trial of *Robert* Earl of *Oxford* and Earl *Mortimer*, and being deſirous to preſerve a good Correſpondence between the two Houſes, have appointed a Committee to ſearch Precedents upon a matter of this great Importance, and deſire that their Lordſhips will not proceed at the time appointed.

Ordered, That the Meſſengers of the Houſe of Commons be called in and acquainted, that the Lords having taken the Meſſage of the Commons into their Conſideration, their Lordſhips will not proceed on the Trial of the Earl of *Oxford* and Earl *Mortimer* at the time appointed, but will proceed further on the ſaid Trial on *Thurſday* next at Eleven o' Clock in the Forenoon.

Accordingly the Meſſengers were called in and acquainted therewith.

Ordered, That the Lieutenant of the *Tower* do take back the Earl of *Oxford* and Earl *Mortimer* to the *Tower*, and do bring the ſaid Earl to the Bar of this Houſe in *Weſtminſter-Hall* on *Thurſday* next at Eleven o' Clock in the Forenoon, in

order to proceed further on the Trial of the ſaid Earl.

Die Jovis 27 Junii, 1717.

THE Houſe of Lords being met as uſual, a Meſſage was ſent from the Houſe of Commons by the Lord *Morpeth* and others, to deſire a Conference with the Houſe of Lords, in relation to Proceedings in the Proſecutions of Impeachments. To which the Houſe agreed.

And the Commons were called in and told, that the Lords do agree to a Conference as is deſired, and appoint it preſently in the *Painted Chamber*.

Then ſeveral Lords were named Managers of the Conference.

The Houſe being informed, that the Commons were ready for the Conference, in the *Painted Chamber*.

The Houſe was adjourned during Pleaſure, and the Lords named as Managers went to the Conference: Which being ended,

The Houſe was reſumed.

And the Lord Privy Seal reported, that they had been at the Conference, and met Mr. *Carter* and other Managers, for the Commons, who delivered to their Lordſhips a Paper as follows.

The Commons having taken into their Conſideration your Lordſhips Reſolution, communicated to their Managers, relating to the Proceedings on the Trial of *Robert* Earl of *Oxford* and Earl *Mortimer*, and being deſirous as far as in them lies to maintain a good Correſpondence with your Lordſhips; have deſired this Conference, and have commanded us to acquaint your Lordſhips, that they conceive it to be the undoubted Right of the Commons, to impeach a Peer, either for High-Treaſon, or for High-Crimes and Miſdemeanours, or, if they ſee Occaſion, to mix both the one and the other in the ſame Accuſation.

The Impeachment preferred againſt *Robert* Earl of *Oxford* and Earl *Mortimer* is one continued Accuſation, conſiſting of High-Crimes and Miſdemeanours and alſo of Charges of High-Treaſon. The Facts on which the Articles preceding thoſe of High-Treaſon are grounded are laid together in Order of Time, and follow one another ſucceſſively, in the manner they were committed.

As the Commons thought this the moſt natural Method for exhibiting the ſeveral Articles againſt the ſaid Earl, they were all of Opinion that they ſhould proceed in the Proof of theſe ſeveral Facts after the ſame Method, ſince it is manifeſt, that in laying open the Courſe of ſuch a wicked Adminiſtration, the preceding Parts of it give light to thoſe which follow; and that the Proof of ſeveral Articles of the High-Crimes and Miſdemeanours would naturally lead to the Proof of thoſe of High-Treaſon.

Your Lordſhips received theſe ſeveral Articles of Impeachment without making any Exception againſt the Form in which they were exhibited. The ſaid Earl made his Anſwer to them in the ſame Order, and has no where inſiſted to be tried in any other Method; ſo that the Commons are ſurprized to find a Stop put to their Proſecution, by an Objection which has never been ſtarted by the ſaid Earl, and which your Lordſhips had given them ſo little Reaſon to expect.

To this muſt be added, that as the Commons only are Maſters of the Evidence, and as upon that Account they are beſt able to determine, in what Method to proceed for the Advantage of the Proſecution, in the Event of which all the Commons of *Great Britain* are ſo highly concerned.

To which they further add, that they ſee no Reaſon, but that your Lordſhips may as well invert the whole Order of the Articles, as preſcribe to the Commons thoſe particular Articles on which they are firſt to proceed; which will neceſſarily produce ſuch a Confuſion, both in the Facts, and Evidence, as is by no means conſiſtent with that Clearneſs and Perſpicuity in which the Commons think this Affair ought to appear.

The Commons upon examining Precedents, do find divers Precedents of Impeachments for High-Treaſon and other High-Crimes and Miſdemeanours, in the ſame Accuſation; and do not find that the Lords ever objected to ſuch Proceeding, or ever gave Judgment upon any particular Article of an Impeachment before the Commons had gone through, and concluded their Evidence upon all the Articles, or ſo many of them as they thought fit; and the Commons are at a Loſs to conceive what Arguments or Precedents can be brought to ſupport the Reſolution of your Lordſhips, to give Judgment upon one Part of the ſame Accuſation, reſerving the other Part for a ſubſequent Trial, as they are to know what your Lordſhips mean by admitting the Commons to proceed upon the Articles for High-Crimes and Miſdemeanours, after the Judgment is given upon the Articles for High-Treaſon, ſuppoſing the Judgment proper for High-Treaſon ſhould be given againſt the ſaid Earl.

For theſe Reaſons the Commons aſſert it as their undoubted Right to proceed on the Trial of *Robert* Earl of *Oxford* and Earl *Mortimer*, after the Method in which their Managers were proceeding, when interrupted by your Lordſhips Reſolution.

The Reaſons deliver'd by the Commons at the Conference were read by the Clerk.

And after Debate, and Reading the Reſolution of this Houſe communicated to the Commons on *Monday* laſt, *viz.*

That the Commons be not admitted to proceed in Order to make good the Articles againſt *Robert* Earl of *Oxford* and Earl *Mortimer*, for High-Crimes and Miſdemeanours, 'till Judgment be firſt given on the Articles for High-Treaſon:

The Queſtion was put, Whether to inſiſt on the ſaid Reſolution?

It was reſolv'd in the Affirmative.

Then it being propoſed that a Committee be appointed to prepare what is to be offered to the Commons at a Conference in communicating to them the Reſolution for inſiſting:

And a Queſtion being ſtated thereupon,

It was moved to add theſe Words to the ſaid Queſtion, *viz.* [And alſo to prepare ſuch Reaſons as ſhall be thought proper to be then uſed in Maintenance thereof.]

And after Debate, the Queſtion was put, Whether thoſe Words ſhall be added to the ſaid Queſtion?

It was reſolv'd in the Affirmative.

Reſolv'd upon the Queſtion, and ordered, that a Committee be appointed to prepare what is to be offered to the Commons at a Conference in communicating

municating to them the Reſolution of this Houſe for inſiſting on their Lordſhips Reſolution abovementioned, and alſo to prepare ſuch Reaſons as ſhall be thought proper to be then uſed in Maintenance thereof.

Ordered, That all the Lords preſent be the ſaid Committee.

Then it being propoſed, that the Committee meet immediately. And the ſame being objected to;

The Queſtion was put, Whether the Committee ſhall withdraw and ſit immediately?

It was reſolv'd in the Negative.

Ordered, That the ſaid Committee, or any Seven of them, meet to-morrow at Ten o' the Clock in the Forenoon in the Prince's Lodgings near the Houſe of Peers, and to adjourn as they pleaſe.

Ordered, That the Lieutenant of the *Tower* do take back the Earl of *Oxford* and Earl *Mortimer*, and bring the ſaid Earl to the Bar of this Houſe in *Weſtminſter-Hall*, on *Saturday* next at Eleven o' the Clock, in order to proceed further on the Trial of the ſaid Earl.

Die Veneris 28 *Junii*, 1717.

THE Lords being aſſembled in their Houſe as uſual, a Meſſage was ſent to the Houſe of Commons by Mr. *Fellows* and Mr. *Meller*, two of the Maſters of the Court of *Chancery*, to acquaint them that the Lords do deſire they will continue ſitting for ſome Time.

The Lord *Trevor* reported from the Committee appointed to prepare what is to be offered to the Commons at a Conference in communicating to them the Reſolution of this Houſe, for inſiſting on their Lordſhips Reſolution communicated to the Commons on *Monday* laſt, and alſo to prepare ſuch Reaſons as ſhall be thought proper to be then uſed in Maintenance thereof, that the Committee have prepared Reaſons accordingly, as follow, *viz.*

Their Lordſhips, in order to preſerve a good Correſpondence with the Houſe of Commons (which they ſhall always endeavour to do as far as lies in their Power) have deſired this Conference upon the Subject-Matter of the laſt Conference, and have directed us to acquaint you, that their Lordſhips judge it a Right inherent in every Court of Juſtice, to order and direct ſuch Methods of Proceedings as ſuch Court ſhall think fit to be obſerved in all Cauſes depending before them, which can have no Influence to the Prejudice of Juſtice; and where ſuch Methods of Proceedings are not otherwiſe ſettled by any poſitive Rule. The Power of Judicature on all Impeachments being a Right unqueſtionably inherent in their Lordſhips, and it not being determined by any poſitive Rule, whether the Houſe of Commons may proceed to make good the ſeveral Articles exhibited for Miſdemeanours, in ſuch Order as they ſhall think fit, before they proceed to make good the Articles exhibited for High-Treaſon; and there being no Precedent where the Commons upon Trial of any ſuch Impeachment attempted to proceed in the firſt Place to make good any of the Articles contained in ſuch Impeachment for High-Crimes and Miſdemeanours; their Lordſhips conſidering the Nature of the Impeachment now depending before them, and the Method wherein the Managers for the Houſe of Commons were beginning to proceed upon the Trial to make good the firſt Article thereof, which is a Charge for High-Crimes and Miſdemeanours only; and alſo conſidering the very different Methods of Proceedings on an Impeachment of a Peer for High-Treaſon, as well before, as upon the Trial thereof, and the Circumſtances attending ſuch a Trial, from the Proceedings on an Impeachment of a Peer for High-Crimes and Miſdemeanours, and the known Circumſtances attending ſuch a Trial, thought themſelves obliged to come to the Reſolution communicated to the Commons on the Twenty-fourth Inſtant, as well for the doing Juſtice in the Caſe depending before them, as for the preventing a new Precedent to be made on this Trial, in Conſequence whereof a new and unjuſtifiable Form of Proceeding againſt a Peer upon an Impeachment for High-Treaſon and High-Crimes, might be introduced at his Trial upon thoſe Articles in which he is charged for High-Crimes and Miſdemeanours only, to the Prejudice of the Peerage of *Great Britain* in all Time to come, *viz.* the Trying a Peer on Articles for High-Crimes and Miſdemeanours without the Bar, the detaining in Cuſtody a Peer ſo accuſed, and repeated Commitments of him to the *Tower*, during the Time of ſuch Trial, and ſubjecting a Peer to as ignominious Circumſtances on his Trial, on Articles for Miſdemeanours, as if he were then on his Trial on Articles for High-Treaſon: Whereas a Peer on his Trial on Articles for Miſdemeanours only, ought not to be deprived of his Liberty, nor ſequeſter'd from Parliament, and is entitled to the Privilege of ſitting within the Bar during the whole Time of his Trial: In all which Particulars the known Rule of Proceedings in ſuch Caſes may be evaded, ſhould a Peer be brought to his Trial on ſeveral Articles exhibited againſt him on High-Crimes and Miſdemeanours and for High-Treaſon mixed together, and the Commons be admitted to proceed in order to make good the Articles for High-Crimes and Miſdemeanours before Judgment be given upon the Articles for High-Treaſon. Their Lordſhips have fully conſidered the Matters offered to them by the Houſe of Commons at the laſt Conference relating to the Proceedings againſt *Robert* Earl of *Oxford* and Earl *Mortimer*; and their Lordſhips are fully ſatisfied, that the Reſolution they have taken and communicated to the Commons on the Twenty-fourth Inſtant is juſt and reaſonable; and that the Houſe of Commons are not put under any real Inconvenience thereby in carrying on their preſent Proſecution. Their Lordſhips have commanded us to let you know that they do inſiſt on their ſaid Reſolution, *viz.* That the Commons be not admitted to proceed in order to make good the Articles againſt *Robert* Earl of *Oxford* and Earl *Mortimer* for High-Crimes and Miſdemeanours 'till Judgment be firſt given upon the Articles for High-Treaſon.

Which Report being read by the Clerk was agreed to by the Houſe.

Then a Meſſage was ſent to the Houſe of Commons by Mr. *Fellows* and Mr. *Meller*, to acquaint them, that the Lords do deſire a preſent Conference in the *Painted Chamber*, upon the Subject-Matter of the laſt Conference.

Ordered, That the Managers of the laſt Conference be the Managers of this Conference.

The Meſſengers ſent to the Houſe of Commons return Anſwer, That the Commons will give a preſent Conference as deſired.

The Houſe being informed, that the Commons were ready in the *Painted Chamber* for the Conference the Names of the Managers were read: And,

The Houſe was adjourned during Pleaſure, and the Lords named as Managers went to the Conference; which being ended, the Houſe was reſumed: And

The Lord Chamberlain reported, that the Managers had been at the Conference, and deliver'd to the Commons what they were directed.

A Meſſage was ſent to the Houſe of Commons by Mr. *Fellows* and Mr. *Meller*, to acquaint them, That the Lords have ordered the Earl of *Oxford* to be brought to the Bar of this Houſe in *Weſtminſter-Hall* to-morrow at Eleven o' Clock in the Forenoon, in order to proceed further on the Trial of the ſaid Earl.

A Meſſage was brought from the Houſe of Commons by Mr. *Yonge* and others, to deſire that this Houſe will continue ſitting for ſome Time; to which the Houſe agreed.

And the Commons were called in and told, That the Lords will continue ſitting for ſome Time, as is deſired.

Ordered, That the Lieutenant of the *Tower* do bring the Earl of *Oxford* to the Bar of this Houſe in *Weſtminſter-Hall*, on *Monday* next at Eleven o' Clock, in order to proceed further on the Trial of the ſaid Earl.

Die Sabbati 29 *Junii*, 1717.

THE Houſe of Lords being aſſembled as uſual in the Chamber of Parliament, a Meſſage was brought from the Houſe of Commons by Mr. *Pelham* and others, to deſire a free Conference with this Houſe upon the Subject-Matter of the laſt Conference.

Ordered, That this Houſe will ſend an Anſwer by Meſſengers of their own. And

The Meſſengers were called in, and acquainted therewith.

The Houſe proceeded to take the ſaid Meſſage into Conſideration. And after Debate, and reading out of the Journal the Proceedings at the ſeveral Conferences in the Caſe of the Lord Viſcount *Mordaunt* upon his Impeachment in the Year One Thouſand Six Hundred and Sixty-ſix,

The Queſtion was put, Whether to give a free Conference with the Houſe of Commons, as is deſired, upon the Subject-Matter of the laſt Conference?

It was reſolv'd in the Negative.

Ordered, That a Meſſage be ſent to the Houſe of Commons, to acquaint them, that the Subject-Matter of the laſt Conference concerning a Point of Judicature determined by this Houſe after the Trial began, their Lordſhips do not think fit to give a free Conference on the Subject-Matter of the laſt Conference, as is deſired by the Houſe of Commons.

And alſo, that another Meſſage be ſent to the Houſe of Commons, to acquaint them, That their Lordſhips have ordered *Robert* Earl of *Oxford* and Earl *Mortimer* to be brought to the Bar of this Houſe in *Weſtminſter-Hall* on *Monday* next at Eleven o' Clock in the Forenoon, in order to proceed further on the Trial of the ſaid Earl; and Mr. *Holford* and Mr. *Dormer*, two of the Maſters of the Court of Chancery, were ſent accordingly with the ſaid Meſſages.

Die Lunæ 1 *Julii*, 1717.

THE Lords being aſſembled in their Houſe as uſual, and this Day being appointed to proceed further on the Trial of *Robert* Earl of *Oxford* and Earl *Mortimer* in *Weſtminſter-Hall*, the Houſe (according to Order) was called over by the Clerk; and the Names of the abſent Lords being ſet down, (purſuant to the ſame Order) they were again called over, and excuſed.

A Meſſage was brought from the Houſe of Commons by Mr. *Gibbon* and others, to deſire their Lordſhips to defer going down into *Weſtminſter-Hall* for ſome Time.

Ordered, That the Meſſengers of the Houſe of Commons be called in and told, That the Lords have conſider'd their Meſſage, and that their Lordſhips will defer going down into *Weſtminſter-Hall* for ſome Time, as is deſir'd.

And the Meſſengers were called, and acquainted accordingly.

A Meſſage was brought from the Houſe of Commons by Mr. *Craggs* and others, to deſire a Conference with this Houſe upon the Subject-Matter of their Lordſhip's Meſſage relating to the free Conference deſired by the Commons:

To which the Houſe agreed.

And the Meſſengers of the Houſe of Commons were called in and told, That the Lords do agree to a Conference as deſired, and appoint it preſently in the *Painted Chamber*.

Ordered, That the Managers of the laſt Conference be the Managers of this Conference.

The Houſe being informed, That the Commons were ready in the *Painted Chamber*.

The Managers Names were read, and the Houſe was adjourn'd during Pleaſure, and the Lords named as Managers went to the Conference; which being ended, the Houſe was reſumed, and the Lord Privy-Seal reported the Effect of the Conference, which was, that the Managers for the Commons had delivered to their Lordſhips a Paper, containing as follows, *viz.*

The Commons having taken into Conſideration your Lordſhip's Meſſage, *viz.*

That your Lordſhips did not think fit to give a free Conference on the Subject-Matter of the laſt Conference, as was deſired by the Commons, and they being ſtill deſirous, to the utmoſt of their Power, to preſerve a good Correſpondence with your Lordſhips, have aſk'd this Conference; and have commanded us to acquaint your Lordſhips, that they are very much ſurprized to find your Lordſhips deny a free Conference, after your Lordſhips had already agreed to a Conference deſired by the Commons on the ſaid Subject-Matter, and after your Lordſhips have on your Parts alſo deſired a Conference upon the ſame Subject.

That free Conferences are the moſt antient and eſtabliſhed Methods for adjuſting the Differences that have at any Time ariſen between the Two Houſes, and, as the Commons conceive, is the only Method to preſerve a good Correſpondence between them on ſuch Occaſions, which at this Time is of the higheſt Importance, becauſe a Miſunderſtanding on this Account would tend to defeat the Trial of the Impeachment of the Commons. That

That the Commons conceive clearly, that the Subject-Matter of the laſt Conference is not a Point of Judicature, but a Point relating only to the Proſecution of the Commons, it having ariſen before any Matter of Judgment had come before your Lordſhips upon the Trial.

For which Reaſons the Commons conceive, that your Lordſhips ought not to have denied them a free Conference upon the Subject-Matter of the laſt Conference.

Which being read by the Clerk;

A Meſſage was ſent to the Houſe of Commons by Mr. *Orlebar* and Mr. *Browning*, two of the Maſters of Chancery, to deſire they would continue ſitting for ſome Time.

Then the Houſe proceeded to take into Conſideration the Matter delivered by the Commons at the laſt Conference.

And it being propoſed to inſiſt on denying a free Conference with the Commons;

And Debate thereupon;

The Queſtion was put, Whether to inſiſt on denying a free Conference upon the Subject-Matter concerning which a free Conference was deſired by the Commons?

It was reſolved in the Affirmative.

Ordered, That a preſent Conference be deſired with the Commons in the *Painted Chamber* on the Subject-Matter of the laſt Conference, and that the Commons be there acquainted, that the Lords having taken into Conſideration the Subject-Matter of the laſt Conference, their Lordſhips do inſiſt on denying a free Conference upon the Subject-Matter concerning which a free Conference was deſired by the Houſe of Commons.

Accordingly a Meſſage was ſent to the Houſe of Commons by Mr. *Orlebar* and Mr. *Browning*, to deſire a preſent Conference in the *Painted Chamber* on the Subject-Matter of the laſt Conference.

The Meſſengers returned, and acquainted the Houſe, that the Commons do agree to a Conference, as deſired.

Ordered, That the Managers of the laſt Conference be the Managers of this Conference.

Then the Houſe being informed, that the Commons were ready in the *Painted Chamber*, the Managers Names were read. And

The Houſe was adjourn'd during Pleaſure, and the Lords appointed Managers went to the Conference; which being ended, the Houſe was reſumed, and the Lord Privy-Seal reported, that they had been at the Conference, and acquainted the Commons as above directed.

A Meſſage was ſent to the Houſe of Commons by the former Meſſengers, to deſire they will continue ſitting for ſome Time.

The Meſſengers being returned, acquainted the Houſe, that the Commons will continue ſitting for ſome Time, as deſired.

Then it being moved, that a Meſſage be ſent to the Houſe of Commons, that this Houſe intends preſently to proceed further on the Trial of the Earl of *Oxford* in *Weſtminſter-Hall*.

And it being alſo moved, that the Houſe do now adjourn during Pleaſure;

The Queſtion was put, Whether now to adjourn during Pleaſure?

It was reſolved in the Affirmative.

The Houſe was accordingly adjourned during Pleaſure.

The Houſe was reſumed.

A Meſſage was ſent to the Houſe of Commons by Mr. *Orlebar* and Mr. *Browning*, to acquaint them, that this Houſe intends preſently to proceed further on the Trial of *Robert* Earl of *Oxford* and Earl *Mortimer* in *Weſtminſter-Hall*.

Then it being propoſed proviſionally to conſider the Form of a Proclamation proper to be made in *Weſtminſter-Hall* for the Appearance of the Proſecutors, if they ſhould not be there preſent to proceed, in order to make good their Impeachment againſt the ſaid Earl of *Oxford* and Earl *Mortimer*;

And thereupon the Proclamation made the Seventeenth of *June*, One Thouſand Seven Hundred and One, at the Trial of the Lord *Somers* being read;

It was agreed by the Houſe, that when the Lords are gone down into *Weſtminſter-Hall*, immediately after the Lords Houſe ſhall be reſumed in *Weſtminſter-Hall*, and Proclamation for Silence made, and Proclamation for bringing the Priſoner to the Bar, if the Managers of the Houſe of Commons ſhall not be there, Proclamation be likewiſe made in theſe Words, *viz.*

Whereas Robert *Earl of* Oxford *and Earl* Mortimer *ſtands impeached of High-Treaſon, and other High-Crimes and Miſdemeanours, by the Houſe of Commons, in the Name of Themſelves and of all the Commons of* Great Britain, *all Perſons concerned are to take notice, that he now ſtands on his Trial, and they may now come forth in order to make good their ſaid Charge.*

Then the Houſe was adjourned into *Weſtminſter-Hall*, and the Lords being come down into *Weſtminſter-Hall*, and ſeated in the uſual manner about Five in the Evening;

L. H. Steward. My Lords, the Houſe is reſumed——Make Proclamation for Silence.

Serj. at Arms. O Yes, *&c.* (as before.)

L. H. Steward. Make Proclamation for the Lieutenant of the *Tower* of *London* to bring the Priſoner to the Bar.

Serj. at Arms. O Yes, *&c.* Lieutenant of the *Tower* of *London* bring forth your Priſoner to the Bar, according to the Order of the Houſe of Lords to you directed.

The Earl of *Oxford* and Earl *Mortimer* being brought to the Bar accordingly, and the Commons not being preſent,

L. H. Steward. Make Proclamation according to the Order of the Houſe of Lords.

Then the Serjeant at Arms made the following Proclamation according to the ſaid Order of the Houſe of Lords, the Clerk of the Houſe of Lords reading it to him as followeth:

Serj. at Arms. Whereas *Robert* Earl of *Oxford* and Earl *Mortimer* ſtands impeached of High-Treaſon, and other High-Crimes and Miſdemeanours, by the Houſe of Commons, in the Name of Themſelves and all the Commons of *Great Britain*, all Perſons concerned are to take notice, that he now ſtands upon his Trial, and they may now come forth in order to make good their ſaid Charge.

After about twenty Minutes Silence, the Lord *Guilford* moved for an Adjournment to the Houſe above.

L. H. Steward. Do your Lordſhips hear what is moved, is that your Lordſhips Pleaſure?

Lords. Ay, ay.

L. H. Steward. This Houſe is adjourned to the Chamber of Parliament.

And being returned in the ſame order they went down,

The Houſe was reſumed.

Then it was propoſed, that *Robert* Earl of *Oxford* and Earl *Mortimer* be acquitted of the Articles of Impeachment exhibited againſt him by the Houſe of Commons for High-Treaſon, and other High Crimes and Miſdemeanors, and of all things therein contained, and that the ſaid Impeachment be diſmiſſed.

And a Queſtion being ſtated thereupon, it was moved to leave out theſe Words *(viz.* and other High Crimes and Miſdemeanors;) and thereupon the Queſtion being put,

Whether thoſe Words ſhall ſtand part of the Queſtion;

It was Reſolved in the Affirmative.

Then the laſt Queſtion being again ſtated,

Ordered, That the Queſtion now ſtated, be the Queſtion to be put in *Weſtminſter-Hall*.

Then the Lord High Steward deſiring that further Directions might be given concerning the further Proceedings in the Trial of the ſaid Earl in *Weſtminſter-Hall*, it was agreed by the Houſe and Ordered, that in *Weſtminſter-Hall* the Lord High Steward ſhall read the Queſtion as already ſtated; and then call to the loweſt Baron firſt, and to every other Lord then preſent, and aſk him his Opinion whether Content or not Content; and that every Lord ſhall ſtand up when called to, and give his Vote Content or not Content; and that the Lord High Steward having taken the Votes, ſhall declare the Majority; and if the Majority anſwer in the Affirmative, the Lord High Steward is to declare the ſame, and particularly to the Earl of *Oxford* as ſoon as he ſhall be brought to the Bar, and ſhall immediately pronounce the Judgment of this Houſe in the Form following, *(viz.)* It is conſidered, ordered and adjudged by the Lords Spiritual and Temporal in Parliament aſſembled, that *Robert* Earl of *Oxford* and Earl *Mortimer* ſhall be, and is hereby acquitted of the Articles of Impeachment exhibited againſt him by the Houſe of Commons for High-Treaſon, and other High Crimes and Miſdemeanors, and of all things therein contained; and that the ſaid Impeachment ſhall be, and is hereby diſmiſſed. And ſhall immediately direct the Lieutenant of the *Tower* then to Diſcharge his Priſoner.

And after that to Diſſolve the Commiſſion.

The Houſe was then again adjourned into *Weſtminſter-Hall*, and being there reſumed,

L. H. Steward. Make Proclamation for Silence.

Serj. at Arms. O yes, *&c.* (as before.)

O yes, *&c.* Lieutenant of the *Tower* of *London*, bring forth your Priſoner to the Bar.

L. H. Steward. My Lords, the Clerk acquaints me, that for want of Light in the Paſſage he could not take an exact Liſt of your Lordſhips, I therefore deſire that he may now take a Liſt of the Lords preſent.

Then the Clerk took a Liſt of the Lords preſent.

L. H. Steward. If your Lordſhips think fit, your Lordſhips Names ſhall now be called over.

Lords. Ay, ay.

Then their Names were called over.

Lords. The Earl of *Oxford* is not yet gone from the Bar.

Then the Earl was ordered to withdraw from the Bar. And being withdrawn,

L. H. Steward. My Lords, I ſhall now ſtate the Queſtion, upon which your Lordſhips are to give your Votes; it is this, That *Robert* Earl of *Oxford* and Earl *Mortimer* be acquitted of the Articles of Impeachment exhibited againſt him by the Houſe of Commons for High-Treaſon, and other High Crimes and Miſdemeanors, and of all things therein contained, and that the ſaid Impeachment be diſmiſſed.

L. H. Steward. The Clerk ſhould attend near the Lords with Candles, as they give their Votes.

Then the Lord High Steward put the Queſtion to their Lordſhips, beginning at the youngeſt Baron, in manner following.

L. H. Steward. My Lord, your Lordſhip has heard the Queſtion ſtated, what ſays your Lordſhip, is your Lordſhip Content, or not Content?

The Names of the Lords preſent, who were all Content, are as follows.

BARONS.

Newburgh
Parker
Cobham
Carleton
Bingley
Bathurſt
Foley
Maſham
Lanſdowne
Trevor
Middleton
Manſel
Montjoy
Hay
Boyle
Harcourt
Belhaven
Gower
Haverſham
Herbert
Aſhburnham
Guilford
Stawell
Carteret
Lumley
Osborne
Cornwallis
Berkeley of *Stratton*
Leigh
Bruce
Teynham
Compton
St. *John*
Hundſdon
North and *Grey*
Willoughby of *Brooke*
Fitzwalter
Delawar
Willoughby of *Erſby*
Abergavenny

BISHOPS.

St. *Aſaph*
Cheſter
Briſtol
Rocheſter
St. *Davids*
Hereford
Landaff
Bath and *Wells*
Carliſle
Litchfield and *Coventry*
Wincheſter
London.

VISCOUNTS.

Caſtleton
Tadcaſter
Lonſdale
Longueville
Townſhend
Say and *Seal*
Hereford.

EARLS.

Halifax
Briſtol
Carnarvon
Uxbridge
Dartmouth
Stafford
Ferrars
Ilay
Delorain
Orkney
Loudoun
Buchan
Cholmondeley
Poulet
Greenwich
Rochford
Plimouth
Abingdon
Rocheſter
Litchfield
Burlington
Carliſle
Angleſea
Cardigan
Clarendon
Scarſdale
Mancheſter
Northampton
Saliſbury
Dorſet
Pembroke
Derby.

DUKES.	*Cleveland* and *Southampton*
Portland	*Somerſet*
Ancaſter	*Kent*
Rutland	*Kingſton.*
Buckingham	
Devonſhire	ARCHBISHOPS.
Shrewſbury	
St. *Albans.*	*York*
Grafton	*Canterbury.*

L. H. Steward. My Lords, upon the Queſtion Stated, I am Content.

L. H. Steward. My Lords, *Robert* Earl of *Oxford* and Earl *Mortimer* is acquitted of the High-Treaſon and other High Crimes and Miſdemeanors wherewith he ſtands charged, by the Unanimous Vote of all your Lordſhips here preſent.

L. H. Steward. Call the Earl to the Bar.

Serj. at Arms. O yes, *&c.* Lieutenant of the *Tower* of *London*, bring the Earl of *Oxford* and Earl *Mortimer* to the Bar of this Houſe.

L. H. Steward. Robert Earl of *Oxford* and Earl *Mortimer*, I am to acquaint your Lordſhip, that your Lordſhip is acquitted of the Articles of Impeachment Exhibited againſt you for High-Treaſon, and other High Crimes and Miſdemeanors, by the Houſe of Commons, and all things therein contained; and thereupon I am to pronounce this Judgment, which I pronounce accordingly:

It is conſidered, ordered and adjudged by the Lords Spiritual and Temporal in Parliament aſſembled, that *Robert* Earl of *Oxford* and Earl *Mortimer* ſhall be, and is hereby acquitted of the Articles of Impeachment exhibited againſt him by the Houſe of Commons for High-Treaſon and other High Crimes and Miſdemeanors, and of all things therein contain'd, and that the ſaid Impeachment ſhall be and is hereby diſmiſſed.

L. H. Steward. Lieutenant of the *Tower* of *London*, you are now to diſcharge your Priſoner.

L. H. Steward. My Lords, this is all that remains to be done by Vertue of his Majeſty's Commiſſion, I do therefore declare the ſame to be diſſolved.

Then the Lord High Steward broke his Staff.

L. Chancellor. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. Chancellor. This Houſe is adjourn'd to the Chamber of Parliament.

The Earl was immediately diſcharg'd at the Bar, and paying his Reſpects to the Lords, and having receiv'd the Compliments of his Friends, went away directly to his own Houſe.

But the Houſe of Commons reſented this Proceeding ſo far as to Addreſs the King, that the Earl of *Oxford* might be excepted out of the then intended Act of Grace, which was done accordingly.

CLXXXVI. *The Trials of Major* Stede Bonnet *and Thirty Three others, at the Court of Vice-Admiralty at* Charles-Town *in* South-Carolina, *for* Piracy, Octob. 30, *&c.* 1718. 5 GEO. I.

Tueſday, October the 28th, 1718. the Court met according to Appointment.

PRESENT

Nicholas Trott, Eſq; Judge of the Vice-Admiralty, and Chief-Juſtice of the ſaid Province of *South-Carolina.*

Aſſiſtant Judges,

George Logan, Eſq;
Alexander Parris, Eſq;
Philip Dawes, Eſq;
George Chicken, Eſq;
Benjamin de la Conſeillere, Eſq;
Samuel Dean, Eſq;
Edward Brailsford, Gent.
John Croft, Gent.
Capt. *Arthur Loan.*
Capt. *John Watkinſon.*

THE King's Commiſſion to *Nicholas Trott*, Eſq; Judge of the Court of *Vice-Admiralty*, and the Commiſſion in the name of the Lord *Palatine*, and the reſt of the Lords Proprietors, and Teſtified by the Honourable *Robert Johnſon*, Eſq; *Governor*, and the reſt of the Lords *Deputies*, for holding the Court of *Admiralty Seſſions*, was openly read.

Then the Grand-Jury was called, and twenty three of them were ſworn; the Names of which are as followeth:

Michael Brewton, Foreman.
Robert Tradd.
Andrew Allen.
Peter Manigault.
John Beauchamp.
John Bullock.
Thomas Barton.
Anthony Matthews.
Alexander Kinlock.
Henry Perrineau.
Paul Douxſaint.
John Breton.
John Bee.
Daniel Gale.
Thomas Loyde.
Laurence Dennis.
Elias Foiſin.
John Shepherd.
John Simmons.
George Peterſon.
Solomon Legare.
Abraham Leſuir.
John Caywood.

Then

Then the Judge of the Vice-Admiralty proceeded to give his Charge to the Grand Jury, as followeth.

GENTLEMEN,

WE are here assembled to hold this Court of *Admiralty-Sessions*; and the Duty of my Office requires me to give in *Charge* to you the things that you are *to Enquire of and to Present*.

In a former *Admiralty-Charge*, by way of *Preface* or *Introduction* to the particular Crime of *Piracy*, which will again now be brought before you;

I then shewed you, *First*, *That the Sea was given by God for the use of Men, and is subject to Dominion and Property, as well as the Land.*

And then I *particularly* remarked to you, the *Sovereignty* of the *Kings of England* over the *British* Seas.

I then proceeded, *Secondly*, to shew you, *That as Commerce and Navigation could not be managed without Laws; so there have been always particular Laws for the better ordering and regulating Marine Affairs; with an Historical Account of those Laws, and their Origin.*

Of all those Matters I then spake largely and fully; and shall not now trouble you with any farther *Repetition* of them.

But I shall now proceed, in the *Third* place, to shew you, *That there have been particular Courts and Judges appointed, to whose Jurisdiction Maritime Causes do belong: and that in Matters both Civil and Criminal.*

And then I shall in *particular* shew you the *Constitution* and *Jurisdiction* of this Court of *Admiralty Sessions*.

And shall mention the *Crimes* cognizable therein: and shall particularly inlarge upon the Crime of *Piracy*, that will now be brought before you.

Time will not permit me to speak of the several sorts of *Magistrates*, to whose Jurisdiction Maritime Affairs do belong, in the *Transmarine* or Foreign Parts of the World: Therefore I shall confine my self, under this Head, only to speak of the Laws of *England*; by which the general *Jurisdiction* in Marine Affairs, is by the King as Supreme, as well by Sea as Land, committed to the *Lord High Admiral*; who, besides his Power over the *Navy*, and the Government over the *Seamen*, hath a Jurisdiction [a] *Civil* and *Criminal* in Marine Affairs, which are decided by his *Maritime Judges* in the Court of *Admiralty*, the chief of which is known by the Stile of *Suprema Curiæ Admiralitatis Angliæ Judex:* within whose Cognizance, in Right of the Jurisdiction of the Admiralty by the Sea Laws, and the Laws and Customs of the Admiralty of *England*, are comprized all Matters properly Maritime, and pertaining to Navigation.

As to the *Antiquity* of the Office of *Lord Admiral*, and the Court of the [b] *Admiralty*, it is sufficient to remark, that the thing itself that signified that Office, now known to us by the Stile of *Lord High Admiral*, and the *Jurisdiction* thereof, hath been in the Kingdom of *England* time out of mind.

The learned Antiquary Sir *Henry Spelman*, in his [c] *Glossarium*, and out of him [d] Dr. *Godolphin* gives us the *Catalogues* of the *Admirals* from the Reign of King *Henry* III. Not but that the *Office* of *Admiral* is far more ancient: For the same learned Antiquary saith, that he hath not in that Catalogue inserted *Marthæus*, that *Princeps Nautarum*, in King *Edgar*'s Time; nor those *Tetrarchs* of his Navy; nor of those other Commanders in Chief in Sea Affairs, constituted by his Successors Kings of *England*; but of such only as in the ordinary way have been dignified with the said Office.

The Lord *Coke* in the *first* part of his *Institutes*, in honour of the *Admiralty* of *England*, saith, "That the Jurisdiction of the Lord Admiral is "very ancient, and long before the Reign of *Edward* III. as some have supposed, as may appear by the Laws of *Oleron*, (so called, for that "they were made by King *Richard* I. when he "was there) that there had been then an Admiral "time out of mind, and by many other ancient "Records in the Reigns of *Henry* III. *Edward* I. "and *Edward* II. is most manifest."

But the learned *Selden* [f] in his Notes upon *Fortescue*, tells us, *That in an ancient Manuscript* De l'Office de l'Admiralty, *translated into* Latin *by one* Tho. Rowghton, *calling it* De Officio Admiralitatis, *there are Constitutions often mentioned touching the Admiralty of* Henry I. Richard I. *King* John, *and* Edward I. which shews the great Antiquity of that Court.

And as to the *Jurisdiction* of the Court of *Admiralty*, not to enter upon the Disputes between the *Civilians* and the *common Lawyers* concerning the same; I shall now only observe to you, that it is allowed even by those *Statutes* that were made purposely to restrain the Jurisdiction of the Court of Admiralty, that that Court ought to have Cognizance of *all things done upon the main Sea* [g], *or Coasts of the Sea. And of the Death* [h] *of a Man, and of Maihem done in great Ships, being and hovering in the main Stream of great Rivers, only beneath the Bridge of the same Rivers nigh the Sea.*

And by the *Preamble* to the Statute of the 28 *H.* VIII. it is declared, [i] that *Traitors, Pirates, Thieves, Robbers, Murderers, and Confederates upon the Sea, were tried before the Admiral, or his Lieutenant or Commissary, after the Course of the Civil Law.*

But as appears further by the said *Preamble*, that it was found inconvenient to try those Offenders before the *Admiral*;

Therefore by the said *Statute* this Court of *Admiralty Sessions* was appointed, whereby such Offenders were to be tried according to the *Course* of the *Common Law*, as if their Offences were committed on Land.

And now I shall proceed to speak of the *Crimes* cognizable in this Court. And particularly I shall enlarge upon the Crime of *Piracy* that will come before you.

The *Crimes* cognizable in this Court, and within the *Jurisdiction* of the same, by the express Words of the Statute [k], are all *Treasons, Felonies, Robberies, Murders, and Confederacies, committed in or upon the Sea, or in any other Haven, River, Creek, or Place where the Admiral or Admirals*

[a] See *Godolph. Admir. Jurisd.* c. 4. p. 41. [b] *Godolph.* p. 24. [c] *Spelmanni Glossarium in voce Admiral.* p. 14. *usque ad* p. 17. [d] P. 215. *to* p. 230. And *Justice* his Laws of the Sea, *p.* 284. to *p.* 289. [e] *Coke on Littl.* l. 3. c. 7. Sect. 439. f. 260. b. [f] *Selden*'s Notes on *Fortescue*, p. 35, 36. [g] 13 *R.* 2. c. 5. p. 173. [h] See the Stat. 15 *R.* 2. *c.* 3. *p.* 180. 2 *H.* 4. *c.* 11. *p.* 193. 2 *H.* 5. *c.* 6. Sect. 2. *p.* 214. And see 13 *Car.* 2. *c.* 9. Art. 36. *p.* 1174. [i] 28 *H.* 8. *c.* 15. *p.* 486. [k] N° 3.

have or pretend to have Power, Authority, or Juriſdiction.

There being only one of thoſe Crimes, *viz. Robbery* or *Piracy*, that will come before you, I ſhall omit the reſt, and only ſpeak to that: wherein I ſhall ſhew you the Nature of the Offence, and the Heinouſneſs thereof.

Now, as this is an Offence that is deſtructive of all Trade and Commerce between Nation and Nation; ſo it is the Intereſt of all Sovereign Princes to puniſh and ſuppreſs the ſame.

And the King of *England* [l] hath not only an *Empire* and *Sovereignty* over the *Britiſh* Sea, but alſo an undoubted *Juriſdiction* and Power, in concurrency with other Princes and States, for the Puniſhment of all *Piracies* and *Robberies* at *Sea*, in the moſt remote Parts of the World.

Now as to the *Nature* of the Offence: *Piracy* is a *Robbery* committed upon the *Sea*, and a Pirate is a *Sea Thief*.

Indeed, the Word *Pirata*, as it is derived from πειρᾶν, *tranſire*, *à tranſeundo mare*, was anciently taken in a good and honourable [m] Senſe, and ſignified a *Maritime Knight*, and an *Admiral* or *Commander* at Sea; as appears by the ſeveral Teſtimonies and Records cited to that purpoſe, by that learned Antiquary Sir *Henry Spelman* in his *Gloſſarium*. And out of him the ſame Senſe of the Word is remarked by Dr. *Cowel*, in his [n] *Interpreter*; and by *Blount* in his [o] *Law Dictionary*. But afterwards the Word was taken in an ill Senſe, and ſignified a *Sea-Rover* or *Robber*; either from the [p] *Greek* Word πεῖρα, *Deceptio*, *Dolus*, *Deceipt*; or from the Word πειρᾶν, *tranſire*, of their wandering up and down, and reſting in no place, but coaſting hither and thither to do Miſchief: And from this Senſe, οἱ κατὰ θάλασσαν κακοῦργοι, Sea-Malefactors were called πειρᾶται, *Pirates*.

Therefore a *Pirate* is thus defined by my Lord *Coke* [q]; *This Word Pirate*, ſaith he, *in Latin* Pirata, *is derived from the Greek Word* πειρατὴς, *which again is fetched from* πειρᾶν, à tranſeundo Mare, *of Roving upon the Sea: and therefore in* Engliſh *a Pirate is called, a Rover and Robber upon the Sea.*

Thus the *Nature* of the Offence is ſufficiently ſet forth in the *Definition* of it.

As to the *Heinouſneſs* or *Wickedneſs* of the *Offence*, it needs no Aggravation, it being evident to the Reaſon of all Men. Therefore a *Pirate* is called [r] *Hoſtis Humani Generis*, with whom neither Faith nor Oath is to be kept. And in our Law they are termed [s] *Brutes*, and [t] *Beaſts of Prey*: and that it is lawful for any one that takes them, if they cannot with Safety to themſelves bring them under ſome Government to be tried, to put them to Death.

And by the *Civil* Law any one may take from them their Ships or Veſſels: ſo that excellent Civilian [u] Dr. *Zouch*, in his Book *De Jure Nautico*, ſaith, *In Deteſtation of Piracy, beſides other Puniſhments, it is enacted, that it may be lawful for any one to take their Ships.*

And yet by the ſame *Civil* Laws, *Goods* taken by *Piracy* gain not any *Property* againſt the *Owners*. Thus in the *Roman Digeſts* or *Pandects* of *Juſtinian* [w], it is ſaid, *Perſons taken by Pirates or Thieves, are nevertheleſs to be eſteemed as free.*

And then it follows, [x] *He that is taken by Thieves, is not therefore a Servant of the Thieves, neither is Poſtliminy neceſſary for him.*

And the learned *Grotius*, in his Book *De Jure Belli ac Pacis*, [y] ſaith, *Thoſe things which Pirates and Thieves have taken from us, have no need of Poſtliminy, becauſe the Law of Nations never granted to them a Power to change the Right of Property: therefore things taken by them, whereſoever they are found, may be claimed.*

And agreeable to the *Civil* Law are the Laws of [z] *England*, which will not allow that a taking Goods by *Piracy* doth diveſt the Owners of their *Property*, tho' ſold at *Land*, unleſs ſold in *Market overt*.

Before the Statute of the [a] 25 *E.* III. *Piracy* was holden to be *Petit Treaſon*, and the Offence ſaid to be done *contra Ligeantiæ ſuæ debitum*, for which the Offenders were to be drawn and hanged: but ſince that Statute the Offenders received Judgment as *Felons*.

And by the ſaid Statute of 28 *H.* VIII. [b] the Offenders are ouſted of the *Clergy*.

But ſtill it remains a *Felony* by the [c] *Civil* Law; and therefore tho' the aforeſaid Statute of 28 *H.* VIII. gives a *Trial* by the Courſe of the *Common Law*, yet it alters not the *Nature* of the Offence;

[l] See Sir *Charles Hedges* his Charge at the Trial of *Dawſon*, &c.

[m] *Pirata, pro milite maritimo ἀπὸ τοῦ πειρᾶν, i. e. tranſire vel pervagari. Aſſer. Menevenſ. Epiſt. in vit. Ælfredi — Rex Ælfredus juſſit cymbas & galeas, i. e. longas naves, fabricari per Regnum, ut navali prælio hoſtibus adventantibus obviaret. Impoſitiſque Piratis in illis, vias maris cuſtodiendas commiſit. Hoc ſenſu Archipiratam dici cenſeo pro nautarum præfecto, vel quem hodie Admirallum nuncupamus. In quadam enim Chartâ Regis Edgari Cœnobio Glaſtonienſi confectu, An. Dom. 971. teſtium unus, Martuſin Archipiratam ſe nominat. Annal. Gisburnenſes, in Will. Rufo, cap. 1. Robertus vero Comes (Normaniæ) attemptavit venire in Angliam cum magno exercitu; ſed à Piratis Regis, qui curam Maris à Rege (Willielmo) ſuſceperat, repulſus eſt. Spelman Gloſſar. in voce Pirata,* P. 460. *Vid. etiam Selden. Mare clauſ.* l. 2. c. 10. p. 257. *Engl. & Godolph. Admir. Juriſd.* c. 3. p. 25.

[n] In the word *Pirata*. [o] In the word *Pirate*. [p] See *Ridley's* View of the Civil Law, *p.* 2. *c.* 1. Sect. 3. *p.* 127.

[q] 3 *Inſt. c.* 49. *p.* 113. And on *Littleton*, f. 391. a. And ſee *Bridal* his *Jus Criminis*, p. 70, 71. [r] *Coke*, 3 *Inſt.* c. 49. p. 113. *Molloy de Jure Marit.* l. 1. c. 4. Sect. 1. p. 51. [s] See Laws of *Oleron*, c. 47. in *Godolph.* in *p.* 211. [t] *Molloy, ib.* Sect. 12. p. 57.

[u] *In odium Piratarum, præter alias pœnas, ſtatutum eſt ut eorum navigia cuivis diripere liceat.* Zouch de Jure Nautico, *p.* 1. Sect. 10. *p.* 400.

[w] *A Piratis aut Latronibus capti liberi permanent.* D. l. 49. t. 15. 19. Sect. 2. p. 757.

[x] *Qui a Latronibus captus eſt, ſervus Latronum non eſt: nec Poſtliminium illi neceſſarium eſt.* Ib. N° 24.

[y] *Et quæ Piratæ aut Latrones nobis eripuerunt non opus habent Poſtliminio, quia jus gentium illis non conceſſit ut jus Domini mutare poſſint. Itaque res ab illis captæ ubicunque reperiuntur vindicari poſſunt.* Grot. de Jur. Bel. ac Pac. l. 3. c. 9. Sect. 16. p. 561.

[z] See 27 *E.* 3. *c.* 13. *p.* 128. 1 *Croke*, p. 685. *Anonym. Hobart*, p. 78, 79. Sir *R. Bingley's* Caſe; and *Edmian* and *Smith's* Caſe, 29 C. 2. 3 *Keble*, p. 744. *pl.* 11. *Bridal's Jus Crim.* p. 71. *Molloy*, *B.* 1. *c.* 4. Sect. 22, 23. p. 61, 62.

[a] *Coke* 3 *Inſt. c.* 49. p. 113. *Hale*, *P. C.* p. 77. *Bridall*, p. 71. *Molloy*, p. 56. *W. I.* his Law of *England* concerning Offences againſt the Crown, *p.* 288. *Hawkins* his *P. C. l.* 1. *c.* 37. Sect. 2. p. 98.

[b] 28 *H.* 8. *c.* 15. Sect. 3. p. 487.

[c] *Coke*, p. 112. *Hale*, p. 77. *Bridal*, p. 72. *Molloy*, B. 1. c. 4. Sect 25, 26, p. 62.

and the *Indictment* muſt mention the ſame to be done *ſuper altum mare*, upon the *High Sea* [d], and muſt have both the Words *Felonicè* and *Piraticè*; and therefore a *Pardon* of all Felonies doth not extend to this Offence, but the ſame ought to be ſpecially named.

Thus having explain'd to you the *Nature* of the Offence, and the *Wickedneſs* thereof, as being deſtructive of Trade and Commerce; I ſuppoſe I need not uſe any Arguments to you, to perſuade you to a faithful Diſcharge of your Duty, in the bringing ſuch Offenders to Puniſhment.

And indeed, the *Inhabitants* of this *Province* have of late, to their great *Coſt* and *Damages*, felt the Evil of *Piracy*, and the Miſchiefs and Inſults done by *Pirates*; when lately an *infamous Pirate* had ſo much Aſſurance as to lie at our *Bar*, in ſight of our *Town*, and to ſeize and rifle ſeveral of our Ships bound inward and outward.

And then had the Confidence to ſend in his inſolent *Demands* for what he wanted, with Threats of *murdering* our People he had on board him, if they were not complied with. Which was putting the Province under *Contribution*.

And the Succeſs he had in going off from our Coaſt with Impunity, encouraged [e] another of thoſe *Beaſts of Prey* to come upon our Coaſt, and take our *Veſſels*.

And this very *Company*, which will now be charged before you with the Crime of *Piracy*, their *Ringleader*, with many, if not all of the *Company*, were belonging to that *Crew*, which firſt inſulted us. And preſuming upon their former Succeſs and Impunity, had the Confidence to lie upon our *Coaſt* to fit their *Veſſel*, and to go on *Shore* at their Will and Pleaſure; deſigning, as we had juſt Reaſon to ſuppoſe, that when all Things were fitted for their miſchievous Deſigns, to come again to cruize before our *Bar*, and take our *Veſſels*.

And therefore upon the receiving theſe Accounts, it was high Time for the *Government* to fit out a *Force* againſt the *Pirates*; and to endeavour to ſuppreſs them, in order to ſupport our *Trade* and *Commerce*, which otherwiſe muſt have been inevitably ruin'd.

And being under ſuch a Neceſſity of having Forces raiſed for that purpoſe, we cannot ſufficiently commend and honour the *Zeal* and *Bravery* of thoſe Perſons, who ſo willingly and readily undertook that *Expedition* againſt the *Pirates*; and ſo gallantly acted their Parts when they *engaged* them.

But it will not be fit for me to ſay any more upon that *Subject*, by reaſon of the near Relation I ſtand in to the *Commander* in Chief in that Expedition; and who is known to you all to have ſo well acted his Part therein, that as it is not proper, ſo he needs not my Commendations.

But then I muſt not omit mentioning to you, that in this *Attack* made upon thoſe *Enemies of Mankind*, many of our People loſt their Lives in the Diſcharge of their Duty to their King and Country, and who fell by the Hands of thoſe inhuman and murdering *Criminals* which will now be brought before you. And the Blood of thoſe murdered Perſons will cry for Vengeance and Juſtice againſt theſe Offenders.

And therefore I hope the Conſideration of doing Juſtice to thoſe Perſons who were kill'd in the Service of their Country, will make you to uſe your Diligence in bringing the Criminals to Puniſhment, without which the Blood of thoſe Perſons will in a great meaſure be required at our Hands.

I need not expatiate to you upon the Heinouſneſs of the Sin of *Murder*; a Crime which carries its own natural Horror and Guilt along with it; ſo that it is altogether needleſs for me to aggravate it; and the manifeſt Injuſtice and Evil of which is evident to all Perſons, even by the Light of Nature: So that there is no Nation ſo barbarous, but by their univerſal Practice do conſent to the Equity and Juſtice of that antient Law of God, that, *Whoſo ſheddeth Man's Blood, by Man ſhall his Blood be ſhed*, Gen. ix. 6.

Indeed, I freely grant, that the Greatneſs of the Crimes the Perſons are charged with, ſhould make you the more careful in your *Enquiry*, and to avoid any Error or Miſtake on both Extremes; that as you would not *condemn* the *Innocent*, ſo likewiſe that you do not *acquit* the *Guilty*, always remembring what the Wiſe Man ſaith, that *He that juſtifieth the Wicked, as well as he that condemneth the Juſt, even both are an Abomination to the Lord*, Prov. xvii. 15. See *Ch.* xxiv. *v.* 24.

I have only this to add, that you being a *Grand* Jury, your Buſineſs is not to try the Priſoners, but to conſider whether or no by the Evidence, there is that probable Proof of the Perſons being guilty of the Fact charged upon them, as that they ought to be put upon their *Trial* for the ſame.

An Indictment found by you being vertually but a legal Accuſation, there being another Jury to paſs upon them.

But on the other Side, tho' your finding the Bill of Indictment is not concluſive to the Priſoners, but that they will have a *Trial*, and be heard in their own Defence before another Jury, which properly are ſaid to try the Priſoners, and paſs between the King and them upon their Lives or Deaths; nevertheleſs, you ought to be cautious and diligent in your Enquiry, and not raſhly and careleſly find a Bill of Indictment againſt Perſons, and put them upon the Hazard of a Trial for a capital Crime.

But as to thoſe *Indictments* that will now be brought before you, I am very well aſſur'd the *Proofs* will be ſo clear and full, that you'll have no Reaſon to doubt the Truth of the Facts charged therein; and then I ſhall not queſtion your faithful Diſcharge of that great Duty and Truſt the Law hath repoſed in you, in bringing ſuch Criminals to Juſtice.

Thus having ſufficiently explained to you what is likely to come before you, I ſhall now diſmiſs you to your Buſineſs.

Then the Court adjourned till the Afternoon.

The Court met according to Adjourment.

And the *Grand* Jury being called over, a Bill of Indictment was given to them againſt *Stede Bonnet*, *Robert Tucker*, *Edward Robinſon*, *Neal Paterſon*, *William Scot*, and *Job Bayley*, for felonioufly and piratically taking the Sloop *Francis* with her Goods, Capt. *Peter Manwareing*, Commander.

[d] *Hawkins*, Ib. Sect. 10. p. 100.

[e] *Vane.*

Then

Then the Court adjourn'd till *Wedneſday* Morning.

Wedneſday, October the 29th, 1718.

The Court met according to Adjournment.

THE *Grand* Jury being called over, a Bill of Indictment was delivered to them againſt *David Hariot, John William Smith, Thomas Carman, John Thomas, William Morriſon, William Livers* alias *Evis, Samuel Booth, William Hewet,* and *John Levit,* for feloniouſly and piratically taking the ſaid Sloop *Francis,* with her Goods, Capt. *Peter Manwareing,* Commander.

And another Bill of Indictment againſt *William Eddy* aliàs *Wedy, Alexander Annand, George Roſs, George Dunkin, Thomas Nicholls, John Ridge, Matthew King, Daniel Perry,* and *Henry Virgin,* for the ſame Fact, in taking Capt. *Manwareing.*

And another againſt *James Robbins* aliàs *Rattle, James Mullet* aliàs *Millet, Thomas Price, John Lopez, Zachariah Long,* and *James Wilſon,* for the ſame Fact.

Then the *Grand* Jury return'd, finding *Billa vera* on the Bill of Indictment againſt *Stede Bonnet* aliàs *Edwards,* aliàs *Thomas, Robert Tucker, Edward Robinſon, Neal Paterſon, William Scot,* and *Job Bayley,* for feloniouſly and piratically taking the ſaid Sloop *Francis,* with her Goods, *Peter Manwareing* Commander.

On the Bill of Indictment againſt *David Hariot, John William Smith, Thomas Carman, John Thomas, William Morriſon, William Livers* aliàs *Evis, Samuel Booth, William Hewet,* and *John Levit,* for the ſame Fact, in taking Capt. *Manwareing.*

On the Bill of Indictment againſt *William Eddy* aliàs *Wedy, Alexander Annand, George Roſs, George Dunkin, Thomas Nichols, John Ridge, Matthew King, Daniel Perry* and *Henry Virgin.*

As alſo the Bill of Indictment againſt *James Robbins* aliàs *Rattle, James Mullet* aliàs *Millet, Thomas Price, John Lopez, Zachariah Long,* and *James Wilſon,* both for the ſame Fact.

Then the Court proceeded to arraign *Robert Tucker, Edward Robinſon, Neal Paterſon, William Scot,* and *Job Bayley,* upon the Indictment, for feloniouſly and piratically taking the Sloop *Francis, Peter Manwareing,* Commander.

Who all pleaded Not Guilty.

The Court then delivered another Bill of Indictment to the *Grand* Jury againſt *Stede Bonnet* aliàs *Edwards* aliàs *Thomas, David Hariot, Edward Robinſon, Robert Tucker, William Scot, Job Bayley, Neal Paterſon, John William Smith, Thomas Carman,* and *John Thomas,* for feloniouſly and piratically taking the Sloop *Fortune,* with her Goods, Capt. *Thomas Read* Commander.

Another Bill of Indictment againſt *John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins* aliàs *Rattle, James Mullet* aliàs *Millet, Thomas Price, James Wilſon, John Lopez,* and *Zachariah Long,* for the ſame Fact, in taking Capt. *Read.*

And another againſt *William Morriſon, William Livers* aliàs *Evis, Samuel Booth, William Hewet, John Levit, William Eddy* aliàs *Wedy, Alexander Annand, George Roſs, George Dunkin,* and *Thomas Nichols,* for the ſame Fact.

Then the Court proceeded to arraign *John William Smith, Thomas Carman, John Thomas, William Morriſon, William Livers* aliàs *Evis, Samuel Booth, William Hewet,* and *John Levit,* for feloniouſly and piratically taking the Sloop *Francis,* with her Goods, Capt. *Peter Manwareing,* Commander.

Who all pleaded Not Guilty.

Then the Court adjourned till *Thurſday* Morning.

Thurſday, October the 30th, 1718.

The Court met according to Adjournment.

THEN the *Grand* Jury return'd, finding *Billa Vera* on the Bill of Indictment againſt *Stede Bonnet* aliàs *Edwards* aliàs *Thomas, David Hariot, Edward Robinſon, Robert Tucker, William Scot, Job Bayley, Neal Paterſon, John William Smith, Thomas Carman,* and *John Thomas,* for taking the ſaid Sloop *Fortune,* with her Goods, Capt. *Thomas Read,* Commander.

On the Bill of Indictment againſt *John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins* aliàs *Rattle, James Mullet* aliàs *Millet, Thomas Price, James Wilſon, John Lopez,* and *Zachariah Long,* for the ſame Fact, in taking Capt. *Read.*

And on the Bill of Indictment againſt *William Morriſon, William Livers* aliàs *Evis, Samuel Booth, William Hewet, John Levit, William Eddy* aliàs *Wedy, Alexander Annand, George Roſs, George Dunkin,* and *Thomas Nichols,* for the ſame Fact.

Then the Court proceeded to the *Trial* of *Robert Tucker, Edward Robinſon, Neal Paterſon, William Scot,* and *Job Bayley.*

Clerk. Set *Robert Tucker, Edward Robinſon, Neal Paterſon, William Scot,* and *Job Bayley* to the Bar.

Then the *Petit Jury* were called over.

Clerk. You the Priſoners at the Bar: Theſe good Men that were called laſt, and have here appeared, are thoſe that ſhall paſs between our Sovereign Lord the King and you, upon your Lives and your Deaths; therefore if you or any of you will challenge them or any of them as they come to the Book to be ſworn, and before they be ſworn, you may, and you ſhall be heard.

Then the Petit Jury were ſworn, whoſe Names were as followeth.

Timothy Bellamy, Foreman.	*Thomas Chambers.*
George Ducket.	*Daniel Townſend.*
John Rivers.	*John Lee.*
William Sheriffe.	*Thomas Bee.*
Benjamin Dennis.	*John Barton.*
Hugh Durfey.	*Richard Fairchild.*

Cryer. O Yes, If any Man can inform the Judge of this Vice-Admiralty for the Vice-Admiralty Juriſdiction of this Province, and the reſt of the Commiſſioners of this Admiralty-Seſſions, or the Attorney-General of this Inqueſt to be taken between our Sovereign Lord the King, and the Priſoners at the Bar, or any of them, of any Treaſon, Piracy, Murder, or other Felony committed or done by the Priſoners at the Bar, or any of them, let them come forth, and they ſhall be heard; the Priſoners now ſtand at the Bar upon their Deliverance.

Then the Priſoners were ſeverally bid to hold up their Hands (which they did.)

Then the *Clerk* charged the Jury with them thus:

Clerk. You Gentlemen of the Jury that are ſworn, look upon the Priſoners, and hearken to their Charge.

Then the Indictment was read, as followeth.

" THE Jurors for our Sovereign Lord the King do upon their Oath preſent, That " *Stede Bonnet* alias *Edwards*, alias *Thomas*, late " of *Barbadoes*, Mariner; *Robert Tucker*, late " of the Iſland of *Jamaica*, Mariner; *Edward* " *Robinſon*, late of *New-Caſtle* upon *Tine*, Mariner; *Neal Paterſon*, late of *Aberdeen*, Mariner; *Job Bayley* alias *Beely*, late of *London*, " Mariner; *William Scot*, late of *Aberdeen*, Mariner; the Second Day of *Auguſt*, in the Fifth " Year of the Reign of our Sovereign Lord " *George*, by the Grace of God of *Great Britain*, " *France*, and *Ireland*, King, Defender of the " Faith, *&c.* by Force, *&c.* upon the High " Sea, in a certain Place called *Cape James* alias " *Cape Inlopen*, about two Miles diſtant from " the Shore, in the Latitude of Thirty-nine, or " thereabouts, and within the Juriſdiction of the " Court of *Vice-Admiralty* of *South Carolina*, did " piratically and felonioufly ſet upon, break, " board, and enter a certain Merchant-Sloop, " called the *Francis*, *Peter Manwareing*, Commander, then being a Sloop of certain Perſons (to the Jurors aforeſaid unknown) and " then and there piratically and felonioufly did " make an Aſſault in and upon the ſaid *Peter* " *Manwareing*, and other his Mariners, (whoſe " Names to the Jurors aforeſaid are unknown.) " In the ſame Sloop, againſt the Peace of God, " and of our ſaid now Sovereign Lord the King, " then and there being, piratically and felonioufly, " did put the aforeſaid *Peter Manwareing*, and " others his Mariners of the ſame Sloop, in the " Sloop aforeſaid, then being in corporal Fear " of their Lives, then and there in the Sloop " aforeſaid, upon the *High Sea*, in the Place " aforeſaid, called *Cape James* alias *Cape Inlopen*, " about two Miles diſtant from the Shore, in " the Latitude of Thirty-nine, or thereabouts, " as aforeſaid; and within the Juriſdiction afore- " ſaid, *piratically* and *felonioufly* did ſteal, take, " and carry away the ſaid Merchant-Sloop, " called the *Francis*, and alſo twenty-ſix Hog- " ſheads, three Tierces, and three Barrels of " Rum, of the Value of two hundred and ſixty " three Pounds ſix Shillings and eight Pence, " current Money of the Iſland of *Barbadoes*; " twenty five Hogſheads of Moloſſes, of the " Value of one hundred thirty eight Pounds " thirteen Shillings and eight Pence, current " Money of the Iſland of *Antegoa*; three Barrels " and three Tierces of Sugar, of the Value of " thirty three Pounds, like current Money of " *Antegoa*; two Pockets of Cotten, of the Va- " lue of fifty Shillings, like current Money of " *Antegoa*; and about ſixty Weight of Indigo, " of the Value of nine Pounds, like current " Money of *Antegoa* aforeſaid; one new Cable, " of the Value of fifty Pounds, Sterling Money " of *Great Britain*; nineteen *French* or *Spaniſh* " Piſtoles; two half Moidores of Gold; four- " teen *French* Crowns; one Pair of Silver Buckles, " value ten Shillings, Sterling Money of *Great* " *Britain*; and one Silver Watch, of the Value " of ſeven Pounds, Sterling Money of *Great* " *Britain* aforeſaid; the Goods and Chattels of " certain Perſons, (to the Jurors aforeſaid un- " known) then and there, upon the *High Sea* " aforeſaid, in the aforeſaid Place, called *Cape* " *James* alias *Cape Inlopen*, about two Miles di- " ſtant from the Shore, in the Latitude of thirty- " nine, or thereabouts, as aforeſaid, and within " the Juriſdiction aforeſaid; being found in the " aforeſaid Sloop, in the Cuſtody and Poſſeſſion " of the ſaid *Peter Manwareing*, and others his " Mariners of the ſaid Sloop, and from their " Cuſtody and Poſſeſſion then and there, upon " the High Sea aforeſaid, in the Place aforeſaid, " called *Cape James* alias *Cape Inlopen*, as afore- " ſaid, and within the Juriſdiction aforeſaid, " againſt the Peace of our now Sovereign Lord " the King, his Crown, and Dignity.

Clerk. Upon this Indictment they have been arraign'd: Upon their Arraigment they have pleaded *Not Guilty*; and for their Trial have put themſelves upon God and their Country, which Country you are. Your Charge is to enquire whether they, or any of them, are guilty of the Felony and Piracy of which they ſtand indicted, in Manner and Form as they ſtand indicted, or not guilty. If you find them, or any of them, guilty, you ſhall then enquire what Goods or Chattels, Lands or Tenements, they, or any of them, had at the Time of the Felony and Piracy committed, or at any Time ſince. But if you find them not guilty, *&c.* And hear your Evidence.

Then *Richard Allen*, Eſq; Attorney-General, ſpake as followeth:

May it pleaſe your Honours, and you Gentlemen of the Jury,

THE Nature of the Crime, *Piracy*, for which the Priſoners at the Bar are now to be tried, and the Statute of the Twenty-eighth of *Henry* the Eighth, intitled, *For Pirates*, has been fully and learnedly laid open and explain'd by the Judge in his Charge to the Grand Jury, (at which I am ſenſible moſt, if not all of you, were preſent.) Therefore I ſhall ſay but little more on that Head, and only remark, that it is a Crime ſo odious and horrid in all its Circumſtances, that thoſe who have treated on that Subject have been at a loſs for Words and Terms to ſtamp a ſufficient Ignominy upon it: Some calling them Sea-Wolves; others Beaſts of Prey, and Enemies of Mankind, with whom neither Faith nor Treaty is to be kept. And all this is but a faint Deſcription of theſe Miſcreants: For Beaſts of Prey, tho' fierce and cruel in their Natures, yet, as has been obſerv'd of them, they only do it to ſatisfy their Hunger, and are never found to prey upon Creatures of the ſame Species with themſelves. Add hereto, that thoſe wild Beaſts have neither rational Souls, Underſtanding, nor Reaſon to guide their Actions, or to diſtinguiſh between Good or Evil. But Pirates prey upon all Mankind, their own Species and Fellow-Creatures, without Diſtinction of Nations or Religions; *Engliſh*, *French*, *Spaniards*, and *Portugueſe*, and *Moors* and *Turks*, are all alike to them: For Pirates are not content with taking from the Merchants what Things they ſtand in need of, but throw their Goods over-board, burn their Ships, and ſometimes bereave them of their Lives for Paſtime and Diverſion, as we have had frequent Inſtances of late, and prove deſtructive to all

Trade and Commerce in general. And if a Stop be not put to thoſe Depredations, and our Trade no better protected, not only *Carolina*, but all the *Engliſh Plantations* in *America* will be totally ruin'd in a very ſhort Time.

The Pirates are become very numerous and formidable in theſe Parts: The Trade of *America* is no ſmall Advantage to the Crown of *Great Britain*. *Jamaica*, by relation, is ruin'd by thoſe Pirates already; and other Parts of *America* have ſuffered moſt grievouſly, and are like to ſhare in the ſame Fate. I know not what is done at home, therefore I can't ſay no Care at all has been taken of us: But this I do ſay, no effectual Care has been taken to ſuppreſs thoſe Pirates. And if a true Repreſentation of theſe Matters were laid before his Majeſty, we could not but hope for ſome Redreſs.

'Tis not my Buſineſs to call in queſtion the Conduct of the *Spaniards*, in breaking up the *Bay* of *Campeachy*. They could not but think the turning away ſuch a Number of profligate Wretches, as were got together, muſt put them on a worſe Courſe of Life: They have done them more Harm ſince than cutting their Log-Wood; for nine Parts in ten of them turned Pirates, and have lived upon robbing and plundering them and us ever ſince that Time. That and the great Expectations which ſo many had from the *Bahama* Wrecks, where not one in ten proved ſucceſsful, gave Birth and Increaſe to all the Pirates in thoſe Parts, *Engliſh*, *French*, and *Spaniards*.

I juſt now inſtanced *Jamaica* as a Place that is almoſt ruin'd by the Pirates: But what Occaſion have we to look abroad? What a grievous Dilemma were we ourſelves reduced to in the Month of *May* laſt? When *Thatch* the Pirate came and lay off this Harbour with a Ship of forty Guns mounted, and one hundred and forty Men, and as well fitted with warlike Stores of all Sorts, as any Fifth-Rate Ship in the Navy, with three or four Pirate-Sloops under his Command. And after having taken Mr. *Samuel Wragg*, one of the Council of this Province, bound out from this Place to *London*, as alſo one Mr. *Marks*, and ſeveral other Veſſels going out and coming into this Harbour, they plundered thoſe Veſſels going home to *England* from hence of about fifteen hundred Pounds Sterling, in Gold and Pieces of Eight. And after that, they had the moſt unheard of Impudence to ſend up one *Richards*, and two or three more of the Pirates with the ſaid Mr. *Marks*, with a Meſſage to the Government, to demand a Cheſt of Medicines of the Value of three or four hundred Pounds, and to ſend them back with the Medicines, without offering any Violence to them, or otherwiſe they would ſend in the Heads of Mr. *Wragg* and all thoſe Priſoners they had on board; and *Richards*, and two or three more of the Pirates, walked upon the Bay, and in our publick Streets, to and fro in the Face of all the People, waiting for the Governor's Anſwer. And the Government, for the Preſervation of the Lives of the Gentlemen they had taken, were forced to yield to their Demands. And ſome of thoſe very Priſoners now at the Bar were Part of that *Thatch*'s and *Bonnet*'s Crew. Afterwards one *Vaughan*, another noted Pirate, came and lay off our Bar, and ſent in another inſolent Meſſage. This rouſed our Spirits; and tho' reduced to a very low Ebb by Reaſon of the Calamities of the *Indian* War, and long and heavy Taxes, we could not bear thoſe Inſults, but ſent out a Force to ſuppreſs them. However, we muſt own, that that Honourable Gentleman, Colonel *William Rhett*, was the chief, if not the firſt Promoter of fitting out two Sloops to take ſome of thoſe Pirates. The Government readily fell in with the Meaſures propoſed: Colonel *Rhett* went in Perſon, accompanied by many Gentlemen of the Town, animated with the ſame Principle of Zeal and Honour for our publick Safety, and the Preſervation of our Trade.

'Tis probable *Vaughan* the Pirate, before Things could be got in readineſs, might have ſome Intimation of our Deſign, and made his way off the Coaſts, though all poſſible Care was taken to prevent it. However, Col. *William Rhett* and the reſt of the Gentlemen were reſolv'd not to return without doing ſome Service to their Country, and therefore went in queſt of a Pirate they had heard lay at *Cape Fear*. About the latter End of *September* they came up with, and *engaged* them: The *Fight* laſted above *ſix* Hours, and the Pirates were forced to ſurrender, tho' the Colonel's Veſſel running a-ground, lay under all the Diſadvantages in the World, as you are all ſenſible.

The Piratical Crew at the Bar, and now to be tried, in the Engagement, killed *ten* or *eleven* of our Men on the Spot, and wounded about *eighteen*, ſeveral of which died ſince they came aſhore here.

This Pirate-Sloop was commanded by that noted Pirate Major *Stede Bonnet*, and formerly called the *Revenge*, now the *Royal James*, and was one of thoſe very Sloops that lay off the Harbour of *Charles-Town* about *May* laſt, when they took Mr. *Wragg* Priſoner, and ſent up their inſolent Demands to the Governour, as I have mentioned before.

We muſt all own, that the Undertaking and Deſign of fitting out thoſe Sloops after theſe Pirates, was bold and noble, and carried on with Prudence and Courage, and crown'd with Victory and Succeſs; and I hope Col. *Rhett*, and the reſt of the Gentlemen that were with him, will meet with both Thanks and Rewards ſuitable to their great Merit, and the Credit and Reputation they have brought to this Province by this gallant Action.

But ſee how Juſtice follows thoſe wicked Offenders! They are now brought to ſuffer in that Country which they ſo lately inſulted. 'Tis true, *Bonnet* had not the ſole Command of his Sloop when he lay off the Bar, but was turned out ſome time before by *Thatch*, but that was not *Bonnet*'s Fault.

Bonnet's Eſcape out of Priſon is no ſmall Misfortune to us: Firſt, becauſe ſome will be reproached with conniving at his Eſcape that had no hand in it, and though they be never ſo innocent: Secondly, by reaſon of the ill Conſequence that may happen to many Merchants in Caſe *Bonnet* makes a Head again, and particularly to the Merchants of this Province.

I hope the great Reward of ſeven hundred Pounds offer'd by the Government for taking *Bonnet* and his *Maſter*, will make the People vigilant in apprehending them. I'm ſure the Government gave frequent and ſtrict Charges to the Marſhal for ſecuring him, and ordering Centinels to be placed early in the Evening; and immediately on his

Eſcape, ſet up all Night ſending *Hue and Cries* and *Expreſſes* by *Land* and by *Water* throughout the whole Province: ſo that 'tis to be hoped he will be retaken before this Service be over. I am ſenſible *Bonnet* has had ſome Aſſiſtance in making his Eſcape; and if we can diſcover the Offenders, we ſhall not fail to bring them to exemplary Puniſhment.

And now, Gentlemen of the Jury, I muſt remind you of your Duty on this occaſion. You are bound by your Oaths, and are obliged to act according to the Dictates of your Conſciences, to go according to the Evidence that ſhall be produced againſt the Priſoners, without Favour or Affection, Pity or Partiality to any one of them, if they appear to be guilty of thoſe Crimes they are charged with. And you are not allowed a latitude of giving in your Verdict according to Will and Humour.

I am ſorry to hear ſome Expreſſions drop from private Perſons, (I hope there is none of them upon the Jury) in favour of the Pirates, and particularly of *Bonnet*; that he is a Gentleman, a Man of Honour, a Man of Fortune, and one that has had a liberal Education. Alas, Gentlemen, all theſe Qualifications are but ſeveral Aggravations of his Crimes. How can a Man be ſaid to be a Man of Honour, that has loſt all Senſe of Honour and Humanity, that is become an Enemy of Mankind, and given himſelf up to plunder and deſtroy his Fellow-Creatures, a common Robber, and a Pirate?

Nay, he was the *Archipirata*, as it is now taken in the worſt Senſe, or the chief Pirate, and one of the firſt of thoſe that began to commit thoſe Depredations upon the Seas ſince the laſt Peace.

I have an Account in my Hand of above twenty eight Veſſels taken by him, in company with *Thatch*, in the *Weſt-Indies*, ſince the fifth Day of *April* laſt; and how many before, no Body can tell.

His Eſtate is ſtill a greater Aggravation of his Offence, becauſe he was under no Temptation of taking up that wicked Courſe of Life.

His Learning and Education is ſtill a far greater; becauſe that generally ſoftens Mens Manners, and keeps them from becoming ſavage and brutiſh: but when theſe Qualifications are perverted to wicked Purpoſes, and contrary to thoſe Ends for which God beſtows them upon Mankind, they become the worſt of Men, as we ſee the preſent Inſtance, and more dangerous to the Commonwealth.

Gentlemen, moſt of the ſaid *Bonnet's* Crew, and particularly the Priſoners at the Bar, to wit, *Edward Robinſon*, *Robert Tucker*, *William Scot*, *Job Bayly*, and *Neal Paterſon*, are old Offenders, and were with *Thatch* and *Bonnet* at the taking of all, or moſt of theſe Veſſels I have mentioned, and were either with *Bonnet* or *Thatch* when they lay off our *Bar* in *May* laſt, and ſent up that inſulting Meſſage, and were in the Engagement againſt Col. *Rhett*, ſo that there is hardly any room left for the leaſt Pity or Compaſſion: Who can think of it, when you ſee your Fellow-Townſmen, ſome dead, and others daily bleeding and dying before your Eyes?

But the particular Fact or Act of Piracy for which the Priſoners at the Bar are now to be tried, is ſet forth in the Indictment, for that they the ſaid *Edward Robinſon*, *Robert Tucker*, *William Scot*, *Job Bayly*, and *Neal Paterſon*, the *ſecond* Day of *Auguſt*, in the *fifth* Year of his Majeſty's Reign, by Force and Arms, upon the high Sea, in a certain Place called *Cape James* alias *Cape Inlopen*, in the Latitude of *thirty nine*, did *piratically* and *feloniouſly* ſet upon, board, break and enter a certain Merchant Sloop call'd the *Francis*, *Peter Manwareing* Commander, putting the ſaid *Manwareing* and others in corporal fear of their Lives; and then and there piratically and feloniouſly did take and carry from the ſaid *Manwareing* out of the ſaid Sloop, twenty ſix Hogſheads and three Tierces, and three Barrels of Rum of the Value of two hundred ſixty three Pounds ſix Shillings and eight Pence, and other the Goods mentioned in the Indictment, of the Value of Five hundred Pounds.

We ſhall call the Evidence, and prove the Fact fully and clearly upon them.

Take notice, Gentlemen, that the boarding, breaking, and entry of one, if the reſt were preſent and conſenting, is the boarding, breaking, and entry of all the reſt.

We ſhall prove, that all the Priſoners at the Bar were at the taking of *Manwareing's* Sloop, that they all bore Arms, and that they all ſhared a few Days before they came to *Cape Fear*: and if ſo, we doubt not but you'll find them *Guilty*, and diſcharge that Duty the Country expects from you.

Mr. *Thomas Hepworth*. *May it pleaſe your Honours*, and you Gentlemen of the *Jury*, the Crime the Priſoners now ſtand charged with, is *Piracy*, which is the worſt ſort of Robbery, both in its Nature and its Effects, ſince it diſturbs the Commerce and Friendſhip betwixt different Nations, and if left unpuniſhed, involves them in War and Blood. What Calamities and Ruin they carry along with them, no Perſon can be a Stranger to; ſo that thoſe that bring not ſuch Criminals to Judgment, when it lies in their Power, and is their Duty to do ſo, are anſwerable in a great meaſure, before God and Man, for all the fatal Conſequences of ſuch Acquittals, which bring a Scandal on the publick Juſtice, and are often attended with publick Calamities.

It is not therefore, Gentlemen, to be ſuppoſed that wiſe or honeſt Men, (and there is none who could willingly be thought otherwiſe) who love their Country, and wiſh its Peace and Proſperity, would be guilty in that kind.

What has been ſaid by the King's Attorney, or my ſelf upon this unexpected Occaſion, I hope will not be looked upon as intended to influence any of the Jury. I am ſure it is far from being ſo deſigned; Religion, Conſcience, Honour, common Honeſty, Humanity, and all Laws forbid ſuch Methods. There is no doubt but the Judges as well as the Jurymen beſt diſcharge their Duty when they proceed without Favour or Affection, Hatred or Ill-will, or any partial Reſpect whatſoever: Malice and Favour (too great Enemies to Juſtice) are to be excluded all Courts of Judicature, as too partial.

Every Man ought to be extremely tender of ſuch a Perſon as he has reaſon to believe is innocent; but it ſhould be conſider'd likewiſe, on the other ſide, that he who brings a notorious Pirate or common Malefactor to Juſtice, contributes to the Safety and Preſervation of the Lives of many, both bad and good; of the good, by means of the Aſſurance of Protection; and of the bad too, by the Terror of Juſtice. It was upon this Conſideration that the *Roman* Emperors, in their Edicts,

made this piece of Service for the publick Good as meritorious as any Act of Piety or religious Worſhip.

Our own Laws demonſtrate how much our Legiſlators, and particularly how highly that great Prince King *Henry* V. and his Parliament, thought *England* concerned in providing for the Security of Traders, and ſcouring the Seas of Rovers and Free-booters. Certainly, there never was any Age wherein our Anceſtors were not extraordinary zealous in that Affair; looking upon it, as it is and ever will be, the chief Support of Navigation, Trade, Wealth, Strength, Reputation and Glory of the *Engliſh* Nation.

Gentlemen, our Concern, as our Trade is, ought in reaſon to be rather greater than that of our Forefathers: we want no manner of Inducements, no Motives to ſtir us up, whether we conſider our Intereſt or Honour. We have not only the ſacred Word, but alſo the glorious Acts of the beſt of Kings, which ſufficiently manifeſt to us, that the Good and Safety of the *Engliſh Nation* is the greateſt Care of his Life. Let every Man therefore who pretends to any thing of a true *Engliſh* Spirit, readily and chearfully follow ſo good, ſo great, ſo excellent an Example, by aſſiſting and contributing to the utmoſt of his Power and Capacity at all times toward the carrying on his noble and generous Deſigns for the common Good; and particularly at this time, by doing all he can, to the end that by the Adminiſtration of equal Juſtice, the Diſcipline of the Seas, on which the Good and Safety of the *Engliſh* Nation, and theſe Parts of *America* more eſpecially, entirely depends, may be ſupported and maintained.

The Civil Law terms the Pirates *Beaſts of Prey*, with whom no Communication ought to be kept; neither are Oaths or Promiſes made to them binding. And by the Law-Marine the Captors may execute ſuch Beaſts of Prey immediately, without any Solemnity of Condemnation, they not deſerving any Benefit of the Law.

I believe, Gentlemen, that no greater Motives can be urged to ſpur you on in your Duty, than to deſire you to reflect and conſider how long our Coaſts have been infeſted with Pirates (for the name of Men they do not deſerve) and how many Veſſels they have taken and pillag'd belonging to this Place, as well as multitudes of others belonging to divers parts of his Majeſty's Dominions; and how many poor Men in whoſe Blood they have imbru'd their Hands with the greateſt Inhumanity imaginable, and how many poor Widows and Orphans they have made, and how many Families they have ruin'd, and how long they have gone on in their abominable Wickedneſs: Nay, do but conſider how thoſe very Pirates lately inſulted this Government, when they ſent for Medicines, threatning to deſtroy our Veſſels and Men in caſe of refuſal; nay, ſince theſe have accepted of Certificates from the Government of *North Carolina*, like Dogs to their Vomits they have returned to their old deteſtable way of living, and ſince taken off theſe Coaſts thirteen Veſſels belonging to *Britiſh* Subjects.

I believe you can't forget how long this Town has laboured under the Fatigue of watching them, and what Diſturbances were lately made with a deſign to releaſe them, and what Arts and Practices have been lately made uſe of and effected for the Eſcape of *Bonnet* their Ringleader; the Conſideration of which ſhews how neceſſary it is that the Law be ſpeedily executed on them to the terror of others, and for the Security of our own Lives, which we were apparently in danger of loſing in the late Diſturbance, when under a Notion of the Honour of *Carolina*, they threaten'd to ſet the Town on fire about our Ears.

We ſhall now call our Witneſſes, who will relate to you what enormous and horrid Crimes the Priſoners at the Bar have committed in the Proſecution of the Fact laid in the Indictment.

Clerk. Call *Ignatius Pell* the Boatſwain, who appear'd and was ſworn.

Mr. *Hepworth.* Do you know the Priſoners at the Bar?

Ig. Pell. I know them all very well.

Mr. *Hepworth.* Pleaſe to give the Court an Account what Veſſels were taken after you came from *North Carolina.*

Ig. Pell. I ſhall begin before that time. We came from the Bay of *Honduras*, and from thence to *Providence*, after which we took ſeveral Veſſels, and then we came and lay off this Bar, where we took five Veſſels.

Judge *Trott.* Did all the Priſoners come from the Bay of *Honduras?*

Ig. Pell. All except *Robert Tucker*, he came out of a Sloop belonging to *Bermuda*; after that we took a *Brigantine*, out of which we took fourteen Negroes. After we had diſcharged the Brigantine, we ſet ſail and went to *Topſail-Inlet* at *North Carolina*, where the Ship was run aſhore and loſt, which *Thatch* cauſed to be done. After we had been there ſome time, Capt. *Thatch* came aboard, and demanded all our Arms, and took our beſt Hands, and all our Proviſion, and all that we had, and left us.

Attor. Gen. Were all theſe Men ſent aboard of Major *Bonnet* immediately, or no?

Ig. Pell. No, Sir, they were put aſhore upon an Iſland.

J. *Trott.* How came they on board the *Revenge?*

Ig. Pell. The Boat was ſent off to fetch them aboard.

Priſ. Major *Bonnet* came with the Boat, and told us, as we were on a Marroon Iſland, that he was going to *St. Thomas*'s to get a Commiſſion from the Emperor to go againſt the *Spaniards* a Privateering, and we might go with him or continue there: ſo we having nothing left, was willing to go with him.

Attor. Gen. You ſay all were on ſhore, and all might have gone up into the Country; pray what Conſtraints were any of you under?

Ig. Pell. Sir, none; when we left *Topſail-Inlet*, it was with a Deſign to go to *St. Thomas*'s for the Emperor's Commiſſion to go againſt the *Spaniards*; but the firſt Veſſel we ſaw we gave Chace to, and came up with her.

Mr. *Hepworth.* What did you take out of that Veſſel?

Ig. Pell. We took ſome Proviſions out of her. After we had diſcharged her, we ſaw another, which we chaced and took.

Attor. Gen. Were all theſe Men aboard and in Arms at the ſame time?

Ig. Pell. Yes, Sir, all were in Arms: So after we had taken ſome Proviſions out of her, then we diſcharged her. Next Day we ſaw two Sloops bound to *Bermuda* which we took. The next Day we gave Chace to another, and about Seven or Eight of the Clock we came up with them.

J. *Trott.* I ſuppoſe you were always ready for an Engagement; ſo that they had their Arms always in Order.

Ig. Pell. I know nothing to the contrary.

J. *Trott.* Was *Tucker* there in particular.

Ig. Pell. He was, to be ſure.

J. *Trott.* Go on.

Ig. Pell. Then we gave Chace to a Ship bound and we came up with her, in which were ſome Negroes. We left three Negroes on board, and two White Men, and ſent three Hands from the *Revenge:* But we ſeeing two Sloops more we ſtood after them, and the other turn'd Tail and we never ſaw them more: So we came up with the Sloop, out of which we took thirty Barrels of Beef, and ſome Butter, and other Proviſion.

Mr. *Hepworth.* What did you return in the room of theſe Goods?

Ig. Pell. Some *Moloſſes* that we had on board Major *Bonnet*'s Sloop, after we had diſcharged theſe Sloops. Next Day we took a Ship and a Scooner, which Major *Bonnet* took with him.

Mr. *Hepworth.* Did you take no Plunder out of thoſe?

Ig. Pell. The chief was Proviſions. Then we ſailed in company; and the next Day we came to the Capes of *Virginia*, where we met with two Veſſels bound for *Glaſcow* in *Scotland*, out of which we took Proviſions and ſome *Tobacco*. And after we had diſcharged them we ſailed for Cape *James*; and after we had been at Anchor ſome time, we ſaw a Sloop which was Captain *Manwareing:* We let down our Dory and ſent ſome Hands on board; and in a little time after they came on board the *Revenge* with Captain *Manwareing*.

Attorn. Gen. Were all the Priſoners on board *Manwareing*'s Sloop; or had they all their Arms ready when *Manwareing* was taken?

Ig. Pell. I cannot ſay that they were all on board; but they had all their Arms ready.

J. *Trott.* Did they all appear forward and active? Did none of them ſhow themſelves diſſatisfied or unwilling to act at that time?

Ig. Pell. No, I don't know but one was as forward and as willing to act as the other; all of them had their Arms ready.

J. *Trott.* Well, how did you proceed after Captain *Manwareing* was taken?

Ig. Pell. Next Day we haled the Scooner a long-ſide of Captain *Manwareing*'s Sloop, and hoiſted out ſeveral Hogſheads of Moloſſes, and put on board the Scooner.

Mr. *Hepworth.* What became of the Scooner afterwards?

Ig. Pell. After we put *Reeves*'s Wife on board, and Captain *Reed*'s Son, we ſent them on ſhore.

Attorn. Gen. How long was Captain *Manwareing* a Priſoner?

Ig. Pell. About ten Weeks.

Attorn. Gen. Was not there more Goods taken out of *Manwareing*'s Sloop? What became of them? Did you not ſhare them?

Ig. Pell. Yes, we ſhared a little before we came to Cape *Fear*.

Attorn. Gen. Did all the Priſoners at the Bar receive their Shares?

Ig. Pell. Yes, Sir; I know nothing to the contrary.

J. *Trott.* They did not refuſe their Shares none of them, did they?

Ig. Pell. No.

Clerk. Have any of you any Queſtions to aſk the King's Evidence? *Robert Tucker* have you any?

Priſoner. No, Sir.

Clerk. Edward Robinſon, have you?

Priſoner. No, Sir.

Mr. *Hepworth.* May it pleaſe your Honours, we will proceed to call another Evidence.

Clerk. Call Captain *Thomas Read*; who appeared and was ſworn.

Mr. *Hepworth.* Captain *Read*, pleaſe to look upon the Priſoners at the Bar, if you know them.

Capt. *Read.* I know them all very well.

Mr. *Hepworth.* Pleaſe to give an Account to the Court how you was taken, and alſo of the taking of Capt. *Manwareing*.

Capt. *Read.* The Sloop *Revenge* was at an Anchor, and the Scooner lay a long-ſide of her. I was then a Priſoner on board of the Sloop *Revenge*. In the Evening we ſaw a Sloop coming into the Bay, and Major *Bonnet* ſent off five Hands with the Dory; and about an Hour after they came on board the *Revenge* and brought Capt. *Manwareing*. After they brought him on board, Major *Bonnet* demanded his Papers, and he gave them to him. He aſked him from whence he came? He anſwered from *Antegoa*, and bound for *Boſton*. He aſked him what he had on board? He told him: But it being Night, he ſaid but little more to him. Next Morning they brought the Sloop and haled along-ſide the Scooner; and I ſaw them hoiſt out ſeveral Hogſheads out of the Sloop and put on board the Scooner. And I heard Major *Bonnet* ſay the next Day, that there were twenty one Hoſheads; and that he had ordered Pitch and Tar to be put on board the Sloop, and in the Evening they took the Foreſail and Mainſail of the Scooner, and ſailed for Cape *Fear*.

J. *Trott.* You look upon all thoſe Men as belonging to Major *Bonnet*, and they were all active in the taking of *Manwareing?*

Capt. *Read.* I did not ſee but one acted as the other did.

J. *Trott.* You did not look upon them to be Priſoners, like you and your Men?

Capt. *Read.* No, Sir.

J. *Trott.* Do you know any thing of their *ſharing?* Did they all take their Shares?

Capt. *Read.* I know nothing of that; for we were all in the Round-Houſe, and were not admitted among them at that time.

Mr. *Dean.* Did you ſee them have their Shares each of them?

Capt. *Read.* I will not ſay I ſaw them have every Man his particular Share; but they were all together when they did ſhare.

Clerk. Would any of you aſk the King's Evidence any Queſtion?

Priſoners. We deſire nothing but that he would ſpeak the Truth.

Mr. *Hepworth.* May it pleaſe your Honours, we ſhall proceed to call another Evidence, which is Capt. *Peter Manwareing*.

Clerk. Call Capt. *Peter Manwareing*. Who appeared and was ſworn.

Mr. *Hepworth.* Captain *Manwareing*, do you know the Priſoners at the Bar?

Capt. *Manwareing.* I know them very well.

Mr. *Hepworth.* Pleaſe to give the Court an Account of your being taken by them.

Capt. *Manwareing.* When they came on board us we were at an Anchor. About Eight or Nine

of

of the Clock in the Evening we ſaw the Canoo coming: I ordered my Man to hale them. He aſked from whence they came, and what Sloops they were? They anſwered, Capt. *Thomas Richards* from *St. Thomas*'s, and Capt. *Read* from *Philadelphia*. So we were glad to hear it; ſo hoped all was well. But as ſoon as they came up the Shrowds they clapp'd their Hands to their Cutlaſhes. Then I ſaw we were taken: And I ſaid, Gentlemen, I hope as you are *Engliſhmen* you'll be merciful, for you ſee we have nothing to defend our ſelves. They told us they would if we were Civil. So I was ordered on board the *Revenge* with two of their Men. So when I came on board, Major *Bonnet* deſired me to come under the Auning. He demanded my Papers. I gave them to him. So he told me I muſt lie as well as I could. Next Day Morning *Robert Tucker* came to me, and aſked me what I had on board? and told me if I did not tell the Truth, it ſhould be the worſe for me. I told him I had ſome Moloſſes, Sugar, and Rum. Then he aſked me concerning my Paſſengers, what Money they had. I told him I never examined Paſſengers what Money they had. So then Major *Bonnet* ordered them to come and lie alongſide the Scooner; but what was done till then on board my Sloop I cannot tell. But then they took out the Moloſſes and the Rum and put on board the Scooner.

Attorn. Gen. How did they behave themſelves with reſpect to yourſelf afterwards?

Capt. *Manwareing.* They were civil to me, very civil: But they were all very briſk and merry, and had all Things plentiful, and were a making Punch and drinking.

Clerk. Would any of you the Priſoners aſk the King's Evidence any Queſtions?

They aſk no Queſtions.

Mr. *Hepworth.* Pleaſe your Honours, we will proceed to call another Evidence.

Clerk. Call *James Killing*, Capt. *Manwareing*'s Mate. Who appeared, and was ſworn.

Mr. *Hepworth.* Do you know the Priſoners at the Bar?

James Killing. Yes, Sir, I know them all very well.

Mr. *Hepworth.* Pleaſe to give the Court an Account of the taking Captain *Manwareing*'s Sloop.

James Killing. The *thirty firſt* of *July* between Nine and Ten of the Clock, there running a ſtrong Tide of Ebb, we came to an Anchor about fourteen fathom of Water near Cape *James*. In about half an Hour's time I perceived ſomething like a Canoo: So they came nearer. I ſaid here's a Canoo a coming; I wiſh they be Friends. I haled them; and aſked from whence they came? They ſaid Capt. *Thomas Richards* from *St. Thomas*'s, and Capt. *Thomas Read* from *Penſylvania*. They aſked me from whence we came? I told them from *Antegoa*. They ſaid we were welcome. I ſaid they were welcome, as far as I knew. So I ordered the Men to hand down a Rope to them. So ſoon as they came on board they clapp'd their Hands to their Cutlaſhes; and I ſaid we are taken. So they curs'd and ſwore for a Light. I ordered our People to get a Light as ſoon as poſſible. So they ordered our Captain immediately to go on board the *Revenge*; and accordingly was ſent with two of their own Hands; and I ſaw him no more that Night. So when they came into the Cabin, the firſt thing they begun with was the Pine-Apples, which they cut down with their Cutlaſhes. They aſked me if I would not come and eat along with them? I told them I had but little Stomach to eat. They aſked me why I looked ſo melancholy? I told them I looked as well as I could. They aſked me what Liquor I had on board? I told them ſome Rum and Sugar. So they made Bowls of Bunch, and went to drinking of the *Pretender*'s Health, and hoped to ſee him King of the *Engliſh* Nation: Then ſung a Song or two. Next Morning they ordered more Hands on board the Sloop, and ſo came and lay long-ſide the Scooner; after that they hoiſted out ſeveral Hogſheads of Moloſſes, and ſeveral Hogſheads of Rum, and put on board the Scooner, and took ſeveral Barrels of Pitch and Tar and put on board the Sloop; and I happened to go down into the Cabin, and *Robert Tucker* came to me, and told me I had no buſineſs there, but was better go forward and work among the reſt of the Men. So I went forward, and aſked who that was? They told me that was their Father. In the after-part of the Day two of *Bonnet*'s Men were ordered to the Maſt to be whipt, and I was threaten'd if I did not confeſs all I knew. Then *Robert Tucker* came to me and told me I muſt go along with them. I told him I was not fit for their Turn, neither were my Inclinations that way. After that Major *Bonnet* himſelf came to me, and told me I muſt either go on a Marroon Shore, or go along with them, for he deſign'd to take the Sloop along with him. That Evening between Eight and Nine we were ordered to ſet ſail, but whither I knew not. So we ſailed out that Night, and I being weary with the Fatigue, went to ſleep; and whether it was with a Deſign or not I cannot tell, but we fell to Leeward of the *Revenge*; and in the Morning Major *Bonnet* took the Speaking Trumpet and told us, if we did not keep cloſer he would fire in upon us and ſink us. So then we proceeded on our Voyage till we came to Cape *Fear*.

J. *Trott.* Have you done with your Evidence?

J. Killing. Yes.

Clerk. Would any of you Priſoners aſk the King's Evidence any Queſtions?

No Queſtions aſked by the Priſoners.

J. *Trott.* You the *Priſoners* at the Bar ſtand charged with *Felony* and *Piracy* committed on a certain Sloop belonging to Capt. *Peter Manwareing*. The Evidences have proved it home upon you; the Boatſwain tells what old Offenders you were, and that you were with *Thatch* off this Bar, and that you were at the taking ſeveral Veſſels after you left *Topſail-Inlet*; and all the Evidences prove the ſame; ſo that it appears all of you took up with this wicked Courſe of Life out of Choice: Now what Evidences have you to come in on your behalf? or what have you to ſay in your Defence? Now is your time to ſpeak what you have to ſay.

Clerk. Robert Tucker, what have you to ſay?

Robert Tucker. After Capt. *Thatch* had taken what we had and left us, Major *Bonnet* came and told us that he was going to *St. Thomas*'s for the Emperor's Commiſſion, if there was any to be had.

J. *Trott.* Pray, if you were bound to *St. Thomas*'s, what did you do at the Cape of *Virginia*? What buſineſs had you there?

Robert Tucker. We had but little Proviſion on board.

J. *Trott.* So you went and met with ſome by the way.

Clerk.

Clerk. Edward Robinſon, what have you to ſay?

Edward Robinſon. When Capt. *Thatch* left us it was on a Marroon Iſland, and Major *Bonnet* came and told me he was going to St. *Thomas*'s, and we might go with him.

J. *Trott.* Was not you one of them that was off this Bar with *Thatch*?

Edw. Robinſon. Yes.

J. *Trott.* Why had you not come on ſhore then?

Edw. Robinſon. I would have come on ſhore but Capt. *Thatch* would not give me leave. I was with Mr. *Wragg*, and told him I would go on ſhore if I had liberty.

J. *Trott.* Was you one of the five that came up to Town?

Edw. Robinſon. No.

Clerk. Neal Paterſon, what have you to ſay in Defence of your ſelf?

N. Paterſon. Thatch came on board and carried away fourteen of our beſt Hands, and marrooned twenty five of us on an Iſland; and Major *Bonnet* came and told us he was minded to go to *St. Thomas*'s, and if there were any Commiſſions from the Emperor, to get one, and go a privateering againſt the *Spaniards*; ſo I was willing to go with him, and when I was on board, he forced me to do what he pleaſed, for it was againſt my Will.

J. *Trott.* Did not *Thatch* carry away your Money and what you had beſides of Goods?

N. Paterſon. Yes.

Attorn. Gen. Was you not all aſhore when you received the Act of Grace?

N. Patterſon. Yes, Sir.

Attorn. Gen. Why had you not continued aſhore? Why did you join with *Bonnet*? Or who forc'd you to it?

N. Paterſon. But, Sir, it was in a ſtrange Land, and I had no Money, nor nothing left, and I was willing to do ſomething to live; but it was againſt my Will to go a pirating.

Judge *Trott.* If you were forced and took only Proviſions, pray how did you come to ſhare ſo much Money and Goods afterwards? You ſay *Thatch* carried away what you had before.

N. Paterſon. I could not hinder the reſt from doing what they pleaſed; but it was contrary to my Inclination.

Cl. William Scot, what have you to ſay?

W. Scot. When we left *Topſail-Inlet*, it was to go to *St. Thomas*'s; and I asked whether there was Proviſions on board? They told me there was enough, which was not above ten or eleven Barrels.

Judge *Trott.* So you took it where you could find it, becauſe you had it not of your own: But pray what did you with ſo much Moloſſes, which was neither fit to eat or drink?

W. Scot. What I did, was to keep me from periſhing; but it was not in my Power to hinder the reſt.

Cl. Job Bayley, what have you to ſay?

Job Bayley. When Capt. *Thomas* or Major *Bonnet* was ready to ſail, I went aboard, and I asked whether they had Proviſions on board? They told me they had: But in a few Days it was all ſpent, and then I was forced to do as the reſt did.

Judge *Trott.* But why did you not do as Capt. *Manwareing* and his Men did? You ſee they did not act as you did.

Job Bayley. Capt. *Manwareing* was not taken then.

Judge *Trott.* But how came you to join with them afterwards? And pray what made you fight againſt Col. *Rhett*, when he came out with lawful Authority to you?

Job Bayley. We thought it had been a Pirate.

Judge *Trott.* And ſo one Pirate might fight with another. But how could you think it was a Pirate, when he had King *George*'s Colours?

Att. Gen. May it pleaſe your Honours, and you Gentlemen of the Jury, the Evidences have plainly prov'd, that all the Priſoners at the Bar were at the taking of Capt. *Manwareing*'s Sloop, that they all conſented to, and all were active in it, and all received their Shares; ſo that I think it hath been plainly prov'd home upon them.

Judge *Trott.* Gentlemen of the Jury, the Priſoners at the Bar all ſtand indicted for *Felony* and *Piracy* committed on a Sloop belonging to Capt. *Peter Manwareing*, as it is expreſſed in the *Indictment*. The *Boatſwain* tells us what old Offenders they were before they went to *Topſail-Inlet*; that they were at the taking of no leſs than *thirteen* Veſſels; and that in particular they were at the taking of Capt. *Manwareing*. Then comes Capt. *Read*, and he was taken before Capt. *Manwareing*, and was then a Priſoner on board the Pirate Sloop, and he tells you, they all appeared in Arms, and that he did not look upon them as Priſoners, or under Conſtraint, but of the ſame Company; and he tells you he ſaw them take Capt. *Manwareing*, and that he ſaw them take out the Goods, as is mentioned in the Indictment, out of *Manwareing*'s Sloop. Then comes Capt. *Manwareing* himſelf, and he ſays all the Goods mentioned in the Indictment were taken out, and that they ſhared theſe Goods amongſt themſelves. Then comes *Killing* the Mate, and he proves the ſame, and particularly *Tucker*, he was ſo forward, that he told them, if they did not tell the Truth, it ſhould be the worſe for them: And *Paterſon* was ſo active, that he was for having them brought to the Gun to make them confeſs; and that all the reſt had their Arms ready, and all had their Shares: So that I think the Evidences have fully proved the Indictment upon them, and that it is very plain and home againſt them. They plead indeed, that they were forced and conſtrained to go, but give no Proof of it; and therefore what Conſtraint any of them appears to be under, I ſhall leave to your Conſiderations: Tho' I think the Evidence is very plain and clear, yet I ſhall not pretend to direct your Judgments. I ſhall only remark to you what the Wiſe Man ſaith, that *he that juſtifieth the Wicked, as well as he that condemneth the Juſt, even both are an Abomination to the Lord.*

Then an *Officer* was ſworn to keep the *Jury*.

And about *two* Hours after the Jury returned, and gave in their *Verdict*.

Cl. Gentlemen, anſwer to your Names *Timothy Bellamy*.

Timothy Bellamy. Here, *&c.*

Cl. Are you all agreed of your Verdict?

Jury. Yes.

Cl. Who ſhall ſay for you.

Jury. The Foreman.

Cl. Robert Tucker, hold up thy Hand (which he did.) How ſay you? Is he guilty of the Piracy whereof he ſtands indicted, or not guilty?

Foreman. Guilty.

Cl. What Goods and Chattels, *&c.*

Foreman. None that we know of.

Cl

Cl. Then hearken to your Verdict, as the Court hath recorded it. You ſay that *Robert Tucker* is guilty of the *Piracy* whereof he ſtands indicted, and that he had no Goods or Chattels, *&c.*

Jury. Yes.

And the Jury alſo found *Edward Robinſon*, *Neal Paterſon*, *William Scot*, and *Job Bayley*, guilty.

Cl. Marſhal, look to your Priſoners.

THEN the Court proceeded to the Trial of *John William Smith*, *Thomas Carman*, *John Thomas*, *William Morriſon*, *William Livers* aliàs *Evis*, *Samuel Booth*, *William Hewet*, and *John Levit*, for the aforeſaid Fact, in *piratically* taking the ſaid Sloop *Francis*, Capt. *Peter Manwareing*, Commander.

Cl. Set *John William Smith*, *Thomas Carman*, &c. to the Bar.

Then the Petit Jury were called over.

Clerk. You the Priſoners at the Bar: Theſe good Men that were called laſt, and have here appeared, are thoſe that ſhall paſs between our Sovereign Lord the King and you, upon your Lives and your Deaths; therefore if you or any of you will challenge them or any of them as they come to the Book to be ſworn, and before they be ſworn, you may, and you ſhall be heard.

Then the Jury were ſworn, whoſe Names are as followeth.

Samuel Prioleau, Foreman.	*Henry Gennelack.*
John Hodgson.	*John Jeffers.*
Garrard Vanvilſen.	*Charles Marche.*
Robert Harvey.	*John Grimbal.*
Joſhua Marriner.	*Benjamin Griffin.*
Thomas Fairchild.	*Joſeph Maſſey.*

Then the uſual Proclamation for Information was made. And the Priſoners being bid to hold up their Hands, the Clerk charged the Jury with them thus.

Cl. You Gentlemen of the Jury that are ſworn, look upon the Priſoners, and hearken to their Charge.

Then the *Indictment* was read as followeth.

THE *Jurors for our Sovereign Lord the King, do upon their Oaths preſent, That* Daniel Harriot, *late of* Jamaica, *Mariner*; John William Smith, *late of* Charles-Town, *Mariner*; Thomas Carman, *late of* Maidſtone *in* Kent, *Mariner*; John Thomas, *late of* Jamaica, *Mariner*; William Morriſon, *late of* Jamaica, *Mariner*; William Livers *aliàs* Evis, *late of* Dublin, *Mariner*; Samuel Booth, *late of* Charles-Town, *Mariner*; John Levit, *late of* North Carolina, *Mariner*; *and* William Hewet, *late of* Jamaica, *Mariner*; *the Second Day of* Auguſt, *&c.* as before.

Cl. Upon this Indictment they have been arraigned, *&c. as before.*

The Witneſſes againſt the Priſoners were *Ignatius Pell*, the Boatſwain, Capt. *Thomas Read*, Capt. *Peter Manwareing*, and Mr. *James Killing* his Mate, who all gave the ſame Evidence againſt theſe as againſt the others that were tried before.

Cl. Will any of you Priſoners ask the King's Evidence any Queſtions?

No Queſtions asked by the Priſoners.

Judge *Trott.* You the Priſoners at the Bar, you have heard how fully the Witneſſes have charged the Facts upon you: Now what you have to ſay in your Defence, I ſhall be ready to hear you.

Cl. John William Smith, if you have any thing to ſay, you have liberty to ſpeak.

John William Smith. When we left *Topſail-Inlet*, I knew nothing but that we were going to *St. Thomas*'s; but after we were out, they hoiſted the bloody Flag: But I did before believe we were going to *St. Thomas*'s.

Att. Gen. Did you bear Arms on board of Major *Bonnet?*

Smith. Yes, Sir.

Att. Gen. Was you at the taking all thoſe Veſſels.

Smith. Yes, Sir; but it was againſt my Will.

Cl. John Carman, what have you to ſay?

Carman. As for what I did on board Captain *Thatch*, I was forced; but when I came to *North Carolina*, I would not have went on board, but Major *Bonnet* ſhewed me the Act of Grace; and when I enter'd myſelf on board, it was to get my Bread, in hopes to have went where I might have had Buſineſs; for when we left *Topſail-Inlet*, I had not ſigned the Articles.

Ign. Pell. But you gave the Captain your Word that you would.

Carman. When I was left in the Sloop, I endeavour'd to make my Eſcape with the Sloop.

Judge *Trott.* So, I find you wanted a Veſſel of your own.

Carman. No, but to have got one from them: But I could not.

Att. Gen. This confirms what the King's Evidence proves againſt them.

Cl. John Thomas, what have you to ſay?

Thomas. We had nothing left us, and we were on a Marroon Iſland, and Major *Bonnet* he came and told me I might go with him; but it was againſt my will to bear Arms.

J. *Trott.* Was not you off this Bar?

Thomas. Yes, but I was forced to it.

Mr. *Hepworth.* And was you not at the taking of Capt. *Manwareing*'s Sloop?

Thomas. Yes.

Mr. *Hepworth.* And had you not your Share?

Thomas. Yes, Sir.

J. *Trott.* And yet you ſay you was not willing to go a pirating.

Clerk. William Morriſon, what have you to ſay?

Morriſon. Capt. *Thatch* had run the Sloop aſhore, and Major *Bonnet* went up to the Governor for the Act of Grace; and when he return'd he told me I might go to *St. Thomas*'s; and after that he ſaid Proviſions would fall ſhort, and he ſhould go on the Coaſt of *Virginia* to ſee for ſome.

J. *Trott.* But was that your manner of going for a Commiſſion, to take *thirteen* Veſſels by the way? But was you not at the taking *Manwareing*'s Sloop? And had you not your Share?

Cl. William Livers aliàs *Evis*, what have you to ſay?

Evis. After we came to *North Carolina*, and Capt. *Thatch* had loſt the Ship, Major *Bonnet* told me he would give me my Paſſage to *St. Thomas*'s, and he would endeavour to get a Ship there, and I might go with him a privateering: but when we came to Sea, I found how it was, and I would not conſent for a long time; but at laſt they forced me to it.

J. *Trott.* But you had your Share as well as the reſt.

Evis. They forced me to do what I did.

Clerk. Samuel Booth, what have you to ſay?

Booth. As we came from *Topſail-Inlet* we met with the Sloop *Revenge*; they boarded us and took us, and I was a Priſoner three Weeks before I conſented; and then they order'd me to the Gun before I would conſent.

J. *Trott.* But you had your Share of Capt. *Manwareing*'s Sloop.

Booth. But my Inclinations was not that way.

Clerk. William Hewet, what have you to ſay?

Hewet. I deſign'd to go to *St. Thomas*'s with Major *Bonnet*, for he told me he was bound thither; ſo I was willing to go with him.

Clerk. John Levit, what have you to ſay?

He makes no Defence.

Attorn. Gen. May it pleaſe your Honours, the Boatſwain and all the Evidences prove the Indictment upon each of the Priſoners, that they were all at the taking of Capt. *Manwareing*'s Sloop, and all had their Shares.

J. *Trott.* Gentlemen of the Jury, I think I need ſay but little on this matter: they all confeſs the Fact of which they ſtand indicted. Some of them were old Offenders, and all of them were proved to be at the taking of Capt. *Manwareing*'s Sloop, and all took their Shares: ſo that I think the Fact is very fully and clearly proved upon them. But I ſhall leave that to your Conſiderations, and I pray God direct you to give a true Verdict.

Then an *Officer* was ſworn to keep the *Jury*.

Who after they had conſider'd of their *Verdict*, return'd and found *John William Smith*, *Thomas Carman*, *John Thomas*, *William Morriſon*, *William Livers* alias *Evis*, *Samuel Booth*, *William Hewet*, and *John Levit*, guilty.

Then the Court adjourn'd to *Friday* Morning.

Friday, October the 31ſt, 1718.

THE Court proceeded to arraign *William Eddy* alias *Nedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, *Thomas Nichols*, *John Ridge*, *Matthew King*, *Daniel Perry*, and *Henry Virgin*, upon the following *Indictment*, for *piratically* taking Capt. *Manwareing*.

The Jurors for our Sovereign Lord the King do upon their Oaths preſent that William Eddy *alias* Nedy, *late of* Aberdeen, *Mariner*; Alexander Annand, *late of* Jamaica, *Mariner*; *George* Roſs, *late of* Glaſcow, *Mariner*; George Dunkin, *late of* Glaſcow, *Mariner*; Thomas Nichols, *late of* London, *Mariner*; John Ridge, *late of* London, *Mariner*; Matthew King, *late of* Jamaica, *Mariner*; Daniel Perry, *late of* Guernſey, *Mariner*; *and* Henry Virgin, *Mariner*, *late of* Briſtol; *the ſecond Day of* Auguſt, *in the fifth Year of the Reign of our Sovereign Lord King* George, *by the Grace of God of* Great Britain, France, *and* Ireland, *King Defender of the Faith*, &c. *as before.*

Who all pleaded *Not Guilty*.

Then the Court proceeded on their *Trial*.

And the Jury were ſworn, whoſe Names are as followeth.

Timothy Bellamy, Foreman, *&c. as before.*

The ſame Witneſſes againſt theſe, *viz.*

Ignatius Pell, the Boatſwain.

Capt. *Thomas Read.*

Capt. *Peter Manwareing.*

And Mr. *James Killing*, his Mate.

Who all gave the ſame Evidence againſt theſe Priſoners as againſt the others, excepting *Thomas Nichols.*

Capt. *John Stevenſon*, one of the Captors, being ſworn, declared, that *George Roſs*, the Gunner of the Pirate's Sloop, was for blowing up the ſaid Sloop, and that he acknowledg'd he was to have ſet fire to the Train, and that he would have done it.

As to *Thomas Nichols*:

Ignatius Pell declared, that *Nichols*, after he came to Sea, was very much diſcontented; but Major *Bonnet* ſaid he would force him to go. However, he would not join with the reſt of the Men, but always ſeparated himſelf from the Company.

Capt. *Read* ſaid, that *Nichols* behaved himſelf different from the reſt, and did not join with them.

Capt. *Manwareing* ſaid, that *Nichols* when he was aboard his Sloop ſaid, *he did hope it would be over with him in a little time, for he hoped to get clear of them*; and looked very melancholy, and never joined with the reſt in their Cabals when they were drinking: and when Major *Bonnet* ſent for him he refuſed to go, and ſaid, *he would die before he would fight.*

Clerk. Will any of you aſk the King's Evidence any Queſtions?

Nichols. Mr. *Killing*, did you never hear me ſay I would leave that Courſe of Life?

J. *Trott.* Did you hear him ſay ſo?

Killing. When he came on board he told me, *he would give the whole World, if he had it, to be free from them*; and when he was on board and Major *Bonnet* ſent for him, he refuſed to go on board the *Revenge*, till he ſent to fetch him by force, and then he told me *he would not fight if he did loſe his Life for it*: and he was not with them when they ſhared; and he told them *he hoped he ſhould not be long with them*; and he never was at their Cabals as the reſt were.

J. *Trott.* He ſeems to be under a Conſtraint indeed, and therefore muſt be taken into Conſideration.

Clerk. Will any of you Priſoners aſk any more Queſtions?

None aſked.

J. *Trott.* If any of them have any thing to ſay, they now have their liberty to ſpeak.

Clerk. William Eddy alias *Nedy*, what have you to ſay?

Nedy. I never was on board Capt. *Manwareing*'s Sloop, nor had no hand in it.

J. *Trott.* You was one of *Bonnet*'s Crew.

Nedy. I never acted in it.

J. *Trott.* That is no Excuſe: it is not ſuch or ſuch a one that goes on board only, but thoſe that ſtand ready to aſſiſt them, have as great a hand in the Fact as the other; for Men would not be taken by two or three, if they had no more help: ſo that the whole Crew are equally concern'd at ſuch a time.

Clerk. Alexander Annand, what have you to ſay?

Annand. When we were at *Topſail-Inlet*, Major *Bonnet* told me he would go and get a Clearance for the Sloop, for he deſign'd to go to *St. Thomas*'s for a Commiſſion, and I might go with him: ſo I ſuſpected nothing till we were out at Sea, and then I could not help it.

J. *Trott.* But why did you not declare againſt it then, and ſo not join with them?

Annand. I was but one Man, and a Stranger, and I was afraid I ſhould have loſt my Life.

Clerk. George Roſs, what have you to ſay?

Roſs. I belonged to [illegible] Sloop, and we met with Major *Bonnet* and was taken by him: next Day two of the Men told me I muſt go with them. I anſwer'd them, No; I did not deſign to leave the Sloop: but they told me I muſt; and they told me if I would but conſent I ſhould have any thing. And a little after Capt. *Manwareing* was taken.

J. *Trott.* And you had your Share of *Manwareing*'s Goods?

Roſs. Yes.

J. *Trott.* So, tho' you were unwilling at firſt, you was willing afterward, and alſo fought Col. *Rhett* when he came out againſt you.

Roſs. They told me it was Capt. *Thatch*; for my part I did not know who *Thatch* was.

J. *Trott.* But pray what Authority had you to fight any body?

Clerk. George Dunkin, you may ſpeak what you have to ſay.

Dunkin. After we were taken at the Capes of [illegible] Major *Bonnet* came to me and told me I muſt go along with them. But I told him I could not leave the Veſſel. He told me I muſt.

J. *Trott.* But why did you join with them afterwards in taking your Share of *Manwareing*'s Goods? and why did you fight Col. *Rhett* and his Men? If you had not fought, you might have ſaved the Lives of 12 or 14 Men.

Dunkin. Major *Bonnet* declared, if any one refuſed to fight he would blow his Brains out.

Thomas Nichols made his Defence before.

Clerk. John Ridge, what have you to ſay?

Ridge. After we came to *Topſail-Inlet*, and the Ship was loſt, Major *Bonnnet* came and told me that he would go and accept the Act of Grace, and get a Clearing for the Sloop, and go to *St. Thomas*'s for a Commiſſion, and he expected we would go with him: ſo when he was gone up to the Country we rigged the Sloop; ſo the Quarter-Maſter, the Boatſwain, and he agreed together; but for my part I knew nothing what their Deſign was; and ſo the firſt Veſſel we ſaw they took: but it was my Reſolution to go away by the firſt Opportunity.

Clerk. Matthew King, what have you to ſay?

King. When we were at *Topſail-Inlet*, Captain *Thatch* marrooned us on an Iſland, and left us; and Major *Bonnet* told us he would go to *St. Thomas*'s; but the firſt Prize we met with we took, having but little Proviſions on board.

J. *Trott.* How could you think of going to *St. Thomas*'s without Proviſions?

Attor. Gen. But the Boatſwain ſays there were Proviſions on board; ſeveral Barrels of Flower, and ſeveral Barrels of Beef and Pork.

J. *Trott.* What need had you then to go a pirating.

King. I did not know it till we were out.

J. *Trott. Bonnet* had not above *five* Hands, and there were of you twenty five; why would you be all commanded by them? You had no need to yield to them.

Clerk. Daniel Perry, what have you to ſay?

Perry. When Capt. *Thatch* left us it was on a Marroon Iſland, and Major *Bonnet* came and told us he had the Act of Grace, and ſo we might go with him.

J. *Trott.* Is that all you have to ſay? You knew *Thatch* and *Bonnet* were both *Pirates*, and why would you go with them again?

Clerk. Henry Virgin, what have you to ſay?

Virgin. Major *Bonnet* ordered about thirty Hands to be ready, and in a little time we were ordered on board; and when we were about an hundred Leagues from Land, he aſked if there were any that would go a Marrooning; and I believe there were two or three that promiſed him they would, tho' I did not.

J. *Trott.* But had you no Opportunity to come from them?

Virgin. If we had known any thing of the Act of Grace when we were off this Bar, we had come aſhore. I went to make my Eſcape, and leapt into the Water, and had like to have been drown'd.

J. *Trott.* How many Veſſels have you been at the taking and burning of do you think?

Virgin. I believe about three.

Mr. *Hepwarth.* He was with them at the Bay of *Honduras*, and all along.

Virgin. But I never gave my Conſent, for Capt. *Thatch* never aſked any of us.

J. *Trott.* Would any of the *Priſoners* ſay any more? if they will I am ready to hear them.

Attor. Gen. May it pleaſe your Honours, and you Gentlemen of the Jury, theſe three, *Nichols*, *Dunkin*, and *Ridge*, ſeem to make ſome Defence. As for *Nichols*, he was with them when *Manwareing* was taken; and the *Mate* tells us, that he ſeparated himſelf from the reſt of the Cabal; and when they ſhared, he told them they might do as they pleaſed with his Share, for he hoped he ſhould not be with them long; ſo that it appears that he ſeparated himſelf from the reſt of the Company from the very firſt: theſe things therefore ought to be conſider'd. And as for *Dunkin*, he looked upon himſelf as a Priſoner at firſt; but the Boatſwain indeed ſays he had his Shares. And as for *Ridge*, he ſaid, that he reſolved to make his eſcape. For all the reſt, they ſeem to be equally guilty.

J. *Trott.* Gentlemen of the Jury, the Priſoners at the Bar ſtand indicted for *Felony* and *Piracy* committed on a Sloop belonging to Capt. *Peter Manwareing* Commander, and not only did they break and board the ſaid *Manwareing*'s Sloop, which was an Act of Piracy, but it hath been proved upon them, that they were at the taking of thirteen Veſſels after they left *Top-ſail-Inlet*. Indeed there are three that have ſomething to ſay in their Defence, *Nichols*, *Ridge*, and *Dunkin*. As for *Dunkin*, *Pell* ſays he had his Share, as the reſt had: Capt. *Read* looked upon him as a Priſoner, but Capt. *Manwareing* did not. As for *Ridge*, he was at *North Carolina*, and took up with *Bonnet* to go to *St. Thomas*'s, and it is poſſible for a Man to be deceived, for *Pell* declares that they were bound to *St. Thomas*'s at firſt; and *Killing* the Mate declared, that he told him he would free himſelf from that Courſe of Life the firſt Opportunity: ſo I ſhall leave this to your Conſideration. But for *Nichols*, I think it's plain that he was under Conſtraint and Force; for *Pell* himſelf declares that he would have nothing to do with their Shares, and he did hope that he ſhould not be long with them. Capt. *Manwareing*, and Mr. *Killing* his Mate, all confirm the ſame. And when he was ſent for to come on board *Bonnet*, to go out to fight Colonel *Rhett*, he refuſed to go; and when he was forced to go on board, he ſaid he would die before he would fight; and accordingly went

into the Hole, and did not fight Col. *Rhett*. So that by the whole Courſe of the Evidence, I think it is very clear that he was under Conſtraint and Fear. As to the reſt, I think the Proof is full againſt them; but I ſhall leave them to your Conſideration. You know that as the Innocent muſt not be condemned, ſo the Guilty ought not to be acquitted. Remember you have the Lives of theſe Perſons in your hands; and I pray God direct you to give a true Verdict.

Then an *Officer* was ſworn to keep the *Jury*.

Who after they had conſidered of their *Verdict*, return'd, and found *William Eddy* alias *Nedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, *John Ridge*, *Matthew King*, *Daniel Perry*, and *Henry Virgin*, Guilty; and *Thomas Nichols*, Not Guilty.

THEN the Court proceeded to arraign *James Robbins* alias *Rattle*, *James Mullett* alias *Millett*, *Thomas Price*, *James Wilſon*, *John Lopez*, and *Zachariah Long*, upon the following *Indictment*, for piratically taking Capt. *Manwareing*.

" The Jurors for our Sovereign Lord the King " do upon their Oath preſent, that *James Rob-* " *bins* alias *Rattle*, late of *London*, Mariner; " *James Mullett* alias *Millet*, late of *London*, Ma- " riner; *Thomas Price*, late of *Briſtol*, Mariner; " *James Wilſon*, late of *Dublin*, Mariner; *John* " *Lopez*, late of *Oporto*, Mariner; and *Zacha-* " *riah Long*, late of the Province of *Holland*, " Mariner; the *Second* Day of *Auguſt*, in the " *Fifth* Year of the Reign of our Sovereign Lord " *George*, by the Grace of God, of *Great Britain*, " *France*, and *Ireland*, King, Defender of the " Faith, *&c.*

To which Indictment *James Robbins* alias *Rattle*, *James Mullet* alias *Millet*, *Thomas Price*, *John Lopez*, and *Zachariah Long*, pleaded *Not Guilty*. *James Wilſon* pleaded *Guilty*.

Then the Court proceeded upon the *Trial* of thoſe that pleaded *Not Guilty*.

The Jurors were ſworn, whoſe Names are as followeth:

Samuel Proileau, Foreman.	*Henry Genelac.*
John Hodgſon.	*John Jeffers.*
Garrat Vanvelſin.	*Charles Marche.*
Lucas Stoutenborough.	*John Grimball.*
Joſhua Mariner.	*Benjamin Griffin.*
Thomas Fairchild.	*Joſeph Maſſey.*

The *Witneſſes* againſt the *Priſoners* were the above-named,

Ignatius Pell, the Boatſwain.

Capt. *Thomas Read.*

Capt. *Peter Manwareing.*

And Mr. *James Killing* his Mate.

Who all gave the ſame *Evidence* againſt theſe *Priſoners*, as againſt the others that were tried before.

Clerk. You, the Priſoners at the Bar, have heard what the King's Evidence have ſworn againſt you. Now is your time to make your *Defence*.

Clerk. James Robbins, what have you to ſay?

Robbins. I was on board the *Revenge*, and then I was ſent on board of Capt. *Read*'s Sloop, and was there four Days; and then was ſent on board the *Revenge* again: For I was about to run away, if I had an Opportunity.

Clerk. James Mullet, what have you to ſay?

Mullet. When we left *Topſail-Inlet*, it was to go to *St. Thomas*'s; ſo Major *Bonnet* told me: And I being on a Marroon Shore, I was willing to go with him.

Clerk. Thomas Price, what have you to ſay?

Price. Capt. *Thatch* left us on a Marroon Shore, and had nothing left; and Major *Bonnet* told me I might go with him to *St. Thomas*'s; but I deſigned not to go a pirating.

J. *Trott.* Had you not your Share?

Price. I was forc'd to do as I did when I was on board.

Clerk. John Lopez, what have you to ſay?

Lopez. I was at the Bay of *Honduras*, and was taken by *Thatch* and carried to *Topſail-Inlet*, and there he marrooned me on an Iſland, and came with five Hands and carried all away that we had and left us. And Major *Bonnet* told me he would go to *St. Thomas*'s, and I might go along with him. I told Captain *Manwareing I would not go a pirating, for I did not like it.*

J. *Trott.* Did you not ſhare a little before you came to Cape *Fear?*

Lopez. Yes; but it was againſt my Will.

J. *Trott.* Capt. *Manwareing*, do you know any thing of this Man?

Capt. *Manwareing.* All as I know, he told me *he had a Wife and Children; and that he did not like that Courſe of Life.* That is all I can ſay of him.

Clerk. Zachariah Long, what have you to ſay?

Long. When we ſailed, I knew nothing but that it was to go to *St. Thomas*'s, till afterwards; and then I muſt do as the reſt did.

Then the *Judge* ſumm'd up the Evidence.

And an *Officer* was ſworn to keep the *Jury*.

Who after they had conſider'd of their *Verdict* return'd, and found the above-ſaid *James Mullet* alias *Millet*, *Thomas Price*, *John Lopez*, and *Zachariah Long*, Guilty; and *James Robbins* alias *Rattle*, Not Guilty.

Then the Court adjourn'd till *Saturday* Morning.

Saturday, *November* the Firſt, 1718. the Court met according to Adjournment.

THEN the Court proceeded to arraign *Edward Robinſon*, *Robert Tucker*, *William Scot*, *Job Bayley*, *Neal Paterſon*, *John William Smith*, *Thomas Carman*, and *John Thomas*, upon the following Indictment.

" The Jurors for our Sovereign Lord the King " do upon their Oath preſent, that *Stede Bonnet* " alias *Edwards*, alias *Thomas*, late of the Iſland " of *Barbadoes*, Mariner; *David Heriot*, late of " the Iſland of *Jamaica*, Mariner; *William Scot*, " late of *Aberdeen*, Mariner; *Job Bayley*, late " of *London*, Mariner; *Edward Robinſon*, late of " *New-Caſtle* upon *Tyne*, Mariner; *Robert Tucker*, " late of the Iſland of *Jamaica*, Mariner; *Neal* " *Paterſon*, late of *Aberdeen*, Mariner; *John Wil-* " *liam Smith*, late of *Charles-Town*, Mariner; " *Thomas Carman*, late of *Maidſtone* in *Kent*, " Mariner; and *John Thomas*, late of the Iſland " of *Jamaica*, Mariner; the *thirty firſt* Day of " *Auguſt*, in the *fifth* Year of the Reign of our " Sovereign Lord *George*, by the Grace of God,

" of God of *Great Britain*, *France*, and *Ireland*, " King, Defender of the Faith, *&c.* by Force " and Arms, *&c.* upon the High Sea, in a cer- " tain Place called *Cape Fear*, in the Latitude of " Thirty-four, or thereabouts, and within the " Juriſdiction of the Court of *Vice-Admiralty* of " the Province of *South Carolina*, did piratically " and felonioufly ſet upon, board, break, and " enter a certain Merchant-Sloop, called the " *Fortune*, *Thomas Read*, Commander, then be- " ing a Sloop of certain Perſons (to the Jurors " aforeſaid unknown) and then and there pira- " tically and felonioufly did make an Aſſault in " and upon the ſaid *Thomas Read*, and other " his Mariners, (whoſe Names to the Jurors " aforeſaid are unknown.) In the ſame Sloop, " againſt the Peace of God, and of our now " Sovereign Lord the King, then and there be- " ing, piratically and felonioufly, did put the " aforeſaid *Thomas Read*, and others his Mari- " ners of the ſame Sloop, in the Sloop aforeſaid, " then being in corporal Fear of their Lives, " then and there in the Sloop aforeſaid, upon " the *High Sea*, in the Place aforeſaid, called " *Cape Fear*, in the Latitude of Thirty-four, or " thereabouts, aforeſaid, in the Sloop aforeſaid, " and within the Juriſdiction aforeſaid, *piratically* " and *felonioufly* did ſteal, take, and carry away " ſix Tierces of Bread, of the Value of thirteen " Pounds, current Money of *Penſilvania*; four " Barrels of Bread, of the Value of four Pounds, " like current Money of *Penſilvania*; one Barrel " of Linſeed Oil, of the Value of ſeven Pounds, " like current Money of *Penſilvania*; two Tierces " of Hams, of the Value of twenty Pounds, like " current Money of *Penſilvania*; and twenty Bar- " rels of Flower, of the Value of twenty Pounds, " like current Money of *Penſilvania*; ſix China- " Plates, of the Value of three Pounds, like " current Money of *Penſilvania*; ſeven Iron- " bound Blocks, of the Value of forty Shillings, " like current Money of *Penſilvania*; ninety " Fathom of Rigging, of the Value of three " Pounds, like current Money of *Penſilvania*; " the ſaid Pump, with Boxes and Breaks, of the " Value of twenty Shillings, like current Money " of *Penſilvania*; the Goods and Chattels of " certain Perſons, (to the Jurors aforeſaid un- " known) then and there, upon the *High Sea* " aforeſaid, in the aforeſaid Place, called *Cape* " *Fear*, in the Latitude of thirty-four, or there- " abouts, aforeſaid, in the Sloop aforeſaid, and " within the Juriſdiction aforeſaid; being found " in the aforeſaid Sloop, in the Cuſtody and " Poſſeſſion of the ſaid *Thomas Read*, and others " his Mariners in the ſame Sloop, from the ſaid " *Thomas Read*, and others his Mariners of the " ſaid Sloop, and from their Cuſtody and Poſ- " ſeſſion, then and there, upon the High Sea " aforeſaid, in the Place aforeſaid, called *Cape* " *Fear*, in the Latitude of thirty-four, or there- " abouts, as aforeſaid, in the Sloop aforeſaid, " and within the Juriſdiction aforeſaid, and " againſt the Peace of our ſaid now Sovereign " Lord the King, his Crown, and Dignity, *&c.*

Who all pleaded *Not Guilty*.
Then the Court proceeded upon their *Trial*.

The Petit-Jury were ſworn, whoſe Names are as followeth.

Timothy Bellamy, Foreman.	*Thomas Chambers.*
George Ducket.	*Daniel Townſhend.*
John Rivers.	*John Lee.*
William Sheriff.	*Thomas Bee.*
Benjamin Dennis.	*John Barton.*
Hugh Durfey.	*Richard Fairchild.*

Then the uſual Proclamation for Information was made. And the Priſoners being bid to hold up their Hands, the Clerk charged the Jury with them thus.

Cl. You the Gentlemen of the Jury that are ſworn, look upon the Priſoners, and hearken to their Charge.

Then the Indictment was read, *as before.*

Clerk. Upon this Indictment they have been arraigned, *&c. as before.*

Then the Witneſſes againſt the Priſoners were called.

Clerk. Call *Ignatius Pell*, the Boatſwain.

Who appeared, and was ſworn.

Mr. *Hepworth.* Do you know the Priſoners at the Bar?

Ign. Pell. Yes, Sir.

Mr. *Hepworth.* Give the Court an Account of the taking Capt. *Thomas Read*, and plundering of his Sloop.

Ign. Pell. Capt. *Read* was in Company with two Veſſels more, which we took, but did not ſhare, till we came to *Cape Fear*.

Mr. *Hepworth.* Were the Goods mentioned in the Indictment taken out?

Ign. Pell. Yes, Sir.

Judge *Trott.* Did all the Priſoners at the Bar receive their Shares?

Ign. Pell. Yes.

Clerk. Will any of you ask the King's Evidence any Queſtions? *Edward Robinſon*, will you aſk any Queſtions?

Edw. Robinſon. Boatſwain, do you not remember when we left *Topſail-Inlet*, it was with a Deſign to go to *St. Thomas*'s?

Ign. Pell. I do believe you might think we were going to *St. Thomas*'s; but the firſt Veſſel we ſaw, we conſented to take, and you had your Share as well as the reſt.

Clerk. Robert Tucker, will you ask any Queſtions?

Tucker. No.

Mr. *Hepworth.* May it pleaſe your Honours, we will proceed to call another Evidence.

Capt. *Peter Manwareing* called and ſworn.

Mr. *Hepworth.* Do you know the Priſoners at the Bar?

Capt. *Manwareing.* I know them all.

Mr. *Hepworth.* Pleaſe to give the Court an Account of the ſharing of Capt. *Read*'s Goods at Cape *Fear*.

Capt. *Manwareing.* As for taking of Captain *Read*, I can ſay nothing, becauſe he was taken by them before I was taken; but when we came to Cape *Fear*, they ſhared what they had.

Judge *Trott.* And had all the Priſoners at the Bar their Shares?

Capt. *Manwareing.* I did not ſee any of them refuſe; and they were amongſt the reſt when they did ſhare.

Clerk. Will any of you ask the Evidence any Queſtions?

The Priſoners ask no Queſtions.

Mr. *Hep-*

Mr. *Hepworth.* We will proceed to call another Evidence. Capt. *Thomas Read*, do you know the Priſoners at the Bar?

Capt. *Read.* I know them all.

Mr. *Hepworth.* Pleaſe to give the Court an Account of your being taken and plundered by them.

Capt. *Read.* After we were taken, *Robert Tucker* with ſome others came on board; and then we ſailed to Cape *Inlopen*, where Capt. *Manwareing* was taken, and after that to Cape *Fear*.

Mr. *Hepworth.* Were thoſe Goods taken out as are mentioned in the Indictment?

Capt. *Read.* Yes, Sir.

Judge *Trott.* Did all the Priſoners receive their Shares?

Capt. *Read.* Yes, I did not ſee but what they did: They were all together when they ſhared.

Clerk. Will any of you ask the Evidence any Queſtions?

Edward Robinſon. Capt. *Read*, when did you ſee me on board your Sloop?

Capt. *Read.* I cannot ſay I ſaw you on board; but you were with them when they ſhared.

Judge *Trott.* If you were not on board the Sloop, you was one of the Crew; and, as I told you before, it's not they only are Pirates that go on board of a Veſſel, but they that ſtand ready to aſſiſt are as much Pirates as the other, and are as much concerned in the Fact.

Clerk. Will any of you ask any Queſtions?

Priſoners. No.

Mr. *Hepworth.* We will proceed to call another Evidence. *James Killing*, do you know the Priſoners at the Bar?

Killing. Yes, Sir.

Mr. *Hepworth.* Give the Court an Account of what you know of the taking of Capt. *Read.*

Killing. I can ſay but little to the Matter till we came to Cape *Fear*, and there they ſhared the Goods.

Judge *Trott.* Did you ſee the Goods taken out?

Killing. I cannot ſay I ſaw them all taken out; but I ſaw them a ſharing of them together.

Mr. *Hepworth.* We will call another Evidence.

Francis Griffin, Capt. *Read*'s Mate; who was ſworn.

Mr. *Hepworth.* Do you know the Priſoners at the Bar?

Griffin. Yes, Sir.

Mr. *Hepworth.* Pleaſe to give an Account of the taking the Sloop you belong'd to.

Griffin. After we were taken, *Tucker* and ſome more came on board, and *Tucker* fell to beating and cutting the People with his Cutlaſh, and cut one Man's Arm. So then we went to Cape *James* alias Cape *Inlopen*, where Captain *Manwaring* was taken, and thence we ſailed for Cape *Fear*.

Mr. *Hepworth.* Were all theſe Goods mentioned in the Indictment taken out? *(That Part of the Indictment read.)*

Griffin. Yes, Sir.

Judge *Trott.* Did all the Priſoners take their Shares?

Griffin. I know nothing to the contrary.

Clerk. Will any of you aſk the King's Evidence any Queſtions?

No Queſtions aſked.

Judge *Trott.* You the Priſoners at the Bar, what have you to ſay in your Defences? I am now ready to hear you.

Clerk. Edward Robinſon, what have you to ſay.

Robinſon. I have nothing to ſay, more than what I have ſaid.

Clerk. Robert Tucker, what have you to ſay?

Tucker. I knew nothing but we were going to *St. Thomas*'s, when I engaged with Major *Bonnet.*

Judge *Trott.* You was his Quarter-Maſter; and you was the Perſon that cut the Man with the Cutlaſh, and abuſed the People.

Clerk. William Scot, what have you to ſay?

Scot. I was never on board Capt. *Read.*

Judge *Trott.* You was never on board! What of that? You was one of the Crew, and conſented to it, and had your Share.

Clerk. Job Bayley and *Neal Paterſon*, what have you to ſay?

Priſoners. We have nothing more to ſay.

Clerk. John William Smith, what have you to ſay?

Smith. It was never my Deſign to go a pirating; and when I was at Sea, I could not help what others did.

Judge *Trott.* If it was not your Deſign at firſt, you afterwards conſented to it.

Clerk. Thomas Carman and *John Thomas*, what have either of you to ſay?

Priſoners. We have no more to ſay, than what we have ſaid.

Att. Gen. May it pleaſe your Honours, I think the Evidence have plainly proved the Priſoners at the Bar guilty of the Fact charged upon them in the Indictment; ſo that they were all equally guilty.

Judge *Trott.* Gentlemen of the Jury, the Priſoners at the Bar ſtand indicted for *Felony* and *Piracy*, committed on a Sloop belonging to Capt. *Thomas Read*: All the Evidences fully prove the Fact upon them, that they were all equally guilty, and all ſhared in the Goods and Plunder; but *Tucker* abuſed the People, and cut one Man with his Cutlaſh, ſo that he added Barbarity to his other Crimes. They all pretend they were under Force and Conſtraint; but it is but a Suggeſtion of their own, without the leaſt Proof: But there is full Proof of their conſenting. But I ſhall leave them to your Conſideration. But the Caſe is ſo clear, that I believe you will not be long before you return with your Verdict.

Then an *Officer* was ſworn to keep the *Jury.*

Who after they had conſidered of their Verdict, return'd, and found the aboveſaid *Edward Robinſon*, *Robert Tucker*, *William Scot*, *Job Bayley*, *Neal Paterſon*, *John William Smith*, *Thomas Carman*, and *John Thomas*, Guilty.

THEN the Court proceeded to arraign *William Morriſon*, *William Livers* alias *Evis*, *Samuel Booth*, *William Hewet*, *John Levit*, *William Eddy* alias *Nedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, and *Thomas Nichols*, upon the following Indictment, for taking Capt. *Read.*

" The Jurors for our Sovereign Lord the " King do upon their Oath preſent, That *William* " *Morriſon*, late of *Jamaica*, Mariner, *&c.* (*as* " *before.*)

Who all pleaded *Not Guilty*, excepting *John Levit*, who pleaded *Guilty.*

Then

Then the Court proceeded upon the *Trial* of thoſe that had pleaded *Not Guilty*.

And the Jury were ſworn, whoſe Names are as followeth:

Timothy Bellamy, Foreman, *&c. (as before.)*

Ign. Pell, one of the Witneſſes againſt the Priſoner, was called and ſworn. He, and the reſt of the Witneſſes in general, gave the ſame Evidence againſt theſe Priſoners, as againſt the former, only they were more particularly examined as to *Thomas Nichols*, and *George Dunkin*.

Mr. *Hepworth*. *Ign. Pell*, do you know the Priſoners at the Bar?

Ign. Pell. Yes, Sir, I know them all very well.

Att. Gen. Pleaſe to give the Court an Account of the taking and plundering Capt. *Read*; and begin with *Nichols*.

Ign. Pell. *Thomas Nichols* was very much diſſatisfied on board, and did not join with the reſt of the Company, and would not take the Share, and ſaid *he hoped he ſhould not continue long with them*.

Foreman. Do you know any thing of *Dunkin*? How did he behave himſelf?

Ign. Pell. I did not ſee but he was as active as any of the reſt, and took his Share as the reſt did at Cape *Fear*.

Judge *Trott*. And had all the Priſoners their Shares?

Ign. Pell. Yes, excepting *Nichols*.

Judge *Trott*. Were the Goods mentioned in the Indictment taken out of *Read*'s Sloop?

Ign. Pell. Yes.

Clerk. Will any of you ask the King's Evidence any Queſtions?

No Queſtions asked by the Priſoners.

Mr. *Hepworth*. We will proceed to call another Evidence. Capt. *Manwareing*, do you know the Priſoners at the Bar?

Capt. *Manwareing*. I know them all very well.

Mr. *Hepworth*. Pleaſe to give the Court an Account of their ſharing Capt. *Read*'s Goods at Cape *Fear*; and particularly how *Nichols* behaved himſelf.

Capt. *Manwareing*. When *Nichols* was on board my Sloop, he ſaid ſeveral Times, *he would get clear of them the firſt Opportunity, and he hoped it would not be long firſt*; and when Major *Bonnet* ſent for all Hands on board the *Revenge*, he refuſed to go, till he ſent word, *if he would not come, he wou'd make him*; and when he went, he ſaid, *before he wou'd fight, he wou'd die:* And he always kept himſelf from the Company, and from their Cabals.

Judge *Trott*. Do you know any thing of *Dunkin?*

Capt. *Manwareing*. What I can ſay is, There was ſome brown Bread upon Deck, and he ſaid, *it was fit for nothing but Negroes to eat*; and I told him, *I wiſhed he might never want it*. So they went, and brought ſome whiter out of the Hole.

Mr. *Hepworth*. How did he behave himſelf?

Capt. *Manwareing*. I ſaw nothing but he was as the reſt were.

Mr. *Hepworth*. Would any of you ask the King's Evidence any Queſtions?

No Queſtions asked by the Priſoners.

Mr. *Hepworth*. Pleaſe your Honours, we proceed to call another Evidence.

James Killing ſworn.

Mr. *Hepworth*. Do you know the Priſoners at the Bar?

Killing. I know them all very well.

Mr. *Hepworth*. Pleaſe to give the Court an Account of what you know of their taking and plundering Capt. *Read*; and firſt begin with *Nichols*.

Killing. I remember when he was on board our Sloop, and Major *Bonnet* ſent for him, when he went off, he ſaid, *he hoped to get clear of them, and he wou'd die before he wou'd fight*.

Judge *Trott*. *Pell*, do you know whether he did fight Col. *Rhett*, or not?

Ign. Pell. He did not fight; and if one that Major *Bonnet* loved very well had not been ſhot down by his Side, he had blowed his Brains out; for he had his Piſtol ready.

Mr. *Hepworth*. How did *Dunkin* behave himſelf?

Ign. Pell. I can ſay nothing for any of the reſt, but that they were all as one, and had all their Shares.

Clerk. Would any of you ask the King's Evidence any Queſtions?

No Queſtions asked by the Priſoners.

Mr. *Hepworth*. We will proceed to call another Evidence. Capt. *Thomas Read*, do you know the Priſoners at the Bar?

Capt. *Read*. I know them all very well.

Mr. *Hepworth*. Pleaſe to give the Court an Account of what Goods were taken from you, and how the Priſoners behaved themſelves; and firſt of *Nichols*.

Capt. *Read*. The moſt of the Time he was on board Capt. *Manwareing*'s Sloop, I heard him ſay, *he did not like that Courſe of Life*; and the laſt Words I heard Major *Bonnet* ſay to him, was, *that he would force no Man to go againſt his Will*.

Judge *Trott*. Can you ſay any thing of *Dunkin?*

Capt. *Read*. As for *Dunkin*, I did not ſee but he acted as the reſt did.

Dunkin. Capt. *Read*, It was againſt my Will.

Mr. *Hepworth*. Capt. *Read*, were theſe Goods taken out of you, as are mentioned in the Indictment? *(That Part of the Indictment read.)* Were all theſe Goods taken out?

Capt. *Read*. Yes.

Clerk. Will any of you ask any Queſtions? *George Dunkin*, will you ask any Queſtions?

George Dunkin. Capt. *Read*, when did you ſee me as active as any of the reſt?

Capt. *Read*. Before Capt. *Manwareing* was taken, I thought you had been a Priſoner; but afterwards I ſaw no difference.

Judge *Trott*. You was one of *Bonnet*'s Crew, one of that Company.

Mr. *Hepworth*. We proceed to call another Evidence.

Francis Griffin, Capt. Read's *Mate ſworn.*

Mr. *Hepworth*. Do you know the Priſoners at the Bar?

Griffin. I know them all.

Mr. *Hepworth*. Give an Account of what you know of *Nichols*, and the reſt of the Priſoners.

Griffin. As for *Nichols*, he was a Man I know nothing of, he being on board of *Manwareing*'s Sloop.

Mr. *Hepworth*. What do you know of *Dunkin?*

Griffin. I knew nothing of him till we were come to Cape *Fear*; and I ſaw no difference, but he ſhared among the reſt.

Mr. *Hepworth.* Were thoſe Goods taken out of the Sloop, the Goods mentioned in the Indictment?

Griffin. Yes, Sir.

J. *Trott.* Now you the Priſoners, what you have to ſay in your Defence I ſhall be ready to hear.

Clerk. William Morriſon, what have you to ſay?

Morriſon. I have no more to ſay than I have ſaid already.

Clerk. William Livers alias *Evis*, what have you to ſay?

Evis. Nothing more.

Clerk. Samuel Booth.

Booth. When I went on board Major *Bonnet*, it was to go to *St. Thomas*'s with him.

J. *Trott.* Why had you not continued at *North Carolina*, ſince you could not continue here?

Booth. I thought to have had better Buſineſs there.

Clerk. John Levit, William Eddy alias *Nedy*, *Alexander Annand.*

Priſoners. We were forced to go, and did not know what they would do.

Attor. Gen. But did you not know what you did when you ſhared? You knew that did not belong to you, did you not?

Clerk. George Roſs, George Dunkin, Thomas Nichols, aſked no Queſtions; only *Dunkin* deliver'd in a Paper, which was read in Court, and contained a Teſtimony of his former Behaviour when in *Scotland.*

Attor. Gen. Pleaſe your Honours, and you Gentlemen of the Jury, I think it appears from the Evidence, that *Nichols* was under Conſtraint, and forced. As for *Dunkin*, and the reſt, they all took their Shares at Cape *Fear.*

J. *Trott.* Gentlemen of the Jury, the Priſoners at the Bar ſtand indicted for *Felony* and *Piracy* committed on a Sloop belonging to Capt. *Thomas Read.* As for *Nichols*, *Pell* ſays that he was not joined to the Company, and ſaid, *as for his Share they might do what they pleaſed, for he hoped he ſhould not be with them long:* And when Major *Bonnet* ſent for him on board, he refuſed to fight Col. *Rhett*; and if another had not been killed, Major *Bonnet* had blown his Brains out. Capt. *Manwareing* ſays, he refuſed his Share, and kept himſelf from the Company and from their Cabals; and he ſaid when ſent for on board, *that he would die before he would fight.* And Capt. *Read* ſays, that Major *Bonnet* ſaid, *that he would put him aſhore, for he would force no Man againſt his Will.* And *Killing* ſays that he told him, that *he would not fight Col.* Rhett, when Major *Bonnet* ſent for him on board the *Revenge.* So that I think it plainly appears he was under Conſtraint. But for *Dunkin*, he ſays of himſelf indeed that he was a Priſoner, and under Conſtraint; but *Pell* ſays he was not, and that he took his Shares, and was as the reſt were. And Capt. *Manwareing* ſays, that he complain'd of the Bread, that it was fit for none but Negroes: ſo I ſhall leave you to conſider that. As for the reſt, they have but little to ſay in their Defence, and I think the Evidence have proved the Fact fully upon them. But I ſhall leave this to your Conſideration; and remember you have the Lives of theſe Perſons in your hands.

Then an *Officer* was ſworn to keep the *Jury:*

Who after they had conſider'd of their *Verdict*, returned, and found the aboveſaid *William Morriſon, William Livers* alias *Evis, Samuel Booth, William Hewit, William Eddy* alias *Nedy, Alexander Annand, George Roſs*, and *George Dunkin*, Guilty, and *Thomas Nichols*, Not Guilty.

Then the Court adjourn'd till *Monday* Morning.

Monday, November the 3d, 1718. the Court met according to Adjournment.

THEN the Court proceeded to arraign *John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins* alias *Rattle, James Mullet* alias *Millet, Thomas Price, James Wilſon, John Lopez*, and *Zachariah Long*, upon the following Indictment for taking Capt. *Read.*

The Jurors for our Sovereign Lord the King do, upon their Oaths, preſent, that John Ridge, *late of* London, *Mariner*, &c. *as before.*

To which Indictment *John Ridge, Matthew King, Henry Virgin, James Robbins* alias *Rattle, James Mullet* alias *Millett, Thomas Price, John Lopez*, and *Zachariah Long*, pleaded Not Guilty: and *Daniel Perry* and *James Wilſon* pleaded Guilty.

Then the Court proceeded upon the Trial of thoſe that had pleaded *Not Guilty.*

And the Jury were ſworn, whoſe Names are as followeth:

Samuel Prioleau, Foreman.	*Henry Genelac.*
John Hodgſon.	*Benjamin Griffin.*
Garrat Vanvelſin.	*Charles Marche.*
Lucas Stoutenburgh.	*John Grimball.*
Joſhua Mariner.	*Nicholas Stephens.*
Thomas Fairchild.	*William Harvey.*

The Witneſſes againſt the Priſoners were the above-named.

Ignatius Pell.
Capt. *Peter Manwareing.*
Capt. *Thomas Read.*
James Killing. And
Francis Griffin.

Who gave the ſame Evidence againſt theſe Priſoners as thoſe *tried* before.

And fully prov'd upon them all the Fact of piratically taking Capt. *Read.*

Only the Witneſſes were more particularly examin'd as to *James Robbins* alias *Rattle*, who upon a former *Indictment* for taking Capt. *Manwareing* was acquitted.

Attor. Gen. Ignatius Pell, give an Account of *James Robbins.*

Ign. Pell. He was as the reſt were when we ſhared at Cape *Fear.*

J. *Trott.* How long was he with you before he joined himſelf to the Company, after he came on board?

Ig. Pell. As ſoon as we came to Cape *Fear.*

Attor. Gen. Did you ſee *Robbins* have his Share?

Ig. Pell. Yes, Sir, they had all their Shares.

Attor. Gen. Was *Robbins* on board *Read*'s Sloop?

Ign. Pell. I cannot tell whether he was on board or not.

J. *Trott.* You looked upon him as one of the Company?

Ig. Pell. Yes.

Capt. *Manwareing* ſworn.

Mr. *Hep-*

Mr. *Hepworth*. Pleaſe to begin with *Robbins*, how he behav'd himſelf.

Capt. *Manwareing*. He was as the reſt of the Men were: he was on board the *Revenge*, and I think they called him *James Rattle* ſometimes.

J. *Trott*. Did he receive his Share?

Manwareing. He was among the Company when they did ſhare.

James Killing called and ſworn.

Mr. *Hepworth*. Give an Account of *Robbins*.

Killing. All I can ſay, he was as the reſt were in ſharing Capt. *Read*'s Goods, and was amongſt them when they did ſhare.

Capt. *Read* ſworn.

Mr. *Hepworth*. Give an Account of *Robbins*.

Capt. *Read*. I did not know him before we came to Cape *Fear*; but I did not ſee but he was as active there in taking out the Goods as any of the reſt.

J. *Trott*. Did he ſhare among the reſt?

Capt. *Read*. Yes, I believe he did, for he was among them when they ſhared.

Robbins. I was forced to do what I did.

J. *Trott*. Did they force you to take your Share?

Francis Griffin called and ſworn.

Mr. *Hepworth*. Give an Account of *Robbins*.

Griffin. I did not know him till we came to Cape *Fear*, and there I ſaw him on board the *Revenge*; and I did not ſee but that he did as the reſt of the Company; and when they were ſharing he was with them and received his Share.

Clerk. What have you to ſay, *Robbins*?

Robbins. I never was on board Capt. *Read*.

J. *Trott*. But you was one of the Company.

Robbins. I never conſented to take out the Goods.

J. *Trott*. But you conſented to take part of them; and they that ſhared the Goods were as much Pirates as thoſe that took them out of the Veſſel.

Then the *Judge* ſumm'd up the Evidence.

And an *Officer* was ſworn to keep the *Jury*.

Who after they had conſidered of their Verdict, returned and found the ſaid *John Ridge*, *Matthew King*, *Thomas Price*, *Henry Virgin*, *James Robbins* aliàs *Rattle*, *James Mullet* aliàs *Millet*, *John Lopez*, and *Zachariah Long*, Guilty.

THE Court then delivered a Bill of Indictment to the *Grand Jury*, againſt *John Brierly*, aliàs *Timber-head*, *Robert Boyd*, *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, for feloniouſly and piratically entring the Sloop *Francis* belonging to Captain *Peter Manwareing* the Commander, and taking certain Goods out of the ſame at Cape *Fear*.

And *another* Bill of *Indictment* againſt the ſame Perſons for *feloniouſly* and *piratically* entring the Sloop *Fortune* belonging to Capt. *Thomas Read* Commander, and taking certain Goods out of the ſame at Cape *Fear*.

The Grand Jury returned upon the ſaid Bills of Indictment *Billa vera*.

Then the Court proceeded to arraign the ſaid *John Brierly* aliàs *Timber-head*, *Robert Boyd*, *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, upon the following Indictment.

" The Jurors for our Sovereign Lord the King " do, upon their Oath, preſent, that *John Brier-* " *ly* aliàs *Timber-head*, late of *Bath-Town* in *North* " *Carolina*, Mariner; *Robert Boyd*, late of *Bath-* " *Town* aforeſaid, Mariner; *Rowland Sharp*, late " of *Bath-Town*, Mariner; *Jonathan Clarke*, late " of *Charles-Town*, in the Province of *South-Ca-* " *rolina*; and *Thomas Gerrard*, late of *Antegoa*, " Mariner; the 27th Day of *September*, in the " fifth Year of the Reign of our Sovereign Lord " *George*, by the Grace of God, of *Great Britain*, " *France*, and *Ireland*, King, Defender of the " Faith, *&c.* by Force and Arms, upon the High " Sea, in a certain Place called *Cape Fear*, about " half a Mile diſtant from the Shore, in the La- " titude of thirty four, or thereabouts, and with- " in the Juriſdiction of the Court of Vice-Admi- " ralty of this Province of *South Carolina*, did pi- " ratically and feloniouſly ſet upon, board, break, " and enter a certain Merchant Sloop call'd the " *Francis*, Capt. *Peter Manwareing* Commander, " then being a Sloop of certain Perſons, (to the " Jurors aforeſaid unknown) and then and there " piratically and feloniouſly did make an Aſſault " in and upon the ſaid *Peter Manwareing*, and " other his Mariners (whoſe Names to the Jurors " aforeſaid are unknown) in the ſame Sloop, in " the Peace of God, and our Sovereign Lord the " King, then and there being, piratically and fe- " loniouſly did put the aforeſaid *Peter Manware-* " *ing*, and others his Mariners of the ſame Sloop, " in the Sloop aforeſaid then being, in corporal " fear of their Lives; then and there in the Sloop " aforeſaid, upon the high Sea, in the place afore- " ſaid, called *Cape Fear*, about half a Mile di- " diſtant from the Shore, in the Latitude of thirty " four, and within the Juriſdiction aforeſaid, pi- " ratically and feloniouſly did ſteal, take and car- " ry away the ſaid Sloop *Francis*, and alſo ſix " Hogſheads of Rum of the Value of Eight " Pounds current Money of the Iſland of *Barba-* " *does*, and one Tierce of Sugar of the Value of " Seven Pounds current Money of the Iſland of " *Antegoa*, the Goods and Chattels of certain " Perſons (to the Jurors aforeſaid unknown) then " and there upon the high Sea aforeſaid, in the " Place aforeſaid called Cape *Fear*, about half a " Mile diſtant from the Shore, in the Latitude " of thirty four, or thereabouts, as aforeſaid, " and within the Juriſdiction aforeſaid, being " found in the aforeſaid Sloop in the Cuſtody and " Poſſeſſion of the ſaid *Peter Manwareing*, and " others his Mariners of the Sloop aforeſaid; and " from their Cuſtody and Poſſeſſion, then and " there upon the high Sea aforeſaid, and in the " Place aforeſaid, called Cape *Fear*, about half " a Mile diſtant from the Shore, in the Latitude " of thirty four, or thereabouts, as aforeſaid, " and within the Juriſdiction aforeſaid, againſt " the Peace of our ſaid now Sovereign Lord the " King, his Crown and Dignity, *&c.*

To which Indictment they all pleaded *Not Guilty*.

Then the Court proceeded upon their Trial.

The *Jurors* were ſworn, whoſe Names were as followeth.

Timothy Bellamy, Foreman.	*Thomas Chambers.*
George Ducket.	*Daniel Townſhend.*
John Rivers.	*John Lee.*
William Sheriffe.	*Thomas Bee.*
Benjamin Dennis.	*John Barton.*
Hugh Durſey.	*Richard Fairchild.*

Then the *Witneſſes* were ordered to be called.

Clerk. Call *Ignatius Pell, who was ſworn.*

Mr. *Hepworth. Pell*, do you know the Priſoners at the Bar?

Ig. Pell. I know them all very well.

Mr. *Hepworth.* Pleaſe to give an Account of what you know of them, and of their Behaviour at Cape *Fear.*

Ig. Pell. John Brierly and *Robert Boyd* came on board three or four Days after we came to Cape *Fear.*

J. *Trott.* You took them firſt, did you not?

Ig. Pell. Yes, we ſent off our Dory, and took them.

J. *Trott.* From whence did they come?

Ig. Pell. From *North Carolina.*

Attorn. Gen. How long after they came on board did they join themſelves to the Company?

Ig. Pell. Brierly did very ſoon, but *Boyd* did not ſo ſoon, tho' he did afterwards; and for *Sharp*, I do not know that ever he was joined to the Company.

J. *Trott.* And how did *Clarke* behave himſelf?

Ig. Pell. Jonathan Clarke and one came in from *South Carolina:* they went away from the Sloop; and then after ſome Days *Clarke* returned again, but it was with Hunger, tho' he ſaid then it was not.

Attorn. Gen. Were there any Goods taken out of Capt. *Read*'s Sloop after he had joined himſelf a ſecond time?

Ig. Pell. I cannot ſay that certainly.

J. *Trott.* Nor you cannot ſay poſitively there were?

Ig. Pell. No.

Mr. *Hepworth.* What do you know of *Gerrard?*

Ig. Pell. I can ſay nothing to him.

Clerk. Will any of you aſk the Evidence any Queſtions? *John Brierly*, will you aſk any Queſtions?

Brierly. Pell, you know I often ſaid I would not bear Arms, and that I deſired no Share.

Ig. Pell. But *John*, you know you had your Arms ready as well as the reſt, and that you had your Share.

Clerk. Robert Boyd, will you aſk any Queſtions?

Boyd. No, Sir.

Clerk. Rowland Sharp, will you?

Sharp. No, Sir.

Clerk. Jonathan Clarke, will you aſk any Queſtions?

Clarke. Pell, don't you remember that I was abaft, and one of the Negroes came and damned me, and aſked me what I did there? why I did not go and work amongſt the reſt? and told me I ſhould be uſed as a Negroe.

Ig. Pell. I do remember it was ſo.

Mr. *Hepworth.* We proceed to call another Evidence.

Capt. *Thomas Read called and ſworn.*

Attorn. Gen. Capt. *Read*, pleaſe to begin with *Brierly.*

Capt. *Read. Brierly* came on board one Morning very early, and helped to take out ſeveral Goods.

Mr. *Hepworth.* Do you know what Goods?

Capt. *Read.* Some Rum and Sugar.

J. *Trott.* Do you know thoſe Goods to be taken out?

Capt. *Read.* Yes.

J. *Trott.* How did he behave himſelf when Major *Bonnet* ſent for him on board to fight Colonel *Rhett?*

Capt. *Read.* I cannot tell.

Mr. *Hepworth.* How did *Boyd* behave himſelf?

Capt. *Read.* I took him to be a Priſoner like myſelf at firſt, till he was ſent for on board the *Revenge* by Major *Bonnet* to fight Colonel *Rhett.*

Attorn. Gen. What made you think he was a Priſoner?

Capt. *Read.* Becauſe he was not employ'd in any Buſineſs, as the reſt were.

J. *Trott.* That Day they engaged Colonel *Rhett*, was he on board your Sloop?

Capt. *Read.* Yes, and Major *Bonnet* ſent for all Hands on board the *Revenge.*

Attorn. Gen. What do you ſay of *Sharp?*

Capt. *Read.* I can ſay nothing of him.

Attorn. Gen. What have you to ſay of *Clarke?*

Capt. *Read.* He run away for a time, and then he return'd again after ſome Days.

Attorn. Gen. Was there any Goods taken out after he return'd?

Capt. *Read.* Yes, Sir.

J. *Trott.* Did *Clarke* himſelf take out thoſe Goods?

Capt. *Read.* That I cannot tell; and as for *Gerrard*, he belong'd to Capt. *Manwareing:* and as the Captain and I was together, he came and told us how they us'd him; but *he was ſorry for what he had done, and was reſolved to make his Eſcape the firſt Opportunity he had to get away.*

Clerk. Have any of you any Queſtions to aſk the King's Evidence?

The Priſoners aſk no Queſtions.

Mr. *Hepworth.* We proceed to call another Evidence.

Francis Griffin ſworn.

Mr. *Hepworth.* Look upon the Priſoners; do you know them?

Griffin. I know them all.

Mr. *Hepworth.* Begin with *John Brierly.*

Griffin. He was on board of us ſome time when we were at Cape *Fear*, and he was as the reſt of the Company was; and he ſaid *he hoped when Major* Bonnet *ſhould go to the Northward, to be revenged on ſome at the* Hore-kills, for ſome Offence they had given him there.

J. *Trott.* You looked upon him as one of the Crew?

Griffin. Yes.

J. *Trott.* What do you know of *Boyd?*

Griffin. He was on board of us ſome time; and when Major *Bonnet* ſent for all Hands on board the *Revenge*, he went with them: but as for *Sharp*, I can ſay nothing of him, nor of *Clarke*, only he run away, and in ſome Days he return'd again.

Mr. *Hepworth.* We ſhall call another Evidence.

Capt. *Peter Manwareing ſworn.*

Mr. *Hepworth.* Captain *Manwareing*, do you know the Priſoners at the Bar?

Capt. *Manwareing.* I know them all very well.

Mr. *Hepworth.* Pleaſe to give the Court an Account of what you know of them; and begin with *Brierly.*

Manwareing. Brierly, the 12th Day of *Auguſt* he came on board; and a little after he was on board, I did not ſee but he acted as the reſt did, and he hoped to come up with ſome at the *Hore-kills:* but as for *Boyd*, he was on board Capt. *Read*'s Sloop.

J. *Trott.* What have you to ſay of *Sharp?*

Manwareing. Some time after he came to Cape *Fear*, and Major *Bonnet* ſent for him on board the Revenge, he ſaid he would go on ſhore if he had an Opportunity, and I never ſaw him among the reſt of the Company.

Judge *Trott.* What have you to ſay of *Jonathan Clarke?*

Manwareing. After we had been at Cape *Fear* ſome Days, *Jonathan Clarke*, and one *Dolton*, came in, and Major *Bonnet* ſent the Dory, and brought them on board; and after ſome Days, *Clarke* and went away, and was gone ſome Days, and then returned again, and then he was ordered to work among the Negroes. As for my Man *Garrard*, he came and told me, *he was not able to bear any longer, but was forced to comply with them, for they told him they would have no regard for the Colour, but wou'd make a Slave of him*; but he did not receive any of their Goods; and when he was at home, he had the Character of an honeſt Man, and fought for his King and Country.

Mr. *Hepworth.* We will call another Evidence.

James Killing called and ſworn.

Mr. *Hepworth.* Do you know the Priſoners at the Bar?

Killing. I know them all very well.

Mr. *Hepworth.* Give the Court an Account of what you know of their ſharing at Cape *Fear.*

Killing. Brierly was put on board our Sloop there to work at his Trade, and would often ſay, *he had a Quarrel againſt ſome at the Hore-Kills, he hoped to revenge himſelf upon them.*

Judge *Trott.* Why what had they done to him?

Killing. He was in debt, and therefore he owed them a Grudge; but for the reſt, I can ſay nothing.

Judge *Trott.* You the Priſoners, what you have to ſay in your Defence, I ſhall now be ready to hear.

Cl. John Brierly, what have you to ſay?

Brierly. Mr. *Boyd* and I was in a leaky Canoo, and we were afraid ſhe would ſink, and ſo we were obliged to keep along ſhore; and I ſtood up, and thought I ſaw a Veſſel or two, and he bid me look again, and then I ſaw it was a Veſſel. They ſent off their Dory, and aſked if we would conſent to go with them? And we ſaid, No: But they ſaid they would break the Canoo, and we might go where we pleaſed. So they made me conſent to go on board the *Revenge*, but I never joined myſelf while I was on board: And then I was order'd on board Captain *Manwareing*, and there I worked; but I never bore Arms, nor did fight Colonel *Rhett.*

Cl. Rowland Sharp, what have you to ſay?

Sharp. After I was taken, I went on ſhore, and travelled four Days in the Woods without eating or drinking, and could find the way to no Plantation, and ſo was forced to return again, and I refuſed to ſign the Articles; and one of the Men came and told me I was to be ſhot, and I had the Liberty to chuſe the four Men that ſhould do it, and the Boatſwain went about to get Hands to beg me off; but I was reſolved to make my Eſcape the firſt Opportunity.

Cl. Jonathan Clarke, what have you to ſay?

Clarke. The 12th of *Auguſt* coming into *Cape Fear* with Mr. *Dolton*, he thought he ſaw the Maſt of a Veſſel, and I deſired him to take the Helm that I might ſee, for if there was any Veſſel it was *Pirates*; but *Dolton* ſaid it was nothing but an old Tree: But when we came farther in, we ſaw three Sloops, and they ſent off their Dory and took us, and carried us aboard the *Revenge*; and Major *Bonnet* asked from whence we came? and I told him. He asked me where we were a going? we told him. The next Day he asked if I did not deſign to do as they did? I told him no. Then I went away with a Deſign to get clear of them, but with Hunger was forced to return again: And they asked me if I would ſign the Articles then? and I refuſed; and one of the Negroes came and damned me, and asked me why I did not go to the Pump, and told me that was my Buſineſs: And Major *Bonnet* told me if I did not, he would make me Governor of the firſt Iſland he came to; for he would put me aſhore, and leave me there.

Cl. Thomas Gerrard, what have you to ſay?

Gerrard. Some time after we were taken, one of the Men came and asked if I would join with them? I told him, No. He ſaid, I was but * like a Negro, and they made Slaves of all of that Colour, if they did not join. So I did it with a Deſign to get clear of them the firſt Opportunity; and I never ſhared any of the Goods.

Judge *Trott. Pell*, did he never ſhare?

Pell. He never did ſhare.

Judge *Trott.* And did they threaten to make a Slave of him, if he did not join?

Pell. Yes.

Att. Gen. May it pleaſe your Honours, and you the Gentlemen of the Jury, as for *Brierly* and *Boyd*, it appears from the Evidence that they came to Cape *Fear* three or four Days after *Bonnet: Brierly* he took up very ſoon, and *Boyd* ſome time after; and that there were ſeveral Goods taken out of Capt. *Manwareing*'s Sloop, and particularly Rum and Sugar. And as for *Sharp*, there is no Evidence proves any thing fully on him; and therefore I think he may be looked upon as under Conſtraint and Force. As for *Gerrard*, I think the ſame; for tho' he ſigned the Articles, yet no Evidence proves that he did ſhare any of the Goods: Nay, the Boatſwain ſays he did not ſhare; and if they did not comply with them, they would make a Slave of him all the Days of his Life. And Capt. *Manwareing* ſays he had the Character of an honeſt Man at home; and that he fought for his King and Country.

Judge *Trott.* Gentlemen of the Jury, the Priſoners at the Bar ſtand charged with *Piracy*, committed on a Sloop belonging to Capt. *Manwareing*; and the Evidence have proved it fully upon *Brierly* and *Boyd*; and particularly, that there was Rum and Sugar taken out. *Brierly* took up very ſoon with them, and had his Share; and that he hoped to revenge himſelf on ſome at the *Hore-Kills*. *Boyd* did not take up ſo ſoon; but he did afterward. As for *Sharp*, he would have made his Eſcape, but could not; and Major *Bonnet* told him he ſhould die, and bid him chuſe four Men to ſhoot him; and tho' he ſigned the Articles, he never ſhared, as *Pell* proves. As for *Clarke*, he ſays he was forced to it; that he went away, and Hunger forced him to return again, and the Negroes inſulted over him; and

* *He was a Mulatto.*

Major

Major *Bonnet* told him, he would make him Governor of an Iſland, and leave him there; and none of the Evidence proves that he ſhared any of the Goods. And as for *Gerrard*, he was threaten'd to be made a Slave of; tho' indeed he had been better made a Slave than go a pirating: But Capt. *Manwareing* ſays he had the Report of an honeſt Man in his Country; and that he was faithful to his King and Country: So I ſhall leave thoſe to your Conſideration. And if you think they were under Force and Conſtraint, as indeed it appears to me, by the whole Courſe of the Evidence, that they were, then you ought to acquit them.

Then an *Officer* was ſworn to keep the *Jury*.

Who after they had conſidered of their Verdict, return'd, and found *John Brierly* alias *Timberhead*, and *Robert Boyd*, Guilty; *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, Not Guilty.

Then the Court adjourn'd till *Tueſday* Morning.

Tueſday, *November* the Fourth, 1718. the Court met according to Adjournment.

THEN the Court proceeded to arraign the ſaid *John Brierly* alias *Timberhead*, *Robert Boyd*, *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, upon the following Indictment.

" The Jurors for our Sovereign Lord the " King do upon their Oath preſent, That *John* " *Brierly* alias *Timberhead*, late of *Bath-Town* in " *North-Carolina*, Mariner; *Robert Boyd*, late " of *Bath-Town* aforeſaid, Mariner; *Rowland* " *Sharp*, late of *Bath-Town* aforeſaid, Mariner; " *Jonathan Clarke*, late of *Charles-Town*, in the " Province of *South Carolina*, Mariner; and " *Thomas Gerrard*, late of *Antegoa*, Mariner; " the *twenty ſeventh* Day of *September*, in the " *Fifth* Year of the Reign of our Sovereign Lord " *George*, by the Grace of God, of *Great Britain*, " *France*, and *Ireland*, King, Defender of the " Faith, *&c.* by Force and Arms, *&c.* upon " the High Sea, in a certain Place called *Cape* " *Fear*, about half a Mile diſtant from the Shore, " in the Latitude of Thirty-four, or thereabouts, " and within the Juriſdiction of the Court of " *Vice-Admiralty* of *South Carolina*, did piratically " and felonioufly ſet upon, board, break, and " enter a certain Merchant-Sloop, called the " *Fortune*, *Thomas Read*, Commander, then be- " ing a Sloop of certain Perſons (to the Jurors " aforeſaid unknown) and then and there pira- " tically and felonioufly did make an Aſſault in " and upon the ſaid *Thomas Read*, and other " his Mariners, (whoſe Names to the Jurors " aforeſaid are unknown.) In the ſame Sloop, " againſt the Peace of God, and of our now " Sovereign Lord the King, then and there be- " ing, piratically and felonioufly, did put the " aforeſaid *Thomas Read*, and others his Mari- " ners of the ſame Sloop, in the Sloop aforeſaid, " then being in corporal Fear of their Lives, " then and there in the Sloop aforeſaid, upon " the *High Sea*, in the Place aforeſaid, called " *Cape Fear*, about half a Mile diſtant from " the Shore, in the Latitude of Thirty-four, or " thereabouts, and within the Juriſdiction afore- " ſaid, *piratically* and *felonioufly* did ſteal, take, " and carry away the ſaid Sloop *Fortune*, and " alſo ten Barrels of Pork, of the Value of " twenty Pounds, current Money of *Penſilvania*; " two Firkins of Butter, of the Value of fifty " Shillings, like current Money of *Penſilvania*; " and three Tierces of Bread, of the Value of " ſix Pounds ten Shillings, like current Money " of *Penſilvania*; the Goods and Chattels of " certain Perſons, (to the Jurors aforeſaid un- " known) then and there, upon the *High Sea* " aforeſaid, in the aforeſaid Place, called *Cape* " *Fear*, about half a Mile diſtant from the " Shore, in the Latitude of thirty-four, or there- " abouts, as aforeſaid, and within the Juriſ- " diction aforeſaid; being found in the aforeſaid " Sloop, in the Cuſtody and Poſſeſſion of the " ſaid *Thomas Read*, and others his Mariners of " the Sloop aforeſaid, and from their Cuſtody " and Poſſeſſion, then and there, upon the High " Sea aforeſaid, in the Place aforeſaid, called " *Cape Fear*, about half a Mile diſtant from " the Shore, in the Latitude of thirty-four, or " thereabouts, as aforeſaid, and within the Ju- " riſdiction aforeſaid, againſt the Peace of our " ſaid now Sovereign Lord the King, his Crown, " and Dignity, *&c.*

Who all pleaded *Not Guilty*.

Then the Court proceeded upon their *Trial*.

The Jurors were ſworn, whoſe Names are as followeth:

Samuel Prioleau, Foreman.	*Henry Genelac.*
John Hodgſon.	*John Ballentine.*
Garrat Vanvelſin.	*Charles Marche.*
Lucas Stoutenburgh.	*John Grimball.*
Joſhua Mariner.	*Nicholas Stephens.*
Thomas Fairchild.	*William Harvey.*

Then the *Witneſſes* were ordered to be called.

Clerk. Call *Ignatius Pell*. *Who was ſworn.*

Mr. *Hepworth*. *Pell*, give an Account firſt of *Brierly* and *Boyd*.

Ign. Pell. As for *Brierly*, he ſoon united himſelf to the Company; and when we engaged Colonel *Rhett*, he was as active as any of the reſt. But for *Boyd*, he was ſent on board Capt. *Read*'s Sloop, and was there till Major *Bonnet* ſent for him on board the *Revenge*, to fight Colonel *Rhett*.

Judge *Trott*. And did he fight?

Ign. Pell. He was wounded with one of the firſt Shot, and ſo was carried down into the Hole; ſo that he never did fight.

Mr. *Dean*. Why was he put on board the Sloop?

Ign. Pell. To look after the Sloop, I ſuppoſe.

Att. Gen. Had he his Arms ready when you engaged Col. *Rhett*?

Ign. Pell. Yes, Sir: So we had all in general: But I did not ſee him uſe them.

As for the other *three*, he thought them to be under Conſtraint, and they did not fight Colonel *Rhett*.

Clerk. Will any of you ask the King's Evidence any Queſtions?

No Queſtions asked by the Priſoners.

Mr. *Hepworth*. We proceed to call another Evidence.

Capt. *Peter Manwareing ſworn.*

Mr. *Hepworth.* Capt. *Manwareing* give an Account of the Priſoners, of their fighting Colonel *Rhett*, and begin with *Brierly* and *Boyd.*

Capt. *Manwareing.* They came on board, and *Brierly* ſoon became one of the Company, and hoped to revenge himſelf on them at the *Hore-Kills*, and acted as the reſt did when they engaged Col. *Rhett.* But as for *Boyd*, I took him to be a Priſoner for ſome Time.

Captain *Manwareing's* Evidence concerning *Sharp*, *Clarke*, and *Gerrard*, the ſame as in the former Trial.

Mr. *Hepworth.* Will any of you aſk the King's Evidence any Queſtions?

No Queſtions aſked by the Priſoners.

Mr. *Hepworth.* We will call another Evidence.

James Killing called and ſworn.

Mr. *Hepworth.* Give an Account of the Priſoners at the Bar; and firſt of *Brierly* and *Boyd.*

Killing. As for *Boyd*, he was on board Captain *Read* after we came to Cape *Fear*, till they were ſent for to fight Colonel *Rhett*; and I thought he had been a Priſoner till then, and I talked very free to him. And as for *Brierly*, he was as the reſt of the Company.

Att. Gen. Were there any Goods taken out after *Brierly* came on board?

Killing. Yes.

Mr. *Hepworth.* Do you know what Goods?

Killing. I cannot remember every particular Sort.

His Evidence againſt the other three *the ſame as in the former Trial.*

Clerk. Will any of you ask the King's Evidence any Queſtions?

No Queſtions asked by the Priſoners.

Mr. *Hepworth.* We call another Evidence.

Capt. *Thomas Read called and ſworn.*

Mr. *Hepworth.* Capt. *Read*, pleaſe to give an Account of the Priſoners at the Bar; and firſt of *Brierly* and *Boyd.*

Capt. *Read.* As for *Brierly*, I did not ſee but he acted as all the reſt of the Company did.

Judge *Trott.* What have you to ſay of *Boyd?*

Capt. *Read.* I thought him to be a Priſoner, and diſcours'd freely with him, which if he had diſcover'd, it had done me an Injury; for I heard him wiſh we might meet with a Thirty-Gun Ship, and I told him I ſhould be glad of it as well as he.

Foreman. What did he wiſh to meet with a Thirty-Gun Ship for?

Capt. *Read.* To free us from the Pirates.

His Evidence againſt the other three *the ſame as before.*

Clerk. Will any of you ask the King's Evidence any Queſtions?

None of the Priſoners asked any Queſtions.

Judge *Trott.* You the Priſoners may now ſpeak what you have to ſay.

Clerk. What have you to ſay *John Brierly?*

Brierly. When Mr. *Boyd* and I came in at Cape *Fear*, we ſaw three Sloops; and then came off a Dory with ſome Hands, and haled us, and then carried us on board; but we did not know that they were Marrooners. But Mr. *Boyd* trembled, and ſhook like a Leaf; and I told him not to be afraid. So they carried us on board.

Judge *Trott.* And ſo you united yourſelf with them to make up the Company?

Brierly. I was forced to do what I did.

Clerk. Robert Boyd, what have you to ſay?

Boyd. After we came to Cape *Fear*, and was taken by *Bonnet's* Men, I was on board the *Revenge* for ſome time, and they asked me to ſign the Articles, the which I refuſed; and Major *Bonnet* told me, if I did not, he would marroon me on an Iſland, and leave me. And after I was ſent on board Capt. *Read's* Sloop, I had nothing but the Proviſions I lived on; I never had any thing more. And when Major *Bonnet* ſent for all on board to fight Colonel *Rhett*, it would have been preſent Death for any to refuſe, and I was wounded with one of the firſt Shot.

The other three made it appear they were innocent, as in the other Indictment.

Att. Gen. May it pleaſe your Honours, and you the Gentlemen of the Jury, the Evidence proves the Fact fully on *Brierly*; that he ſoon engaged with *Bonnet* after he was taken, and that he acted as the reſt of the Company did; and that he hoped to be revenged on ſome at the *Hore-Kills.* As for *Boyd*, tho' he was on board the Pirate-Sloop, he never took Part with them; and he wiſhed for a Thirty-Gun Ship, that they might be ſet at Liberty. And Capt. *Read* took him for a Priſoner till he was ſent for on board the *Revenge*; and then the Boatſwain ſays he did not fight. As for the other three, I think it appears they were under Conſtraint and Force.

Judge *Trott.* Gentlemen of the Jury, the Priſoners at the Bar ſtand indicted for piratically taking Capt. *Read*, in the Sloop *Fortune.* As for *Brierly*, the Evidence proves it very plain and fully upon him, that he took up very ſoon with them, and did hope to revenge himſelf upon ſome of the *Hore-Kills*, and that he engaged againſt Col. *Rhett.* As for *Boyd*, Capt. *Read* looked upon him as a Priſoner; and that he had ſuch Diſcourſe with him, that if he had diſclos'd it to *Bonnet's* Crew, it had done him much hurt; and the *Boatſwain* ſays, he did not fight Col. *Rhett.* And as for the other *three*, I think it hath been fully proved they were under Conſtraint. But I ſhall leave it to your Conſideration.

Then an *Officer* was ſworn to keep the *Jury*, Who after they had conſidered of their *Verdict*, return'd, and found *John Brierly* alias *Timberhead*, Guilty; *Robert Boyd*, *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, Not Guilty.

Then the Court adjourn'd till *Wedneſday* Morning.

Wedneſday, November the Fifth, 1718. the Court met according to Adjournment.

THEN *Robert Tucker*, *Edward Robinſon*, *Neal Paterſon*, *William Scot*, *Job Bayley*, *John William Smith*, *Thomas Carman*, *John Thomas*, *William Morriſon*, *William Livers* alias *Evis*, *Samuel Booth*, *William Hewet*, *John Levit*, *William Eddy* alias *Nedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, *John Ridge*, *Matthew King*, *Daniel Perry*, *Henry Virgin*, *James Robbins*, *James Mullet* alias *Millett*, *Thomas Price*, *John Lopez*, *Zachariah Long*, *James Wilſon*, *John Brierly* alias *Timberhead*, and *Robert Boyd*, who ſtood convicted of *Piracies*, as appears by the above Records, were brought to the Bar, and were ſeverally aſked what

what they could ſay why Judgment of Death ſhould not paſs upon them.

And they having nothing to alledge in arreſt of Judgment;

Then Proclamation for *Silence* was made, while the Judge of the Court of Vice-Admiralty pronounced *Sentence* of *Death* upon the *Priſoners*.

J. *Trott*. You the Priſoners at the Bar, *Robert Tucker*, *Edward Robinſon*, *Neal Paterſon*, *William Scot*, *Job Bayley*, *John-William Smith*, *Thomas Carman*, *John Thomas*, *William Morriſon*, *William Livers* alias *Evis*, *Samuel Booth*, *William Hewit*, *John Levit*, *William Eddy* alias *Nedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, *John Ridge*, *Matthew King*, *Daniel Perry*, *Henry Virgin*, *James Robbins*, *James Mullet* alias *Millet*, *Thomas Price*, *John Lopez*, *Zachariah Long*, *James Wilſon*, *John Brierly*, and *Robert Boyd*, ſtand here convicted of *Piracy*.

You have been *indicted* but for *two* Acts of *Piracy*; but you know upon the *Trials* it was fully proved againſt moſt of you, that you *piratically* took *thirteen* Veſſels ſince you joined Major *Bonnet*, and ſailed from *Topſail-Inlet* in *North Carolina*.

So that many of you might have been convicted on *eleven* more Indictments of *Piracy*.

Beſides, ſeveral of you were proved to be *Pirates* before that time, as belonging to *Thatch*'s Crew; and ſo were guilty of the ſeveral *Piracies* committed while you belong'd to him.

You cannot but acknowledge that you have all of you had a fair and indifferent Trial.

You were fully heard, not only as to all you could pretend to ſay in your own *Defences*, but alſo as to what you alledge in *Mitigation* of your Crimes.

And indeed, when you ſaw that the *Facts* laid in the *Indictment* were ſo fully proved againſt you, tho' moſt of you pleaded *Not Guilty* for Form-ſake, yet in the open Court, upon your Trials, moſt of you acknowledged the Facts charged upon you. Therefore no one can think but that you were all of you juſtly found *Guilty*; and your own Conſciences will oblige you to acknowledge the ſame. So that there is not any of you who can complain of any Hardſhips at your Trials.

As to the *Crime* that you are convicted of, which is *Piracy*, the *Evil* and *Wickedneſs* of it is evident to the Reaſon of all Men: So that it needs no Words to aggravate the ſame; it is ſo deſtructive of all Trade and Commerce between Nation and Nation, that *Pirates* are called *Enemies to Mankind*, *with whom no Faith nor Oath ought to be kept*; and they are term'd in our Law *Brutes* and *Beaſts of Prey*, and therefore it is the *Intereſt*, as well as *Duty*, of all Governments to bring ſuch Offenders to Puniſhment.

Tho' the Greatneſs of your *Crime* is ſuch, that no one can think but that the *Sentence of Death* which will now be paſſed upon you is juſtly due to you for the ſame; yet as Pity and Compaſſion, even to the worſt of Criminals, when brought to Puniſhment, are natural to all Men who have not flung off all Senſe of Humanity, but much more firmly ingrafted in the Hearts of Chriſtians: therefore ſurely it cannot but be a very melancholy Spectacle to ſee ſo many Perſons in the Prime of their Years, in perfect Health and Strength, dropping into the Grave: And which is a more ſorrowful Conſideration, that they are in the height of their Sins; and therefore, without the infinite Mercies of God, through the Satisfaction of Chriſt, muſt neceſſarily ſink into the Dwellings of everlaſting Miſery.

And indeed, moſt ſad and deplorable is the Condition you have brought your ſelves to: To be adjudg'd by the Laws of your Country unworthy any longer to live, and to tread the Earth, or breathe the Air; and that no further Good or Benefit can be expected from you but by the Example of your Deaths; and to ſtand like Marks or fatal Rocks and Sands, to warn others from the ſame Shipwrack and Ruin for the future.

As moſt of you have been *Mariners* by Profeſſion, and every one of you have ſeveral times been at *Sea*; ſo I cannot but wonder, that being ſo often at Sea, you ſhould not conſider the great *Power* of God in creating the ſame, and his *Providence* in preſerving thoſe who paſs upon it; and conſequently, that ſuch Thoughts ſhould not cauſe in you a *Dread* of his *Power*, and a *Love* of his *Goodneſs*.

The Conſideration of God's Power in making the Sea, and ſetting Bounds to the raging Waters thereof, is uſed as an Argument by God himſelf, why Men ſhould fear him; for thus God expreſſeth it by the Prophet *Jeremiah*: *Fear ye not me? ſaith the Lord: will ye not tremble at my Preſence, which have placed the Sand for the bound of the Sea by a perpetual Decree, that it cannot paſs it; and tho' the Waves thereof toſs themſelves, yet can they not prevail: tho' they fear, yet can they not paſs over it*; Jer. 5. v. 22. Or as it is expreſſed in the Book of *Job*: *Hitherto ſhalt thou come, but no farther; and here ſhall thy proud Waves be ſtayed*: Job 38. v. 11.

The *Pſalmiſt* ſaith, that *they that go down to the Sea in Ships, that do Buſineſs in great Waters; theſe ſee the Works of the Lord, and his Wonders in the Deep. For he commandeth and raiſeth the ſtormy Wind, which lifteth up the Waves thereof. They mount up to the Heaven, they go down again to the Depths, their Soul is melted becauſe of Trouble. They reel to and fro, and ſtagger like a drunken Man, and are at their Wits end. Then they cry unto the Lord in their Trouble, and he bringeth them out of their Diſtreſſes. He maketh a Storm a Calm, ſo that the Waves thereof are ſtill. Then they are glad becauſe they be quiet; ſo he bringeth them unto their deſired Haven.* But the practical Inference that he draws from theſe is, *That Men ſhould praiſe the Lord for his Goodneſs, and for his wonderful Works to the Children of Men*: Pſal. 107. *v.* 23, 24, 25, 26, 27, 28, 29, 30, 31.

But inſtead of having a Senſe of God's Power and Goodneſs, in preſerving you and others upon the Sea, your frequent Preſervations harden'd you into a Contempt of the Danger you were in; and you thereby ſlighted your Deliverance. And tho' you could not but ſee the many *natural* Dangers that attend the Seas, and thoſe who had occaſion to go upon the ſame, yet you were reſolved that you would contribute what in you lay to the Hazards thereof, by the frequent *Rapines* and *Murders* which you committed. So that what the *Prophet* ſaith of the Pride of the *Tyrians*, may be apply'd to you, *that you cauſed your Terror to be on all that haunt the Sea*: Ezek. 26. *ver.* 17.

Altho' it may be, while you were in your ſeeming Proſperity, and went on in your committing *Spoils* and *Robberies* without controul, you might make *a mock at your Sins*, Prov. 14. *v.* 9. and *ch.* 10. *v.* 23. and *ſay in your Hearts, God hath*

forgotten, he hideth his Face, he will never ſee it, Pſal. 10. *v.* 11. 94. *v.* 7. 64. *v.* 5. and Job 22. *v.* 13. yet now that you ſee that God's Hand hath reached you, and his Power hath brought you to publick Juſtice; I hope your preſent unhappy Condition hath had a good effect upon you, that it hath raiſed in you more ſerious Thoughts; and that you are now ſenſible of the Greatneſs of your Sins, and that you will ſincerely repent you of the ſame.

As to the great *Evil* and *Sinfulneſs* of the *Facts* you have committed, ſurely you cannot but know, that it is one of the expreſs Commandments of God, *Thou ſhalt not ſteal*, Exod. 20. *v.* 15. and the Apoſtle St. *Paul* expreſly affirms, that *Thieves ſhall not inherit the Kingdom of God*, 1 Cor. 6. *v.* 10.

But then remember that to *Theft* you have added the Sin of *Murder*, in deſtroying thoſe Perſons who were ſent by lawful Authority to ſuppreſs you, and to put a ſtop to your wicked Actions. For you being no way authoriſed to uſe the Sword, or to fight any one, every one of thoſe Perſons who fell by your hands, were murdered; and their Blood now cries for Vengeance againſt you: For it is the *Voice* of *Nature*, as well as the revealed Law of God, that *Whoſo ſheddeth Man's Blood, by Man ſhall his Blood be ſhed*, Gen. 9. *v.* 6.

It is the Commandment of God, *Thou ſhalt do no Murder*, Exod. 20. *v.* 13. and the Apoſtle enumerating ſeveral of the Works of the Fleſh, amongſt the reſt reckons *Murders*; and then concludes with theſe remarkable Words: *Of which I tell you before, as I have told you in time paſt, that they which do ſuch things, ſhall not inherit the Kingdom of God*, Gal. 5. *v.* 21.

And *Murderers* are threaten'd to have *their part in the Lake which burneth with Fire and Brimſtone, which is the ſecond Death*, Rev. 21. *v.* 8. See *ch.* 22. *v.* 15. Words which carry that Terror with them, that conſidering your Circumſtances, and your Guilt, ſurely the Sound of them muſt make you tremble; *For who can dwell with everlaſting Burnings?* Iſa. 33. *v.* 14.

I ſuppoſe you all know that you muſt appear before the Tribunal of Chriſt; from whoſe infinite *Knowledge* none of your Actions can be hid, and from whoſe infinite *Power* no one can reſcue you or protect you; and from whom, without a true and unfeigned Repentance for all your Sins paſt, you can expect no other than that dreadful Sentence of Condemnation, *Depart from me, ye curſed, into everlaſting Fire, prepared for the Devil and his Angels*, Matth. 25. *v.* 41.

I do not ſpeak this to overwhelm you with Sorrow, much leſs to drive you into *Deſpair* of God's Mercy, which is one of the worſt of Sins, and which I hope you will not add to your other Offences againſt God. But I mention this to you, to make you ſenſible of the great Danger of your Condition, without true and unfeigned Repentance. For ſeeing I can give you no hopes of Pardon from Man, I hope you will improve the ſhort time you have now left you, to make your Peace with God, and to obtain Pardon from him.

And I wiſh that what I now ſay to you in this your deplorable Conditions, may make you all ſenſible of the Greatneſs of your Offences, that ſo you may become truly penitent; which if you are, you may yet hope for Mercy from God: *For tho' your Sins be as Scarlet*, [even dyed in Blood] *yet he can make them white as Snow*, Iſa. 1. *v.* 18.

Therefore if you will now turn unto God by a true and unfeigned Repentance, he will not refuſe you nor reject you, even now in your great Diſtreſs.

For the Threatnings declared by God in the Scripture againſt Sinners, muſt always be underſtood againſt impenitent Sinners; for God hath declared himſelf to be *Merciful and Gracious*, Exod. 34. *v.* 6. *And that he hath no pleaſure in the death of the Wicked, but that the Wicked turn from his way and live*, Ezek. 33. *v.* 11. *ch.* 18. *v.* 23. And hath promiſed that when he doth ſo, *he ſhall ſave his Soul alive*, ver. 27.

But be ſure remember that you muſt go to God, in and thro' the alone Merits and Interceſſion of his Son *Jeſus Chriſt*, who hath made *Satisfaction* to the *Juſtice* of God for us: *For he is our Advocate with the Father*; *And he is the Propitiation for our Sins*, John 2. *v.* 1, 2. *For his Blood cleanſeth us from all Sin*, ch. 1. v. 7. Know therefore, that *there is none other Name under Heaven given among Men, whereby we muſt be ſaved*, but only by the Name of the Lord *Jeſus*, Acts 4. *v.* 12.

But then conſider how he invites *all them that labour and are heavy laden with their Sins to come unto him, and he will give them reſt*, Matth. xi. *v.* 28. *He will not break the bruiſed Reed, nor quench the ſmoaking Flax*, Iſa. 42. *v.* 3. compared with *Matth.* 12. *v.* 20. The Apoſtle tells us, *that Chriſt Jeſus came into the World to ſave Sinners*, 1 Tim. 1. *v.* 15. And he himſelf aſſures us, *that he came to ſeek and ſave that which was loſt*, Luke 19. *v.* 10. Matth. 18. *v.* 11. And hath promiſed, that *he that cometh unto him, he will in no wiſe caſt out*, John 6. 37.

Doubt not therefore, but that if you will now ſincerely turn to God, he will accept you, and pardon and forgive you your Sins.

But know that the *Condition* of theſe and other the Promiſes of God made to Sinners, is *Faith* and *Repentance*. And great Sins (ſuch as yours are) muſt have great Repentance. You muſt earneſtly cry unto God for Pardon and Remiſſion of your Sins, and particularly, that he would *deliver you from Blood-guiltineſs*, Pſal. 51. *v.* 14.

And do not miſtake the *Nature* of Repentance, to be only barely a Sorrow for your Sins, by reaſon of the *Evil* and *Puniſhment* which they have now brought upon you: but your Sorrow for your Sins muſt ariſe from the Conſideration of your having offended a gracious and merciful God. To which ſhould be added, a ſincere Reſolution, and an actual Amendment for the future. Indeed, ſuch is your unhappy Circumſtances, that you cannot give any actual Proof of the Amendment of your Lives: but remember that God knows the Heart.

Time will not permit me to enlarge upon the *Nature* of Repentance, and of the many Miſtakes that Men make in that great Duty: Neither indeed will I ſo far preſume to meddle out of my own Profeſſion. You may have thoſe Matters better explained to you by ſome of the *Miniſters* of this Province, whom you may deſire to attend you, and fit you for Death; and from them you may expect more full and particular Directions: *For the Prieſt's Lips ſhall keep Knowledge, and you ſhall ſeek the Law at their Mouths: for they are the Meſſengers of the Lord*, Mal. 2. *v.* 7. *And the Ambaſſadors of Chriſt; and to them is committed the Word* [or Doctrine] *of Reconciliation*, 2 Cor. 5. *v.* 19, 20.

Thus having diſcharged my Duty to you as a *Chriſtian*, by exhorting you to an unfeigned Repentance for your Crimes, and Faith in Chriſt,

by whoſe Merits alone you muſt hope for Pardon and Salvation; I muſt now do my Office as a Judge.

The *Sentence* that the Law hath appointed to paſs upon you for your Offences, and which this Court doth therefore award, is,

That you the ſaid Robert Tucker, Edward Robinſon, Neal Paterſon, William Scot, Job Bayley, John William Smith, Thomas Carman, John Thomas, William Morriſon, William Livers *aliàs* Evis, Samuel Booth, William Hewet, John Levit, William Eddy *aliàs* Nedy, Alexander Annand, George Roſs, George Dunkin, John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet *aliàs* Millet, Thomas Price, John Lopez, Zachariah Long, James Wilſon, John Brierly, *and* Robert Boyd, *ſhall go from hence to the Place from whence you came, and from thence to the Place of Execution, where you ſhall be ſeverally hanged by the Neck, till you are ſeverally dead.*

And the God of infinite Mercy be merciful to every one of your Souls.

After the *Condemnation* of the above-mention'd Perſons, *Thomas Nichols, Rowland Sharp, Jonathan Clarke*, and *Thomas Gerrard*, who were found *Not Guilty*, were *diſcharged*.

And then the Court adjourn'd to *Monday* the 10th Inſtant.

On Saturday, November the 8th, 1718. *Robert Tucker, Edward Robinſon, Neal Paterſon, William Scot, Job Bayley, John William Smith, John Thomas, William Morriſon, Samuel Booth, William Hewet, William Eddy* aliàs *Nedy, Alexander Annand, George Roſs, George Dunkin, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet* aliàs *Millet, Thomas Price, John Lopez*, and *Zachariah Long*, were executed at the *White Point* near *Charles-Town*, according to the above *Sentence*.

Monday, November the 10th, 1718. the Court met according to Adjournment.

THEN the Court proceeded to arraign *Stede Bonnet* aliàs *Edwards* aliàs *Thomas*, [*who had eſcaped, but was retaken. Nov.* 6.] for feloniouſly and piratically taking the Sloop *Francis*, with her Goods, Capt. *Peter Manwareing*, Commander; and the Sloop *Fortune*, with her Goods, Capt. *Thomas Read*, Commander; upon the two following Indictments.

The Jurors for our Sovereign Lord the King, do on their Oath preſent, That Stede Bonnet *aliàs* Edwards *aliàs* Thomas, *late of* Barbadoes, *Mariner*; Robert Tucker, *late of the Iſland of* Jamaica, *Mariner*, *&c. as before.*

The Jurors for our Sovereign Lord the King, do on their Oath preſent, That Stede Bonnet *aliàs* Edwards *aliàs* Thomas, *late of the Iſland of* Barbadoes, *Mariner*; David Heriot, *late of the Iſland of* Jamaica, *Mariner*; Edward Robinſon, *late of* Newcaſtle *upon* Tine, *Mariner*, *&c. as before.*

To both which Indictments he pleaded *Not Guilty*.

Judge *Trott*. You are to come upon your Trial this Day, upon the firſt *Indictment*, and you have pleaded *Not Guilty*; ſo that what Evidence you have muſt be ready.

Bonnet. My pleading *Not Guilty* is becauſe I may have ſomething to offer in my Defence; and therefore I hope none of the Bench will take it amiſs.

The Court proceeded upon his Trial on the *firſt* Indictment, for piratically taking the Sloop *Francis*, Capt. *Peter Manwareing*, Commander.

Then the *Jurors* were ſworn, whoſe Names are as followeth.

Timothy Bellamy, Foreman.	*Thomas Bee.*
George Ducket.	*James Mazyck.*
William Sheriff.	*Thomas Lamboll.*
Benjamin Dennis.	*Henry Beaton.*
Jonathan Main.	*Moſes Wilſon.*
John Lee.	*Claas Joor.*

Mr. *Hepworth*. May it pleaſe your Honours, and you Gentlemen of the Jury: The *Priſoner* who now ſtands arraigned at the Bar, has been guilty of many *Piracies*, committed many *Robberies*, ruined many Families, and been the Occaſion of many moſt cruel and inhuman *Murders*, and all that within a very ſhort Time paſt. Should I here deſcend into all the Particulars, I ſhall take up too much of your Time. You know (all of ye) I believe, after what manner he lately *fled* from *Juſtice*. Nay, he was not ſatisfied with his own *Eſcape*, but he muſt tamper with the King's Evidence, to avoid others being proſecuted; and prevailed with the Maſter *Herriot* to run away with him, who has been ſince killed. And I believe the Priſoner at the Bar cannot, upon Reflection, but think himſelf anſwerable for that Man's Death. Nay, ſome People took particular notice of the Priſoner's Behaviour at the Time when *Thatch* having got the Command from him, he began to reflect upon his paſt Courſe of Life, and was filled then with ſuch *Horror*, that he was perfectly confounded with *Shame* at the many deteſtable Crimes he had been guilty of, and ſaid, he would gladly leave off that way of living, being fully tired, and having got conſiderably by it; but he ſhould be aſhamed ever to ſee the Face of an *Engliſhman*: Therefore if he could not get to *Spain* or *Portugal*, where he might be undiſcover'd, he would live and die in the ſame Courſe of Life, *viz.* in *Piracy* and *Robbery*.

The Trial of this Man ought to be the more conſiderable, as he was the great *Ringleader* of them; who has ſeduced many poor ignorant Men to follow his Courſe of Living, and ruined many poor Wretches; ſome of whom lately *ſuffered*, who with their laſt Breath expreſſed a great Satisfaction at the *Priſoner*'s being *apprehended*, and charged the Ruin of themſelves and Loſs of their Lives intirely upon him.

We ſhall now proceed to call our *Evidences*.

Ign. Pell. called and ſworn.

Mr. *Hepworth*. *Pell*, begin with the *firſt* Indictment, and when you was firſt acquainted with Major *Bonnet*.

Ign. Pell. It was at the Bay of *Honduras*; but Capt. *Thatch* was Commander in Chief.

Att. Gen. This I obſerve was before they went to *Topſail-Inlet* at *North Carolina*.

Ign. Pell. Yes, Sir, for when we came to *Topſail-Inlet*, *Robert Tucker* was choſe Quarter-Maſter;

and we went out to go to *St. Thomas*'s for a Commiſſion to go a privateering againſt the *Spaniards*; but the firſt Veſſel we ſaw we took.

Mr. *Hepworth*. What did you take out of her?

Ign. Pell. We took ſome Proviſions.

Att. Gen. Had you no Proviſions on board the *Revenge*?

Ign. Pell. Yes, Sir, ſome Beef, Pork, and Flower.

Mr. *Hepworth*. What was the next Veſſel you took?

Ign. Pell. A Sloop belonging to *Bermudas*. After we had diſcharged her, we took another, in which were eight Negroes. We took out two, and left three Men and two Women, and ſent three Hands more, which made eight; and the next Day we gave chace to two Ships belonging to *Glaſgow* in *Scotland*, and in the Evening we came up with them, and the other turn'd Tail, and we never ſaw them more after that. And after we had taken ſome Tobacco and other Goods, we diſcharged them. We took, as I remember, two Veſſels belonging to *Briſtol*, when Capt. *Read* was taken.

Att. Gen. What do you know of Capt. *Manwareing*?

Ign. Pell. We were at an Anchor near Cape *James* aliàs Cape *Inlopen*, and a little before Night we ſaw a Sloop come to an Anchor at the Mouth of the River, and we ſent off the Dory with five Hands, and in a little Time they returned with Capt. *Manwareing*; and the next Day we haled the Sloop long-ſide the Scooner which we had taken before, and hoiſted out ſeveral Hogſheads of Moloſſes and Rum, and put them on board the Canoo, and put ſome Pitch and Tar on board the Sloop.

Att. Gen. Who gave you Orders for the doing of that?

Ign. Pell. I cannot tell, Sir.

Att. Gen. Did you ſee Major *Bonnet* on board *Manwareing*'s Sloop?

Ign. Pell. I cannot ſay he was, neither do I know certainly that he was not.

Judge *Trott*. Was he not your Commander?

Ign. Pell. He was called our Captain to be ſure.

Cl. Have you any Queſtions to ask the King's Evidence?

Bonnet. Don't you believe in your Conſcience, that when we left *Topſail-Inlet*, it was to go to *St. Thomas*'s? And there were near forty Hands, and they concluded to go a marrooning.

Ign. Pell. I did believe it was ſo till after we were out.

Judge *Trott*. That was what they accuſed you for on their Trials; that you deceived them, under a Pretence of going to *St. Thomas*'s.

Bonnet. I am ſorry that they ſhould take the Opportunity of my Abſence to accuſe me of that which I was free from.

Mr. *Dean*. If there were forty Hands on board, it cannot be thought that he had Power to command them.

Judge *Trott*. But he was Commander in Chief among them, and that after they went a pirating; was it not ſo, Boatſwain?

Ign. Pell. He went by that Name; but the Quarter-Maſter had more Power than he.

Judge *Trott*. What do you mean by your Evaſions? Was he Commander in Chief, or was he not?

Ign. Pell. He was.

Judge *Trott*. Then who had the greateſt Power?

Att. Gen. Do you know if he received his Share of Capt. *Manwareing*'s Goods? Or did any receive it for him?

Ign. Pell. Sir, it was the Quarter-Maſter took care of that.

Judge *Trott*. He was Commander in Chief, and therefore I ſuppoſe he had a double Share?

Ign. Pell. I did never enquire whether he had or not.

Judge *Trott*. Boatſwain, tell the Truth; had he his Share, or had he not?

Ign. Pell. He had it.

Bonnet. Boatſwain, did you ever hear me force any Man to go?

Ign. Pell. No, Major, I cannot ſay I did.

Bonnet. Do you not remember, that when we left *Topſail-Inlet*, and they began to quarrel about Proviſion, that I ſaid I would leave the Sloop?

Ign. Pell. I do remember you ſaid ſo.

Judge *Trott*. But if you did take ſome for Proviſion, would no leſs than *thirteen* Veſſels ſatisfy you?

Bonnet. It was contrary to my Inclination.

Mr. *Hepworth*. We proceed to call another Evidence.

Capt. *Peter Manwareing called and ſworn*.

Mr. *Hepworth*. Capt. *Manwareing*, look upon the Priſoner at the Bar, do you know him?

Manwareing. I know him very well.

Mr. *Hepworth*. Give the Court an Account of your being taken by him.

Manwareing. I arrived at Cape *James* aliàs Cape *Inlopen*, the thirty-firſt of *July*; and after being at an Anchor ſome time, we ſaw a Dory coming, as I ſaid before. So I was ordered on board the *Revenge*.

Judge *Trott*. And before whom was you brought?

Manwareing. Before the Man at the Bar, Capt. *Thomas* he was called then; and ſo I gave him my Papers; and it being Night, he ſaid but little more that Night. Next Morning they haled the Sloop long-ſide the Scooner, and hoiſted out the Rum and Moloſſes out of the Sloop, and put on board the Scooner; and the Firſt of *Auguſt* we ſailed in Company to Cape *Fear*. But indeed the Gentleman was very civil to me.

Att. Gen. Did you ever hear him give Orders to take out any Goods?

Manwareing. He was on board the Sloop himſelf when it was done.

Mr. *Hepworth*. Do you remember any particular Goods taken out?

Manwareing. Yes, Sir.

Clerk. Will you ask the King's Evidence any Queſtions?

Bonnet. I beg leave to ask whether you ever ſaw me ſhare among the reſt?

Manwareing. You was in the Round-Houſe, and a Bundle and ſome Pieces was brought; and I ſaw you take it, and give it the Negroe-Boy, to put into the Cheſt.

Bonnet. There were ſeveral that I kept their Shares for; but it was not mine.

Manwareing. It was put away by your Order.

Bonnet. Did you ever hear me order any thing out of the Sloop?

Manwareing. Major *Bonnet*, I am ſorry you ſhould ask me that Queſtion; for you know you did: Which was my All, that I had in the World.

So that I do not know but my Wife and Children are now periſhing for want of Bread in *New-England*. Had it been only myſelf, I had not matter'd it ſo much; but my poor Family grieves me.

Clerk. Will you aſk any more Queſtions?

Bonnet. No, Sir.

Mr. *Hepworth.* We will call another Evidence.

James Killing called and ſworn.

Mr. *Hepworth.* Give the Court an Account of your being taken, and what Goods were taken out of you.

The Evidence gave in the ſame Relation as in the former Trials; and then added, That Major *Bonnet* ordered him to go and ſhew which was the Rum, and which was the Moloſſes.

Mr. *Hepworth.* Do you remember in particular what Goods were taken out?

Killing. Yes, Sir.

Mr. *Hepworth.* Were the twenty one Hogſheads of Moloſſes, and the Rum taken out?

Killing. Yes, Sir.

Att. Gen. And all by Major *Bonnet*'s Order?

Killing. Major *Bonnet* gave Orders for it to be done.

Judge *Trott.* What need had you of ſo much Moloſſes?

Bonnet. I did not carry it away, and it was contrary to my Inclination.

Judge *Trott.* You gave Orders for it to be done, and yet it was contrary to your Inclinations.

Clerk. Will you ask the King's Evidence any Queſtions?

Bonnet. No, Sir.

Mr. *Hepworth.* We will call another Evidence.

Capt. *Thomas Read called and ſworn.*

Mr. *Hepworth.* Pleaſe to give the Court an Account of Capt. *Manwareing*'s being taken.

Capt. *Read.* After we came to Cape *James*, we ſaw a Sloop come to an Anchor, and Major *Bonnet* ordered the Dory, with five Hands, to go off; and in about half an Hour they came on board with Capt. *Manwareing*.

Att. Gen. Was you on board the *Revenge* when the Dory was ſent off?

Capt. *Read.* Yes, Sir.

Att. Gen. And Major *Bonnet* gave Orders to take out thoſe Goods?

Capt. *Read.* Yes, Sir.

Judge *Trott.* Was he on board himſelf?

Capt. *Read.* Yes; and ordered the ſeveral Goods to be taken out.

Att. Gen. Do you know if the Major received his Share?

Capt. *Read.* The Captain was in the Round-Houſe when they ſhared, and they brought in ſeveral Pieces of Cloth, and a Bag of Money.

Mr. *Hepworth.* Who brought that to him?

Capt. *Read.* I do not know which of the Men.

Att. Gen. And did the Captain receive his Share?

Capt. *Read.* He ordered it to be put in the Cheſt by the Boy.

Clerk. Will you ask any Queſtions?

Bonnet. No, Sir.

Judge *Trott.* You now ſtand on your Defence: What have you to ſay, I ſhall be ready to hear.

Bonnet. May it pleaſe your Honours, there is a young Man come from *North-Carolina*, that will ſay ſomething in my Defence.

James King called and ſworn.

Judge *Trott.* What do you know of the Priſoner at the Bar.

King. When Major *Bonnet* took out his Clearance at *North Carolina*, the Sloop was cleared for *St. Thomas*'s, for a Commiſſion to go againſt the *Spaniards* a privateering.

Mr. *Dean.* Do you certainly know it was ſo?

King. It was reported to be ſo by the Governour.

Att. Gen. Did you hear the Governour declare this?

King. No; but Colonel *Brice*'s Son told me ſo.

Judge *Trott.* Colonel *Brice* lives fifty Miles in the Country, how did he come to inform you of this?

King. He came down out of the Country?

Judge *Trott.* If this be all the Evidence you have, I do not ſee this will be of much uſe to you; but if you have any thing further to ſay, I ſhall be ready to hear you.

Bonnet. I ſhould be glad to go through both Indictments at once.

Judge *Trott.* We ſhall go through but one Indictment now; therefore you muſt prepare to ſpeak to that ſingly.

Bonnet. May it pleaſe your Honours, and the reſt of the Gentlemen, though I muſt confeſs my ſelf a Sinner, and the greateſt of Sinners, yet I am not guilty of what I am charged with. As for what the *Botſwain* ſays, relating to ſeveral Veſſels, I am altogether free; for I never gave my Conſent to any ſuch Actions: For I often told them, if they did not leave off committing ſuch Robberies, I would leave the Sloop; and deſired them to put me on ſhore. And as for taking Capt. *Manwareing*, I aſſure your Honours it was contrary to my Inclination. And when I cleared my Veſſel at *North Carolina*, it was for *St. Thomas*'s; and I had no other End or Deſign in view but to go there for a Commiſſion. But when we came to Sea, and ſaw a Veſſel, the Quarter-Maſter, and ſome of the reſt, held a Conſultation to take it: But I oppoſed it, and told them again I would leave the Sloop, and let them go where they pleaſed. For as the young Man ſaid, Col. *Brice*'s Son can teſtify that I had Clearance for *St. Thomas*'s.

Judge *Trott.* Was Col. *Brice*'s Son there when you cleared for *St. Thomas*'s?

Bonnet. Yes; and Col. *Brice*'s Son knew I was deſigned for *St. Thomas*'s.

Judge *Trott.* But pray what Buſineſs had you at *St. Thomas*'s? Surely after you had contracted ſo much Guilt upon your Conſcience by your former *Piracies* and *Robberies*, you might have been contented to have lived a retired Life in *North Carolina*, reflected on your former wicked Courſe of Living, and repented of the ſame, and not engaged in new Actions.

Bonnet. I never took a Veſſel but with Capt. *Thatch*.

Judge *Trott.* Did you not take Capt. *Manwareing*'s Sloop?

Bonnet. It was contrary to my Inclinations; and I told them ſeveral Times if they would not leave off that Courſe of Life, I would leave the Sloop: And when Capt. *Manwareing* was taken, I was aſleep.

Judge *Trott.* How came you to order the Dory to be ſent off with five Hands to take him? And Capt. *Read* ſwears it was by your Order.

Att. Gen. May it pleaſe your Honours, and the Gentlemen of the Jury, the Priſoner at the Bar hath pleaded *Not Guilty* to the *Indictment*; but the *Boatſwain*, tho' he ſeems to bear a very great Affection to him, yet tells you that he was Commander in Chief among them at the Time when Capt. *Manwareing* was taken. Capt. *Manwareing* tells you, when he was brought on board the *Revenge*, he was brought before him, and no other, and that he delivered his Papers to him; and he ſaw his Share brought to him in the Round-Houſe, and put into the Cheſt.

Then Capt. *Manwareing*'s *Mate* ſays, Major *Bonnet* was on board the Sloop, and ordered him to ſhew which was the Moloſſes, and which was the Rum. And then Capt. *Read* ſays, Major *Bonnet* was Commander in Chief; and that he ordered the Dory to be ſent off with five Hands to take Capt. *Manwareing*. Indeed the Priſoner pleads he was under Conſtraint from his Men, and that it was contrary to his Inclinations; but I think it not common for one that is forced to have ſuch Command. And as for what *James King* ſays in behalf of the Priſoner, that he had his Clearance for *St. Thomas's*, is what he was accuſed of before, that he deceived his Men with a Notion of his going there for a Commiſſion.

Judge *Trott*. Gentlemen of the Jury, the Priſoner at the Bar ſtands indicted for *Felony* and *Piracy*, committed on a Sloop belonging to Capt. *Peter Manwareing*, for breaking and boarding the ſaid Sloop. The firſt Evidence, *Ignatius Pell*, through the great Affection he ſeem'd to have for him, was unwilling to ſpeak the Truth; yet he cannot deny but he was at the taking of *thirteen* Veſſels, and particularly Capt. *Manwareing*'s, and that he had his Share. Then comes Capt. *Manwareing*, and he ſays Major *Bonnet* was Commander in Chief; and that he was brought before him, and he gave his Papers to him, and by his Order it was that the Goods were taken out. And then *Killing* the Mate, he ſays *Bonnet* was on board when the Goods were taken out. Then comes Capt. *Read*, and he ſays the Dory was ſent off by Major *Bonnet*'s Order; and that his Share was brought into the Round-Houſe to him. As for his Pretence, that his Men forced him againſt his Will, it appears by the Evidence he did not act like a Perſon under Conſtraint. And in the former Trials, ſeveral of you remember, that his Men generally ſaid, that he deceived them under Pretence of his going to *St. Thomas*'s; and that he forced them. So that I think the Evidence have proved the Fact upon him: But I ſhall leave this to your Conſideration.

Then an *Officer* was ſworn to keep the *Jury*.

Who after they had conſider'd of their *Verdict*, return'd, and found the aboveſaid *Stede Bonnet* alias *Edwards* alias *Thomas*, Guilty.

Then the Court adjourned till *Tueſday* Morning.

Tueſday, *November* the 11th, 1718. the Court met according to Adjournment.

THEN the Court proceeded on the Trial of *Stede Bonnet* alias *Edwards* alias *Thomas*, upon the ſecond Indictment for *feloniouſly* and *piratically* taking the Sloop *Fortune*, with her Goods, Capt. *Thomas Read*, Commander.

To which *Indictment* upon his Arraignment he pleaded *Not Guilty*; but now deſired leave to withdraw his *Plea*, and pleaded *Guilty*.

Then the Court adjourn'd till *Wedneſday* Morning.

Wedneſday, *November* the 12th, 1718. the Court met according to Adjournment.

THEN *Stede Bonnet* alias *Edwards* alias *Thomas*, who ſtood convicted of Piracies, as appears by the above Records, being brought to the Bar; and being asked what he had to ſay why Judgment of Death ſhould not paſs upon him:

And he having nothing to alledge in Arreſt of Judgment;

Then Proclamation for *Silence* was made, while the *Judge* of the Court of *Vice-Admiralty* pronounced *Sentence* of Death upon the Priſoner.

Judge *Trott*. Major *Stede Bonnet*, you ſtand here convicted upon *two* Indictments of *Piracy*: One by the *Verdict* of the Jury, and the other by your own *Confeſſion*.

Although you were indicted but for *two* Facts, yet you know that at your Trial it was fully proved, even by an unwilling Witneſs, that you *piratically* took and rifled no leſs than *thirteen* Veſſels, ſince you ſailed from *North Carolina*.

So that you might have been indicted and convicted of *eleven* more Acts of *Piracy*, ſince you took the Benefit of the King's *Act of Grace*, and pretended to leave off that wicked Courſe of Life.

Not to mention the many *Acts* of *Piracy* you committed before; for which, if your Pardon from *Man* was never ſo authentick, yet you muſt expect to anſwer for them before God.

You know that the Crimes you have committed are *evil* in themſelves, and contrary to the *Light* and *Law* of *Nature*, as well as the *Law* of God, by which you are commanded that *you ſhould not ſteal*, Exod. xx. 15. And the Apoſtle St. *Paul* expreſly affirms, that *Thieves ſhall not inherit the Kingdom of God*, 1 Cor. vi. 10.

But to *Theft* you have added a greater Sin, which is *Murder*. How many you may have *killed* of thoſe that reſiſted you in the committing your former *Piracies*, I know not: But this we all know, that beſides the wounded, you killed no leſs than *eighteen* Perſons out of thoſe that were ſent by lawful Authority to ſuppreſs you, and to put a Stop to thoſe Rapines that you daily acted.

And however you may fancy that that was killing Men fairly in open *Fight*, yet this know, that the Power of the *Sword* not being committed into your Hands by any lawful Authority, you were not impower'd to uſe any *Force*, or to *fight* any one; and therefore thoſe Perſons that fell in that Action, in doing their Duty to their King and Country, were *murdered*, and their *Blood* now cries out for *Vengeance* and *Juſtice* againſt you: For it is the *Voice* of *Nature*, confirm'd by the *Law* of God, that *whoſo ſheddeth Man's Blood, by Man ſhall his Blood be ſhed*, Gen. ix. 6.

And

And consider that Death is not the only Punishment due to *Murderers*; for they are threaten'd to have *their Part in the Lake which burneth with Fire and Brimstone, which is the second Death*, Rev. 21. 8. See *Chap.* 22. 15. Words which carry that Terror with them, that considering your Circumstances and your Guilt, surely the Sound of them must make you tremble; *For who can dwell with everlasting Burnings?* Chap. 33. 14.

As the *Testimony* of your *Conscience* must convince you of the great and many Evils you have committed, by which you have highly offended God, and provoked most justly his Wrath and Indignation against you, so I suppose I need not tell you that the only way of obtaining Pardon and Remission of your Sins from God, is by a true and unfeigned *Repentance*, and *Faith* in Christ, by whose meritorious Death and Passion you can only hope for Salvation.

You being a Gentleman that have had the Advantage of a *liberal Education*, and being generally esteemed a Man of *Letters*, I believe it will be needless for me to explain to you the Nature of *Repentance* and *Faith* in Christ, they being so fully and so often mentioned in the Scriptures, that you cannot but know them. And therefore, perhaps, for that Reason it might be thought by some improper for me to have said so much to you, as I have already upon this occasion; neither should I have done it, but that considering the Course of your Life and Actions, I have just reason to fear that the Principles of Religion that had been instill'd into you by your *Education*, have been at least corrupted, if not entirely defac'd, by the *Scepticism* and *Infidelity* of this wicked Age; and that what time you allowed for Study was rather applied to the *Polite Literature*, and the vain *Philosophy* of the Times, than a serious Search after the *Law* and *Will* of God, as revealed to us in the *Holy Scriptures*: For *had your Delight been in the Law of the Lord, and that you had meditated therein Day and Night*, Psal. 1. 2. you would then have found that God's *Word was a Lamp unto your Feet, and a Light to your Path*, Psal. 119. 105. and that you would account all other Knowledge but *Loss*, in comparison of *the Excellency of the Knowledge of Christ Jesus*, Phil. 3. 8. *who to them that are called is the Power of God, and the Wisdom of God*, 1 Cor. 1. 24. *even the hidden Wisdom which God ordained before the World*, Chap. 2. 7.

You would then have esteemed the *Scriptures* as the *Great Charter* of Heaven, and which delivered to us not only the most perfect *Laws* and *Rules* of Life, but also discover'd to us those Acts of *Pardon* from God, wherein we have offended those righteous Laws: For in them only is to be found the great *Mystery* of fallen Man's *Redemption*, *which the Angels desire to look into*, 1 Pet. 1. 12.

And they would have taught you that *Sin* is the debasing of *Human Nature*, as being a *Deviation* from that *Purity*, *Rectitude*, and *Holiness*, in which God created us; and that *Virtue* and *Religion*, and walking by the Laws of God, were altogether preferable to the Ways of *Sin* and *Satan*; for that the *Ways* of Virtue are *Ways of Pleasantness, and all her Paths are Peace*, Prov. 3. 17.

But what you could not learn from God's Word, by reason of your *carelesly*, or but *superficially* considering the same, I hope the Course of his *Providence*, and the present *Afflictions* that he hath laid upon you, hath now convinced you of the same: For however in your seeming Prosperity you might make a *Mock at your Sins*, Prov. 3. 17. yet now that you see that God's Hand hath reached you, and brought you to publick Justice, I hope your present unhappy Circumstances hath made you seriously reflect upon your past Actions and Course of Life; and that you are now sensible of the Greatness of your Sins, and that you find the Burden of them is intolerable.

And that therefore being thus *labouring, and heavy laden with Sin*, Matt. 11. 28. you will esteem that as the most valuable *Knowledge*, which can shew you how you can be reconciled to that supreme God, whom you have so highly offended; and which can reveal to you him who is not only the powerful *Advocate with the Father for you*, 1 John 2. 1. but also who hath paid that Debt that is due for your Sins by his own Death upon the Cross for you, and thereby made full Satisfaction to the Justice of God. And this is to be found no where but in God's Word, which discovers to us that *Lamb of God which taketh away the Sins of the World*, John 1. 29. which is *Christ* the Son of God: For this know, and be assured, that *there is none other Name under Heaven given among Men, whereby we must be saved*, Acts 4. 12. but only by the Name of the Lord *Jesus*.

But then consider how he invites all Sinners to come unto him, and *that he will give them rest*, Matt. 11. 28. for he assures us *that he came to seek and to save that which was lost*; Luke 19. 10. Matt. 18. 11. and hath promised that *he that cometh unto him, he will in no wise cast out*, John 6. 37.

So that if now you will sincerely turn to him, tho' late, even at the *eleventh Hour*, Matt. 20. 6, 9. he will receive you.

But surely I need not tell you that the *Terms* of his *Mercy* is *Faith* and *Repentance*.

And do not mistake the *Nature* of Repentance to be only a bare Sorrow for your Sins, arising from the Consideration of the *Evil* and *Punishment* they have now brought upon you; but your Sorrow must arise from the Consideration of your having offended a gracious and merciful God.

But I shall not pretend to give you any particular Directions as to the Nature of Repentance: I consider that I speak to a Person whose Offences have proceeded not so much from his not *knowing*, as his *slighting* and *neglecting* his *Duty*: Neither is it proper for me to give Advice out of the way of my own Profession.

You may have that better delivered to you by those who have made Divinity their particular Study; and who by their Knowledge, as well as their Office, as being the *Ambassadors of Christ*, 2 Cor. 5. 20. are best qualified to give you Instructions therein.

I only heartily wish that what, in compassion to your Soul, I have now said to you upon this sad and solemn Occasion, by exhorting you in general to *Faith* and *Repentance*, may have that due Effect upon you, that thereby you may become a true *Penitent*.

And therefore having now discharged my Duty to you as a *Christian*, by giving you the best Counsel I can with respect to the Salvation of your Soul, I must now do my Office as a *Judge*.

The Sentence that the Law hath appointed to pass upon you for your Offences, and which this Court doth therefore award, is,

That you the ſaid Stede Bonnet *ſhall go from hence to the Place from whence you came, and from thence to the Place of Execution, where you ſhall be hanged by the Neck till you are Dead. And the God of infinite Mercy be merciful to your Soul.*

On *Wedneſday December* the 10th, 1718. the ſaid Major *Stede Bonnet* was *executed* at the *White-Point* near *Charles-Town*, according to the above *Sentence*.

CLXXXVII. *Proceedings of the Houſe of Lords in* Ireland *againſt* Jeffery Gilbert, *Eſq*; *Lord Chief Baron*, John Pocklington, *Eſq*; *and Sir* John St. Leger, *Kt. Barons of the* Exchequer *there, for iſſuing Proceſs in the Cauſe of* Anneſley *and* Sherlock, *in oppoſition to an Order of that Houſe*, July 28. 1719. 5 GEO. I.

Alexander Burrowes, High Sheriff of the County of *Kildare*, having been ſeveral times fined by the Court of *Exchequer*, for not obeying an Order of that Court, which he apprehended to be a Breach of a former Order of the Houſe of Lords, preſented the following Petition.

To the Right Honourable the Lords Spiritual and Temporal in Parliament Aſſembled, the Humble Petition of *Alexander Burrowes*, Eſq; late Sheriff of the County of *Kildare*,

Moſt humbly Sheweth,

THAT on the 3*d* Day of *October*, 1717. your Lordſhips were pleaſed to Order, that the High Sheriff of the County of *Kildare* ſhould forthwith put *Heſter Sherlock* into the Poſſeſſion of the Lands of *Little-Rath*, and other Lands in the ſaid Order mentioned, which were to be held by her till ſhe ſhould receive thereout the Sum of 1507*l*. 14*s*. 8*d*. Farthing, chargeable upon the ſaid Lands.

That *Charles Nuttal*, Eſq; then High Sheriff of the County of *Kildare*, in Obedience to, and by Vertue of your Lordſhips ſaid Order, on the ſixth Day of *October* aforeſaid, put the ſaid *Heſter Sherlock* into the Poſſeſſion of the Premiſſes; and ſhe was in the actual Poſſeſſion thereof, when your Petitioner was appointed and ſworn Sheriff of the ſaid County of *Kildare* for the Year, ending at *Michaelmas* 1718.

That on the 15th Day of *March*, 1717. an Injunction iſſued out of the Court of *Exchequer*, Sign'd by the Right Honourable *Jeffery Gilbert*, Eſq; Lord Chief Baron of the ſaid Court; and under the Seal thereof, directed to your Petitioner, being then Sheriff of the ſaid County; whereby your Petitioner was required immediately after Receipt thereof, purſuant to an Order of the ſaid Court of *Exchequer*, bearing Date the 19th Day *February* preceding, (although the Barons of the ſaid Court had due Notice of your Lordſhips ſaid Order of the 3d of *October* aforeſaid) to reſtore *Maurice Anneſley*, Eſq; to the Poſſeſſion of thoſe Lands, whereof the ſaid *Heſter Sherlock* was then actually poſſeſſed by Vertue of, and under your Lordſhips ſaid Order. And your Petitioner was alſo required by the ſaid Injunction to ſupport and keep the ſaid *Maurice Anneſley* in ſuch Poſſeſſion of the Premiſſes till the further Order of the ſaid Court, or till the ſaid *Maurice Anneſley* ſhou'd be thereout Evicted by due Courſe of Law, which Injunction was delivered to your Petitioner by *John Anneſley* (the ſaid *Maurice*'s Brother) who required your Petitioner to give him the Poſſeſſion of the ſaid Lands, having a Letter of Attorney from his ſaid Brother for that Purpoſe, (as he informed your Petitioner) but your Petitioner refuſed to execute the ſaid Injunction, conceiving it to be a Breach of your Lordſhip's ſaid Order of the 3d of *October* 1717. and of the Rights and Privileges of this Honourable Houſe.

Whereupon the ſaid *John Anneſley* in his proper Perſon, on the 13th Day of *May*, 1718. moved the ſaid Court of *Exchequer* on his Affidavit, ſetting forth, that your Petitioner refuſed to execute the ſaid Injunction, and pray'd that the ſaid Affidavit might be read, which was order'd, and accordingly read by *John Beauman*, Gent. one of the Attornies of the ſaid Court, and the ſaid Lord Chief Baron, and the Honourable *John Pocklington*, Eſq; and Sir *John St. Leger*, Kt. two other of the Barons of the ſaid Court, then ſitting in the ſaid Court of *Exchequer*, Ordered, that your Petitioner ſhou'd be fined 40*s*. if he did not return the ſaid Injunction in four Days; and on ſeveral Motions afterwards made by the ſaid *John Beauman*, the ſaid Barons impoſed ſeveral Fines on your Petitioner, which amount to 77*l*. *Sterl*. and upon ſaid *Beauman*'s Motion on the 30th Day of *June*, 1718. ordered an Attachment to the Purſuivant againſt your Petitioner, for the Matters aforeſaid, which accordingly iſſued.

That on the 7th Day of *July*, 1718. your Petitioner returned the ſaid Writ of Injunction, and thereon returned in *hæc Verba*, your Lordſhips ſaid Order of the 3*d* Day of *October* 1717. and the Reſolutions of this Honourable Houſe, bearing

ing Date the 11th Day of *February*, 1703. on the Petition of *Edward* Earl of *Meath*, and *Cecilia* Counteſs of *Meath* his Wife; of which the ſaid Barons had likewiſe due Notice. And that your Petitioner by reaſon of your Lordſhips ſaid Order and Reſolutions, and of the Rights and Privileges of this Honourable Houſe, durſt not reſtore the ſaid *Maurice Anneſley* to the Poſſeſſion of the Premiſſes, as by the ſaid Writ of Injunction was required.

That all the ſaid Fines being impoſed on your Petitioner for not Returning ſaid Writ, and your Petitioner having complied with the ſaid Orders by Returning the ſame; the ſaid Barons *Pocklington* and *St. Leger*, on the 16th Day of *July*, 1718. ſitting publickly upon the Reducing of Fines in the *Exchequer* Chamber, and having heard the ſaid ſeveral Fines impoſed upon your Petitioner read unto them by the proper Officer, and being by him informed, that your Petitioner had Return'd ſaid Injunction, were pleaſed to reduce, and accordingly took off the ſaid Fines, upon paying 6*d.* in the Pound, (as by a Rule made by the Barons has been practis'd in ſuch Caſes, tho' the ſame was never taken before, as your Petitioner is informed;) but in the Afternoon of the ſaid Day, *John Draycot*, one of the Attorneys of the ſaid Court, (who paid the Box for your Petitioner on taking off the ſaid Fines) was ſent for by the ſaid Lord Chief Baron to his Lordſhip's Houſe, where the ſaid other two Barons then were; and after the ſaid Barons had heard the ſaid Writ of Injunction and Return read, and what was offered in behalf of your Petitioner in Juſtification of the ſaid Return, the ſaid Barons were pleaſed at his Lordſhip's ſaid Houſe, to oblige the ſaid *Draycot* to take back the Money he ſo paid for taking off ſaid Fines; and eſtreated the ſame, which have ſince iſſued in Proceſs againſt your Petitioner; although the ſaid Return was never complained of by the ſaid *Maurice Anneſley*, or his Council, nor had your Petitioner an Opportunity or Day given him to juſtify the Legality of the ſaid Return, tho' the ſame was prayed by the ſaid *Draycot* in behalf of your Petitioner.

That the ſaid Barons, without having any regard to the ſaid Return, on the 7th Day of *November* laſt, upon ſaid *Beauman*'s Motion, ordered the ſaid Attachment to the Purſuivant to be renewed againſt your Petitioner; which having iſſued, your Petitioner was obliged to abſcond, and keep as private as poſſible, ſo that he could not attend his Affairs, whereby your Petitioner has ſuffered very much in his Fortune.

That by Reaſon of the ſaid Attachment to the Purſuivant, ſo from time to time iſſued againſt your Petitioner, he could not come upon his Accounts before the ſaid Barons in the ſaid Court of *Exchequer*: your Petitioner being adviſed and well aſſured, that if he ſhould appear in the ſaid Court, the ſaid Barons would commit your Petitioner into cloſe Cuſtody, for not obeying their ſaid Injunction: and the ſaid Barons taking Advantage of your Petitioner's ſaid Circumſtances, ordered your Petitioner to be Fined 1200*l.* and upwards, for not coming upon his Accounts; tho' your Petitioner always was, and ſtill is ready to give his Majeſty a juſt and true Account of his ſaid Office of Sheriff-wick, while he was concerned therein.

May it therefore pleaſe your Lordſhips to take the Premiſſes into Conſideration, and make ſuch Order therein for your Petitioner's Relief, as to your Lordſhips in your great Wiſdom ſhall ſeem meet, &c.

And your Petitioner will ever Pray,

ALEX. BURORWES.

Upon reading this Petition, the Houſe of Lords referr'd it to the Committee for Courts of Juſtice, who after an Examination into the Affair, made the following Report by the Lord Biſhop of *Cloghet* their Chairman.

My LORDS,

THE Lords Committees for *Courts of Juſtice*, to whom the Petition of *Alexander Burrowes*, Eſq; late Sheriff of the County of *Kildare* was referred, do find,

That by the Order of this Houſe of the 3*d* of *October*, 1717. *Heſter Sherlock*, Widow, was upon the 6th of the ſame Month put into the actual Poſſeſſion of the Lands of *Little Rath*, *Bodingſtown*, *Darr* and *Mullenafooky* in the County of *Kildare*, by *Edward Conyers* Under-Sheriff to *Charles Nuttall*, Eſq; then High Sheriff of the ſaid County; to continue therein till ſhe ſhould receive thereout the Sum of 1507*l.* 14*s.* 8*d.* Farthing, chargeable on the ſaid Lands; and the ſaid *Heſter* continued ſo poſſeſſed by Vertue of the ſaid Order for near two Years.

That by the Minutes of the *Chancery* ſide of the *Exchequer* it appears, that the Lord Chief Baron of the *Exchequer*, on the 19th *February*, 1717. produced a Letter [a] dated *London* the 8th *February*, 1717. ſign'd *Cowper*, *C.* in which two Papers [b] were incloſ'd, dated the 6th *February*,

[a] *London*, the 8th *February*, 1717. My Lord Chief Baron, By Order of the Houſe of Lords (a Copy whereof I herewith ſend you) I Tranſmit to your Lordſhip, and the reſt of the Barons of his Majeſty's Court of *Exchequer* in *Ireland*, the Order of the ſaid Houſe; whereby the Barons of that Court are commanded to Reſtore Mr. *Anneſley* to the Poſſeſſion of his Eſtate. Your Lordſhip will immediately communicate this to the reſt of the Barons, and let me know, as ſoon as can be, what is done by your ſelf, and the reſt of the Barons, in purſuance to their Lordſhips Order, as you ſee by the above-mentioned Copy I am ordered to require of you. I am your Lordſhip's moſt faithful Servant, *Cowper*, *C.*

To the Lord Chief Baron of the Exchequer *in* Ireland, *and the reſt of the Barons of the ſaid Court.*

[b] *Die Jovis*, 6° *Februarii*, 1717. *Ordered*, By the Lords Spiritual and Temporal in Parliament Aſſembled, That the Lord Chancellor do Tranſmit the Order of this Houſe to the Barons of the *Exchequer* in *Ireland*, which requires them to cauſe Poſſeſſion to be forthwith delivered to *Maurice Anneſley*, Eſq; of the Lands of which he was diſpoſſeſſed, pending his Appeal in this Houſe, commanding the Barons of the *Exchequer* at the ſame time to return to this Houſe, as ſoon as they can, an Account of what ſhall be done therein.

William Cowper, Cler'. Parliamentor'.

Die Jovis 6 *Die Februarii*, 1717. Upon Report from the Committee of the whole Houſe, to whom it was Referr'd, to conſider by what Methods the Order of this Houſe, for the Reſtoring Poſſeſſion to *Maurice Anneſley*, Eſq; of the Eſtate in *Ireland*, whereof he was Diſpoſſeſs'd, pending his Appeal in this Houſe, may be moſt properly enforced and Executed: It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, that the Barons of the Court of *Exchequer* in *Ireland*, do cauſe the ſaid *Maurice Anneſley*, Eſq; to be forthwith Reſtored to the Poſſeſſions of the Lands of which he was Diſpoſſeſs'd, pending his Appeal, which was received by this Houſe the 8th Day of *June* laſt.

William Cowper, Cler'. Parliamentor'.

1717, ſign'd *William Cowper, Cler' Parliamentor'* directed to the Lord Chief Baron of the *Exchequer* in *Ireland*, and the reſt of the Barons of the ſaid Court; alledged by the Lord Chief Baron to be Orders from the Lords in *Great Britain*, requiring them to reſtore *Maurice Anneſley*, Eſq; to the Poſſeſſion of the Lands he was diſpoſſeſſed of; pending his Appeal in the *Houſe of Lords* of *Great Britain*.

That on the ſaid 19th Day of *February*, 1717. in purſuance of the ſaid alledged Orders and Letter (inſerted at the end of this Report) tho' no Affidavit had been made, that the ſaid Orders or Letter were regularly Compared and ſigned, the ſaid Lord Chief Baron, and the other Barons, without any Motion by Council or Attorney, ordered an Injunction for the reſtoring the ſaid *Maurice Anneſley* to Poſſeſſion of the Lands he was diſpoſſeſs'd of, pending his ſaid Appeal, in the Name of the *Chancellor*, *Treaſurer*, and *Barons* of the ſaid Court of *Exchequer*, whereby the Sheriff or Sheriffs of the County or Counties where the ſaid Lands lay, was forthwith to put the ſaid *Maurice* into the Poſſeſſion of the ſaid Lands.

That in order to make out the ſaid Injunction, the ſaid Court ordered the ſaid *Maurice Anneſley*, his Attorney, Agent, Sollicitor or Council, ſhou'd forthwith attend the Chief Remembrancer, or his Deputy, with the Names of the Lands of which the ſaid *Maurice Anneſley* was ſo diſpoſſeſſed of, and alſo the County or Counties where the ſaid Lands lay.

That upon the 14th of *March*, 1717. Affidavit was made before the Lord Chief Baron by *John Anneſley* of *Ballyſax* in the County of *Kildare*, Eſq; wherein *Heſter Sherlock* was made Plantiff, and *Maurice Anneſley*, Eſq; Defendant; that he the ſaid *John* was diſpoſſeſs'd of the Lands of *Little Rath*, *Darr*, *Bodingſtown*, and *Mullenafooky*, which he the ſaid *John* held by Vertue of a Leaſe from the ſaid *Maurice Anneſley*, pending his ſaid Appeal; and that the ſaid *John*'s Leaſe was then in being and undetermined.

That upon the 14th of *March*, 1717. the ſaid Affidavit of the ſaid *John Anneſley* was filed in the Chief Remembrancer's Office, in order to have the ſaid Injunction made out; but before the ſaid Injunction iſſued, it appears by the Examination of Mr. *John Draycott*, Attorney for Mrs. *Sherlock* in the *Exchequer* (after having been ſworn at the Bar of this Houſe) that he the ſaid *Draycott* attended Mr. *John Becher*, then Deputy Chief Remembrancer, at his Office, and in the Preſence of the ſaid *John Anneſley* informed the ſaid *Becher*, that the ſaid Affidavit was inſufficient, and that the ſaid *Draycott* was ready to prove, that the ſaid *Maurice Anneſley* was not at the time of his ſaid Appeal, nor at any time ſince, in Poſſeſſion of the ſaid Lands mentioned in the ſaid Affidavit; having ſold the ſaid Lands ſome Years before to *Andrew Wilſon*, Eſq; and Mrs. *Frances Harman*.

That by two Copies of Memorials out of the Regiſter's Office (for Regiſtring Deeds, *&c.* purſuant to Act of Parliament) proved by the ſaid *Draycott* to be true Copies of the Memorials remaining in the ſaid Office, it appears, that by Deeds of Leaſe and Releaſe bearing Date reſpectively the 1ſt and 2d Days of *March*, 1714. the Leaſe being made between *Jeffery Paul*, Eſq; of the one Part, and *Andrew Wilſon*, Eſq; of the other Part; and the Releaſe made between the ſaid *Jeffery Paul* of the firſt Part, ſaid *Andrew Wilſon* of the ſecond Part, and *Maurice Anneſley*, Eſq; on the third Part, whereby the ſeveral Lands of *Little Rath*, *Darr*, and *Bodingſtown* in the Barony of *Naas*, and County of *Kildare*, were for the Conſiderations therein mentioned, conveyed to the ſaid *Andrew Wilſon* and his Heirs for ever: And the Right Honourable the Lord *Altham* upon his Honour declared, that he knew that *John Anneſley* of *Ballyſax*, Eſq; had paid Rent to the ſaid *Andrew Wilſon* by Vertue of, and under the ſaid Purchaſe; but believed that the Lord Chief Baron or the other Barons knew nothing thereof. It alſo appears, that by Deeds of Leaſe and Releaſe, bearing Date reſpectively the 2*d* and 3*d* Days of *April*, 1715. made between *Maurice Anneſley*, Eſq; of the one Part, and *Frances Harman* of the City of *Dublin*, Widow, of the other Part; By which ſaid Releaſe the ſaid *Maurice Anneſley* for the Conſiderations therein mentioned, conveyed to the ſaid *Frances Harman*, and her Heirs for ever, the Lands of *Mullenafooky* in the ſaid County of *Kildare*. That notwithſtanding there was no County mentioned in the ſaid Affidavit, and ſaid Notice given of ſaid Sale to the ſaid Officer as aforeſaid; neither did it appear by the ſaid Affidavit, that the ſaid *Maurice Anneſley* was diſpoſſeſſed of the ſaid Lands therein mentioned, pending his Appeal; the ſaid Injunction iſſued directly to the Sheriff of the County of *Kildare*, bearing Date the 22*d* *February*, in the Fourth Year of his Majeſty's Reign, ſign'd *Galfridus Gilbert*, and returnable into the ſaid Court in *Quindec. Paſch.* then next enſuing.

That by an Affidavit ſworn by *John Anneſley* on the 7th of *May*, 1718. before Mr. Baron *St. Leger*, and filed in the Chief Remembrancer's Office the 9th of the ſame Month; wherein he made *Maurice Anneſley*, Eſq; Plantiff, and *Heſter Sherlock*, Widow, Defendant; in which the ſaid *John Anneſley* depoſed, that on or about the 15*th* of *March* preceding, he delivered the before-mentioned Injunction to *Alexander Burrowes*, Eſq; then High Sheriff of the ſaid County of *Kildare*; and ſhewed the ſaid Sheriff a Letter of Attorney from the Plantiff, impowering the ſaid *John Anneſley* to receive the Poſſeſſion of the Lands in the ſaid Injunction mentioned; but the ſaid Sheriff refuſed to execute the ſaid Injunction.

That the ſaid *John Anneſley* in his proper Perſon, on the 13th of the ſaid Month, moved the ſaid Court upon an atteſted Copy of the ſaid Affidavit; but the ſaid *Draycott* inſiſting, that there was no ſuch Cauſe in Court, the ſaid *Anneſley* was directed by the ſaid Court to amend his Affidavit and move it again.

That the ſaid *Anneſley* thereupon eraſed and altered the ſaid Copy, and made *Heſter Sherlock*, Widow, Defendant; and ſwore the ſame before Mr. Baron *St. Leger*, and filed the ſaid Affidavit ſo amended in the Chief Remembrancer's Office, without any Alteration made in the Body of the ſaid Affidavit; which was proved by the Depoſition of *Daniel Reading*, Eſq; Deputy Chief Remembrancer; who was ſworn at the Bar of this Houſe, and examined before the ſaid Lords Committees.

That the ſame Day *(viz.)* 13th *May*, upon reading the ſaid Affidavit, the ſaid Court was informed by Counſellor *Dixon*, that what was ſworn in the ſaid Affidavit could not be true: For that the ſaid *Anneſley* ſwore he had a Letter of Attorney from the Plantiff (who was Mrs. *Sherlock*) to receive Poſſeſſion of the Lands therein mentioned;

when, in truth, Mrs. *Sherlock* was then in actual Poſſeſſion of the ſaid Lands.

That the Lord Chief Baron ſaid it was only a Miſtake, and without rectifying the ſame, on Motion of Mr. *John Beauman* an Attorney, the Court ordered the ſaid Sheriff to be fin'd forty Shillings, if he did not return the ſaid Injunction in four Days; and on ſaid *Beauman*'s ſeveral Motions, there were Fines at ſeveral Times laid upon the ſaid Sheriff for not returning the ſaid Injunction, which amounted to 77*l.* which was proved by the Minutes of the ſaid Court, and the Teſtimony of the ſaid *Draycott*.

That the ſaid *Draycott* likewiſe proved, that the ſaid Lord Chief Baron, and the other Barons, had due notice of the ſaid Order of this Houſe; and the Reſolutions thereof made the 11th *February*, 1703. before any Proceedings were had in the ſaid Cauſe, ſubſequent to the ſaid Order of this Houſe of the 3d of *October*, 1717. and that the ſaid *Anneſley* and *Beauman* were ſerved with Copies of the ſaid Order and Reſolutions, before any Motions were made by them in the ſaid Cauſe.

That by the Minutes of the 13th *June*, 1718. taken in the ſaid Court, it appears, that Mr. *Chancellor* of the *Exchequer* declared, That the Orders of the Houſe of Lords of *England* being only directed to the *Barons* of that Court; and that he found, that the Order of that Court, which was made thereon, was made, as if done by him, and the *Treaſurer*, as well as by the *Barons*; that he apprehended, that in regard the ſaid Orders were not directed to him, or he preſent when the ſaid Order of the Court of *Exchequer* was made, *That he had nothing to do therewith, and did not conſent thereto.*

That it appeared by the Teſtimony of the ſaid Mr. *Reading*, that the ſaid Cauſe between *Sherlock* and *Anneſley* was of the *Chancery* Side of the *Exchequer*; and that all Bills in the *Chancery* Side of the ſaid Court were directed to the *Chancellor*, *Treaſurer* and *Barons*, and believed, that if a Bill was directed otherwiſe, it would be Error.

That upon the 30th of *June*, 1718. on Motion of the ſaid *Beauman*, an Attachment to the Purſuivant was awarded againſt the ſaid *Burrowes* for not returning the ſaid Injunction, bearing Teſt the 1ſt Day of *July*, in the Fourth Year of his Majeſty's Reign, and returnable before the *Chancellor*, *Treaſurer*, and *Barons* of the ſaid Court, in *Craſt. Animar.* then next.

That upon the 7th *July*, 1718. the ſaid *Burrowes* return'd the ſaid Injunction, and the ſaid *Beauman* was acquainted therewith by the ſaid *Draycott*; who told the ſaid *Beauman*, that he was ready to pay him the Coſt of impoſing the ſaid Fines and Purſuivant, which the ſaid *Beauman* refuſed, and told the ſaid *Draycott*, that *he muſt firſt have the ſaid Sheriff in Cuſtody:* That the ſaid *Draycott* applied again to the ſaid *Beauman*; and the ſaid *Beauman* ſaid, *he muſt firſt lay the ſaid Sheriff by the Heels.*

That by the Teſtimony of the ſaid Mr. *Reading* and Mr. *Draycott*, Barons *Pocklington* and *St. Leger*, upon 16th *July* 1718. ſat in the *Exchequer*-Chamber on the reducing of Fines: That the Fines impoſed upon the ſaid Sheriff were then read by Mr. *Becher* the Officer, who inform'd the ſaid Barons, that the ſaid Injunction was return'd; that a Piſtole and ſeven Half Crowns were paid to the Box, and the ſaid Fines were then taken off by the ſaid Barons.

That upon the ſame Day in the Afternoon, the ſaid *Becher*, *Reading*, and *Draycott* were ſent for to the Lord Chief Baron's Houſe, where the two other Barons were with his Lordſhip; that the ſaid Injunction was ſent for, and ſaid Injunction and Return thereon was read, and the Barons declared that it was no Return; that the ſaid *Draycott* told his Lordſhip, that he hoped he would at leaſt reſpite the ſaid Fines till the then next Term, or give the ſaid Sheriff an Opportunity to juſtify his ſaid Return, which was refuſed: That the Liſt of Fines, which was that Day read in the *Exchequer*-Chamber, was then call'd for, and the Fines impoſed upon the ſaid *Burrowes* were then read; That the ſaid *Draycott* was obliged to take back the ſaid Money, which he had paid to the Box for taking off the ſaid Fines, and the ſame were then eſtreated.

That the Return made by the Sheriff upon the ſaid Injunction, was to this Purpoſe, (*viz.*) That before the ſaid Writ came to him, the Order of this Houſe of the 3d of *October*, 1717. and the Reſolutions of this Houſe of the 11th of *February*, 1703. were delivered to him, which he recites in *hæc verba*. Which Return [c] the Lords Committees have thought fit to annex to their Re-

[c] The Return upon the Injunction. *Cancellar. Theſaurar. & Baronibus Infraſcript. humillimè Certifico quod ante adventum hujus Brevis mihi direct. quædam Reſolutiones Præhonorabil. Dom. Procerum hujus Regni* Hiberniæ *fact. in Parliament. apud* Dublin. *in hoc Regno Congregat. undecimo die* Febr. *Anno Dom. Milleſimo Septingenteſimo Tertio mihi deliberat. fuer. quæ ſequuntur in hæc verba, ſcilicet.* Reſolutions of the Right Honourable the Houſe of Peers, the Eleventh of *February*, 1703.

Ordered on Motion, That the Petition of *Edward* Earl of *Meath*, and *Cecilia* Counteſs of *Meath*, his Wife, be read; read accordingly.

Ordered on Motion, That the Clerk of the Rolls do bring into this Houſe the Roll of the Acts of Parliament of the 38th of *Henry* the Sixth.

Reſolved on the Queſtion, *Nemine Contradicente*, That by the antient and known Laws and Statutes of this Kingdom, her Majeſty hath an undoubted Juriſdiction and Prerogative of Judging in this her High Court of Parliament, in all Appeals and Cauſes within her Majeſty's Realm of *Ireland*.

Reſolved on the Queſtion, *Nemine Contradicente*, That the Determinations and Judgments of this High Court of Parliament, are final and concluſive, and cannot be revers'd or ſet aſide by any other Court whatſoever.

Reſolved on the Queſtion, *Nemine Contradicente*, That if any Subject or Reſiant within this Kingdom, ſhall hereafter preſume to remove any Cauſe determined in this High Court of Parliament, to any other Court, ſuch Perſon or Perſons ſhall be deemed *Betrayers* of her Majeſty's Prerogative and Juriſdiction, and the undoubted, antient Rights and Privileges of this Honourable Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

Reſolved on the Queſtion, *Nemine Contradicente*, That if any Subject or Reſiant within this Kingdom, ſhall preſume to put in Execution any Order from any other Court, contrary to the final Judgment and Determination of this High Court of Parliament, ſuch Perſon or Perſons ſhall be deemed *Betrayers* of her Majeſty's Prerogative and Juriſdiction, and the undoubted, antient Rights and Privileges of this Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

En. Sterne, Cler' Parliamentor'.

Et ulterius Certifico, quòd ante Adventum iſtius Brevis mihi direct. quidam Ordo fact. per Præhonorabil. Domin. Spiritual. & Temporal. in Parliament. in hoc Regno Congregat. geren. dat. Tertio die Octobris, *Anno Dom. Milleſimo Septingenteſimo decimo Septimo etiam mihi deliberat. fuit, qui ſequitur in hæc verba, ſcilicet. Die* Jovis *Tertio die* Octobris, 1717. Whereas by the Report made from the Lords Committees appointed to conſider the propereſt Method for the relieving of *Heſter Sherlock*, Widow, *&c.* purſuant to what was Ordered and Adjudged by this Houſe, on the 19th Day of *June*, 1716. in a Cauſe wherein

port. That *Charles Nuttal*, Eſq; late Sheriff of the County of *Kildare*, by Vertue of the ſaid Order of the 3d of *October*, put *Heſter Sherlock* into the Poſſeſſion of the Premiſes, and that ſhe was at the Time of the Return in Poſſeſſion thereof; that by Reaſon of their Order and Reſolutions, he durſt not reſtore *Maurice Anneſley* to the Poſſeſſion of the Lands in the ſaid Injunction mentioned, in Prejudice and Violation of the Rights and Privileges of this Houſe.

That upon the 7th of *November*, 1718. upon Motion of the ſaid *Beauman*, the ſaid Attachment to the Purſuivant againſt the ſaid *Burrowes* was renewed, bearing Teſt the 6th *November* laſt, and returnable before the ſaid *Chancellor*, *Treaſurer* and *Barons* in *Octabis Sanct. Hillarii* then next enſuing; and on the 30th *January* following, the ſaid Attachment was again ordered to be renewed: That the ſaid *Sheriff*, by Reaſon of their ſaid Attachments, was obliged to abſcond, and thereby prevented from coming upon his Accounts, and was upon that Account fined by the ſaid Court 1200*l.* and upwards.

That upon the 4th *February*, 1718. the Lord Chief Baron, and Mr. Baron *Pocklington*, upon the Receipt of Three Papers, which the ſaid Barons alledged to be Orders from the Houſe of Lords of *Great Britain*, dated the 23d *January*, 1718. ſign'd *William Cowper*, *Cler' Parliamentor'*. In a Letter produced by the ſaid Barons from the Lord Chancellor, dated *London*, the 27th *January*, 1718. ſign'd *Parker* C. which came by the Poſt; directed to the Lord Chief Baron of the *Exchequer* in *Ireland*, and the reſt of the Barons of that Court; whereby it was Ordered, That the Barons of the ſaid Court of *Exchequer*, ſhould cauſe *Heſter Sherlock* to account before them upon Oath, for the Rents and Profits of the Eſtate in Queſtion, which ſhe had made or received ſince her gaining the Poſſeſſion thereof by the Order of the Houſe of Lords in *Ireland*; and to anſwer and pay the ſame to *Maurice Anneſley*, Eſq; but without Prejudice in Caſe of an Appeal: Alſo, that the Barons of the ſaid Court were directed to proceed by the moſt ſpeedy and effectual Methods, to cauſe Poſſeſſion of the Eſtate of the ſaid *Maurice Anneſley*, as required by their Order of the 6th *February*, to be reſtored to him; and alſo, that the Chancellor of *Great Britain* ſhould tranſmit to the ſaid Barons the ſaid Orders, and that they ſhould give an Account of what ſhould be done therein.

That without any Proof by Affidavit, (as uſual in Courts of Equity) the ſaid *Alledged Orders* were

wherein the ſaid *Heſter Sherlock*, Widow, was Appellant, and *Maurice* and *John Anneſley*, Eſqrs; were Reſpondents: As alſo upon the Reſolutions agreed to this Day by this Houſe, it appears, That the Sum of One Thouſand Five Hundred and Seven Pounds, Fourteen Shillings and Eight Pence Farthing was due to *Heſter Sherlock*, the Appellant, upon the 19th Day of *February*, 1716. on Account of the Principal and Intereſt of the Portion of *Edward Sherlock*, decreed unto the ſaid Appellant as Adminiſtratrix to the ſaid *Edward*, by this Houſe on the 19th Day of *June*, 1716; and that the Lands of *Little Rath*, *Bodingſtown*, *Darr*, and *Mullenafooky*, in the Barony of *Naas* and County of *Kildare* are chargeable with, and liable to the Payment of the ſaid Sum. It is thereupon Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the High Sheriff of the County of *Kildare* do forthwith put the ſaid *Heſter Sherlock* into the Poſſeſſion of the ſaid Lands of *Little Rath*, *Bodingſtown*, *Darr*, and *Mullenafooky*, ſubject to the ſaid Sum of One Thouſand Five Hundred and Seven Pounds, Fourteen Shillings, and Eight Pence Farthing, to be held by her the ſaid *Heſter*, until ſuch Time, as ſhe ſhall receive the ſaid Sum chargeable upon the ſaid Lands as aforeſaid, and this ſhall be a ſufficient Warrant in that behalf.

To Charles Nuttal, Eſq; High Sheriff of the County of *Kildare*.

En. Stern. Cler' Parliamentor'. *Virtut. cujus Ordin. prædict.* Carolus Nuttal *poſuit prædict.* Heſter Sherlock *in plen. quiet. & pacific. Poſſeſſion. Omn. Vill. & Terr. prædict. & prædict.* Heſter Sherlock *jam uſq; Continuavit in ead. Poſſeſſion. Præmiſſ. prædict. ſecund. tenor. & effect. Ordinis prædict. Ratione quorum Reſolution. & Ordin. in Prejudict. & Seſſion. Privileg. Parliament. per Leges & Statut. hujus Regni* Hiberniæ *proviſ. infra Nominat.* Mauric. Anneſley, *Ar. ad Poſſeſſion. Seporal. Vill. & Terr. de* Little Rath, Bodinſtown, Darr, & Mullenafooky *infra Menconant. reſtituer. non audeo. Sic Reſpond.*

Alex. Burrowes, *Ar. vic.*

[a] *Anneſley* verſ. *Sherlock.* *Die Veneris* 23 *Januarii*, 1718. *Ordered*, By the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord High Chancellor of *Great Britain* do tranſmit the two Orders made this Day on the Behalf of *Maurice Anneſley*, Eſq; to the Barons of the Court of *Exchequer* in *Ireland*, commanding them at the ſame time to return, as ſoon as they can, an Account of what ſhall be done therein.

William Cowper, *Cler' Parliamentor'*.

My Lord Chief Baron, *London the 27th January*, 1718.

By Order of the Houſe of Lords (a Copy whereof I herewith ſend you) I tranſmit to your Lordſhip and the reſt of the Barons of his Majeſty's Court of *Exchequer* in *Ireland*, two Orders of the ſaid Houſe, made in the Cauſe of *Anneſley* againſt *Sherlock*; by one of which the Barons of that Court are commanded to proceed by the moſt ſpeedy and effectual Methods, to cauſe Poſſeſſion of the Eſtate of the Appellant *Maurice Anneſley*, Eſq; to be reſtor'd to him, as was required by Order of the ſaid Houſe of the 6th *February* laſt; and by the other, the ſaid Barons are commanded to cauſe *Heſter Sherlock* to account before them upon Oath for the Rents and Profits of the Eſtate in Queſtion, which ſhe has made or received ſince her gaining Poſſeſſion thereof, by Order of the Houſe of Lords in *Ireland*; and anſwer and pay the ſame to the ſaid Appellant, *Maurice Anneſley*, Eſq; but without Prejudice to the Right, in Caſe of an Appeal to be brought by either Party from the Decree of the Court of *Exchequer* in *Ireland*.

Your Lordſhip will immediately communicate this to the reſt of the Barons, and return, as ſoon as you can, an Account of what ſhall be done by yourſelf, and the reſt of the Barons, in Purſuance of your Lordſhip's ſaid Orders, as you ſee by the abovementioned Copy I am order'd to require of you.

I am, Your Lordſhip's moſt faithful Servant, *Parker*, C.

To the Lord Chief Baron of the Exchequer in Ireland, and the reſt of the Barons.

Anneſley verſ. *Sherlock.* *Die Veneris* 23 *Januarii*, 1718. Upon Report from the Lords Committees, appointed to enquire into the Reaſon of the Delay, in not obeying the Orders of this Houſe, relating to the Appeal of *Maurice Anneſley*, Eſq; and how the ſame may more properly be enforced: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Barons of the Court of *Exchequer* in *Ireland* be, and are hereby directed to proceed by the moſt ſpeedy and effectual Methods, to cauſe Poſſeſſion of the Eſtate of the ſaid *Maurice Anneſley*, as required by Order of this Houſe of the 6th of *February* laſt, to be reſtored to him.

William Cowper, *Cler' Parliamentor'*.

Anneſley verſ. *Sherlock.* *Die Veneris* 23 *Januarii*, 1718. *Ordered*, By the Lords Spiritual and Temporal in Parliament aſſembled, That the Barons of the Court of *Exchequer* in *Ireland* do cauſe the Reſpondent, *Heſter Sherlock*, to account before them upon Oath, for the Rents and Profits of the Eſtate in Queſtion, which ſhe has made or received ſince her gaining the Poſſeſſion thereof, by the Orders of the Houſe of Lords in *Ireland*; and to anſwer and pay the ſame to the Appellant, *Maurice Anneſley*, Eſq; but without Prejudice to the Right, in Caſe of an Appeal to be brought by either Party from the Decree of the Court of *Exchequer* in *Ireland*.

William Cowper, *Cler' Parliamentor'*

regularly

regularly ſigned and compared? and without Motion of Council or Attorney, it was ordered in the Name of the *Chancellor* and *Treaſurer*, *Lord Chief Baron*, and the reſt of the *Barons* of his Majeſty's Court of *Exchequer* in *Ireland*, that the Injunction of that Court ſhould forthwith iſſue, directed to the ſaid *Heſter Sherlock*, and to the ſeveral and reſpective Tenants of the Lands in Queſtion; requiring them, and every of them, quietly to reſtore to the ſaid *Maurice Anneſley*, the Poſſeſſion of the Town and Lands of *Little Rath*, *Bodingſtown*, *Darr*, and *Mullenafooky*, lying and being in the County of *Kildare*; the ſaid Lands by the ſaid Barons ſuppoſed to be comprehended in the ſaid Order.

That the ſaid Injunction was ordered to be ſerved upon the ſaid Perſons by the Purſuivant attending the ſaid Court, or by any other Perſon or Perſons whom the ſaid *Maurice Anneſley*, or his Agent ſhould appoint: And the ſaid *Maurice Anneſley*, or his Agent, was thereby required to leave the Names of the ſeveral and reſpective Tenants of the ſaid Lands at the proper Office, in order to be inſerted in the ſaid Injunction: And alſo ordered, that the Rents of the ſaid Lands remaining in the ſeveral Tenants Hands from the Time the ſaid *Heſter Sherlock* was put in Poſſeſſion, ſhou'd be forthwith by them paid over to the ſaid *Maurice Anneſley*; and that a Copy of the ſaid Order ſhould be ſerved upon the ſaid ſeveral Tenants of the ſaid Lands, together with the ſaid Injunction: Tho' by the Order of the Houſe of Lords of *Great Britain*, the Barons were only directed to oblige *Heſter Sherlock* to account before them upon Oath, for the Rents of the ſaid Lands, received by her ſince her gaining the Poſſeſſion thereof; which ſhe was to pay to *Maurice Anneſley*, without Prejudice in Caſe of an Appeal.

That purſuant to the ſaid Order of the 4th of *February*, an Injunction iſſued out of the ſaid Court, ſign'd *Geff. Gilbert*; bearing Teſt the 12th *February* laſt, directed to *Heſter Sherlock*, and Twenty-one Perſons as Tenants to the ſaid Lands. That the ſaid *Heſter Sherlock* was never ſerved with the ſaid Injunction or Order; notwithſtanding which, ſhe was thereby diſpoſſeſſed of the ſaid Lands about the 20th *February* laſt, by the Attornments of the Tenants; except a ſmall Part thereof in the Poſſeſſion of *Dennis Galvin*.

That upon an Affidavit made by *Richard Lyons*, in a Cauſe of *Anneſley* verſ. *Sherlock*, ſworn before Mr. Baron *St. Leger*, the 23d of *February* laſt; and upon Motion of ſaid *Beauman*, an Attachment to the Purſuivant was the ſame Day ordered by the ſaid Court, againſt ſaid *Dennis Galvin*, for not obeying the ſaid Injunction, though no ſuch Perſon was named in the ſaid Writ of Injunction.

The ſaid Lords Committees had alſo the Oath adminiſtred to the *Barons* of the *Exchequer*, laid before them by Mr. *Hartley Hutchinſon*, Deputy Clerk of the Crown in the High Court of *Chancery*, and is as follows, *viz.*

YE ſhall ſwear, That well and truly ye ſhall ſerve the King in the Office of Baron of his Exchequer; *and that truly ye ſhall Charge and Diſcharge all manner of People; as well the Poor as Rich, and that for Highneſs nor for Riches, nor for Hatred, nor for the Eſtate of no manner of Perſon or Perſons, nor for any good Deed, Gift ne Promiſe of any Perſon the which is made to you, nor by Craft nor by Engine, ye ſhall Lett the King's Right, nor none other Perſons Right ye ſhall Diſturb, Lett nor Reſpitt againſt the Laws of the Land, nor the King's Debts ye ſhall put in Reſpitt where that they may goodly be Levyed, and that the King's Needs ye ſhall ſpeed afore all other, and that for Gift, Wages, nor good Deed ye ſhall Layne, Diſturb nor Lett the Profit and Reaſonable Advantage of the King, in the Advantage of any other Perſon nor of yourſelf: And that nothing ye ſhall take of any Perſon for to do Wrong or Right or Delay, or for to Deliver or to Delay the People which that have to do afore you; but as haſtily as ye may them goodly to Deliver without hurt of the King, and having no regard to any Profit, that might thereof to you be therein, you ſhall make to be delivered: And whereas ye may know any Wrong or Prejudice to be done to the King, ye ſhall put and do all your Power and Diligence that to Redreſs, and if ye may not do it, ye ſhall tell it to the King, or to them of his Council, which may make Relation to the King, if ye may not come to him, to the King's Majeſty's Lieutenant, or other Chief Governour or Governours of this Realm for the time being, and the King's Council ye ſhall keep and Layne in all things, as God you help, and by the Contents of this Book.*

The Committee humbly take leave to obſerve to your Lordſhips, That there is no Name of any Attorney to the firſt Injunction.

Which ſaid Report being read, the Houſe agreed to the ſame, and came to the following Reſolutions:

RESOLVED on the Queſtion, That *Alexander Burrowes*, Eſq; late High-Sheriff of the County of *Kildare*, has fully proved the Allegations of his Petition, to the Satisfaction of this Houſe.

Reſolved on the Queſtion, That the ſaid *Alexander Burrowes*, Eſq; late High-Sheriff of the County of *Kildare*, in not obeying the Injunction iſſued forth out of his Majeſty's Court of *Exchequer*, dated the 22d *February*, 1717. in the Cauſe between *Sherlock* and *Anneſley*, has behaved himſelf with *Integrity* and *Courage*, and with due Reſpect to the Orders and Reſolutions of this Houſe.

Reſolved on the Queſtion, That the Fines impoſed upon *Alexander Burrowes*, Eſq; by the Court of *Exchequer*, amounting to 77*l.* for not returning the Writ of Injunction in the Cauſe between *Sherlock* and *Anneſley*, be taken off without Fees.

Reſolved on the Queſtion, That the Fines impoſed upon *Alexander Burrowes*, Eſq; by the Court of *Exchequer*, for not Entering on his Accounts, amounting to 1200*l.* and upwards, be taken off, when he ſhall have made a juſt Account, without other Fees than ſuch as are uſual on paſſing Sheriffs Accounts.

Reſolved on the Queſtion, That the Lord Chief Baron, and the other Barons of the Court of *Exchequer*, had due Notice of the Reſolutions of this Houſe, made the 11th *February*, 1703. in the Cauſe of the Earl of *Meath*, and Lord *Ward*, before they made an Order for an Injunction to put *Maurice Anneſley* into Poſſeſſion.

Reſolved on the Queſtion, That the Lord Chief Baron, and the other Barons of the Court of *Exchequer*, had due Notice of the Order of this Houſe of the 3d of *October*, 1717. in the Cauſe of *Sherlock* and *Anneſley*.

Reſolved on the Queſtion, That *Jeffery Gilbert*, Eſq; Lord Chief Baron of his Majeſty's Court of *Exchequer*, in the Proceedings in the Cauſe between *Sherlock* and *Anneſley*, as alſo againſt *Alexander Burrowes*, Eſq; late High Sheriff of the County of *Kildare*, has acted in direct Violation of the Orders and Reſolutions of this Houſe.

Reſolved on the Queſtion, That *Jeffery Gilbert*, Eſq; Lord Chief Baron of his Majeſty's Court of *Exchequer*, in the Proceedings in the Cauſe between *Sherlock* and *Anneſley*, as alſo againſt *Alexander Burrowes*, Eſq; late High Sheriff of the County of *Kildare*, has acted in manifeſt Derogation to, and Diminution of the King's Prerogative of finally Judging in his High Court of Parliament in *Ireland*, as alſo of the Rights and Privileges of this Kingdom, and the Parliament thereof.

Reſolved on the Queſtion, That *John Pocklington*, Eſq; one of the Barons of his Majeſty's Court of *Exchequer*, in the Proceedings in the Cauſe between *Sherlock* and *Anneſley*, as alſo againſt *Alexander Burrowes*, Eſq; late High Sheriff of the County of *Kildare*, has acted in direct Violation of the Orders and Reſolutions of this Houſe.

Reſolved on the Queſtion, That *John Pocklington*, Eſq; one of the Barons of his Majeſty's Court of *Exchequer*, in the Proceedings in the Cauſe between *Sherlock* and *Anneſley*, as alſo againſt *Alexander Burrowes*, Eſq; late High Sheriff of the County of *Kildare*, has acted in manifeſt Derogation to, and Diminution of the King's Prerogative of finally Judging in his High Court of Parliament in *Ireland*, as alſo of the Rights and Privileges of this Kingdom, and the Parliament thereof.

Reſolved on the Queſtion, That Sir *John St. Leger*, Kt. one of the Barons of his Majeſty's Court of *Exchequer*, in the Proceedings in the Cauſe between *Sherlock* and *Anneſley*, as alſo againſt *Alexander Burrowes*, Eſq; late High Sheriff of the County of *Kildare*, has acted in direct Violation of the Orders and Reſolutions of this Houſe.

Reſolved on the Queſtion, That Sir *John St Leger*, Knt. one of the Barons of his Majeſty's Court of *Exchequer*, in the Proceedings in the Cauſe between *Sherlock* and *Anneſley*, as alſo againſt the ſaid *Alexander Burrowes*, Eſq; late High Sheriff of the County of *Kildare*, has acted in manifeſt Derogation to, and Diminution of the King's Prerogative of finally Judging in his High Court of Parliament in *Ireland*, as alſo of the Rights and Privileges of this Kingdom, and the Parliament thereof.

Reſolved on the Queſtion, *Nem. Con.* That it is the Duty of the Barons of the *Exchequer*, where there is any Wrong or Prejudice done to the King, in Matters lying before them, to inform the King, or the Chief Governour, or Governours of this Kingdom, or the Council.

Reſolved on the Queſtion, That the Caſe of *Sherlock* and *Anneſley*, as it lately lay before the Barons of the *Exchequer*, being Matter not only of Law, but of State, ought to have been laid before the King, the Chief Governour or Governours of this Kingdom, or the Council of the ſame: It ſo nearly concerning his Majeſty's Prerogative, and the Intereſt of the whole Kingdom.

Diſſentient.

Jo. Meath, *Donerayle.*
Welbore Kildare, *Midleton*, Canc.
Henry Killala and *Achonry*. *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

Reſolved on the Queſtion, That *Jeffery Gilbert*, Eſq; Lord Chief Baron of the Court of *Exchequer*, *John Pocklington*, Eſq; and Sir *John St. Leger*, Kt. Barons of the ſame, in their Proceedings in the Cauſe between *Sherlock* and *Anneſley*, and againſt *Alexander Burrowes*, Eſq; late Sheriff of the County of *Kildare*, have acted contrary to Law, and to the eſtabliſhed Practice of the King's Courts.

Diſſentient,

Jo. Meath, *Donerayle.*
Welbore Kildare, *Midleton*, Canc.
Henry Killalla and *Achonry*, *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

Reſolved on the Queſtion, That *Jeffery Gilbert*, Eſq; Lord Chief Baron of the Court of *Exchequer*, having taken upon him to put in Execution a pretended Order from *Another Court*, contrary to the final Judgment of this High Court of Parliament, in the Cauſe between *Sherlock* and *Anneſley*, is a *Betrayer* of his Majeſty's Prerogative, and the undoubted, antient Rights and Privileges of this Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

Diſſentient,

Jo. Meath, *Donerayle.*
Welbore Kildare, *Midleton*, Canc.
Henry Killalla and *Achonry*, *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

Reſolved on the Queſtion, That *John Pocklington*, Eſq; Second Baron of the Court of *Exchequer*, having taken upon him to put in Execution a pretended Order from *Another Court*, contrary to the final Judgment of this High Court of Parliament, in the Cauſe between *Sherlock* and *Anneſley*, is a *Betrayer* of his Majeſty's Prerogative, and the undoubted, antient Rights and Privileges of this Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

Diſſentient,

Jo. Meath, *Donerayle.*
Welbore Kildare, *Midleton*, Canc.
Henry Killalla and *Achonry*, *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

Reſolved on the Queſtion, That Sir *John St. Leger*, Third Baron of the Court of *Exchequer*, having taken upon him to put in Execution a pretended Order from *Another Court*, contrary to the final Judgment of this High Court of Parliament, in the Cauſe between *Sherlock* and *Anneſley*, is a *Betrayer* of his Majeſty's Prerogative, and the undoubted, antient Rights and Privileges of this Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

Diſſen-

Diſſentient,

Jo. Meath, *Donerayle.*
Welbore Kildare, *Midleton,* Canc.
Henry Killalla and *Achonry,* *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

It is *Ordered* by the Lords Spiritual and Temporal in Parliament aſſembled, That the Right Honourable *Jeffery Gilbert,* Eſq; Lord Chief Baron of the Court of *Exchequer,* ſhall, for the ſaid Offences, be taken into the Cuſtody of the Gentleman-Uſher of the *Black-Rod* attending this Houſe.

Diſſentient,

Jo. Meath, *Fitz-Williams.* *Midleton,* Canc.
Welbore Kildare, *Donerayle.*
Henry Killalla and *Achonry,* *W. Derry.*
Timo. Kilmore and *Ardagh.*

It is *Ordered* by the Lords Spiritual and Temporal in Parliament aſſembled, That *John Pocklington,* Eſq; Second Baron of the Court of *Exchequer,* ſhall, for the ſaid Offences, be taken into the Cuſtody of the Gentleman-Uſher of the *Black-Rod,* attending this Houſe.

Diſſentient,

Jo. Meath, *Fitz-Williams.* *Midleton,* Canc.
Welbore Kildare, *Donerayle.*
Henry Killalla and *Achonry,* *Wm. Derry.*
Timo. Kildare and *Ardagh.*

It is *Ordered* by the Lords Spiritual and Temporal in Parliament aſſembled, That Sir *John St. Leger,* Kt. Third Baron of the Court of *Exchequer,* ſhall, for the ſaid Offences, be taken into the Cuſtody of the Gentleman-Uſher of the *Black-Rod* attending this Houſe.

Diſſentient,

Jo. Meath, *Fitz-Williams.* *Midleton,* Canc.
Welbore Kildare, *Donerayle.*
Henry Killalla and *Achonry,* *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

CLXXXVIII. *The Trial of* Hugh Reaſon *and* Robert Tranter, *at the* King's-Bench, *for the* Murder *of* Edward Lutterell, *Eſq;* Feb. 3. 1721. Hil. 8 Geo. I.

The Indictment was as follows:

In Banco Regis.

Dominus Rex verſ. Hugonem Reaſon & Robertum Tranter.

"THE Jury preſent, That *Hugh* " *Reaſon* and *Robert Tranter,* not " having the Fear of God before " their Eyes, but being moved and " ſeduced by the Inſtigation of the " Devil, the 17th Day of *October* laſt, about the " Hour of Ten of the Clock in the Forenoon " of the ſaid Day, by Force and Arms, at the " Pariſh of St. *Clement Danes* in the County of " *Middleſex,* in and upon one *Edward Lutterell,* " Eſq; in the Peace of God and of our Sovereign " Lord the King, then and there being, feloniouſly, voluntarily, and of their Malice aforethought, did make an Aſſault; and that the " ſaid *Hugh Reaſon,* with a Piſtol of the Value of " five Shillings, then and there charged with " Gun-Powder and leaden Bullets; which ſaid " Piſtol the ſaid *Hugh Reaſon* in his Right Hand " then and there had and held into and againſt " the aforeſaid *Edward Lutterell,* then and there " feloniouſly and of his Malice afore-thought " did ſhoot off and diſcharge: And that the " ſaid *Hugh Reaſon* with leaden Bullets aforeſaid " iſſuing and ſhot off out of the Piſtol afore-" ſaid, then and there by the Force of the ſaid " Powder, the ſaid *Edward Lutterell* in and " upon the Right Part of the Body of the ſaid " *Edward Lutterell,* under the Right Pap of the " ſaid *Edward Lutterell,* then and there feloniouſly " voluntarily, and of his Malice afore-thought " ſtruck: And that the ſaid *Hugh Reaſon* then and " there feloniouſly, voluntarily, and of his Malice " aforeſaid, gave to the ſaid *Edward Lutterell,* " with the leaden Bullets aforeſaid, out of the " ſaid Piſtol then and there by Force of the ſaid " Powder ſhot off and diſcharged in and againſt " the Right Part of the Body of the ſaid *Edward* " *Lutterell,* under the Right Pap of the ſaid " *Edward Lutterell,* one mortal Wound of the " Breadth of one Inch, and the Depth of nine " Inches, of which ſaid mortal Wound the ſaid " *Edward Lutterell,* from the ſaid tenth Hour of " the ſaid 17th Day of *October,* until the tenth " Hour in the Afternoon of the ſaid Day he " languiſhed, and languiſhing lived, at which " ſaid Hour the ſaid *Edward Lutterell,* at the " Pariſh aforeſaid, of the Wound aforeſaid, died: " And that the ſaid *Robert Tranter* at the Time " of the Felony and Murder aforeſaid, by the " ſaid *Hugh Reaſon* in Manner and Form afore-" ſaid, feloniouſly, voluntarily, and of his Malice " aforeſaid, committed and perpetrated, feloni-" ouſly, voluntarily, and of his Malice aforeſaid " there was preſent, aiding, abetting, aſſiſting, " comforting and maintaining the ſaid *Hugh* " *Reaſon* to commit the aforeſaid Felony and " Murder

" Murder in manner and form aforeſaid. And " the Jury ſay, that the ſaid *Hugh Reaſon* " and *Robert Tranter* the ſaid *Edward Lutterell* " in manner and form aforeſaid, at the Pariſh " and County aforeſaid, feloniouſly, voluntari- " ly, and of their Malice afore-thought, did kill " and murder againſt his Majeſty's Peace, *&c.*

To this Indictment they ſeverally pleaded, *Not Guilty*, and on *Febr.* 3. were brought to the King's-bench Bar to receive their Trial, which proceeded in the following manner.

Clerk of the Crown. You the Priſoners at the Bar, theſe Men which you ſhall hear called and perſonally appear, are to paſs between our Sovereign Lord the King and you upon the Trial of your ſeveral Lives and Deaths, if you will Challenge them or any of them, you muſt do it as they come to the Book to be ſworn, before they are ſworn.

Robert Dennes, Eſq; challeng'd.
Francis Lee, Eſq; challeng'd.
James Haley, Eſq; challeng'd.
Robert Sutton, challeng'd.
Benjamin Drake, challeng'd.
Edward Groſne, challeng'd.
Richard Newton, challeng'd.
1. *Giles Riddle*, Jur.
2. *William Pannett*, Jur.
John Mills, challeng'd.
3. *Thomas Beckington*, Jur.
4. *Abraham Harriſon*, Jur.
5. *Charles Maddock*, Jur.
6. *Edward Boſvile*, Jur.
7. *John Parſons*, Jur.
8. *Thomas Cuthbert*. Jur.
9. *Thomas Cliff*, Jur.
10. *Miles Harper*, Jur.
11. *Robert Kent*, Jur. And
12. *John Salt*, Jur.

Clerk of the Crown. Cryer Make Proclamation.

Cryer. O yes, *&c.* If any one can inform our Sovereign Lord the King's Juſtices, the King's Serjeants, or the King's Attorney, of the Felony and Murder whereof the Priſoners ſtand indicted before this Inqueſt be taken between our Sovereign Lord the King, and the Priſoners at the Bar, let them come forth and they ſhall be heard, for the Priſoners now ſtand at the Bar upon their Deliverance.

Clerk of the Crown. Hugh Reaſon hold up your Hand, *Robert Tranter* hold up your Hand.

Gentlemen of the Jury look upon the Priſoners and hearken to their Cauſe; they ſtand indicted, for that they not having the Fear of God before their Eyes, but being moved and ſeduced by the Inſtigation of the Devil, the 17th Day of *October* laſt, about the Hour of Ten of the Clock in the Forenoon of the ſaid Day, by Force and Arms, at the Pariſh of St. *Clement Danes* in the County of *Middleſex*, in and upon one *Edward Lutterel*, Eſq; in the Peace of God and of our Sovereign Lord the King, then and there being feloniouſly, voluntarily, and of their Malice afore-thought did make an Aſſault; and that the ſaid *Hugh Reaſon*, with a Piſtol of the Value of 5 *s.* then and there charged with Gunpowder and leaden Bullets; which ſaid Piſtol the ſaid *Hugh Reaſon* in his Right Hand then and there had and held into and againſt the aforeſaid *Edward Lutterell*, then and there feloniouſly and of his Malice afore-thought did ſhoot off and diſcharge: And that the ſaid *Hugh Reaſon* with the leaden Bullets aforeſaid iſſuing and ſhot off out of the Piſtol aforeſaid, then and there by the Force of the ſaid Powder, the ſaid *Edward Lutterell* in and upon the right Part of the Body of the ſaid *Edward Lutterell*, under the right Pap of the ſaid *Edward Lutterell*, then and there feloniouſly, voluntarily, and of his Malice afore-thought ſtruck: And that the ſaid *Hugh Reaſon* then and there feloniouſly, voluntarily, and of his Malice aforeſaid, gave to the ſaid *Edward Lutterell*, with the leaden Bullets aforeſaid, out of the ſaid Piſtol then and there by Force of the ſaid Powder ſhot off and diſcharged in and againſt the right part of the Body of the ſaid *Edward Lutterell*, one mortal Wound of the breadth of one Inch, and the depth of nine Inches, of which ſaid mortal Wound the ſaid *Edward Lutterell*, from the ſaid tenth Hour of the ſaid 17th Day of *October*, untill the tenth Hour in the Afternoon of the ſaid Day he languiſhed, and languiſhing lived, at which ſaid Hour the ſaid *Edward Lutterell*, at the Pariſh aforeſaid, of the Wound aforeſaid, died: And that the ſaid *Robert Tranter* at the time of the Felony and Murder aforeſaid, by the ſaid *Hugh Reaſon* in manner and form aforeſaid, feloniouſly, voluntarily, and of his Malice aforeſaid, committed and perpetrated, feloniouſly, voluntarily, and of his Malice aforeſaid there was preſent, aiding, abetting, aſſiſting, comforting and maintaining the ſaid *Hugh Reaſon* to commit the aforeſaid Felony and Murder in manner and form aforeſaid. And the Jury ſay, that the ſaid *Hugh Reaſon* and *Robert Tranter* the ſaid *Edward Lutterell* in manner and form aforeſaid, at the Pariſh and County aforeſaid, feloniouſly, voluntarily, and of their Malice afore-thought, did kill and murder againſt his Majeſty's Peace, *&c.*

They likewiſe ſtand charged on the Coroner's Inqueſt for the ſaid Murder.

Upon this Indictment they have been arraigned, and thereto have pleaded *Not Guilty*; and for their Trial have put themſelves upon God and their Country, which Country you are: Your Charge is to inquire whether they be guilty of this Felony and Murder in Manner and Form as they ſtand indicted, or not guilty; if you find them guilty, you ſhall inquire what Goods or Chattels, Lands or Tenements they had at the time of the ſaid Felony and Murder committed, or at any time ſince: If you find them not guilty, you ſhall inquire whether they fled for it: If you find that they did fly for it, you ſhall inquire of their Goods and Chattels as if you found them guilty; if you find them not guilty, and that they did not fly for it, ſay ſo and no more, and hear your Evidence.

Mr. *Strange.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Counſel in this caſe for the King. This is an Indictment againſt the Defendants *Hugh Reaſon* and *Robert Tranter* for the Murder of Mr. *Lutterel*. The Indictment ſets forth, that the Defendants not having the Fear of God before their Eyes, but being moved and ſeduced by the Inſtigation of the Devil, on the 17th of *October* laſt at Ten of the Clock in the Morning, in the Pariſh of St. *Clement Danes* in the County of *Middleſex*, did make an Aſſault on *Edward Lutterell*, Eſq; that the Defendant

Hugh Reaſon with a Piſtol charged with Gunpowder and Bullets, which he then and there held in his Right Hand, into and againſt the ſaid *Edward Lutterell* then and there feloniouſly, and of his Malice afore-thought, did ſhoot off and diſcharge, and that the Priſoner *Hugh Reaſon* with the leaden Bullets aforeſaid, iſſuing and ſhot off out of the Piſtol aforeſaid, then and there by the Force of the ſaid Powder the ſaid *Edward Lutterell*, in and upon the right part of the Body of the ſaid *Edward Lutterell*, under the right Pap of the ſaid *Edward Lutterell*, then and there feloniouſly, voluntarily, and of his Malice afore-thought ſtruck, and that the ſaid *Hugh Reaſon* then and there feloniouſly, wilfully, and of his Malice afore-thought, did give to the ſaid *Edward Lutterell*, with the leaden Bullets aforeſaid, out of the ſaid Piſtol, then and there by Force of the ſaid Powder ſhot off and diſcharged in and againſt the right Part of the Body of the ſaid *Edward Lutterell*, under the right Pap of the ſaid *Edward Lutterell*, one mortal Wound of the Breadth of one Inch, and the Depth of nine Inches, of which mortal Wound the ſaid *Edward Lutterell*, from the ſaid 10th Hour of the ſaid 17th of *October*, to the 10th Hour in the Afternoon of the ſaid Day languiſhed, and languiſhing lived, at which time the ſaid *Edward Lutterell* at the Pariſh aforeſaid, of the Wound aforeſaid, died: And that the other Defendant *Robert Tranter*, was aiding and aſſiſting the ſaid *Hugh Reaſon* to commit the ſaid Felony and Murder in manner and form aforeſaid, and that they the ſaid *Hugh Reaſon* and *Robert Tranter*, the ſaid *Edward Lutterell* in manner and form aforeſaid, at the Pariſh and County aforeſaid, feloniouſly, wilfully, and of their Malice afore-thought did kill and murder, which is laid to be againſt the Peace of his Majeſty, his Crown and Dignity, to which the Defendants have ſeverally pleaded *Not Guilty*; they are likewiſe charged on the Coroner's Inqueſt for the ſaid Murder. We ſhall call our Witneſſes, and if we prove them guilty you will find them ſo.

Mr. *Serj. Cheſhire.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Counſel in this Caſe for the King, the two Priſoners at the Bar, *Hugh Reaſon*, and *Robert Tranter*, ſtand indicted before you, and are charged before you on the Coroner's Inqueſt, for the Murder of *Edward Lutterell*, Eſq; and according to my Inſtructions, which I will keep exactly to, he came by his Death in this manner: On the 17th of *October* laſt, this Gentleman coming out of his Lodgings in *Surrey-ſtreet*, going towards the Water ſide to take Water at the Stairs there, the two Priſoners came to him and did arreſt him, and told him, they arreſted him at the Suit of one Mr. *Rous* for 10 *l.* He ſubmitted to their Arreſt, deſired them to return with him to his Lodging and he would pay the Money: They conſented, and both return'd to the Door with him, but *Reaſon* was the only Perſon that went up with him; *Tranter* ſaid he would go and fetch the Attorney or Sollicitor's Bill: The Deceaſed went up one Pair of Stairs, *Reaſon* went with him, they were together in the Dining-Room, Words happened between them, as will come from the Evidence; they called him *Rogue*, *Raſcal*, and *Minter*, charged him as a Perſon that refuſed to pay honeſt Debts, and ſheltered himſelf under reputed Places of Security. He directed his Lady, who was then in her Bedchamber on the ſame Floor up one Pair of Stairs, to go and fetch the Money, by which it may be ſuppoſed that it was in order to pay the Debt, but the Witneſs did not hear the Sum, but it is reaſonable to preſume, he had told her what it did come to. The Defendant *Reaſon* ſaid, *You muſt order more than that, I muſt have three Guineas for my Civility: No*, ſays the Deceaſed, *you have not uſed me ſo as to deſerve three Guineas or any other Sum for Civility, without making any Demand you arreſted me publickly in the Street.* My Lord, according to my Inſtructions, the Deceaſed went up one Pair of Stairs, and he returned down with a Caſe of Piſtols; the Maid Servant, *Heſter Gerrard*, ſeeing him with thoſe Piſtols, ſaid to him, *For God ſake what buſineſs have you with thoſe Piſtols? Pray lay the Piſtols away, Miſchief may happen:* Says he, *I deſign to do them no harm, they have uſed me ill, called me Rogue, Raſcal, and Minter, I do not deſign to hurt them, but will not be ill uſed by them.* The Maid preſs'd him, *for God ſake lay them down, your Lady will be frighted.* He went to the far end of the Room, laid down the Piſtols, and retreated to the Fire-place. By this time there was a knocking at the Door, and the Boy *Thomas Hargrave* went to let in the Perſon that knock'd, and it proved the Defendant *Tranter*: *Tranter* run haſtily up Stairs, and the Boy was following him, and hearing a Noiſe in the Dining Room, as my Inſtructions are, he haſtened the earlier to ſee what the matter was; as ſoon as he came into the Dining Room, the firſt thing he ſaw was, *Tranter* holding the Deceaſed's Arm in his, and the other Defendant *Reaſon* ſtabbing him, and he ſaw the Stab: He was going to give a ſecond Stab, but the Boy took hold of the Sword Arm; *Reaſon* takes the Sword with his other Hand, and ſays to the Boy, *Damn you, if you don't get out of the Room, you ſhall die before your Maſter:* Upon this he ſaw a ſecond Paſs at the Gentleman, and he cryed *Murder*: Upon his crying *Murder*, the Maid Servant *Sarah* came, and ſhe ſays ſhe ſaw her Maſter upon his Back on the Floor with his Hands up begging for Mercy, and ſaw the Men ſtab him ſeveral times: ſhe likewiſe cries out *Murder*, and as ſhe went down the Stairs, and not till then, ſhe heard a Piſtol go off, which muſt be after the poor wounded mangled Man lay upon the Floor. Some time after, not two Minutes, ſhe heard another Piſtol go off; by this time the Noiſe was ſo great that the Neighbourhood came in, particularly one *Waters* a Waterman; *Waters* runs up Stairs, and he finds the Deceaſed at the further end of the Room, lying there in a ſtrange mangled Condition; one of the Priſoners endeavour'd to make his Eſcape, but he was ſeized, and ſo was the other.

It was thought proper in this dying Condition, as it was apprehended the poor Gentleman was in, that they ſhould ſend for the Curate of the Pariſh, Mr. *Peters*; Mr. *Peters* did come, and according to my Inſtructions, as they apprehended him to be dying, ſays a Friend of the Defendants, *Pray inquire of the Gentleman how this Accident happened.* He did ſo, and he will give you an Account of what paſs'd between him and the Deceaſed before the Juſtices of the Peace came. But Mr. *Vernon* and Mr. *Haynes*, the two Juſtices of the Peace, ſoon after came in, and at their Requeſt they having no Clerk with them, Mr. *Peters* was pleaſed to ſit down and take the Examination in writing; having given him his Oath, Mr. *Peters* was pleaſed

to

to ſet it down; the Subſtance of what he did ſay was this, *The Bailiffs took the Piſtols from my Table and ſhot me twice, the fat Man run me thro', and then drew my Sword, which I broke my ſelf in his Hand, and beg'd for my Life: I never fired a Piſtol, nor made one Puſh, they both run me thro', I offer'd to pay them the Money.* The Condition the Gentleman was in at that time was ſuch, as it was not thought reaſonable that he ſhould ſign it, but they will give you an account that he was perfectly ſenſible. My Lord, in the Afternoon ſomebody ſent for Mr. *Peters* the Clergyman again, and it was with an intent that the Deceaſed might receive the Holy Sacrament; and Mr. *Peters*, like a prudent Man, ſays, *According to the Account you have given you have been hardly uſed, however it becomes me to hope and deſire, and you to expreſs, that you are in Charity, before I adminiſter the Holy Sacrament.* Says he, *As I ſhall appear before the great God of Heaven, what I told you is true, I was barbarouſly murder'd; however I am in perfect Charity with them, I forgive them, and I pray Almighty God to forgive them their Indiſcretion.* My Lord, he did continue for ſome time in a languiſhing Way, tho' all Care was taken to ſave his Life. On Examination after his Death, (which is a ſad Circumſtance in the Caſe) there are found no leſs than ten Wounds on him, many of them mortal; he did continue till the 17th about Ten at Night and then he died. My Lord, here is a Caſe of great Conſideration; and as on the one hand the Defendants are Officers and Miniſters of Juſtice, and muſt be protected in ſerving of their Proceſs, and as long as they do their Duty muſt not be abuſed; yet when People ſubmit to their Authority, they too muſt be protected, and the Law, that requires the one to ſubmit, requires the other to protect and preſerve their Lives; and if any Officer gives unreaſonable Correction, where they make no Reſiſtance in Caſes of Durance only, where Hardſhips and Difficulties are put upon them, ſo as to ſhorten their Lives. I ſubmit it to my Lord's Direction, whether they are not guilty of Murder. To ſhew how careful the Law is of the Life of a Man, my Lord *Coke* * ſays, *If any Man who is in Cuſtody of a Goaler dies, the Coroner's Inqueſt muſt ſit upon him*; and it is for this Reaſon, that the King may be appriſed that the Subject had no foul Play, but came to a natural Death; this Policy of Law is a good one. Theſe, Gentlemen, are the Bounds which will be taken into Conſideration, and when we have called our Witneſſes, it muſt be left to my Lord's Direction and your Conſideration, whether the Defendants Caſe is a Caſe to be juſtified, or whether or no they won't deſerve the Puniſhment due to Ruffians and Aſſaſſins.

Mr. *Reeve*. I am Counſel likewiſe in this Caſe for the King: The Facts have been fully open'd in every particular Circumſtance, and I apprehend this is not a Matter proper for us to ſhew with its uſual Aggravations; for conſidering the Priſoners are not allowed Counſel, we are only to lay the Matter fairly before the Jury and the Court, both in relation to Matters of Fact and of Law.

True, the Defendants are Officers of Juſtice, and as ſuch are entitled to the Protection of the Law, ſo far as the Law authorizes them in what they do, but in caſe they exceed that Authority, and uſe Barbarity to their Priſoners, where there is no occaſion for it, they exceed the Bounds of their Authority, and what happens afterwards by a needleſs Quarrel, they themſelves are the occaſion of, and if a Perſon is killed, I ſubmit it to your Lordſhip if they are not guilty of Murder.

We agree, my Lord, if Reſiſtance is made by a Perſon arreſted, and it is neceſſary for the Preſervation of the Priſoner, or for the Life of the Officer, if his Life is attempted by the Priſoner, and in doing what is neceſſary for their Defence, and for the keeping of their Priſoner, there happens a Quarrel commenced by the Fault of the Priſoner, we agree the Officers are not to be blamed: But if a Quarrel is commenced by the Officers againſt a Priſoner ſubmitting to the Law, and to their Authority, and willing to do that which the Law requires, namely, to pay the Debt, then only for Civility Money they uſe Durance, and they uſe him ill, and they begin the Quarrel and fight with the Man on that account, we muſt ſubmit it, whether it is not Murder. We muſt agree in our Evidence, that there was not any Perſon preſent at the time of the beginning of the Quarrel, nor who continued there during the Quarrel: But from the Circumſtances, and the Evidence we have to lay before the Jury, it will amount to a Proof, that this Quarrel was begun by the Officer. It is true, there were Piſtols fetch'd by the Deceaſed, but theſe Piſtols, if we ſhew they were not deſigned to be made uſe of to injure the Bailiffs, but were only for his own Preſervation, if he ſhould be ill uſed by them; if after he had taken theſe Piſtols he diſmiſs'd himſelf from the Cuſtody of theſe Piſtols, as we apprehend will appear from the Evidence, and they take up theſe Piſtols, and with one of theſe Piſtols ſhoot their Priſoner, we apprehend that will take off the Circumſtances, that would ſeem in favour of them. My Lord, we will call our Witneſſes, and prove all our Facts, and then we muſt ſubmit it to your Lordſhip's Direction to the Jury, whether on thoſe Facts it doth not appear that the Offence committed is Murder.

L. C. J. Call your Witneſſes.

Thomas Hargrave ſworn.

Mr. *Hungerford*. My Lord, *Thomas Hargrave* was the Deceaſed's Servant, and he ſaw more than any Body; he will give your Lordſhip an account of the Matter.

Serj. Cheſhire. *Thomas Hargrave*, do you tell my Lord and the Jury, what you know in relation to your late Maſter Mr. *Lutterell*, what paſt between him and the Defendants, and either of them, tell from the beginning, and be ſure you tell the Truth.

At the Priſoners Deſire the other Witneſſes were order'd out of Court.

Hargrave. The firſt beginning, my Lord, was my Maſter ſent me out of the Houſe to call a Pair of Oars to go up to *Weſtminſter* on *Tueſday* between Nine and Ten a Clock.

L. C. Juſt. What Day of the Month?

Hargrave. I don't know; with that I went and called a Pair of Oars, and came back and told him I had called them; ſays he, *Thomas get your Hat and go along with me*; when we had got two or three Doors from our Lodging, a little Man,

* 3. *Inſt.* 52. 91.

whose Name is *Tranter*, clapt him on the Shoulder, and presently after came another Man *Reason*, and said they arrested him; with that my Master says, *Gentlemen, if you will go with me, you shall have your Money, my Wife is with Child, and I am afraid she will be frightened.*

No, Damn you, we will go with no such Minter, with that with great Persuasion my Master got them to go to his Lodging; my Master said, *fetch the Attorney and I will pay the Money: Reason* sent *Tranter* for the Attorney, and *Reason* went up with my Master, who said to my Mistress, *My Dear, don't be frightened, here are two Rascals who have abused me in the Street*; and my Mistress said to me, *Go to my Nephew*, I went, but he did not immediately come; when I returned I went into the Room, and there was no harm then, my Master was walking about the Room, and *Reason* stood with his Back to the Ceiling with his Face to the Pistols. My Master said, *Let me see your Warrant: Reason* shew'd it him, and he said, *wipe your Arse with it*, and throw'd it down upon the Ground. *Reason* ask'd for Civility Money; my Master said, *No, he would give him none, for he had not used him well.* At last *Tranter* came; I open'd the Door to him, he run up Stairs, I staid to shut the Door, and I heard a Rustling, or Noise; upon which I ran up Stairs after *Tranter*, and I saw *Tranter* close with my Master and throw him against the Closet Door, and *Reason* took his Sword and run my Master thro'; I took *Reason* hold of the Sword Arm, and he said, *Damn me, if you don't go out of the Room you shall die before your Master*; I heard no Pistol all that time.

Serj. Cheshire. Did you go in after the Pistol was shot off to see your Master?

Hargrave. No, I did not see him till after he was carried into t'other Room.

Serj. Cheshire. Do you know of any Direction given by your Master about fetching the Money?

Hargrave. Yes, I heard my Master say to my Mistress, *Fetch the Money and I will pay these Rascals.*

Mr. *Reeve.* I think you say upon hearing of a Scuffle you ran up Stairs, and you saw *Tranter* run your Master against the Closet Door.

Hargrave. Yes, Sir.

Mr. *Reeve.* Had your Master any Weapon?

Hargrave. No.

Mr. *Reeve.* Where were the Pistols?

Hargrave. One was on the Table, and the other in the Window.

Mr. *Hungerford.* How far were the Pistols from your Master, were they within his Reach?

Hargrave. No, Sir.

Mr. *Reeve.* You say you saw him stab your Master.

Hargrave. Yes.

Mr. *Reeve.* Was there any Attempt to give another Stab?

Hargrave. Yes, he went to give another Stab, I took him by the Sword Arm, and he said, *Damn you, you shall die before your Master*; upon that I went and cried out *Murder.*

L. C. Just. You say that before that he demanded Civility Money.

Hargrave. Yes.

L. C. Just. What said your Master?

Hargrave. He said, *I will give no Rascals as you are Civility Money, for you have shew'd me no Civility.*

L. C. Just. Then you went down by your Mistress's Direction to call her Nephew; when you return'd, before you came up, what did you hear? Did you hear any Noise, or Bustle, or Blow?

Hargrave. No.

L. C. Just. None at all?

Hargrave. No, it was after *Tranter* came that I went up Stairs again.

L. C. Just. When *Tranter* came you opened the Door to him, and followed him up Stairs.

Hargrave. Yes.

L. C. Just. Did you hear before *Tranter* enter'd the Room any Noise, or Stroke?

Hargrave. Only two or three Words.

L. C. Just. What were those Words?

Hargrave. I don't know.

Mr. *Hungerford.* What said *Reason*, when your Master told him he did not use him well?

Hargrave. Then he was mad, he swore and called him a great many Names, called him a Minter, and I don't know what.

Reason. Did not your Master request us to go to the *Tilt-yard* Coffee-house?

Hargrave. No, he said, *if you'll go with me I will pay the Money*; you said, *I will go with no such Minter.*

L. C. Just. Did your Master desire them to go to any particular Place?

Hargrave. He said, *If they would go with him to* Westminster, *he would pay them the Money*; but they refused and said, *they would go with no such Minter.*

L. C. Just. Did your Master propose to go to his own Lodgings?

Hargrave. Yes, when they would not let him go there.

L. C. Just. Why would he had them have gone to *Westminster?*

Hargrave. Because for fear of frightning his Wife, she was great with Child; with great Persuasion he got them to go to his Lodging.

Reason. Did he not ask us to go to his Lodging?

Hargrave. I don't know, I did not hear him.

L. C. Just. You said just now with much ado your Master persuaded them to go to his Lodging, now you say you did not hear him ask them to go; I only admonish you not to be too hasty in your Answers, but to consider. Who proposed going to your Master's Lodging?

Hargrave. Why my Master, when they would not go there.

Reason. Did not I ask him to go to the Crown Tavern?

Hargrave. Not that I heard; I heard *Reason* bid *Tranter* go for the Attorney.

L. C. Just. Did you hear *Tranter* ask Mr. *Lutterell* to go to the Crown-Tavern.

Hargrave. No, Sir.

Tranter. At whose Desire did I go to the Attorney?

Hargrave. Why my Master said, *fetch your Attorney, and I will pay you your Money.*

Tranter. Did not I desire your Master to send you, and he said, *Damn you, you shall go?*

Hargrave. No, I heard no such thing.

Hester Gerrard sworn.

Mr. *Serj. Cheshire.* Do you tell my Lord and the Jury what you know when the Defendants, or either of them were at Mr. *Lutterell*'s Lodgings, and what pass'd there; begin at the beginning, tell all you know.

Hester.

Heſter. I happen'd to be in the Kitchen when my Maſter came in.

Serj. Cheſhire. Tell us the time and the Day of the Month.

Heſter. I don't know indeed, it was of a *Tueſday.*

Serj. Cheſhire. Do you know what Month?

Heſter. I don't know. Being in the Kitchen I heard my Maſter return again, when he was but juſt gone out before; hearing his Tongue I ſtep'd to the Stairs, and wonder'd he ſhould come in again ſo ſoon; I ſaw him come in with another Man, I heard him go up Stairs, I liſten'd, and I heard him ſpeak loud; I underſtood he was arreſted, I was ſurpris'd at it; I ſtaid a little while till he went up, then I went up to my Miſtreſs, becauſe ſhe was with Child; I was afraid ſhe would be frighted; when I came up ſhe was in the Dining-Room with my Maſter and Mr. *Reaſon*, and in a little time ſhe went out of the Dining-Room into the Bed-Chamber, and ſhe was heaving, and in ſome time my Maſter and Mr. *Reaſon* was in the Room together, my Maſter talk'd and walk'd about the Room; I ſtaid with my Miſtreſs ſome time, and at laſt I heard my Maſter go up Stairs, and he came down immediately again; upon this I went into the Room, my Maſter had two Piſtols, and he put them on each ſide of his Coat; I aſk'd him, *What do you do with thoſe Piſtols? if my Miſtreſs comes ſhe will be frighted:* Says he, *I do not deſign to do any hurt.* Then he told me how they had abuſed him in the Street, and called him *Miniter*; this Man (pointing to *Reaſon*) was in the Room all the time. *Sir*, ſays I, *pray lay down the Piſtols*, and he came and laid down both the Piſtols on the Table at my Requeſt, and he had only his Cane in his Hand. I went into the Room again to my Miſtreſs, and when I came there ſhe was in her Cloſet taking out ſome Money: She got up, lock'd the Cloſet Door, and ſat down on the Bed-ſide, and was frighted. I perſuaded her not to be frighted: Afterwards I heard ſomebody knock at the Door, and I ſtep'd out to the top of the Stairs to ſee who came in, and I ſaw I ſuppoſe that Man: (pointing to *Tranter*) the Boy let him in, I ſaw him come along the Entry and the Boy follow him: upon that I went into my Miſtreſs, and ſaid there was a ſecond Perſon come, I don't like him, ſhall I ſtop him on the Stairs; he went into the Room, and I ſaw the Boy follow him; I went into my Miſtreſs again for fear ſhe ſhould be frighten'd; I heard a Noiſe, but did not know what it was; I heard the Noiſe grow greater; I ſtep'd ſoftly thro' the Paſſage, threw open the Dining-Room Door, and I ſaw this Gentleman (pointing to *Reaſon*) ſtabbing my Maſter with all his Might and Main, and he on his Back on the Floor, lifting up his Hands as if he beg'd for Mercy. The other Bailiff had his Back towards me, ſtanding by the ſide of my Maſter; I ran to the Door and cried out *Murder*; then off went the Piſtol: I was frighten'd, for I thought they had ſhot after me; and in about two Minutes there went off another.

Mr. *Hungerford.* In that Place where your Maſter was, could he come at the Piſtols?

Heſter. No, my Maſter had his two Hands lifted up thus.

Mr. *Hungerford.* Had your Maſter any thing in his Hand.

Heſter. No.

Serj. Cheſhire. What Condition did you leave your Maſter in when you went out of the Room?

Heſter. He was upon the Ground on his Back, and his two Hands lifted up thus, and Mr. *Reaſon* ſtabbing him when upon the Ground; he ſtab'd him upon the left ſide.

Serj. Cheſhire. I aſk you, conſider, by the Oath you have taken, whether the Piſtol did go off till after you had left your Maſter, and he was ſtabbing of him?

Heſter. It was after that I ſaw him, within two Minutes after; upon my crying out Murder the People came up Stairs.

Reaſon. How long was this after *Tranter* came?

Heſter. Immediately.

Reaſon. How long was it after *Tranter* came in before you ſaw this?

Heſter. Not long, all the Action was not long.

Mr. *Strange.* You did not obſerve where the Piſtols lay?

Heſter. No.

Mr. *Strange.* Did you obſerve your Maſter had any thing in his Hand?

Heſter. No, I did not.

L. C. Juſt. Did you ſee your Maſter when he went out in the Morning?

Heſter. No, I heard him.

L. C. Juſt. You ſaw him when he returned?

Heſter. Not till he was up in the Dining-Room.

L. C. Juſt. Had your Maſter any Sword on?

Heſter. I believe he had, I did not mind.

L. C. Juſt. When your Maſter came in and *Reaſon* after him, you heard your Maſter talk of an Arreſt, and that you had the Curioſity of hearing what paſt between them; did you hear any words of Heat or Paſſion?

Heſter. No, my Lord, I heard my Maſter talk ſomething, by which I underſtood my Maſter was arreſted.

L. C. Juſt. Did your Maſter ſeem angry?

Heſter. Yes, becauſe they ſeem'd ſo uncivil that they did not come and give him Notice of it.

Mr. *Hungerford.* You ſay you ſaw your Miſtreſs telling Money, can you gueſs at the Quantity of it?

Heſter. No.

Mr. *Hungerford.* Can you tell for what Purpoſe ſhe was telling the Money?

Serj. Cheſhire. Did you hear Mr. *Lutterell* ſpeak to his Lady to fetch any Money?

Heſter. I was not in the Room.

Reaſon. Did I ſtay in the Room by my ſelf when your Maſter went up Stairs?

Heſter. Yes, you did.

L. C. Juſt. And when he came down he had a Caſe of Piſtols?

Heſter. When I ſaw him he had them in his Hand, and when I inſiſted upon his laying them down, he came and laid them down on the Table by me.

Hungerford. When did your Maſter die?

Heſter. He died the Night following, I was with him all the time.

Thomas Waters the Waterman ſworn.

Serj. Cheſhire. Thomas Waters, will you tell my Lord and the Jury what you know on the occaſion of a Noiſe and crying out *Murder* at Mr. *Lutterell*'s Lodging.

Waters. My Lord, I was at the Water-ſide when Capt. *Lutterell* came down to go by Water, I went down to carry him, there two Men croſs'd over the Way to him; I was gone down to my Boat to wait for him, but he not coming down,

I came back again, and seeing them go into the House, I went to the Water-side, and staid there some time, and the Lad running out of the House, and crying *Fire*, *Murder*, I run up, and run into the Door, and when I was about half way up Stairs, *Lord*, says the Boy, *they are murdering my Master*; I run to the Stair-head and heard the Pistol go off, and then said to the Boy, is there any more Pistols? Then I opened the Door, and went in, and met *Reason* with his Sword drawn in his Hand, and as he was putting it in it stuck.

Mr. Serj. *Cheshire*. Where was Captain *Lutterell*?

Waters. Laid down on the Floor, all in his Gore; when I came into the Room the young Man followed me in; I saw one Pistol lay upon the Table; *Tranter* was behind *Reason*, *Reason* was putting his Sword into his Scabbard, and it stuck; and as I came in *Tranter* shew'd me his Hand, and said, see how I am used, *Reason* was opening the Door, I took hold of him and said, you must go no further, here is Murder done; then the Constable came in, and I charged the Constable with them. The Captain's Sword was in the middle of the Room broke, he lay on his Right Side with his Arm on the Chair.

Mr. Serj. *Cheshire*. How far was the Table off?

Waters. The whole Breadth of the Room; he lay just before the Fire-Place; I saw but one Pistol; I came in when the last Pistol went off, and I met Mr. *Reason*, and put him by with my Hand, to come into the Room.

Tranter. What Wound did you see me have?

Waters. No more than in your Hand, he shew'd me his Hand.

L. C. Just. Did it appear to you upon looking on his Hand, that he had received a Wound in his Hand?

Waters. Yes, my Lord, I believe he was wounded, because he shew'd me his Hand, and it was bloody.

Tranter. Was my Head broke?

Waters. I did not see that.

L. C. Just. When you came into the Room, you saw but one Pistol?

Waters. I saw but one, and that upon the Table, just as I come into the Room.

L. C. Just. How far from Mr. *Lutterell* was it?

Waters. I believe three Yards.

L. C. Just. How far from the Prisoner, or either of them?

Waters. The Prisoner stood by the Table, as I came into the Room.

L. C. Just. Was the Sword in the Scabbard, that was broke.

Waters. It was out, and please you my Lord.

L. C. Just. Whose Sword was it?

Waters. It must be the Deceased's, because the other had his Sword with him in his Hand drawn. I saw the Blood: I desired the Constable to draw the Sword, and I saw it bloody a good way.

Mr. *Peters* sworn.

Mr. Serj. *Cheshire*. Mr. *Peters* will you tell my Lord and the Jury, whether on the 17th of *October* last you was sent for, and by whom?

Mr. *Peters*. On the 17th of *October* last, I think it was in the Forenoon, about 12 o' Clock, I was sent for to visit Mr. *Lutterell*; the Messenger told me he lay expiring: I came into his Room, where I found him on his Bed, in a wounded Condition, and languishing of his Wounds; he seem'd desirous, that I would pray to Almighty God for his Soul, for he believed he had but a little time to continue in this World, and therefore he desired to make the best Use of it; I was ready to assist him; and desired him to consider how far he might be instrumental in bringing this Misfortune on himself, I desired him to consider, that as a dying Man great Weight would be laid on his Words, therefore if he said any thing not strictly true, he might involve innocent People in the Guilt, and the Punishment: Therefore I desired him to lay his Hand upon his Heart and consider.

He told me, *As a dying Man, as he expected to be tried for this very Fact at the Bar of Heaven, as well as the Persons, who had injur'd him, he assur'd me he was murdered in a barbarous manner.* Afterwards came in one *Church*, a Bailiff in the same Street, and desired me to put it home to him: I did; upon which he made me the same Answer, *That he was barbarously murder'd*; he wanted Spirits, or would have express'd himself more fully: On this I pray'd by him, and when I had done, I took my leave of him. In about an Hour afterwards I was sent for again; when I came there, I met Mr. *Vernon* and Mr. *Haines*, Justices of the Peace; one of the Justices gave Mr. *Lutterell* his Oath, and there being no Clerk there, desired me to take his Words in Writing, which I did; the Words were these; *The Bailiffs took the Pistols from my Table; they fired them twice; the fat Man drew his Sword, and run me into the Body with his Sword; and then drew my Sword, which I broke in his Hand, and begg'd for Life; I neither fired a Pistol nor made one Push; they both run me through; I offer'd to pay them the Money.* I think these are the very Words he said: After this I pray'd by him again, and still desired, that he would not lay any thing to the Charge of People that were not guilty: I left him then, and came again a third Time, and as I was praying by him, he interrupted me, and ask'd me, If it was not proper to receive the Holy Sacrament, which he was desirous to do: I ask'd him, if ever he had received the Sacrament; he told me he had; I desired him to consider; and to assist him, I put him into a Method; I told him one Thing which was necessary, which perhaps he might come into with Reluctance, and that was Charity and forgiving his Enemies. I told him he had been hardly dealt with I believed, yet it did behove him, as he died a Christian, to forgive them; he told me he did forgive them, and he hoped Almighty God at the last Day would forgive their Indiscretion; he died some time afterwards, but then in so dosing a Condition, that I could not attend him to any purpose.

Mr. *Hungerford*. Did he say any thing about who fired the Pistol?

Mr. *Peters*. I mentioned it to him; when I ask'd him, if he had fired either of the Pistols, I told him one of the Bailiffs was wounded, and that there were two Balls taken out of his Hand; he assured me, as he was a dying Man, he fired neither of the Pistols.

Reason. Did not he confess, that he had broke one of their Heads?

Mr. *Peters*. No, he did not say, he broke one of their Heads, nor any thing like it; so far from that, that he said he did not design to hurt a Hair of their Heads.

L. C. Juſt. I think Mr. *Peters* you ſay, when you came there you met with two Juſtices of the Peace, Mr. *Vernon* and Mr. *Haines*, and becauſe they had no Clerk there, they deſired you to take the Examination.

Mr. *Peters.* Yes, my Lord, I did take it.

Mr. Serj. *Cheſhire.* My Lord, I apprehended we had it ready to produce, or elſe I had not opened it; but upon my calling for it, I am told, to my Surprize, that Mr. *Vernon* hath it, and he is gone into the Country.

Mr. *Peters.* I have a Copy of it.

L. C. Juſt. We muſt have the Original.

Mr. *Peters.* My Lord, there is a Copy of it in my Depoſition before the Coroner.

L. C. Juſt. Is Mr. *Haynes* here?

Mr. *Haynes* called.

L. C. Juſt. You have given an Account of the Examination of this Gentleman, firſt before the Clergyman, afterwards before two Juſtices of the Peace, his Examination is taken and reduced into Writing, and if it was reduced into Writing, by the Rule of Law, unleſs you ſhew you are diſabled to do it by ſome Accident or other, you muſt produce that Writing.

Mr. *Reeve.* I am very much ſurprized, I apprehended they had the Writing ready in Court to produce. My Lord, Mr. *Haynes* will inform you.

Mr. *Haynes* ſworn.

L. C. Juſt. Mr. *Haynes* we have been inform'd by that Gentleman that ſtands before you, the Miniſter, that upon hearing of this unhappy Accident, you and one of your Brethren, Mr. *Vernon*, came there in order to inquire into the Matter, and take the Examination of the Priſoners; did you do it?

Mr. *Haynes.* My Lord, on the 17th of *October* laſt, the Priſoners at the Bar were brought before me, and charged with the Murder of Mr. *Lutterell*; I underſtood Mr. *Lutterell* was not actually dead, ſo Mr. *Vernon*, another Juſtice of the Peace, went with me to Mr. *Lutterell*'s Lodging, and there we found him in a very weak Condition, but ſenſible; we adminiſter'd the Oath, in order to take the Information in Form; Mr. *Vernon* and the Miniſter were there; my Hearing not being good, Mr. *Vernon* examined him, but before they could perfect his Examination in form he fainted away, and could not go on: then we went to my Houſe, where the Priſoners were, and examined them, and afterwards committed them. What the Deceaſed ſaid to Mr. *Vernon* and the Miniſter I did not hear, ſo can give no Account of it.

Mr. *Reeve.* Had you a Paper taken?

Mr. *Haynes.* There was a Paper taken, but it was imperfect.

Mr. *Reeve.* And I think that is not in your Cuſtody, had you the Paper?

Mr. *Haynes.* No, I had it not.

Mr. *Reeve.* Do you know where it is?

Mr. *Haynes.* No, I do not.

Mr. *Peters.* I gave it to Mr. *Vernon*, and obtained it of him to ſhew the Coroner, and afterwards I gave it him again; I took a Copy of it.

L. C. Juſt. The Copy you took is from the Paper produced to the Coroner.

Mr. *Reeve.* You was examined before the Coroner.

Mr. *Peters.* I brought the Original Paper to the Coroner.

Mr. *Reeve.* Whether that, which is mention'd in your Affidavit before the Coroner, was a Copy from the Original Paper?

Mr. *Peters.* Yes.

Mr. *Reeve.* And did you examine it?

Mr. *Peters.* Yes.

L. C. Juſt. We muſt have the Original.

Mr. *Hungerford.* We hope we may have Liberty to read the Depoſition taken before the Coroner, if what the Gentleman ſays be ſo; he ſaw the Examination taken in the Preſence of the Juſtices of the Peace, and the very Paper, the Words of the Paper, are contained in the Depoſition taken before the Coroner.

L. C. Juſt. That won't do, you have not the Examination of the Deceaſed. This is ill done of Mr. *Vernon*, he ought to have taken Care, and attended here, and had the Examination before the Court, and without that we can't arrive at the Truth of this Caſe; I doubt you muſt lay aſide all the Evidence of this Gentleman for want of the original Examination.

Mr. *Reeve.* We muſt ſubmit it to your Lordſhip, as to the Confeſſion, that Part of it that is not contained in the Examination, which was not propoſed to him at the Time of his Examination, whether that is not Evidence; there are two or three Things he gives an Account of, that he ſaid before it was reduced into Writing. But ſuppoſe we can't have the Benefit of the Examination, yet the Diſcourſe that was had with the Deceaſed at another Time, whether we may not be admitted to give that in Evidence, we muſt ſubmit it to your Lordſhip. But ſuppoſe no Examination had been taken, we humbly apprehend what he ſaid would be proper to lay before the Jury. Therefore when he gives an Account of what he ſaid at another Time than that of his Examination, though we can't produce what he ſaid at the Time of his Examination, yet we may give in Evidence what he ſaid at other Times. There were two other Times which he gives an Account of; the firſt was, when he was ſent for to pray by him, and one *Church* came in; he then declared on the Words of a dying Man, *He was barbarouſly murder'd.*

L. C. Juſt. You know in the Court of *Chancery*, when the Party is examined on his Oath, he gives in a firſt Anſwer; and on Examinations taken to it, he gives in a ſecond, and ſo a third; all theſe are taken but as one Anſwer and entire Confeſſion of the Party.

Mr. *Reeve.* Here is not an Examination before a proper Officer.

L. C. Juſt. You are to be heard no more to it becauſe you ought to produce it.

Mr. *Reeve.* I am ſure it is a Surprize on all of us.

Mr. *Hungerford.* As to us, we have the very Confeſſion in our Brief, and I believe, if we had thought it could not have been produced, we ſhould not have opened it.

L. C. Juſt. And there is too an Examination in Print; that ought not to be, and the Perſon that did it ought to be cenſured; are Juries to be prepoſſeſſed; here is a printed Pamphlet, whereof the Title is, Mr. *Lutterell*'s *Cry for Juſtice.*

Mr. *Hungerford.* I never ſaw it, but am told it is moſt in Favour of the Priſoners at the Bar.

L. C. Juſt. If the Examination is true, it ought to be produced, and the Priſoners ought

come fairly to their Trial, and, if guilty, God forbid but they ſhould ſuffer, but not by paſſionate Inſinuations in Print; and it is an unprecedented Thing, and if it comes out who did it, I ſhall take a Courſe with them: It is a way of preventing all Manner of Juſtice.

Mr. *Hungerford.* No doubt it is a very unjuſt Thing, and unwarrantable, no more to be juſtified, than Officers are, when under the Colour of Juſtice, they ſhall murder a Gentleman at his own Lodging; but as to the Caſe in *Chancery*, firſt, ſecond, and third Anſwers are but one Anſwer. I ſpeak it with all Deference, whether that be the ſame Caſe, the Words that he did deliver at other Times, when the Juſtices were not preſent, when he was a dying Perſon on the Brink of Eternity, and then ſaid the ſame Words, and now this Paper can't be produced, whether the Words of the Paper may not be admitted as Evidence, we humbly ſubmit it to your Lordſhip; and we believe the Witneſſes will give you an Account of what he ſaid at other Periods of Time, when there was no Examination in Writing, which was only when the Juſtices attended.

L. C. Juſt. Give an Account how it comes to paſs, that you have not this Examination to produce, that was in Writing.

Mr. *Mitchell* ſworn.

Mr. *Reeve.* Will you give an Accout of this Paper, and whether there hath been any Application made to get it, and why it is not here?

Mr. *Mitchell.* I called at Mr. *Vernon*'s, but they told me he was gone into the Country, and he had not fixed any one Place, which he not doing, they did not know where to ſend to him.

L. C. Juſt. Here is a printed Narrative goes about the Town. Do you know who was the Author of that?

Mr. *Mitchell.* No, my Lord, we have been enquiring in order to proſecute the Perſon; I have ask'd the Widow, and Mr. *Keate* her Nephew, and they ſay they know nothing of it.

Mr. *Hungerford.* It ſets out with this Fact, that the Deceaſed ſtruck firſt; and if ſo, it is very reaſonable to ſuppoſe, that this Paper was done rather in Favour of the Priſoners at the Bar, than of the Proſecutors.

L. C. Juſt. The Juſtice of Peace that had not the Examination doth appear, but he that hath it is out of the way. Mr. *Peters*, how many Times was you with the Deceaſed?

Mr. *Peters.* Three Times; at 12 o' Clock, about an Hour after, and about an Hour after that, the third Time.

L. C. Juſt. When was it you reduced what he ſaid into Writing?

Mr. *Peters.* The ſecond Time; the third Time I adminiſter'd the Sacrament.

L. C. Juſt. And when you examined him the firſt Time, and afterwards a ſecond and third Time, the Deſign of that was to perfect the Examination which you took the firſt Time, and then it is all of a piece.

Mr. *Hungerford.* My Lord, the third Examination was after the taking any thing in Writing; when he took the Sacrament on the ſolemn Occaſion, he declared, *&c.*

Mr. *J. Powis.* The laſt Examination therefore was an Advice to a forgiving Temper.

Mr. *J. Eyre.* Mr. *Peters* ſhould declare what he ſaid the firſt and the third time.

Mr. *Peters.* I preſs'd him to conſider and recollect whether what he had ſaid was true, he ſaid it was.

Mr. *J. Eyre.* What did he ſay the firſt time?

Mr. *Peters.* The firſt time he told me, *he was barbarouſly murdered:* As I told you before there came in one *Church* a Bailiff, and then I put him to conſider, whether he was not Acceſſary to his own Misfortune; to which he returned the ſame Anſwer, *that he was barbarouſly murdered, that he did not draw his Sword, nor fire his Piſtol.*

L. C. Juſt. Did you aſk him about any Blow, or Provocation given?

Mr. *Peters.* I aſk'd him, to which he ſaid, *he did not deſign to hurt a Hair of their Heads.*

L. C. Juſt. I muſt confeſs for my part I am not entirely ſatisfied: Mr. *Peters* at his firſt coming examines him, and after that he comes to him a ſecond time, and then he is examined in the Preſence of two Juſtices of the Peace, and by their Authority; and he ſays the intent of that was to perfect the firſt Examination; and being ſo examined a ſecond time, his examination is taken in Writing; whether or no the firſt and ſecond do not make an entire Examination, and ſo that you can't produce the firſt without the ſecond; I make no doubt it might be produced, if there had not been a ſecond; but he that examines him firſt, examines him afterwards a ſecond time, in order to perfect that Examination, and when he doth it, it is reduced into Writing; to me it ſeems a Matter of great Conſequence, if the firſt is allowed without producing the ſecond.

Mr. *Juſt. Eyre.* It can't properly be called an Examination.

Mr. *Hungerford.* The firſt time he examined him as a Chriſtian, as a Miniſter; as to the ſecond Examination, Mr. *Peters* had no more to do in it than as a Juſtice's Clerk.

L. C. Juſt. The Examination taken before the Juſtice, was to confirm the former Examination, and upon that Examination all was reduced into Writing.

Mr. *J. Eyre.* That which is ſet down in Writing, if it be an Examination taken in Writing of a Priſoner before a Juſtice of the Peace, you can't give Evidence of that Examination *vivâ voce*, unleſs the Examination be loſt; but what Declaration or Confeſſion was made at any other time, may be given in Evidence; the particular Examination of what he ſaid before the Juſtices, and was reduced into Writing, cannot be proved but by that Writing; but as to what he ſaid at any other time, the firſt and third time, and not before the Magiſtrates, that may be given in Evidence.

Mr. *J. Powis.* The great Matter I obſerve is, that Mr. *Peters* did ſay, he did look upon the ſecond Examination to perfect the firſt, the firſt was not ſo perfect, and then it was to be aſcertained by a ſecond, and which they not caring to truſt to their Memory, put into Writing; that Writing indeed the Juſtice of Peace hath; it is not produced, but if it be agreed that it was put into Writing, and after it was reduced into Writing, it ſeemed to be all of a piece, ſo as plainly to relate to what was done the time before, how will they aſcertain the whole, but by producing the Writing? Then this Writing can't be ſeen, the

Juſtice of Peace hath it, and doth not come here to produce it.

Mr. *J. Eyre.* I don't know how to call this perfecting the former Examination, you can't call the Diſcourſe between him and Mr. *Peters* an Examination, when there was no Juſtice of Peace preſent; it is not an Examination what paſs'd between Mr. *Peters* and this Gentleman. It is always taken ſo at the *Old-Bayley*, where Evidence is allowed to be given *vivâ voce* of what was ſaid by People at other times beſides the time of Examination.

Mr. *J. Powis.* What doth Mr. *Peters* mean by perfecting the Examination?

Mr. *Peters.* I beg your Pardon, it was not my word.

L. C. Juſt. Not to differ about words, whether this is an Examination before the Miniſter, when the Juſtices of Peace were not there; it is very likely this Miniſter came to inquire of this Gentleman about the Circumſtances of his Death; after that the ſame Gentleman is preſent when the Juſtices of Peace come; thereupon the Juſtices of Peace deſire him to take it in Writing; he aſks the ſame Queſtions as he did before, and they are taken in Writing; he takes it, deſigning to make the firſt Examination more authentick to charge the Perſon that gives the Examination. Now really when all this is done, the Examination of him before the Juſtice, taken in Writing by the ſame Perſon that inquired of him before, and all this done in order to perfect and conſummate the Examination, whether you will not take them both together as one entire Account given by the Deceaſed? He gives the Account, he gives it as true in the Preſence of the Juſtice; they were not preſent the firſt time, but the ſame Perſon that aſk'd him the firſt time, he aſks him when the Juſtices were there, if what he ſaid before was true, and on that an Account is taken in Writing: Now upon this, when there is an Examination in Writing in the Preſence of the ſame Perſon, and when they give you no reaſonable Excuſe why they don't produce it, there ought to be the leſs Credit given to them.

M. *J. Eyre.* I think there is the leſs Credit to be given, becauſe the Examination is not produced; however it is Evidence.

Mr. *J. Powis.* If they were both of equal Validity you ſay ſomething, but it is confeſſed on all Hands, that the ſecond Examination was more ſolemn and valid, becauſe two Juſtices of the Peace were preſent, and there was the Awe of Magiſtracy over the Perſon, and the ſecond Examination relates to the firſt.

Mr. *J. Forteſcue.* It is a hard Caſe on the Priſoners at the Bar; it is the Confeſſion of Mr. *Lutterell*, and if they had that in Evidence, they might be compared together; but they not having that, I own, as to point of Law, they cannot give it in Evidence: It is a great Hardſhip, but where it lies I cannot tell; I think it ought to be cenſured in a proper Time. The moſt material of what is ſaid by word of Mouth is detained from us, and not produced; but I think we ſhould allow what was ſaid at other times to be given in Evidence, becauſe the firſt is no Examination, becauſe no Juſtice of Peace then preſent; ſo that the Examination ſtands diſtinctly by it ſelf, and that Evidence is to be laid aſide and not produced: but ſhall we not allow that to be Evidence which he ſaid at other times, becauſe he had an Examination taken in Writing? Therefore we ſhall hear no other Evidence, the firſt was no Examination, only what Mr. *Peters* will take upon him to ſay paſs'd between them.

L. C. Juſt. Go on with your Evidence.

Mr. *Hungerford.* There can be no doubt of the third Declaration; my Lord, the third Examination was certainly the moſt honeſt Examination; as to the ſecond Examination, it had the Solemnity of two Juſtices of the Peace, one happens to be deaf, the other to be abſent; whether what a Man ſays juſt as he is going to die, and on his receiving the Holy Sacrament, is not to be regarded?

Mr. *J. Eyre.* He ſhould diſtinguiſh between what paſs'd in the firſt Diſcourſe, without any regard to what is contained in the ſecond Examination.

Mr. *Reeve.* Mr. *Peters*, you hear the Opinion of the Court, that what paſs'd at the writing of this Paper you muſt not take any notice of, but give an Account of what paſs'd at any other time.

Mr. *Peters.* I told your Lordſhip before I was ſent for to viſit him the firſt time, when I found him dangerouſly ill; after I had talk'd to him ſome time to put him in mind of Death, I deſired to know of him, how far he had been any way inſtrumental or acceſſary to bring this Misfortune upon himſelf; he ſaid, *As he was a dying Man, and expected to be judged at the laſt Day, they murder'd him barbarouſly.* I repeated it to him again at the Requeſt of Mr. *Church* a Bailiff, and the laſt time I came to him, when he receiv'd the Sacrament.

L. C. Juſt. Mr. *Peters*, I deſire you to conſider with your ſelf, did you not aſk him whether he had ſtruck any of the Bailiffs?

Mr. *Peters.* I did not.

L. C. Juſt. Did you aſk him if he had given them any Provocation?

Mr. *Peters.* I did, to which he anſwer'd, *He had given them no Provocation.*

L. C. Juſt. Did you aſk who gave the firſt Blow?

Mr. *Peters.* No, I did not.

L. C. Juſt. Did you ſee the Wound; did he ſay he gave that?

Mr. *Peters.* I told him, it appears one of the Bailiffs is wounded in the Hand, and it is probable he was the Perſon that diſcharged that Piſtol; upon which he aſſured me, *He fired neither of the Piſtols; he neither drew his Sword, nor fired either of the Piſtols.*

L. C. Juſt. When you had this Diſcourſe with him, did you reduce it into Writing?

Mr. *Peters.* What I reduced into Writing, was only my Depoſition, which I writ with my own Hand, and which Mr. Juſtice *Harper* ſwore me to, and I believe he hath it in his Cuſtody.

L. C. Juſt. Here this Gentleman is allowed to give an Account of what Diſcourſe paſs'd between him and Mr. *Lutterell* the firſt time; the Juſtice of Peace can't be allowed to give an Account of what is ſaid at his other Examination, becauſe it was reduced into Writing, and that Writing can't be produced.

Mr. *Reeve.*

Mr. *Reeve.* I beg you would give an Account of what he ſaid at any other time, when this Paper was not written: When you talk'd with him about this Matter you ſay he ſaid, *The Bailiffs did barbarouſly murder him without any Provocation*; that he ſaid, *He gave them no Provocation:* And when you aſk'd him about the Wound that one of the Bailiffs had, he ſaid, *He fired neither of the Piſtols, nor drew his Sword*; I deſire to know at any other time, whether there was any thing material paſs'd between you at any other time than at that time when the Paper was wrote: Can you recollect?

L. C. Juſt. You diſcours'd him three times, the firſt you have given an Account of, the ſecond time it was reduced into Writing, that Writing doth not appear; what paſs'd the third time, pray repeat it again?

Mr. *Peters.* As he was going to receive the Holy Sacrament, I beg'd of him to conſider whether what he had ſaid was true: He ſaid, *Every Article he had ſaid, as he was a dying Man, and as he hoped to receive Benefit by the Sacrament, every thing he had ſaid was ſtrictly true.*

Mr. *Reeve.* We ſhall trouble your Lordſhip with one Evidence more, that is, the Surgeon, who will give you an Account of his Wounds.

Mr. *Sparham* ſworn.

Mr. *Reeve.* I think you was ſent for as a Surgeon, give an Account in what Condition you found the Deceaſed, how many Wounds, and of what Nature.

Mr. *Sparham.* I found him labouring with a Wound under the Right Pap with a Shot; upon this I examined him, and putting him into a proper Poſture, I found ſeveral other Wounds; one near the Liver, the lower part of the eighth Rib, near the Back-bone; ſeveral other Wounds with a Sword, three or four on his Belly. Upon opening of his Body I found that the Wound with the Bullet had penetrated about nine Inches towards the Back, which Wound was mortal, the firſt to be of the Lungs, having a hole thro', and the ſecond to be torn, and the *Diaphragma* wounded: I found one other Wound with a Sword near the eighth Rib, three Inches and a half broad, penetrating the *Thorax*, and wounding the *Diaphragma*, which was alſo mortal; I found eight other Wounds with a Sword about a quarter of an Inch wide each, and a quarter of an Inch deep, one near the left Pap, four others on the right ſide of the Belly, two more on each ſide the Back Bone.

Mr. *Reeve.* So you look'd upon two of the Wounds to be mortal, one whereof was with the Piſtol-ſhot.

Mr. *Sparham.* Yes, I ſaw two leaden Pieces taken out of his Body.

Mr. *Strange.* Who attended at the ſame time?

Mr. *Sparham.* Mr. *Gifford.*

Strange. Did he or you take out thoſe Bullets?

Mr. *Sparham.* We both took them out, I think.

Mr. *Reeve.* My Lord we have done.

L. C. Juſt. What ſay the Priſoners? The Counſel for the King have called what Witneſſes they think proper, it is now your time to anſwer for your ſelves.

Reaſon. If your Lordſhip pleaſe, we arreſted the Gentleman in *Surrey-ſtreet*, and he deſired me to go to his Lodging; when we came there, he ſaid he would pay the Money, ſays he, *Go and ſee for the Attorney, and I will pay the Money*; upon that *Tranter* went to the Attorney for his Bill, I went up Stairs with the Gentleman into the Dining-Room; when he came up, ſays he, *My Dear, I am arreſted, it is for Mr.* Rous's *Bill.* He began to look a little angry, with that he went to his Scrutore and took ſomething out of it, a Key, and he went up Stairs and fetch'd his Piſtols, and when he came down again, he clap'd one to my Breaſt, and threatened to ſhoot me; I was ſurpriſed, his Lady runs out of the Room, with that I gave him good words; ſays he, *Sirrah I will let you live a little till your Partner comes back, and then I will ſend all your Souls to Hell together:* Then the Foot-boy came back and ſaid, the Gentleman was coming; he order'd the Boy out of the Room, and one knock'd at the Door; when the Boy was gone, he clap'd his Piſtols one on one ſide of his Boſom, and the other on t'other, and my Partner came, and when he came into the Room he gave him a Blow over the Head; with that he clos'd in with him, and then one of the Piſtols went off and wounded him; then he drew his Sword, and I drew mine, and then the other Piſtol went off, which was the occaſion of his Death.

L. C. Juſt. Have you any Witneſſes?

Mr. *Twine* ſworn.

Mr. *Twine.* My Lord, I was employ'd by the Plaintiff Mr. *Carr*, to take out a Writ againſt Mr. *Lutterell*, on an Indors'd Note; I did take out a Writ and gave it to Mr. *Reaſon*, and he got the Warrant upon it, and afterwards came to me, and deſired to know where Mr. *Lutterell* was to be found, and that I would deſcribe him to him, whether young or old, *&c.* I told him where to go, and deſcribed him to them; then they went and arreſted him, and after he was arreſted *Tranter* came to me and told me the next Morning, they had taken the Captain: they ſaid they took him at the lower end of *Surrey-ſtreet*, and that he was very angry, and ſaid they had not uſed him civilly.

L. C. Juſt. What *Tranter* ſaid is not Evidence.

Mr. *Twine.* I know no more, my Lord; *Tranter* came to me for the Bill, and I gave him a Bill of the Debt and Charges.

L. C. Juſt. Did you give the Bill of the Debt and Charges to *Tranter?*

Mr. *Twine.* I did; he told me they had juſt taken the Captain, and then I gave it him; the Bill of Charges was one Pound thirteen Shillings.

Mr. *Tims* ſworn. *The Warrant ſhew'd to him.*

Mr. *Tims.* This is the Warrant made out upon the Bill of *Middleſex*, at the Suit of Mr. *Carr*, to arreſt the deceaſed; *The Warrant read, and alſo the Bill of Middleſex produced and read.*

Mr. *Hickman* ſworn, *and the Warrant ſhew'd to him.*

Mr. *Hickman.* This I know to be my Hand, I made out this Warrant all of it.

Mr. *Hungerford.* I would humbly offer it to your Lordſhip's Obſervation, here is a Fact we have omitted to prove, here is a Witneſs in Court, one *Lucas*, can prove that *Reaſon* ſhot off the Piſtol.

L. C. Juſt. It is irregular; but altho' you have omitted it, and come out of time, I would have the whole Fact, and if my Brothers pleaſe we will hear it.

Conſtance Lucas ſworn.

Mr. *Hungerford.* Mrs. *Lucas*, what do you know of ſhooting off the Piſtol?

Conſt. Lucas. I was oppoſite to the Captain's Lodging in *Surrey-ſtreet*, in a Room up two Pair of Stairs, and I heard a Piſtol go off, upon that I went to the Window, and I ſaw a luſty fat Man take a Piſtol out of the Window in the Captain's Lodging up one Pair of Stairs, and let it off towards the Fire-ſide.

Mr. *Strange.* Do you know Mr. *Lutterell?*

Conſt. Lucas. Yes.

Mr. *Strange.* Can you take upon you to ſay it was not Mr. *Lutterell?*

Conſt. Lucas. Yes, I am ſure it was not he.

L. C. Juſt. When you ſaw a luſty fat Man take a Piſtol off from the Window and diſcharge it, was any Body by him at that time?

Conſt. Lucas. No Body that I ſaw.

L. C. Juſt. What ſort of Man was Mr. *Lutterell?*

Conſt. Lucas. He was a little Man.

One of the Jury. Was there any Light in that Room to diſtinguiſh one Man from another?

L. C. Juſt. What ſhe ſaid was, ſhe ſaw a luſty fat Man come to the Window, and take up a Piſtol and diſcharge it, and that ſhe ſaw no Body elſe at the Window.

Mr. *Hungerford.* The Coroner's Inqueſt came into this Room, and was ſatisfied, that from thence ſhe might ſee into this Window.

Mr. *Gifford the Surgeon ſworn.*

Mr. *Gifford.* On *Tueſday* the 17th of *October* laſt, about ten or eleven a Clock in the Morning, I was ſent for to a Gentleman, Mr. *Lutterell*; when I came to him, I found him ſitting on a Chair, and he lean'd back with his Shirt and Clothes very bloody; Mr. *Sparham* was with him in order to look to his Wound; we put him to Bed, we found a Wound about an Inch below the right Pap, by Gun or Piſtol Shot, and we dreſs'd it and all the other Wounds we could find; I went into the Parlour, and there were the two Priſoners at the Bar; I was told one of them was wounded; upon that I went to examine into it: Upon coming into the Parlour I examined *Tranter*, and there I found two pieces of Balls which were lodged in his Hand; we extracted the Balls; I found a ſmall Wound in his Wriſt, and a Razure on his Head; that was a ſmall Wound which was on the Wriſt, it ſeem'd to be from a Prick, ſomething that had entered the Skin. Then I went to Mr. *Lutterell* again, as he was in a good State of Senſe; I aſk'd Mr. *Lutterell, Whether he had fired a Piſtol?* I aſk'd him ſeveral times, he denied it at firſt, ſecond, and third time, and he uſed this Expreſſion, *I call God to Witneſs, I neither fired a Piſtol, nor drew my Sword, but was barbarouſly murder'd.* I was there again when Mr. *Peters* gave him the Sacrament, when he was aſk'd the ſame Queſtion; he then anſwer'd, *He neither did the one or the other.* In the Afternoon Mr. *Keat* and I went together, he was then in a calm State, ſeem'd reaſonable, and we aſk'd him, *Sir, you can give ſome Account of this Matter, your Reaſon and Judgment are ſtrong; I have heard that you fetch'd down the Piſtols:* He told me, *He had, but with no malicious Deſign, only he would not be forc'd out of his Lodgings.* I aſk'd him, *If there was any Blow given:* He ſaid, *They had given him abuſive Language, which induced him to ſtrike one of them; upon that they immediately ſeized him, the luſty Man ſeized him and drew his Sword, he tumbled down, and he ſtab'd him; he often beg'd them to ſpare his Life; the other ſaid, Damn him, draw his own Sword and ſtab him.* Mr. *Lutterell*'s Finger and Thumb were cut, as if it was with graſping of a Sword. Then he ſaid, *The leſſer Man took a Piſtol and clap'd it cloſe to his Breaſt, and ſhot him in the Body, and the luſty Man held the other Piſtol to his Head and ſhot it off*; which I the rather believe, becauſe he had ſome Powder Spots or Marks on his Face.

Reaſon. He own'd to you that he ſtruck one of us.

Mr. *Gifford.* Yes, but it was upon your giving ſawcy Language.

L. C. Juſt. When you ask'd him about bringing down the Piſtols, and upon what Account, what ſaid he?

Mr. *Gifford.* He acknowledg'd he brought down the Piſtols, but with no evil Intent; but as he was willing to pay his Debts, he was not willing to be forc'd out of his Lodging and be expoſed.

Mr. *Bonner* ſworn.

Mr. *Bonner.* My Lord, juſt as Mr. *Lutterell* was got to Bed I came up Stairs, and ask'd him, if he had fired the Piſtol; he diſowned it, and ſaid, *He had no Deſign to do them any Harm, or make any Reſiſtance, but* (ſaid he) *they kill'd me cowardly and cruelly.*

Reaſon. After that he had declared to you that he had no Deſign to make any Reſiſtance, what followed?

Bonner. When I came out of the Room, ſays Mr. *Gifford* to me, Mr. *Bonner*, Mr. *Tranter* is ſhot in the Hand; it is certain Mr. *Lutterell* ſhot him in the Hand; therefore let us go back and ask him: we went and ask'd him both of us, and he ſaid, *No, as God ſhould judge him he did not, nor had he any Deſign of doing them any Harm, but he did threaten them ſeveral times.* He ſpoke inwardly and ſeem'd to be faint, and deſired we would leave him.

Reaſon. Pleaſe to take notice, that my Partner is ſhot in the Right Hand.

Tranter. My Lord, I have loſt the Uſe of my Thumb.

Blake the Surgeon ſworn.

Blake. My Lord, Mr. *Tranter* was wounded in the Thumb of the Right Hand, and in his Left he had a Wound here in his Wriſt, I did not take the Ball out of his Hand, but I dreſs'd it.

L. C. Juſt. What was that Blow on his Head? what do you think it was done with?

Mr. *Blake.* It ſeem'd to be done with a Cane.

L. C. Juſt. Was it a Wound or a Bruiſe?

Mr. *Blake.* A Wound, the Skin was broke. Mr. *Reaſon* had a little Wound in one of his Fingers, which ſeem'd to be done with the Point of a Sword.

Thomas Hargrave call'd again.

L. C. Juſt. Heark you, young Man, hear the Queſtion and conſider well; upon your former Examination you ſay, when *Tranter* knock'd at the Door you went down to let him in; that *Tranter* made up to the Dining-Room, and you follow'd him; you heard a little Buſtle before you came in, but the firſt thing you ſaw, when you came, was *Tranter* running your Maſter againſt the Cloſet Door, and *Reaſon* pricking him with a Sword: I ask you this Queſtion, whether or

no, when you was going up Stairs after *Tranter*, before you enter'd the Room, you did not hear a Blow?

Tho. Hargrave. I heard a Blow, but did not know who ſtruck it.

Mr. *J. Eyre.* Did you ſee to whom the Blow was given?

Hargrave. No, I ſaw nothing at all of it.

L. C. Juſt. The Reaſon of my calling him again, was to be ſatisfied as to this Particular; for the Coroner informs me, that before him, he had ſwore to the ſame Effect; he anſwered haſtily before, but I believe not with any Deſign; he ſaid he did not hear any Blow, his Meaning then might be, tho' he did hear a Blow, yet not ſeeing who gave it, therefore he thought it not material; I did not believe he did it with any Deſign.

L. C. Juſt. Have you any other Witneſſes?

Reaſon. My Lord, we had none but ourſelves, we are Officers of the Court; he aſſaulted us and brought down his Piſtols and ſtuck them in his Boſom.

L. C. Juſt. Did he not afterwards take them out and lay them on the Table?

Reaſon. No, my Lord.

Tranter. While I was gone, I did not know what happen'd, but when I came back, the Minute I enter'd the Room he ſtruck me over the Head with his Cane, and the Piſtol went off, and ſhot me in the Hand.

The Clothes were produced, and by the Hole in the Waiſtcoat it appeared, that the Wound given by the Piſtol under the Right Pap could no way happen by any Poſition of the Piſtols in the Boſom of the Deceaſed, by the Piſtol going off of itſelf.

Reaſon. My Lord, we are Officers of the Court, and what we did was for our own Security.

L. C. Juſt. What ſays *Tranter?*

Tranter. My Lord, we have no more to ſay.

Mr. *Reeve.* My Lord, I beg leave to obſerve a few Things by way of Reply. They have endeavour'd to differ the Caſe with reſpect to three Particulars; the firſt Particular is with relation to the Bolw given by Mr. *Lutterell*; they ſay Mr. *Lutterell* himſelf being preſs'd very much, did own that he had given one of the Bailiffs a Blow on the Head; there appears Reaſon to think that to be true, becauſe the Surgeon ſays he dreſs'd him of a Wound received by a Blow with a Cane; we ſubmit it, whether that is a ſufficient Juſtification of the Officers for what followed, to kill Mr. *Latterell* in this manner, ſuppoſing it to be true. What the Boy ſays, he ſaw afterwards, immediately upon his coming into the Room, in an inſtant, as ſoon as he had heard the Blow, he found Mr. *Tranter* running him up againſt the Wainſcot, and the other Bailiff ſtabbing him, he ſwears Mr. *Lutterell* had then no Sword or Stick in his Hand, ſo that whether or no after the Bailiff had received the Blow on his Head, it will be a Juſtification ſufficient for the Bailiffs to murder him? Another Part of the Evidence is in relation to the bringing down of the Piſtols; I beg leave to obſerve, my Lord, he did confeſs that the Piſtols were brought down, but not with an Intention to do them any Prejudice; that he laid them on the Table; they don't pretend Mr. *Lutterell* fired either of them, but in the Struggle, the Piſtols were in his Breaſt, and there they went off of themſelves. One wounded the Priſoner, the other went into his own Breaſt. As to what is ſaid with relation to the Intention of Mr. *Lutterell*, he did own he did threaten them: If he did, yet he had not Power over the Piſtols, one was on the Table, and the other was in the Window, and they ſay the Piſtols were not fired by any of them: Our Witneſs the Maid-Servant, juſt a little before the Piſtols were fired off, ſaw Mr. *Lutterell* on the Ground upon his Back, and his Hands lifted up, and them ſtabbing him, and this before any one of the Piſtols went off; there is another Witneſs ſwears expreſsly, ſhe ſaw a fat Man take a Piſtol out of the Window, and fire it towards the Chimney: Mr. *Lutterell* was not a fat Man, ſo it muſt be ſomebody elſe that fired the Piſtol, and not Mr. *Lutterell*, in all probability. It was Mr. *Reaſon*, as to the Evidence given in relation to the Cloaths, becauſe here is a Hole in the Waiſtcoat, the Piſtol that was in his Breaſt muſt go off of itſelf, and make that Hole. It can be no ſuch Thing, the Jury have ſeen the Cloaths, and where the Wound is given, and in what Poſition Mr. *Reaſon* himſelf hath attempted to place the Piſtols, and it is impoſſible the Piſtols ſhould go off, and give that mortal Wound. We ſubmit it to your Lordſhip's Diſcretion upon the whole, whether it is a ſufficient Juſtification, though they are Officers of Juſtice, and ought to be protected, yet ſuppoſe ſuch a Misbehaviour, where there is no Neceſſity for it, they are not to be juſtified.

L. C. Juſt. There will be two Points in Law; the one is whether the Officers are to be juſtified in what they have done; if they have done nothing, but what was proper to ſecure their Priſoner, and their own Lives when they were aſſaulted, they are not guilty of Felony; and if they are guilty of Felony, then of what Degree, whether of *Murder* or *Manſlaughter*.

Mr. *Reeve.* My Lord, we muſt ſubmit it, whether a Man ſtriking another over the Head be a Juſtification for him immediately to kill him, and take it with this Circumſtance, that they had given him ill Language.

L. C. Juſt. Is ill Language a Juſtification for Blows? Beſides you will conſider, whether there was not ill Language on the other Side.

Mr. *Hungerford.* My Lord, I won't take up much of your Lordſhip's Time, if your Lordſhip will ſpare me a Word or two. Here is a Man's Life taken away by two Perſons, that had a Precept from a Court of Juſtice to arreſt, the only Thing they had to do, was to ſecure the Perſon, to make him anſwerable to Juſtice, whether that could not be done without this Outrage? Whether Officers of Juſtice may execute their Proceſs with ſo much Cruelty? It amounts to as great premeditated Malice, as can be conceived. There is a Malice contained in Cruelty; I need not mention the Matter; it hath been fully laid before you; I ſhall only mention a Precedent or two; one is that of * *Holloway*'s Caſe: There was ſomething of a Provocation, but the Judge there in that Caſe did enter into the Fact, whether the Provocation was ſufficient to juſtify the killing of the Boy. The Boy was ſtealing Wood in his

* *Croke Charles*, 131.

Park,

Park, and had a Rope about his Middle, and as he was up in a Tree, he bid him come down out of the Tree, and he took hold of the Rope and dragg'd him ſo, that he was killed, and this was not a ſufficient Provocation. Another Caſe is that of *Mawgridge* [b], it is reported by my Lord Chief Juſtice *Holt*, there was a Provocation; *Cope* had deſired *Mawgridge* to go out of the Room, and then turned him out of the Room; and there the turning him out of the Room was not a ſufficient Provocation, and it is a very juſt Obſervation of my Lord Chief Juſtice *Holt*; when Caſes are attended with ſo much Cruelty and Barbarity, (as appears to be here, here are nine Wounds, eight beſides that with the Piſtol on the ſame Perſon, and certainly two luſty Men, as the Priſoners at the Bar are, might have made him anſwerable to Juſtice, without any ſuch barbarous Treatment:) The Obſervation my Lord Chief Juſtice *Holt* made is, that the Law ſhould be ſo conſtrued. As to the Buſineſs of the Cloaths, it ſeems to be abſurd, that the Piſtol went off, and made that Wound on the Right Side; by no Poſition he could put the Piſtols in, could their going off make that Wound.

Mr. *Strange.* My Lord, I would only obſerve two or three Things. If Mr. *Lutterell* at the time they aſſaulted him with a Sword, had held his Piſtols in his Hand, and their own Lives had been in danger, the Caſe had been different; but when he had put the Piſtols out of his Hand, and they were between him and the Piſtols, ſo that it was impoſſible for him to do them any ſuch Harm (for I do admit if it was in Mr. *Lutterell*'s Power at that Time, and he had ſhew'd an Intention, that if they did not kill him, he would kill them, that might be ſomething of a Juſtification) they are the leſs excuſable in doing what they did. As to the Circumſtance of the Piſtols firing of themſelves, as they were in Mr. *Lutterell*'s Boſom, and ſo giving this Wound, it ſeems to be impoſſible it ſhould be ſo, and that this muſt be a Wound given by a Piſtol levelled directly at him.

L. C. Juſt. I think you mentioned the Caſe that is in *Keilyng*, and if you have read that Caſe lately, you will remember, there a Blow is a Provocation, and if a Blow be firſt given, it will not be Murder, tho' Death do enſue upon it.

L. C. Juſt. Gentlemen of the Jury, the Priſoners at the Bar, *Hugh Reaſon* and *Robert Tranter*, are charged by the Coroner's Inqueſt, and by an Indictment, with the Murder of Mr. *Lutterell*; they ſay they are not guilty of this Murder, and whether they are guilty or not is your Buſineſs to enquire, and receive Satisfaction in. In order to prove them guilty, they have called ſeveral Witneſſes for the King. The firſt is *Thomas Hargrave*, who it ſeems was a Servant to Mr. *Lutterell*; he tells you, that upon *Tueſday*, but he doth not remember the Month, or the Day of the Month, but it comes out from the other Witneſſes, that it was the 17th Day of *October*, he ſays his Maſter was going down to the Water-ſide in order to take Boat, for it ſeems he lodged in *Surry Street*, and he ſays a little Man ran after him, and clapp'd him on the Back. He did not then know him, but now ſays his Name is *Tranter*; on that his Maſter told him, he would pay the Money. He did differ in the Evidence he gave, at firſt he did not remember, that he deſired them to go to his Lodging, but he deſired them to go with him to *Weſtminſter*. But the Officers thought, that was not reaſonable; then afterwards he ſays, that with much Perſuaſion he prevailed with them, to carry him back to his Lodging; and that his Officers did carry him back to his own Lodging; he ſays his Maſter went up Stairs, he followed after; when he came up Stairs his Maſter demanded of the Officer, that was with him, the fat Man, which is *Reaſon* (for *Tranter* was gone to get a Bill of Coſts from the Attorney) he demanded of the Officer his Warrant; the Officer did ſhew him his Warrant; he ſaid, he took the Warrant in his Hand, and afterwards threw it on the Ground, uſing a very indecent Expreſſion, *he ſhould take it and wipe his Back-ſide with it.* He tells you while he was there ſomebody knock'd at the Door, with that he went down to open the Door, and he ſays he let in *Tranter*, and he ran up to the Dining-Room, and he followed him. Now he ſays on his ſecond Examination, before he came into the Dining-Room, he did hear the Noiſe of a Blow given; formerly the Lad giving his Evidence haſtily, and not ſo well conſidering, he ſaid he did not hear any Blow given, but on his ſecond Examination, he doth ſay he heard a Blow given before he came into the Dining-Room. He ſays when he came into the Dining-Room *Tranter* had got hold of Mr. *Lutterell*, and was running of him againſt the Wainſcot, and that *Reaſon* had his Sword drawn and was ſtriking at him with his Sword; and he ſays, as he was preparing himſelf to make another Thruſt, he took hold of his Sword-Arm and prevented that; and *Reaſon* with ſome Paſſion ſaid, *Damn you, get you out of the Room, or elſe you ſhall die before your Maſter.* With that the Boy went out of the Room, and went down Stairs and cried out *Fire and Murder*, in order to alarm the Neighbourhood, he tells you while he was there he heard a Piſtol go off, and before he could get up Stairs he heard another Piſtol go off; this is the Evidence given by *Hargrave.* They have called another Witneſs, *Heſter Daron*; ſhe ſays ſhe heard her Maſter go out in the Morning, and in a little time after ſhe heard him return again, and there came with him *Reaſon*, one of the Priſoners at the Bar. Obſerving this, that her Maſter came in ſo ſhort a Time after he went out, ſhe had the Curioſity to hearken what the Meaning or Occaſion of her Maſter's returning ſo ſoon was; ſhe ſays, ſhe heard her Maſter talking of an Arreſt, and he ſeem'd to be in a Paſſion with the Bailiff, that was with him, and ſaid he had not uſed him well, but ſhould have given him notice before he arreſted him in the Street; ſhe ſays ſhe withdrew afterwards into her Miſtreſs's Bed-Chamber, which was near the Room where they were, and in a little time ſhe heard her Maſter go up Stairs, and in a ſhort time after return again; with that ſhe had the Curioſity to go in, and ſee what was the Matter; her Miſtreſs being big with Child ſhe was therefore more curious than ordinary to prevent the Misfortune falling on her Miſtreſs; ſhe found her Maſter with two Piſtols in his Hand, he ſtuck one of the Piſtols on one Side, and the other on the other Side in his Coat; ſhe ſays, ſhe admoniſh'd her Maſter, and deſired him to conſider the Condition of her Miſtreſs, and not to do any thing to fright her; upon that

[b] *Keilyng*'s Reports, 119.

he ſaid the Bailiffs had affronted him, and abuſed him, and called him *Minter*, however he did not deſign to do them any harm with the Piſtols, and her Maſter at her Deſire laid down the Piſtols on the Table; with that ſhe went out of the Room; but ſoon after hearing a great Noiſe ſhe came into the Room again, and found her Maſter on his Back on the Floor, and the Bailiffs ſtabbing him: She ſays ſhe went out with an Intent to give notice of it to the Neighbourhood, and that ſhe cried out *Murder*; that while ſhe was doing this, ſhe heard one Piſtol go off, and preſently after another; but before either went off, ſhe ſaw her Maſter lying upon his Back, and the Priſoner at the Bar (*pointing at him*) ſtabbing him. Then they call *Thomas Waters*, a Waterman, he was ſtanding by the Water-ſide, and ſeeing Mr. *Lutterell* coming down, who was one that uſually employ'd him, he expected a Fare from him, and that he ſhould carry him, as he uſually did; he ſaw Mr. *Lutterell* make back again and go into his own Lodging; but ſtill he ſaid he expected his Maſter to come down, and go by Water; but he not coming in ſo ſhort time as he expected, he made toward his Lodging, and as he came near he heard the Boy cry *Fire* and *Murder*: He went up into the Room, where he found Mr. *Lutterell* lying in the Room wounded all in Blood. The next Witneſs is Mr. *Peters*, who is a Reverend Divine, and came to do his Office and Duty on this melancholy Occaſion; he hearing Mr. *Lutterell* was wounded, and in danger of dying, came to him to perform his Office on that Occaſion: He ſays, that he requeſted and admoniſhed him to tell him, if he was not acceſſary to his own Misfortune, and that it may be, if it was not diſcovered whilſt he was living, it might be the Occaſion of an innocent Perſon's Suffering. When he admoniſhed him to tell the Truth, he did with the moſt ſolemn Aſſeveration, as he was to anſwer at the dreadful Day of Judgment, ſay, *That he was barbarouſly murder'd*; but did not you give any Provocation or Occaſion for it? *No, I gave none.* With that, ſays he, I told him I underſtood one of the Bailiffs was wounded with a Piſtol; did not you diſcharge either of the Piſtols? *No, upon the Word of a dying Man, and as he was to anſwer it to Almighty God, he never diſcharged either of the Piſtols, nor did he run his Sword at them, draw his Sword at them, or give them any Provocation.* The Miniſter ſays, he adviſed him to be very ſerious, and examined him as to the Fact, and ſaid it would be of very dangerous Conſequence, if he ſhould die with any Falſity in a Caſe of this Nature, and it would draw preſent Ruin on innocent Perſons; he ſaid, *He never drew his Sword, nor diſcharged either of the Piſtols, but was barbarouſly murder'd.* Mr. *Peters* then went away, and a little time after came again, when Mr. *Vernon* and Mr. *Haynes*, two Juſtices of the Peace, came to take an Examination from Mr. *Lutterell* himſelf; he ſays, he was preſent at that Time, that becauſe they had no Clerk with them, he was deſired to take an Account in Writing of what was ſaid; he preſs'd him as formerly, and having taken an Account in Writing, that ought to be produced, but it is not produced, and therefore no Regard is to be had to it, for a Perſon is to give the beſt Evidence the Thing is capable of, eſpecially where a Perſon's Life is concerned, and he of his own ſhewing, ſays it was taken in Writing, and that Writing is not produced, and no Account is given that they are diſabled to produce it, but the Juſtice of the Peace that hath it is out of the Way, and it doth not appear, that proper Endeavours have been taken to have him here, that this Examination might appear more perfect than the former. He tells you afterwards he came to him a third Time, and the End of his coming a third Time was to admoniſh him with reſpect to his Fate in the other World, and at that Time he deſired to take the Sacrament; he told him what was neceſſary, that he might take the Sacrament worthily, and that it was proper above all Things that he ſhould diſcharge himſelf and his Conſcience, and give a true Account of what happen'd on this melancholy Occaſion, that ſo no innocent Perſon might ſuffer. He ſtill inſiſted, *That he was barbarouſly murder'd*, and ſaid, *that every Article of what he had ſaid was true.* He ſaid to him further, before you receive the Holy Sacrament, and as you are going before God, and there hope to have Remiſſion of your Sins, it is neceſſary for you to forgive even your Enemies; and with that ſays he, he told me, *He did heartily forgive all the World, and did forgive the Perſons that had been guilty of this Indiſcretion, and hoped God Almighty would forgive them*: He gives it a ſoft Term there, *their Indiſcretion.* Indeed I ſhould have been very glad if the Examination that was reduced into Writing was here, that it might be laid before you. Mr. *Peters* is a very worthy Perſon, there is no Reaſon to doubt, but he ſwears upon his Memory; and when a Man ſwears upon his Memory, he may miſtake, and the Miſtake of a few Words may alter the Senſe; therefore it was very proper to have had the Examination here; that might poſſibly have corrected his Memory; and tho' he hath ſhew'd himſelf a Man of great Probity and Worth, yet he might be miſtaken in ſome Particular; and it ſeems ſtrange, that of two Juſtices of Peace the one appears, and the other, Mr. *Vernon*, with whom the Examination is left, doth not appear, nor any Endeavours uſed to have him here; and therefore it muſt be taken as an Objection, not as to his Veracity, but that the Proſecutor hath not produced the Evidence that is proper, and only relies on the Memory of the Witneſs, and this ſeems to affect the Evidence that is given by Mr. *Peters*. They have called another Witneſs, whom they called at laſt after they had cloſed their Evidence; ſhe lived in an Houſe over againſt Mr. *Lutterell*'s Lodging; ſhe was in a Chamber, two Pair of Stairs, and ſhe ſaw a luſty fat Man come to the Window, take up a Piſtol, and as ſhe thought diſcharged the Piſtol; and ſhe ſaw no other Perſon but this Man, and therefore concluded the fat Man fired the Piſtol: This is the Evidence given for the King. The Priſoners are asked what they have to ſay for themſelves, in Anſwer to this Charge, which ſeems to be a weighty one given againſt them: They tell you they are Miniſters of Juſtice, and they give you an Account not only by their own opening, but by the Evidence they have produced, in what manner they behaved themſelves; that upon the firſt Arreſt, at the Requeſt of the Priſoner that then was, they ſubmitted to carry him back to his own Lodging: I muſt confeſs this doth ſeem to make ſome Impreſſion, it is what Bailiffs are not

not bound to do, they are uſually rough, and not eaſy to be intreated, unleſs well paid for it; this ſhews, that theſe Men went beyond the Bounds of their own Duty, for when they had arreſted him, they ought to have ſecured him by carrying him to Jail, or ſome Place of Safety; it was incumbent on them to give him an Opportunity of paying the Money, or ſending for Bail, in Caſe he deſired to be diſcharged that Way; but when a Bailiff hath arreſted a Man, to carry him back to his own Lodging, is an unuſual way of treating Priſoners, and ought not to have been; but ſtill it is not to be imputed to the Bailiffs, as an Aggravation in the Charge, they were too favourable in truſting him in his own Lodging. What is next? When they had him there, *Tranter* is ſent for the Attorney's Bill, this is pretty extraordinary when they had taken him, not only to give him Leave to go to his own Lodgings, but one of them goes upon an Errand, which Mr. *Lutterell* might have ſent his own Servant upon, and leaves none but *Reaſon*; this was extreme civil Uſage, and not often done by Men of their Character; what then? *Lutterell* goes up Stairs, what did *Reaſon* then do? When he had carried him to his own Lodging and ſent his Partner away, he gives him leave to go into another Chamber; this doth not ſeem to be ill Treatment of the Deceaſed, but ſhews exceſſive Favour to their Priſoner, which they could not in Strictneſs juſtify: He went up Stairs and returned again, and the Maid-Servant of Mr. *Lutterell* tells you, ſhe ſaw him with a Caſe of Piſtols, one ſtuck on one Side of his Coat, and the other on t'other; if their Treatment was ſo extraordinary and civil, this ſeems to be an untoward Return of Mr. *Lutterell*'s, when he was truſted to go out of the Room, for to return with a Caſe of Piſtols; but the Maid-Servant ſays, he ſaid, *He had no Malice towards them, and would not hurt a Hair of their Heads, he only brought down the Piſtols that he might not be impoſed upon.* I don't know what he meant, when he was in Cuſtody of the Officers, and had been ſo civilly uſed, to bring down a Caſe of Piſtols to prevent his being ill uſed, ſeems an untoward Return, and to affright the Officers, that they might not carry him away. This is not all, Mr. *Gifford* ſays, that he being a Surgeon was called to give his Aſſiſtance on this very unhappy Accident; he gives an Account of the Wounds, and the Diſcourſe that paſs'd on that Occaſion, and upon what he had done, and how the Bailiffs had treated him. Says he, *I confeſs*, although he ſays he had examined, and asked him ſeveral Times before, and that he refuſed to give any Account then, but did perſiſt in it, that he did not give any Provocation, but at laſt when Mr. *Gifford* repeated it with ſome Earneſtneſs, out it comes at laſt, *That he did give one of the Bailiffs a Stroke on his Head with a Stick.* He goes on, and ask'd him the Intent of bringing down the Piſtols; he ſays, *I did not deſign any Harm; I have no Malice, but brought them down, that I might not be ill uſed:* This was ill Behaviour, where he had been treated civilly, to declare that he brought down his Piſtols, that he might not be ill uſed: It was the Duty of the Bailiffs to carry him off, and he brought down his Piſtols to prevent that; as to the Blow, ſay the Bailiffs, the Aſſault begun on his Side; the young Man hath told you he heard a Blow given: Mr. *Lutterell* declared, he brought down the Piſtols to prevent their carrying him off, and that he did give one of the Bailiffs a Blow with a Cane; it is ſurprizing, that immediately when *Tranter* came back he ſhould run him againſt the Wainſcot, and the other aſſault him with a Sword; this Behaviour is not of a Piece with the other, that *Tranter* ſhould come back, and without any Provocation run him againſt the Wall, and *Reaſon* ſhould take his Sword and ſtab him: There muſt be a Provocation; the Boy ſays there was a Blow given, but he can't tell who gave it. Mr. *Lutterell* declares he gave a Blow, and another Surgeon confirms it; ſo that it appears beyond Contradiction, by the Evidence, that the Piſtols were brought down with a Deſign to prevent his being carried off, and that he did give one of the Bailiffs a Blow with a Stick: Then Mr. *Bouman* hath given you an Account of ſeveral Matters, but that which is material is, that he did not diſcharge any of his Piſtols, or draw his Sword; that he did not intend it, but did threaten it ſeveral Times. One *Blake*, who was another Witneſs, ſays, that upon Examination afterwards there appeared, that there had been a Blow on the Head of *Tranter*. This is the Nature of the Evidence given on the Side of the Priſoners. Upon the whole Matter, I think it is plain beyond Contradiction, that the Priſoners at the Bar did kill Mr. *Lutterell*. It is plain that firſt of all, when *Tranter* had him againſt the Wall, that *Reaſon* ſtabb'd him, and when lying upon the Floor, that *Reaſon* ſtabb'd him; and it appears afterwards by the Evidence of the Witneſs, who ſays ſhe ſaw the fat Man take up the Piſtol and diſcharge it, that *Reaſon* ſhot off the Piſtol; ſo that I think there can be no doubt at all, but the Priſoners at the Bar did give theſe Wounds, of which he died. The Surgeons give an Account, and I think there are ſome eight or nine Wounds with a Sword, one of them only mortal; a Wound with a Bullet that is mortal; ſeveral other Wounds he ſpeaks of, that are but ſlight. Then the Queſtion will be, whether upon this Evidence the Defendants are guilty of Felony, and if guilty, then in what Degree, whether of *Murder* or *Manſlaughter*. Gentlemen, it hath been opened truly, that the Bailiffs are Miniſters of Juſtice; they are arm'd with the Authority of Law, and thoſe, who reſiſt a Bailiff in the Execution of his Office, reſiſt the Law. They are not bound to give way and let their Priſoner Eſcape, but they being to execute their Warrant, if in doing what is neceſſary for this purpoſe, for obtaining their Priſoner, and the Security of their own Perſons, Death doth enſue, the Bailiffs having the Authority of the Law on their ſide, it is not ſo much as Felony; and it is very neceſſary it ſhould be ſo, for without it all our Properties would be precarious. When any Man offers an Injury to another, there is no Remedy but by bringing an Action at Law, and in order to bring the Perſon to do Juſtice a proper Officer muſt be imployed; and therefore it is highly reaſonable that Bailiffs ſhould have an Authority to carry off the Perſons they have arreſted, and if in doing of it Death enſues, the Party muſt thank himſelf. That being the Queſtion, I would recommend to your Conſideration theſe Circumſtances; it appears in the beginning, that the Bailiffs treated Mr. *Lutterell* with all Civility,

gave him leave to go to his Lodging; one of them ſends his Companion away, and gives him leave to go up Stairs; but altho' they did do that, that will not juſtify them for being guilty of any Barbarity, without any juſt occaſion offer'd; therefore you are to conſider what happen'd afterwards: It appears Mr. *Lutterell* brought down the Piſtols, he did do this to prevent his being carried off; that is, to prevent the Bailiffs from carrying him from his Lodgings, which was their Duty to do in caſe the Money was not paid, or Bail given in; and if ſo, this is good introductory Evidence to that, which they offer to prove, namely, that he endeavour'd to reſcue himſelf: He ſays, he did not diſcharge either of the Piſtols, or draw his Sword upon them; that he did not intend to do any Miſchief, but he threatened them; then ſee how this is when taken together: Here is Mr. *Lutterell* under an Arreſt, fetches down his Piſtols with an intent to prevent his being carried off; I doubt his threatening muſt have reference, that he threatened to diſcharge his Piſtols, or draw his Sword upon them; then when his Piſtols are brought down with that intent, when he threatens what uſe he would make of his Piſtols or Sword, what is done afterwards? Mr. *Lutterell* gives one of the Bailiffs a Blow with his Cane; it is proved undeniably that there was a Blow given, that is proved by the Boy, that the Blow was given by Mr. *Lutterell*; that appears by what he own'd himſelf. Then conſider, here are Piſtols brought down with a Deſign to make Oppoſition; that he threatened them, and not only ſo, but gave one of them a Blow with his Cane; what is the Conſequence? *Tranter* runs him againſt the Wall, and *Reaſon* ſtabs him: If this were all that was in the caſe, when Piſtols are brought down, and Threatenings uſed, and a Blow given, the Officers are not to ſtand ſtill till they are murdered, nor could they tell what Mr. *Lutterell*'s Intention was: As he had made an Appearance of Reſiſtance, and had made an Aſſault, you are to conſider whether this was not a neceſſary Defence of the Officers to ſecure their Priſoner. It is of no weight what Mr. *Lutterell* ſaid, that he intended to do them no harm; if he made an appearance of Reſiſtance, and actually aſſaulted them, the Queſtion is, whether the Baliffs, in this caſe, are not juſtified in what they have done; you will conſider their Circumſtances. The Maid tells you, when the Piſtols were brought down, at her Perſuaſion her Maſter laid them on the Table; ſo one would think that was an Indication that no ill uſe was intended to be made of them: It doth not appear whether one or both were in the reach of Mr. *Lutterell*. Then it appears, that notwithſtanding the running him againſt the Wall, he had in ſome meaſure reſcued himſelf from that Force, and there was a ſtruggling, and throwing down, which ſhews this Man was not ſo in the power of the Bailiffs, ſo as they could be ſecure of preſerving their Priſoner, or their own Lives. It muſt be left to your Conſideration, whether there was any Deſign of Mr. *Lutterell* to reſcue himſelf; but if you think they had a juſt Provocation, and they had Reaſon to be apprehenſive of loſing their Priſoner, the Law does allow them to do what is neceſſary for their own Security, and the Security of their Priſoner. This is what I recommend to your Conſideration, whether or no it appears to you that this was done out of Heat, and out of a Paſſion by the Bailiffs, when there was no juſt Cauſe for them to apprehend the Priſoner's being reſcued; if you believe that, then the Priſoners will be guilty of Felony: But if you believe there was juſt occaſion for the Priſoners to be apprehenſive they were in danger of their Lives, and of loſing their Priſoner, then whatever is done in their own Defence to ſecure their Priſoner, and their own Lives, it will not be Felony. I muſt confeſs it looks barbarous to think, that when a Man was in his Blood on the Ground, they ſhould follow their Blows, giving him more Wounds; this is carrying the thing a great way, and it looks like ſome Barbarity. But if Mr. *Lutterell* gave the firſt occaſion, whatever happened after, if done for the Security of their own Lives, and of their Priſoner, won't make them guilty of Felony; but ſuppoſe you ſhould be of Opinion that the Bailiffs have done more than they ſhould, then the next thing to conſider is, in what degree they are guilty: It appears a Blow was given, and that by the Boy before he came up Stairs; it appears by Mr. *Lutterell* that he gave the Blow; Gentlemen, I don't know, Men of Honour are not to juſtify themſelves by ſaying, ſaucy Language is given them, and therefore I am to be my own Avenger; Mr. *Lutterell* gave one of them a Blow over the Head, afterwards the reſt fell out as you have heard.

The Queſtion is, whether it be *Murder*; it muſt be done maliciouſly, and without Provocation, or elſe it is not Murder: Blows have always been allow'd to be Provocations, and here this is accompanied with fetching down the Piſtols, threatening the Bailiffs what he would do, and afterwards giving one of them a Blow; and if ſo, the Defendants will not be guilty of *Murder*, but only of *Manſlaughter*: Firſt, you are to aſſert a juſt and true Authority of the Bailiffs; on the other ſide you muſt not encourage the Bailiffs on a few angry Words immediately to fall into a Paſſion, and take away the Life of a Man. Here it appears, that a Blow was given under untoward Circumſtances, after the Bailiffs had been threatened with a Deſign to prevent his being carried off by them; and if it be ſo, the moſt you can make of it will be *Manſlaughter*.

They did behave themſelves civilly at firſt, ſhew'd him their Warrant, which he threw down and bid them wipe their backſide with it; that is a Matter which if this Gentleman had not ſuffered in the manner he hath done, muſt have been reſented in its place; then two or three times they are called *Rogues* and *Raſcals*, and that might provoke the Bailiffs: I think this unhappy Buſineſs was occaſioned by too great a Lenity of the Bailiffs in carrying back their Priſoner to his own Lodging; that was not well done of them. However I muſt leave it to your Conſideration, whether or no they are guilty of Felony; and if they be guilty of Felony, then in what degree, whether of *Murder* or *Manſlaughter*. I forgot one thing, the Surgeon did ſwear that one of the Bailiffs had a Wound in his Hand by a Bullet, each of them had a Wound, tho' it doth not appear how; all this is likewiſe to be conſider'd: you will conſider the whole, and give your Verdict accordingly.

Reaſon, as hath been proved, ſaid, he hoped he would give him Civility Money; he ſaid he would give nothing to ſuch Rogues as they were, for they had given him no Notice, but had arreſted him in the Street; that is the great Ground

of Complaint, and at that the Offence is taken; they did not give him due Notice, therefore it was not civilly done, which if they had done, and it had come before us, we ſhould have puniſhed with great Severity.

Upon this the Jury withdrew, and after ſtaying out about an Hour, brought them both in *Guilty of Manſlaughter:* Upon which they prayed the Benefit of the Clergy, and were immediately burnt in the Hand.

CLXXXIX. *The Trial of* John Woodburne *and* Arundel Coke, *Eſq; at* Suffolk *Aſſizes for* Felony, *in wilfully ſlitting the Noſe of* Edward Criſpe, *Gent.* March 13, 1721. 8 Geo. I.

ON *Tueſday* the 13th of *March* 1721, at the Aſſizes held at *Bury St. Edmonds* in the County of *Suffolk*, *John Woodburne* and *Arundel Coke* were arraigned upon an Indictment found by the Grand-Jury: And the Court proceeded thus.

Clerk of the Arraignments. John Woodburne, hold up thy Hand; *Arundel Cooke* aliàs *Coke*, hold up thy Hand; which they ſeverally did.

You ſtand indicted by the Names of *John Woodburne*, late of the Borough of *Bury St. Edmonds* in the County of *Suffolk*, Labourer; and *Arundel Coke* aliàs *Cooke*, of the Borough aforeſaid, Eſq; for that you, after the twenty fourth Day of *June*, in the Year of our Lord one thouſand ſix hundred and ſeventy one, *viz.* the firſt Day of *January*, in the Eighth Year of our Sovereign Lord *George*, of *Great Britain*, &c. intending one *Edward Criſpe*, Gent. then and yet being a Subject of our ſaid Sovereign Lord the King, to maim and disfigure at the Borough aforeſaid, in the County aforeſaid, by Force and Arms, *&c.* in and upon the ſaid *Edward Criſpe*, in the Peace of God, and of our ſaid Sovereign Lord the King, then and there being, on Purpoſe, and of Malice fore-thought, and by lying in wait, did unlawfully and felonioufly make an Aſſault. And that you the ſaid *John Woodburne* with a certain Bill value a Penny, which you the ſaid *John* then had and held in your right Hand, the Noſe of the ſaid *Edward Criſpe*, on Purpoſe, and of your Malice fore-thought, and by lying in wait, did then and there unlawfully and felonioufly ſlit, with an Intent by ſo doing, the ſaid *Edward Criſpe* to maim and disfigure. And that you the ſaid *Arundel Coke*, at the time of the Felony aforeſaid, by the ſaid *John Woodburne* in manner aforeſaid, unlawfully and felonioufly done and committed, to wit, the ſaid firſt Day of *January*, in the eighth Year aforeſaid, at the Borough aforeſaid, in the County aforeſaid, on Purpoſe, and of your Malice fore-thought, and by lying in wait, unlawfully and felonioufly was preſent, aiding and abetting the ſaid *John Woodburne* the Felony aforeſaid, in manner aforeſaid, felonioufly to commit and do. And ſo the Jury aforeſaid, upon their Oaths ſay, that you the ſaid *John Woodburne* and *Arundel Coke*, the ſaid firſt Day of *January*, in the eighth Year aforeſaid, at the Borough aforeſaid, in the County aforeſaid, by Force and Arms, *&c.* on Purpoſe, and of your Malice fore-thought, and by lying in wait, the Felony aforeſaid, in manner aforeſaid, did, and each of you did, commit, and do againſt the Peace of our Sovereign Lord the King, his Crown and Dignities, and alſo againſt the Form of the Statute in that Caſe made and provided. [Vid. *A true Copy of the Indictment it ſelf in* Latin, *at the end.*]

Clerk of the Arraigns. How ſay'ſt thou, *John Woodburne*; art thou guilty of the Felony whereof thou ſtand'ſt Indicted, or not Guilty?

Priſoner. Not Guilty.

Cl. Arr. Culprit. How wilt thou be tried?

Priſoner. By God and my Country.

Cl. Arr. God ſend thee a good Deliverance. How ſay'ſt thou, *Arundel Coke* aliàs *Cooke*, art thou guilty of the Felony whereof thou ſtand'ſt Indicted, or not Guilty?

Priſoner. Not Guilty.

Cl. Arr. Culprit. How wilt thou be try'd?

Priſoner. By God and my Country.

Cl. Arr. God ſend thee a good Deliverance. You *John Woodburne*, and *Arundel Coke* aliàs *Cooke*, the Priſoners at the Bar, hearken to what is ſaid to you. Thoſe good Men that are now called and do here appear, are thoſe that are to paſs between our Sovereign Lord the King and you, upon your ſeveral Lives or Deaths; if therefore you or either of you will challenge them or any of them, you muſt challenge them as they come to the Book to be ſworn, before they are ſworn, and you ſhall be heard.

Cl. Arr. Cryer, give the Book to

Thomas Buckingham,	*George Croſs*,
Nicholas Alger,	*Samuel Bridge*,
Ambroſe Gallant,	*Jonathan Clements*,
George Goddard,	*Thomas Taylor*,
Robert Gall,	*Simon Reeve*,
William Scott,	*William May.*

Cl. Arr. Count theſe.

Cryer. Are you all ſworn, Gentlemen?

Jury. Yes.

Cl. Arr. Make a Proclamation.

Cryer. O Yes, If any of you can inform my Lord the King's Juſtice, the King's Attorney or Sollicitor General, of any Treaſon, Murder, Felony, or other Miſdemeanour committed by the Priſoners at the Bar, or either of them, come forth, and you ſhall be heard; for the Priſoners at the Bar now ſtand upon their Deliverance: And all Perſons bound by Recognizance to proſecute them, or either of them, come forth and proſecute, or you'll forfeit your Recognizances.

Cl. Arr.

Cl. Arr. *John Woodburne*, and *Arundel Coke* aliàs *Cooke*, hold up your Hands. Gentlemen of the Jury, look upon the Priſoners, and hearken to their Charge: They ſtand indicted by the Names of *John Woodburne*, late of the Borough of *Bury St. Edmonds*, in the County of *Suffolk*, Labourer, and *Arundel Coke* aliàs *Cooke*, of the Borough aforeſaid, Eſq; for that they (as in the Indictment before-mentioned) upon which Indictment they have been arraign'd, and pleaded ſeverally Not Guilty: Your Charge is to enquire whether they, or either of them, are Guilty of the Felony whereof they ſtand indicted, or Not Guilty.

Mr. *Lee*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel for the King againſt the Priſoners at the Bar, who are indicted for Felony on the 22° and 23° *Car.* II. entitled, *An Act to prevent malicious Maiming and Wounding*. And the Indictment ſets forth, that the Priſoners, the firſt Day of *January*, in the eighth Year of his preſent Majeſty, at *Bury St. Edmonds* in this County, did on Purpoſe, and of Malice fore-thought, and by lying in wait, make an Aſſault unlawfully and felonioufly upon *Edward Criſpe*, Gent. and that the Priſoner *John Woodburne* with a Bill which he then had in his Right Hand, did on Purpoſe, of Malice fore-thought, and by lying in wait, ſlit the Noſe of the ſaid *Edward Criſpe*, with an Intent in ſo doing to disfigure the ſaid *Edward Criſpe*; and that the Priſoner *Arundel Coke* at the Time of committing the ſaid Felony, on Purpoſe, and of his Malice fore-thought, and by lying in wait, was unlawfully and felonioufly preſent, aiding and abetting the ſaid *John Woodburne* to commit the ſaid Felony: All which is laid to be done contrary to the Form of the Statute. If we who are Counſel for the King prove this Matter, you will find them Guilty.

Serj. *Selby*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Counſel, *pro hac Vice*, for the King againſt the Priſoners at the Bar, who ſtand indicted upon the Statute of the 22° of King *Charles* II. the one for maliciouſly maiming and disfiguring of *Edward Criſpe*, the other for abetting that Fact, which by that Act is made one and the ſame Offence; I ſaid, Gentlemen, I was Counſel for the King, for that his Majeſty, as the Father of his People, and for their Safety, out of his natural Goodneſs, hath been graciouſly pleaſed particularly to regard this Proſecution for ſo horrid and bloody an Aſſaſſination. And though, Gentlemen, 'tis difficult to ſtand in this Place without the greateſt Tenderneſs to our Fellow-Creatures, yet theſe, who have diveſted themſelves of all Humanity, now ceaſe to be ſuch; 'tis even Cruelty to the King's People not to ſtand up againſt them ſo far as is conſiſtent with Law and Juſtice. Their Proſecution is become the common Concern of Mankind; for ſo long as theſe Priſoners have a Being here, the Life of every Man is precarious, and but at the Will of ſo infernal a Contriver as the one, and ſo helliſh an Executioner as the other. We ſhall firſt, Gentlemen, prove the Fact committed, and that by Mr. *Criſpe* himſelf, who by a particular Providence hath ſurvived this horrid Attempt, and is here to give Evidence of it, and that he was invited with his Wife by Mr. *Coke* (who married Mr. *Criſpe*'s Siſter, and who was to have Mr. *Criſpe*'s Eſtate by his Deceaſe) to ſup at his Houſe; that Mr. *Coke* propoſed to him to go after Supper to make a Viſit to Mrs. *Monke* (whoſe Name we mention without any the leaſt Imputation) to which Mr. *Criſpe* conſented; that Mrs. *Monke*'s Houſe opens into the Church-yard, which is but croſs the Way from Mr. *Coke*'s Houſe; that Mr. *Coke* took Mr. *Criſpe* along with him about ten or eleven at Night, it being dark, into the Church-yard, and walked him about near Mrs. *Monke*'s Door without going in, and then making ſome Noiſe or Whiſtling, a Perſon came up to him and knock'd him down, after which he was not ſenſible; that being left for dead, after ſome Time he got up, and return'd, he did not know how, to Mr. *Coke*'s Houſe, where the Company receiv'd him with great Conſternation, as did Mr. *Coke* himſelf, who ſoon returned after walking out with Mr. *Criſpe*, out of Breath, and called for a Glaſs of Wine; and being aſked what was become of Mr. *Criſpe*, ſaid he was ſtumbling home in the dark. This we ſhall prove by Mr. *Browne*, another Relation. We ſhall prove by Mr. *Sturgeon*, who was called as his Surgeon, the Condition of his Wounds; and by *Carter*, a Blackſmith, that Mr. *Coke* about the *Friday* before the Fact was committed, ſent for him, and aſked (after a previous Diſcourſe of *Carter*'s Poverty, and how he might live well in the World) if he would cut off ten Men's Heads without Remorſe; which when *Carter* ſaid he could not, If he would cut off one Man's Head, and lay it before *Coke*; which *Carter* refuſing, Mr. *Coke* bid him conſider on't, and come again; then gave him a Glaſs of Brandy, and diſmiſſed him, bidding him ſend *Woodburne* to him. We ſhall prove by one *Moone*, a Taylor, that Mr. *Coke* about three Years ſince ſollicited him to the like Effect. We ſhall prove by *Willet* the Conſtable, that after *Woodburne* was taken up, he confeſſed the Fact, ſaid he did it with a Hedging-Bill, and gave him Directions where to find it, and he found it accordingly; which *Woodburne*, when ſhew'd him, acknowledged to be the ſame, and which we have here to produce. We ſhall prove by Mr. *Wetherell* the Goaler, that Mr. *Coke*, ſince he was in his Cuſtody, confeſſed the whole Fact, and that *Woodburne* was placed in a Porch of an empty Houſe near Mr. *Coke*'s, to come out on a Whiſtle to do the Fact; and that he deliver'd Mr. *Criſpe* to *Woodburne*, and was preſent when the Fact was committed. And after this Evidence, there can be no doubt, Gentlemen, but you will find the Priſoners at the Bar guilty of this Indictment.

Serj. *Brantbwayt*. My Lord, the Defendants are indicted of Felony, upon an Act of Parliament made 22° & 23° *Car.* II. by which Act, if any Perſon or Perſons, on Purpoſe, and of Malice fore-thought, and by lying in wait, ſhall unlawfully cut out or diſable the Tongue, put out the Eye, ſlit the Noſe, *&c.* with an Intention in ſo doing to maim or disfigure; the Perſon or Perſons ſo offending, their Counſellors, Aiders, and Abettors, knowing thereof, are Felons without Benefit of Clergy. The Indictment charges the Defendants with feloniouſly making an Aſſault on Mr. *Criſpe*; that *Woodburne* ſlit his Noſe with a Bill or Hook; that *Coke* was aiding and aſſiſting therein. We ſhall be able by undoubted Evidence to prove and make clear the Charge of the Indictment, and every Particular thereof, as has been opened to you, and that the manner

of

of doing it was attended with ſuch Circumſtances of Inhumanity, Baſeneſs, and Villany, as no Inſtance can parallel. Mr. *Criſpe* is Brother-in-Law to Mr. *Coke*, who on the firſt Day of *January* laſt, under the Colour of Friendſhip and Affection, invites Mr. *Criſpe* and Family to Supper at *Coke*'s Houſe. Before this Invitation he had agreed with *Woodburne* for Hire, to lie in wait on Purpoſe to effect the deſigned Miſchief. When *Woodburne* was lying in wait, *Coke* came ſeveral times to him to encourage him in his vile Purpoſe. After Supper, Mr. *Coke*, unmindful of all the Obligations of brotherly Love, of Hoſpitality, and of the Protection due to Mr. *Criſpe*, by falſe and vile Arts and Perſuaſions entices him into the Church-yard, the Place deſigned and agreed upon for the Execution of their wicked Purpoſes. When he had got Mr. *Criſpe* into this Place, by Sign he gave notice of it to *Woodburne*, who had follow'd at ſome diſtance; and then deliver'd him into the Poſſeſſion of *Woodburne*, and was preſent at the ſtriking ſeveral Blows with the Hook. By the Nature of the Inſtrument every Blow muſt maim and disfigure; and the Blows being given by the Order and Direction of Mr. *Coke* by *Woodburne*, Mr. *Criſpe*'s Noſe was ſlit on purpoſe to maim and disfigure by one lying in wait: Which are all the Circumſtances requir'd by the Act of Parliament to make them guilty of the Felony with which they are charged. Which ſeveral Facts we ſhall call our Witneſſes to make out, and doubt not but the Jury will find them guilty.

Serj. *Selby*. We deſire in the firſt Place, Mr. *Edward Criſpe* himſelf may be ſworn, *(which was done accordingly.)* Mr. *Criſpe*, give an Account to my Lord and the Jury of the whole Matter.

Criſpe. On *New-Year's-Day* laſt I was invited to ſup at Mr. *Coke*'s, and being there, he propoſed to me to go to Mrs. *Fanny Monke*'s.

L. C. Juſt. Was this before or after Supper?

Criſpe. This was before Supper: We ſupp'd about ſeven, and after Supper about ten o' Clock he call'd me out of his Parlour, I follow'd him; we went into the Church-yard: It was then very dark, the Moon did not ſhine. He took three or four Turns before the Houſe where Mrs. *Monke* dwelt, then he ſtood ſtill and made a Noiſe.

L. C. Juſt. What kind of Noiſe did he make?

Criſpe. It was like a Hollowing.

L. C. Juſt. Were you under any Fear or Apprehenſion from that Noiſe?

Criſpe. Yes, my Lord, I was afraid, and made up towards the Wall; but in a quarter of a Minute ſomebody came behind me, and knock'd me down.

L. C. Juſt. Did you then know who that Man was?

Criſpe. I did not.

L. C. Juſt. Can you tell what was done to you afterwards?

Criſpe. My Lord, I cannot, for on that Blow I loſt my Senſes for ſome time.

L. C. Juſt. How long was it before your Senſes returned?

Criſpe. My Lord, I cannot tell, but in ſome time I got up, and return'd to Mr. *Coke*'s.

Serj. *Selby*. In what Condition did you find yourſelf?

Criſpe. I was ready to die and faint, and I was found very much wounded.

Serj. *Branthw*. Did any Surgeon come to you at Mr. *Coke*'s?

Criſpe. Yes, Sir, Mr. *Sturgeon*.

L. C. Juſt. After the Perſon came up who knock'd you down, did you hear Mr. *Coke* ſay any thing?

Criſpe. No, my Lord.

L. C. Juſt. Can you tell whether he ſtaid any time, or what became of him?

Criſpe. No, I cannot.

L. C. Juſt. Was he there when the firſt Blow was given?

Criſpe. Yes, he was.

L. C. Juſt. Will the Priſoners aſk Mr. *Criſpe* any Queſtions?

Coke. Mr. *Criſpe*, was I preſent when you were knock'd down?

Criſpe. Yes, Sir.

Coke. Do you remember that you ſaw me?

Criſpe. Yes.

Coke. How near was I to you?

Criſpe. You were cloſe by me when I was knock'd down.

Serj. *Selby*. Call Mr. *Brown* and ſwear him, *(which was accordingly done.)* I think you are a Relation of Mr. *Coke*'s?

Brown. Yes, Sir, I married his own Siſter, and he married Mr. *Criſpe*'s Siſter.

Serj. *Selby*. Was you at Mr. *Coke*'s Houſe laſt *New-Year's-Day* at Night?

Brown. A Day or two before laſt *New-Year's-Day*, I and my Wife and Daughter were invited to ſup with him, and accordingly we went. I came about ſix o' Clock, and found Mr. *Coke* and Mr. *Criſpe* drinking a Glaſs of Wine in the Parlour before Supper.

Serj. *Selby*. Was there any other Company with them?

Brown. No, the Women were above Stairs. I ſat down with them, and we three ſtaid in the Parlour till Supper-time. When Supper was ready, we went up Stairs. Then after Supper, between eight and nine, we three came down into the Parlour again. Some time after, *Coke* went out of the Room, and then came back again and gave a Call, or beckon'd to Mr. *Criſpe*, who follow'd him out of the Room.

Serj. *Selby*. At what Time of Night was this?

Brown. After nine o' Clock at Night.

Serj. *Branthw*. How long was it before Mr. *Coke* return'd?

Brown. He was gone about ten Minutes and then return'd.

Serj. *Branthw*. Was he in any Diſorder when he returned?

Brown. He ſeem'd to be out of Breath, as if he had been walking faſter than ordinary.

Serj. *Branthw*. How far diſtant is the Church-yard, where this Gentlewoman dwelt, from Mr. *Coke*'s Houſe?

Brown. The Church-yard is about twice the length of this Shire-Houſe from Mr. *Coke*'s Houſe.

Serj. *Branthw*. What did *Coke* do when he came in?

Brown. Immediately he drank a Glaſs of Wine to me, and after he had ſat ſome time, he went out of the Room. I heard a Noiſe up Stairs, and being told my Daughter was ill, I went up, and in a little time came down again into the Parlour, where I found Mr. *Coke*.

Serj. *Branthw.* Did you aſk him what was become of Mr. *Criſpe*?

Brown. I did then ask him what was become of Mr. *Criſpe*, and he told me that he believed he was gone home in the dark. In about two or three Minutes after, Mr. *Criſpe* came in. He was very much wounded and bloody. I was ſo ſurprized that I could not take particular notice of him.

Mr. *Raby.* How long was it from *Criſpe*'s going out to his coming in again?

Brown. It was near half an Hour.

L. C. Juſt. So then *Coke* returned in about ten Minutes, and *Criſpe* in near half an Hour.

Brown. Yes, my Lord.

Serj. *Selby.* Did Mr. *Coke* ſee Mr. *Criſpe* when he came back to his Houſe?

Brown. Yes.

Serj. *Selby.* What did he ſay?

Brown. He ſeem'd to be in a great Conſternation.

Mr. *Raby.* Do you know of any Eſtate that would have come to Mr. *Coke* after Mr. *Criſpe*'s Death?

Brown. I cannot poſitively ſay it of my own Knowledge.

Mr. *Raby.* We will aſk Mr. *Criſpe* that Queſtion. Pray Mr. *Criſpe*, would any Eſtate have come by your Death to Mr. *Coke?*

Criſpe. In caſe I had died, one hundred Pounds *per Annum* would have come to his Wife, as one of my Siſters.

L. C. Juſt. Have you then no Children, nor Brothers?

Criſpe. No, my Lord; my next of Kin are three Siſters, one of which is Mr. *Coke*'s Wife, ſhe would have been one of my Heirs.

Serj. *Selby.* Call Mr. *Sturgeon*; (*who appeared, and was ſworn.*) What do you know concerning this wounding of Mr. *Criſpe?*

Sturg. I am a Surgeon by Profeſſion; and the firſt Day of *January* laſt at Night, about eleven o' Clock, I was ſent for to Mr. *Criſpe* at Mr. *Coke*'s Houſe: When I came, I found him very much wounded and cut, and in a very weak Condition, and that he had loſt a great deal of Blood. I examined his Wounds: One Wound began at his Right Ear, divided the fleſhy Part of his Cheek, and ended on his upper Lip juſt under his Right Noſtril; the Fleſh was all divided, and the Jaw left naked. Another Wound divided the Right Side of the Noſtril, and made an oblique Croſs over the Wound, and ended near the Right under Jaw.

Serj. *Selby.* Was his Noſe ſlit?

Sturg. Yes, Sir, the Noſe was cut from without into the Noſtril; the Edge of the Noſe was not cut through, but there was a Cut or Slit in the Noſe that went through: I ſow'd it up: It was indeed but with one Stich; it is yet viſible, and the Noſe was cut through.

Serj. *Selby.* Were there any other Wounds?

Sturg. There was another deep Wound under his Chin, that reach'd from one Jaw to the other. There was another Wound, which began at his Chin, croſs'd the Left under Jaw, and tended towards his Ear. There was alſo a ſmall Wound on his Left Cheek, another on his upper Lip, and another on his Left Temple.

Serj. *Selby.* How many Wounds had he in all?

Sturg. Seven.

Serj. *Selby.* Do you think there were ſeven diſtinct Wounds, that had ſeven diſtinct Blows?

Sturg. I take it, that every one of the ſeven Wounds had a diſtinct Blow.

Serj. *Selby.* With what Inſtrument did you apprehend thoſe Blows were given?

Sturg. It was cut ſo clean, that I thought it was done either by a Knife or Razor.

L. C. Juſt. Let the Jury ſee Mr. *Criſpe*'s Wounds.

[*Then his Face and Wounds were ſhewn to the Jury for their Obſervation.*]

Serj. *Branthw.* Swear *Charles Willet*; (*which was done accordingly.*) I think you are a Conſtable in *Bury St. Edmonds?*

Willet. I am.

Serj. *Branthw.* Had you any Occaſion to ſpeak to *Woodburne* concerning this Matter, and what did he ſay?

Will. I had a Warrant from Alderman *Wright* and Mr. Serjeant *Reynolds* to apprehend *Coke* upon *Woodburne*'s Examination.

Serj. *Branthw.* The Queſtion aſk'd you is, What you know of *Woodburne*'s Confeſſion, and what he hath ſaid to you about this Matter?

Will. After *Woodburne* was committed, I was with him, and ask'd him, Whether he was concerned in the wounding of Mr. *Criſpe?* He told me, Yes, he was. I ask'd him how long *Coke* ſtaid with him: He ſaid, that he had ſtruck *Criſpe* three or four Blows before *Coke* left him.

Serj. *Branthw.* What elſe did you aſk him, or did he ſay to you?

Will. He told me, that he was walking up and down in the Church-yard when *Coke* whiſtled to him, and that on that Signal he went up and aſſaulted Mr. *Criſpe.*

Serj. *Branthw.* Did he give you any Account how long and where he waited before the Fact was done?

Will. He told me, that he was deſired by Mr. *Coke* to be up and down in the Church-yard about nine o' Clock that Night; and that being a cold Night, *Coke* gave him a Bottle of Brandy, and told him he could not tell what time *Criſpe* would come home, but deſired him to be ready and to ſtay let it be never ſo long.

Serj. *Branthw.* Did he tell you with what Inſtrument he did it?

Will. He told me, he did it with an Hook or Bill, that was new ground for the Purpoſe, and that it was in his Houſe at the Right Hand of his Door. I went according to his Direction, and found it, and brought it to him; and he ſaid, that was the Hook.——— The Hook I have brought with me, and this is the Hook that I have now in my Hand.

Mr. *Raby.* Call *William Wetherel*; (*who was ſworn.*) Give my Lord and the Jury an Account what you know of this Matter.

Weth. I am the Goaler; and the Day after Mr. *Coke* was committed to me, about five Minutes after One, he ſent for me up into his Chamber, where his Wife was crying and in great Diſorder, as he ſeem'd to be likewiſe. She was deſiring her Husband to diſcover. When he came to himſelf, he told me, that he and *Woodburne* had had a Deſign to murder Mr. *Criſpe*, and had attempted it ſeveral Times; and deſired me to go and ſecure *Woodburne.* I went to the Alderman, and told him of it, and he gave me the like Orders. Coming from the Alderman I met Mr. *Coke*'s Man, who aſk'd me, whether I had found

found him; on which I ask'd him, who and what he meant, thinking him to be ignorant of his Maſter's Confeſſion: But he told me, that his Maſter had diſcovered it to him, and had ſent him to take up *Woodburne*. Whilſt we were talking, we ſaw *Woodburne* coming up, and we deſir'd one *John Carter*, a Smith, who was ſhooting a Horſe, to aſſiſt us; which he did, and we ſecur'd *Woodburne*.

L. C. Juſt. Did Mr. *Coke* confeſs any thing to you concerning this Fact, and the manner of doing it?

Weth. Yes, my Lord, he did. He told me ſeveral times, that he had a Deſign to murder *Criſpe*, and that he employed *Woodburne*, and deliver'd *Criſpe* into his Hands.

L. C. Juſt. Did he tell you that?

Weth. He did tell me ſo: He told me alſo, that it was done with an Hook; and that he bid *Woodburne* to cut his Weaſand or Wind-pipe; and that if *Woodburne* had not been a cow-hearted Dog, he would have ſo done, and ſecur'd *Criſpe* from telling Tales.

Mr. *Raby.* Did *Coke* tell you what Means he uſed to do this to Mr. *Criſpe?*

Weth. He ſaid, that he call'd him out of his Houſe, went into the Church-yard with him, and there he delivered him into *Woodburne*'s Hands.

Mr. *Raby.* Did he ſay what Signal was given?

Weth. Not that I remember; but he ſaid, that *Woodburne* was placed there by his Appointment.

Mr. *Raby.* For what Deſign?

Weth. With an Intent to murder him. When *Woodburne* ſtruck him, *Coke* ſaid, he went away immediately.

Mr. *Raby.* What have you heard *Woodburne* ſay concerning this Fact?

Weth. I have heard *Woodburne* ſay, that he and *Coke* had lain in wait ſeveral Times and at ſeveral Places to murder Mr. *Criſpe.*

Mr. *Raby.* Did *Woodburne* give you any Account what he did at this Time to Mr. *Criſpe?*

Weth. Yes, he did; he ſaid, that he ſtruck him a Blow with his Hook, and that not quite ſtriking him down, he gave him a ſecond Blow which did; and that *Criſpe*, as he was falling, (who was never us'd to ſwear) cried out, God damn him; and that then it went to his very Heart to think that he ſhould kill a Man with an Oath in his Mouth.

Mr. *Raby.* Did he ſay he gave him many Blows?

Weth. He ſaid, he gave him ſeveral Blows, and that he thought he was dead.

Mr. *Lee.* Call *Robert Moon*; (*who appeared, and was ſworn.*) What did you know of this Matter?

Moon. When I heard what happen'd to *Criſpe*, I ſaid, I knew the Perſon who did it, or the Perſon who employ'd him to do it; and the Reaſon was, becauſe three Years, or three Years and a half ago, Mr. *Coke* ſent for me, and ſaid to me, at firſt I thought it to be in a jeſting Way, that he wiſh'd Mr. *Criſpe* out of the World, he was a good for nothing Fellow; his Wife had a Trick of playing away his Eſtate, and he wiſh'd ſomebody would knock him on the Head. Sir, ſaid I to him, what Advantage would that be to you? He ſhook his Head, and ſaid, a very good Eſtate. Said I, I thought *Criſpe* had but a ſmall Eſtate. Yes, ſaid he, a very good one. Then I began to think there was ſomething in it. After ſome little time, ſaid he, I do not value ten or twenty Guineas to knock him on the Head. Then I began a little to reflect that he ſhould have ſuch an Opinion of me, that I ſhould be ſuch a ſort of a Perſon.

Mr. *Lee.* What then did you ſay to him?

Moon. I told him, that I would not kill the greateſt Villain in the World for ten ſuch Towns as *Bury.*

Mr. *Lee.* What did he ſay afterwards?

Moon. I do not remember, I have forgot if there was any thing elſe.

Mr. *Lee.* How came you to remember this?

Moon. When I heard of this Fact committed on Mr. *Criſpe*, then it came freſh into my Memory.

Serj. *Selby.* Call *John Carter*; (*who appeared, and was ſworn.*) What Trade are you of?

Carter. A Blackſmith.

Serj. *Selby.* Did *Coke* at any time ſend *Woodburne* for you, and what paſt thereon?

Carter. On the *Friday* before *New-Year's-Day* laſt, which was on a *Monday*, Mr. *Coke* ſent *Woodburne* to me, who told me his Maſter *Coke* wanted to ſpeak with me.

Serj. *Selby.* Did you go?

Carter. Yes, I went to his Houſe, and he order'd me to come up to him in his Chamber. When I came up, he told me that he wanted a good ſtrong Horſe to carry his Weight. I told him I did not know of any one then; but when I did, I would let him know. Upon that he ſaid, by God, how do you go on, Boy? I hear you have loſt moſt of your Buſineſs, you have got no Iron nor Coals, and you are afraid of a Goal; I have a Thing now in Agitation that will make a Man of you as long as you live. I ſaid I ſhould be very glad of that. Said he, can you keep a Secret? Yes, ſaid I, as well as any one to ſerve myſelf and my Friend. Said he, can you keep one of the biggeſt Secrets in the World? I told him, as well as any body. Said he, you are pretty much in Debt, and if you will ſerve me in this, I can make a Man of you as long as you live: Do you think you could cut five or ſix Men's Heads off without Scruple of Conſcience? I told him, No; it was too much for a Man's Conſcience to bear. Said he, what, a Scruple of Conſcience to do ſuch a Thing as that? There are thoſe above who have done ten times worſe. I ſuppoſe, Sir, ſaid I, you mean the *South-Sea* Gentlemen. Yes, ſaid he, ſo I do; they have ruined Families, and beggar'd Gentlemen: To cut Mens Heads off is but a Trifle to them. Said I, Mr. *Coke*, I believe you ſpeak only in Joke, by way of Merriment. Said he, what do you think I ſent for you by way of Joke? I told him I could not do any ſuch Thing. Then, ſaid he, do you think you can cut off one Man's Head without Scruple of Conſcience? I told him, No. Then, ſaid he, if you can't cut off a Man's Head, and lay it down upon the Table before me, you are not for my Turn: On that he fetch'd a Bottle of Brandy, and gave me a Glaſs or two, and then ſaid to me, *Carter*, I would have you go home, and conſider of it for two or three Days, and if you can cut off a Man's Head without Scruple of Conſcience, you ſhall have Plenty of Gold and Silver, and any thing elſe you aſk. I told him, I needed no Conſideration, for I could

could not do it. Then, ſaid he, ſend *Woodburne* to me. And as I went out, I ſaw *Woodburne* at the Door, and ſent him in to Mr. *Coke*.

Serj. *Selby*. Did he ſay any thing elſe to you, or any thing about Mr. *Criſpe?*

Carter. I live in a Houſe of Mr. *Criſpe*'s, and Mr. *Coke* had been formerly his Steward, and *Woodburne* acted under him. And Mr. *Coke* ſaid, that he heard my Houſe was out of Repair, that it would be his after Mr. *Criſpe*, and whether I ſhould not like it better for him to keep it in Repair, as he had done before.

Serj. *Selby*. I think, my Lord, we have done with our Evidence, and have ſufficiently proved Mr. *Coke* and *Woodburne* to be guilty not only within the Intention but the Letter of the Statute of the 22d of *Car.* II. upon which they ſtand indicted. We have proved the Malice premeditated and fore-thought, the Intention to maim and disfigure, by ſlitting the Noſe (for Mens Intentions muſt be conſtrued by their Actions) and the maiming and disfiguring accordingly; and that Mr. *Coke* was privy to, and the Aider and Abetter of the Offence: And therefore, Gentlemen of the Jury, we can't doubt but that you will find them both Guilty; and that your Verdict and their Conviction will be with the Suffrage of all Mankind.

Mr. *Raby*. My Lord, having gone through our Evidence, you will now permit me to make ſome few Obſervations upon what has been offer'd, and from which we humbly apprehend it will moſt clearly appear, that we have fully prov'd and made out every thing neceſſary to maintain this Indictment.

My Lord, it muſt be agreed, that this is an Offence created by a particular Act of Parliament, uſually call'd Sir *John Coventry*'s Act, made on the Occaſion of the like barbarous Uſage he met with, to puniſh that Offence, and to prevent the like for the future: And I alſo agree, that the Priſoners muſt appear to be guilty of thoſe very Facts, which by that Act are made Felony, or otherwiſe they cannot be puniſhed by that Law. But we humbly apprehend, that when that Law, and the Evidence which has been given againſt the Priſoners are conſider'd, they will appear to be guilty within the expreſs Words of that Law; for which End I beg leave to mention that Act, which is the 22 and 23 *Car.* II. *cap.* 1. The Words are theſe. "That if any Perſon or Perſons, on Purpoſe, and of Malice fore-thought, and by lying in wait, ſhall unlawfully cut or diſable the Tongue, put out an Eye, ſlit the Noſe, *&c.* with an Intention in ſo doing to maim or disfigure, in any the Manners before-mentioned, the Perſon or Perſons ſo offending, their Counſellors, Aiders, and Abettors (knowing of and privy to the Offence aforeſaid) ſhall be *Felons*, *&c.*"

From this Clauſe it appears the Offence muſt be done;

1. Of Malice fore-thought.
2. By lying in wait.
3. By ſlitting the Noſe, *&c.*
4. With an Intention to maim or disfigure.

And we humbly ſubmit it, that from the Evidence which has been given againſt the Priſoners, it moſt plainly appears, that the Defendants are guilty of this Offence in every Circumſtance deſcribed by this Act of Parliament.

1. For certainly there cannot be the leaſt Queſtion, but that this was done of Malice fore-thought, when it appears from the Evidence to have been under Conſideration and premeditated for three Years and an half: And Mr. *Coke* had tried ſeveral Perſons, before he could find any ſo hardy as to execute his baſe Purpoſe, or comply with ſo inhuman an Attempt: And therefore we apprehend there cannot be any Colour to ſay, this was not of Malice fore-thought.

2. And that this Offence was alſo done with lying in wait is as clear: For does it not fully appear upon the Evidence of Mr. *Criſpe*, that when he came out of Mr. *Coke*'s Houſe, Mr. *Coke* gave a Whiſtle or Signal? In vain had Mr. *Coke* given that Signal, if no Perſon had been in waiting to have heard it: To what End had that Signal been given, if Mr. *Coke* had not known there was ſome Perſon to have heard it? It appears plainly *Woodburne* came upon the Signal given; and what enſued you have heard, I need not repeat.

3. The third Thing made material by this Act, is, *That the Noſe ſhould be ſlit*; and that the Noſe was ſlit appears from the Surgeon's Evidence, who has given a very particular Account of the ſeven Wounds Mr. *Criſpe* received in his Face and Head: And he ſays, the Noſe (the Noſtril) was cut through.

4. Whether the other Circumſtance, that this was done with an Intent to maim and disfigure, does ſufficiently appear, or not, is the only Queſtion that remains: And we ſubmit it to your Conſideration, as that which is very clear from this Evidence.

Mens Acts are the beſt Interpreters of their Intents: If a Man kills another without Provocation, tho' no expreſs Malice or malicious Intent appears, yet the very Act of the Party has always been taken to be a ſufficient Proof of his Intent and Malice fore-thought. The Intent is latent in the Mind, and can ſeldom be known otherwiſe than by the Act which is done: And as there the malicious Intent is collected from the Act of the Party, ſo here 'tis as reaſonable to collect his Intent to disfigure from the Act which is done, the maiming and disfiguring Mr. *Criſpe*; and the very Manner of doing it ſpeaks it.

Whoever looks upon this Gentleman (Mr. *Criſpe*) ſees too plainly how much he is disfigur'd: And could a Man cut another ſeven Times on the Head and Face with this Iron Bill, with this Weapon, without disfiguring him? Is it to be imagined? And when he has done the very Act, when he has disfigured him, ſhall he ſay, he had no ſuch Intent? The Act done, and the Manner of doing it, ſpeak it too plainly. 'Tis confeſs'd the Intent was to murder; this is what both the Priſoners admit to be the End deſign'd; but did they not alſo intend the Means? It would be in vain to intend the End, and reject the Means to effect it: The Means choſen to effect it have appear'd to be to cut him to death, by ſtriking him with a Bill on the Head and Face: Is it poſſible to expect to cut him to Death on the Face with the Weapon produced, and not to disfigure him? This is the Act *Woodburne* has done, and *Coke* was preſent when *Woodburne* ſtruck, even when he did this Fact, and *Coke* was a Counſellor, Aider and Abettor; he was preſent, and, in the Words of the Act of Parliament, knowing of the Offence. And therefore upon this Evidence we ſubmit it, whether we have not given Satisfaction

faction to the Court and Jury, that the Priſoners are guilty.

This is not a Proſecution of the Party injured, ariſing from Revenge or Reſentment, but is carried on by the Publick, by the Crown, for the ſake only of Publick Juſtice, that by the Puniſhment of this Offence, the Subjects may have that Protection they ought to have by a due Execution of the Laws: And all we pray is, that the Jury will give ſuch a Verdict as is agreeable to Juſtice.

L. C. Juſt. Woodburne, what have you to ſay for yourſelf?

Woodburne. May it pleaſe your Honour, my Lord, the firſt Time that *Coke* began with me about this Matter was on a *Wedneſday* in laſt Barley-Harveſt. He ſent for me to mend his Copper, and after I had done it, he bid me go to the further End of the *Mill-Lane*, and there he muſt ſpeak with me, and which came firſt ſhould ſtay for the other. I was there before him; when he came he was on Horſe-back, and his Horſe kick'd about in a furious Manner, that the People took notice of it. When they were gone, he told me, that he had a Thing for me to do, but not to be done preſently, and that if I did it I ſhould want for nothing. I aſk'd him what it was. He ſaid, about Mr. *Criſpe*, to ſet him aſide, that is, to kill him: But he ſaid, it was not to be done preſently: So he put his Hand in his Pocket and gave me Eighteen Pence. I told him, I never did ſuch a Thing in my Life; I could not do it. Said he, it is not to be done preſently, we have Time to conſider. A while after he ſent for me again, and aſk'd me, whether I had conſider'd of it. I told him, I could not do it. Said he, we muſt ſet *Criſpe* aſide; for Mrs. *Criſpe* hath got a Trick to play; ſhe will make away what there is from me and my Child. I ſaid, I never did any ſuch Thing; I could not do it, and deſired him to forbear. I went away and left him in his Chamber. Within a while after he came to my Houſe; ſaid he, *John*, what is the Reaſon you can't do this for me? Said I, I cannot do it. Said he, what ſignifies it, I would do it for you. I ſaid, I could not do it. Then he went away very uneaſy, and in a Week or Fortnight ſent for me again to his Chamber, and there was at me again. I told him I could do no ſuch Work. Said he, why can't you do this Work? I have been a good Maſter to you, I made myſelf look little to bail you when you were in Goal. I turned about and cried. Said he, what makes you cry? Your crying ſignifies nothing; the Money that I ſhall give you will do you and your Family a Kindneſs. Said I, I can do no ſuch Thing. Said he, it ſignifies no more the killing of him, than to kill a Dog, for they do no good with what they have. Yes, ſaid I, Mr. *Criſpe* is a very good Maſter; I work'd for him and his Father before him: And ſo I went away. Afterwards my Wife died three Days before *Gunpowder-Treaſon* laſt: She was buried on that Day, and being very poor, I ſent my Daughter to deſire a little Money of him to have the Bell toll'd for my Wife; but he ſent me none. My Wife was buried on a *Sunday*, then on the *Monday* he ſent his Boy for me; I went down to him, and when I came, I fell a weeping for the Loſs of my Wife, and having ten Children. Said he, what makes you cry? You muſt pull up a good Heart; tho' your Wife be dead, you may have Friends; here is that which will do you a Kindneſs hereafter. Said I, I am very ſorry for the Loſs of my Wife. Said he, what ſignifies that? She was carried well into the Church, and is, no doubt, happy; ſhe is gone before you; we muſt all go in our Time: I was a Friend to you in her Illneſs; I ſent her a good Doctor at my own Charge: This twenty Pounds that I will give you will be a brave Eſtate for you.

L. C. Juſt. What were you to have this twenty Pounds for?

Woodburne. It was to kill Mr. *Criſpe*; he told me that I muſt ſet aſide Mr. *Criſpe*; he offer'd me twenty Pounds to do it; but I then refus'd it. On *Monday*, *New-year's-day* in the Morning, *Coke* ſent his Boy for me to come to him; and between eight and nine in the Morning I went to him. He was in his green Room. Now, ſaid he, *John*, we ſhall have the faireſt Opportunity to kill Mr. *Criſpe*. I told him, I was loth to do it; it was very cold, and I had an Ague. Said he, I will give you that which ſhall warm you. He went to his Cloſet, and gave me out of the Bottle that he uſed to carry in his Pocket, half a Pint of Brandy, and told me, that happen how it will I muſt not come near his Houſe any more that Day, leſt afterwards there ſhould be ſome Suſpicion; but ſaid he, whether Ague or not, you muſt be at Mr. *Morrice*'s Porch, which is in the Church-yard, about eight o' Clock in the Evening. I went there between eight and nine; about nine *Coke* came out, and gave me a Whiſtle: On that I went up to him; he told me, Mr. *Criſpe* was very jolly, and he believed it would be late before he came out. I told him, I did not care to ſtay. Said he, you muſt ſtay now; this is the Time that will do it. I ſtaid till ten o' Clock; then he came to me again in Mr. *Morrice*'s Porch, and told me, that he believed *Criſpe* would not go till eleven o' Clock; but the later the better. Then he went from me again, and a little Time after ten *Coke* and *Criſpe* came out together, and on *Coke*'s Whiſtling I came up to them; *Criſpe* was then before, and coming to get againſt the Wall. I came up to *Coke*; he bid me have a care not to hit him inſtead of *Criſpe*, being very dark; ſo he took me by the Sleeve to lead me up to *Criſpe*; and ſaid to *Criſpe*, Brother, ſtand ſtill; on that I hit him two Strokes with my Hook; tho' I never heard him ſwear before, yet he now ſwore, God damn him: On that *Coke* ſaid, what! doth he ſwear? Secure him, down with him. He ſtood by him till I gave him ſeveral Blows, and then he went away. *Coke* deſired me to take away his Watch; for, ſaith he, as to his Money, he don't carry above half a Crown or three Shillings in his Pocket; and when I go to *London*, I will ſell the Watch for you.

L. C. Juſt. What *Woodburne* ſaith againſt *Coke*, is no Evidence againſt *Coke*, and ſhould not have been mentioned by him; but what he ſaith relating to himſelf before the Fact, is ſo twiſted with *Coke*, that without the Whole it is not ſo intelligible as to himſelf. However, the Jury are to take notice, that what *Woodburne* ſaith, is only Evidence againſt himſelf, and not againſt Mr. *Coke*.

L. C. Juſt. After you had given him thoſe ſeveral Blows with your Hook, what did you next?

Woodburne. I began immediately to reflect on what I had done, and went away forthwith to my

own Houſe, where I was about to take a Line to hang my ſelf.

L. C. Juſt. Have you any Witneſſes, or any body to ſpeak for you?

Woodburne. My Lord, here are my two Daughters in the Court; I deſire your Lordſhip would be pleas'd to hear them, *Ann Woodburne* and *Sarah Woodburne*; who being call'd, appear'd, and were ſworn.

L. C. Juſt. What ſay you, *Ann Woodburne?*

Ann Woodburne. On the *Wedneſday* before *New-Year's-Day Coke* ſent for my Father by his Boy; I told the Boy, my Father was in Bed, and ſick of an Ague, and could not come. The Boy came again, and ſaid, my Father muſt by all Means come; but he would not then go, but he went to him on *New-year's-day* in the Morning, and came Home again. About five or ſix a-Clock in the Evening, my Father went out with a Hook in his Hand; and he ſaid, he ſhould not be at Home till eleven or twelve at Night; and if any body came for him, he bid us not take any Notice but that he was at Home. We thought he took the Hook to cut ſome Wood with.

L. C. Juſt. Have you any thing more to ſay?

Ann Woodburne. When my Mother died, I went to Mr. *Coke*'s to borrow five Shillings of him, to have the great Bell toll for my Mother; and told him, that my Father would pay him again. He ſaid, What ſignify'd the ringing out of the great Bell? her Soul would be never the better for it; but if he will ſatisfy me in my Requeſt, he ſhall have five times five Shillings.

L. C. Juſt. What ſay you, *Sarah Woodburne?*

Sarah Woodburne. Coke did frequently ſend for my Father at all times, both of Day and Night; and he would often come to my Father, and when he came, they would go out, and walk down the Back-ſide, and talk together. After this Fact was done, *Coke* ſent his Boy for my Father, and the Boy ſaid, they muſt not go together; for if they did, People would take Notice of them.

L. C. Juſt. Woodburne, have you any thing more to ſay?

Woodburne. This Day nine Weeks, which was a Week after the Fact committed, *Coke* ſent for me, and ſaid, *John*, I wiſh you would have done the thing I order'd you; but you have been before Alderman *Wright* and the Recorder, and have told your Story well; but hold you faſt, they will examine you again; I ſhall——

L. C. Juſt. This is ſubſequent to the Fact, and is not Evidence againſt *Coke.* If you *Woodburne* have done, then Mr. *Coke* what have you to ſay for your ſelf?

Coke. May it pleaſe your Lordſhip, I am much aſham'd, and very unable to defend myſelf; I am aſham'd to think I ſhould be concern'd in ſo heinous a Crime againſt Mr. *Criſpe*'s Life; I am even confounded at it; it is indeed a very great Crime, and I know not what to ſay for myſelf. As for *Woodburne*, he hath aſſerted againſt me ſeveral things that are falſe.

L. C. Juſt. I have told the Jury, that what he hath ſaid is no Evidence againſt you.

Coke. When I firſt ſpoke of this Matter to *Woodburne*, he ſaid, he ſhould value it no more than the cutting off the Head of a Dog. I did, indeed, go out with Mr. *Criſpe* that Night, but I was not near him when *Woodburne* ſtruck him, but retreated to my own Houſe in a Moment. My Lord, I am very ſenſible that a Point of Law may ariſe on the Statute whereon I am indicted.

L. C. Juſt. Whereon?

Coke. With reſpect to my Intention.

L. C. Juſt. Your Intention is Matter of Fact, and muſt be try'd by the Jury, whether your Intent was to maim and diſfigure; this doth not ſeem to me to be a Point of Law; if there be any Point of Law that ſhall ariſe, you ſhall have Counſel to ſpeak to it; but whether you ſlit Mr. *Criſpe*'s Noſe, with an Intention to diſfigure him, is a Matter of Fact.

Coke. My Intent was to kill Mr. *Criſpe*, and not to maim or diſfigure him.

L. C. Juſt. But that is the Queſtion the Jury are to try, whether you did not of Malice ſlit his Noſe, with an Intent to diſfigure him. If the Jury do not find that you ſo did, you muſt be acquitted on this Indictment. Suppoſing your Deſign was to kill, yet your Deſign might be likewiſe to maim; and this the Jury muſt try; this is Matter of Fact for their Conſideration.

Coke. This is a very penal Statute, and I am unable to plead my own Cauſe; I beg your Lordſhip to aſſign me Counſel.

L. C. Juſt. If any Point of Law doth ariſe upon the Statute, you ſhall have Counſel; but as yet there is nothing but Matter of Fact; whether the Fact proved doth ſupport the Charge in the Indictment; or in other Words, whether the Evidence be ſufficient to make good the Charge; this muſt be left to the Jury; I will ſtate the Fact to them, and they are on their Oaths to give in their Verdict.

Coke. This is a very penal Statute, and I cannot argue it for myſelf; I hope your Lordſhip will aſſign me Counſel; this is the firſt Indictment that ever was upon this Statute.

L. C. Juſt. What do the King's Counſel ſay to it?

Serj. Selby. After ſo full an Anſwer as your Lordſhip has given, I think it but vain to ſay any thing; I always thought that no Matter of Law could ariſe upon this Fact and Indictment; for *Woodburne* did the Fact of Malice forethought, by lying in wait, and with an Intention to maim; Mr. *Coke* was aiding, abetting, and privy to the Fact: Therefore, though it was an Intent to kill, it muſt be to maim alſo; he could not intend to kill him with ſuch an Inſtrument, without intending to maim him firſt; and therefore, if there were two Intentions and but one executed, there is no Pretence to ſay, that what was executed was not intended. Mr. *Coke* ſays, there never was any Indictment before upon this Statute; if not, it muſt be becauſe no Man before ever thought of being guilty of ſo horrid an Action.

L. C. Juſt. If any Point in Law doth ariſe you ſhall have Counſel; but the Fact muſt be agreed and ſtated, before the Law can come in debate. You ſay, your Intent was only to murder; but that is not yet agreed or found to be the Fact: It is the Point now in Trial, whether you did it not with an Intention to maim or diſfigure; and according as that Intention ſhall appear to the Jury, ſo will they either acquit or convict you; therefore if you have any thing more to ſay, I deſire you to go on.

Coke. I ſubmit to your Lordſhip's Judgement.

L. C. Juſt. Gentlemen of the Jury, this is an Indictment of the Priſoners at the Bar, *John Woodburne* and *Arundel Coke*, for Felony, by lying in wait, and purpoſely and maliciouſly ſlitting the Noſe of *Edward Criſpe*, with Intention, in ſo doing, to maim or diſfigure the ſaid *Edward Criſpe*. *John Woodburne* is indicted for the principal Actor, or the Perſon who did the Fact; and *Arundel Coke* is indicted for being preſent, aiding and abetting. This Indictment is founded on a Statute made in the two and twentieth Year of King *Charles* the Second, intitled, *An Act to prevent malicious maiming and wounding*; whereby it is enacted, That if any Perſon or Perſons, from and after the twenty fourth Day of *June*, in the Year of our Lord 1671, on Purpoſe, and of Malice fore-thought, and by lying in wait, ſhould unlawfully cut out, or diſable the Tongue, put out an Eye, ſlit the Noſe, cut off a Noſe or Lip, or diſable any Limb or Member of any Subject of his Majeſty, with Intention in ſo doing to maim or diſfigure, in any the Manners beforemention'd, ſuch his Majeſty's Subject, that then, and in every ſuch Caſe, the Perſon or Perſons ſo offending, their Counſellors, Aiders and Abettors (knowing of, and privy to the Offence, as aforeſaid) ſhall be, and are thereby declared to be Felons, and ſhall ſuffer as in Caſes of Felony, without Benefit of the Clergy. Now the Queſtion on this Indictment is, whether *John Woodburne* did on Purpoſe, and of Malice fore-thought, and by lying in wait, unlawfully ſlit the Noſe of *Edward Criſpe*, with an Intention to maim or diſfigure him therein? And, whether *Arundel Coke* was felonioufly preſent at the Fact, aiding and abetting *Woodburne* in the Commiſſion and Perpetration of it? To make out this Matter ſeveral Witneſſes have been called; the firſt Witneſs was *Edward Criſpe* himſelf, who informs you, that *Arundel Coke* married his Siſter, and Mr. *Brown*, *Coke*'s Siſter; and that laſt *New-year's-day* they were invited to ſup at Mr. *Coke*'s; and that before Supper Mr. *Coke* propos'd to go to Mrs. *Monke*'s; and that after Supper, about ten a-clock at Night, Mr. *Coke* call'd Mr. *Criſpe* out of the Parlour to go to this Mrs. *Monke*'s; and that when they had walked three or four Turns before the Houſe where Mrs. *Monke* dwelt, *Coke* ſtood ſtill, and made a Noiſe like a hollowing, which made Mr. *Criſpe* afraid, being dark, ſo he made toward the Wall; but in a quarter of a Minute's time a Man came and knock'd him down: Who that Man was, nor what was then further done to him, he could not then tell, becauſe by the Blow he loſt his Senſes for ſome time; but afterwards he got up again, and return'd to Mr. *Coke*'s Houſe, from whence he came, but in a ſad Condition, much wounded and bloody, where Mr. *Sturgeon* the Surgeon came to him, from whom you have the Particulars of his Caſe, He ſays, that *Coke* was cloſe by him when he was knock'd down; but did not hear *Coke* ſay any thing. He alſo ſays, that upon his Death one hundred Pounds *per Annum* would have gone to *Coke*'s Wife, as one of his Siſters and Co-heir.

The next Witneſs is Mr. *Brown*, who married *Coke*'s Siſter; and he ſays, that he, his Wife and Daughter were invited to ſup at Mr. *Coke*'s the Evening of *New-year's-day*; that he came about ſix a-clock, and found Mr. *Coke* and Mr. *Criſpe* drinking a Glaſs of Wine in the Parlour before Supper; that he ſate down and drank with them till Supper; that after Supper they three came into the Parlour again, and ſome time after *Coke* went out of the Room, and then came back again, and call'd Mr. *Criſpe* out of the Room, who followed him; that *Coke* returned again in about ten Minutes, and ſeem'd to be out of Breath, as if he had been walking faſter than ordinary; that *Coke*'s Houſe is diſtant from the Churchyard about twice the length of the Shire-houſe; that *Coke*, after he came in, drank a Glaſs of Wine; and that *Brown* ask'd *Coke* what was become of Mr. *Criſpe*; and that *Coke* ſaid, he believ'd he was gone home in the Dark; and that in about two or three Minutes after Mr. *Criſpe* came in much wounded and bloody; and that it was about half an Hour between the time of Mr. *Criſpe*'s going out and returning again.

Mr. *Sturgeon* the Surgeon ſwears, that being ſent for, he came to Mr. *Criſpe* about eleven a-clock that Night; that he had loſt a great deal of Blood, and was very much wounded; and that in the whole he had received ſeven diſtinct Wounds, which he apprehends were by ſo many ſeveral Blows. He hath given you a particular Deſcription of the ſeveral Wounds; the ſecond Wound is that which is alledged to be within this Statute. He tells you, That this Wound divided the right ſide of the Noſtril; and that though the Edge of the Noſe was not cut through, yet it was cut through in another Place; the Noſe was ſlit; there was a Cut from without into the Noſtril; indeed the Slit was not very great, for he ſew'd it up with one Stitch; but he is ſure that a Slit there was, and you have ſeen Mr. *Criſpe*'s Noſe. Now the ſlitting of the Noſe is one of the particular Facts mention'd in the Statute.

Mr. *Willet* the Conſtable ſwears, That he was with *Woodburne* after his Commitment, and that he told him, he was concern'd in the wounding Mr. *Criſpe*; that he had been there waiting for that Purpoſe; and that when *Coke* whiſtled to him, he went up and made the Aſſault upon Mr. *Criſpe* with an Hook or Bill, that was new-ground for that purpoſe, and directed him where to find it at his Houſe, which he accordingly did, and brought it to *Woodburne*, who ſaid that was the Hook; and the Hook hath been now produced before you, and you have ſeen it.

The next Witneſs is Mr. *Wetherell* the Goaler, who ſwears, That the Day after *Coke* was committed to his Cuſtody, *Coke* ſent for him up into his Chamber, and told him, That he and *Woodburne* had had a Deſign to murder Mr. *Criſpe*, and had attempted it ſeveral times, and deſired him to go and ſecure *Woodburne*, which he accordingly did. He hath given you an Account how and in what manner he ſecur'd him; and he ſwears moreover, that *Coke* told him ſeveral times that he had a Deſign to murder *Criſpe*, and that he employ'd *Woodburne*, and deliver'd *Criſpe* into his Hands; that *Woodburne* did it with an Hook, and that he bad *Woodburne* to cut his Windpipe? and that if *Woodburne* had not been a Cow-hearted Dog, he would have ſo done, and ſecur'd *Criſpe* from telling Tales. *Wetherell* likewiſe ſwears, that *Coke* told him, That he call'd *Criſpe* out of his Houſe, went into the Churchyard with him, and there deliver'd him into *Woodburne*'s

burne's Hands; and he farther ſwears, as to *Woodburne*, That *Woodburne* own'd that he and *Coke* had lain in wait ſeveral Times, and at ſeveral Places, to murder Mr. *Criſpe*; and as to this particular Fact, he gave him this Account, That he ſtruck him a Blow with his Hook, and that not quite ſtriking him down, he gave him a ſecond Blow; and that as *Criſpe* was falling, he cried out, God damn him; and that then it griev'd him to kill a Man with an Oath in his Mouth.

Robert Moon ſwears, That when he heard what was befallen Mr. *Criſpe*, he ſaid, that he knew the Perſon that did the Fact, or him who employ'd the Perſon; and the Reaſon was, becauſe about three Years and a half before Mr. *Coke* ſent for him, and told him, That he wiſh'd Mr. *Criſpe* out of the World, and that ſome body would knock him on the Head; and that when he ask'd him what Advantage that would be to him? He replied, A very good Eſtate; and afterwards told him, he did not value ten or twenty Guineas to knock him in the Head: This made *Moon* reflect upon himſelf, and was concerned that he ſhould have ſuch an Opinion of him, and thereon told him, that he would not kill the greateſt Villain in the World for ten ſuch Towns as *Bury*.

John Carter ſwears, That on *Friday* before *New-year's-day* laſt, *Coke* ſent *Woodburne* to him, to tell him that his Maſter *Coke* wanted to ſpeak with him; that thereon he went to his Houſe, and was order'd to come up to him in his Chamber, which he did; and there *Coke* firſt enquired, whether he could help him to a good ſtrong Horſe? And then told him, that he heard he had loſt much of his Buſineſs; he had no Iron, nor Coal; and that he had a thing in Agitation that would make a Man of him as long as he lived; and thereon ask'd him, whether he could keep a Secret, and one of the biggeſt Secrets in the World? And upon his telling him that he could, he ask'd him whether he could cut five or ſix Mens Heads off without Scruple of Conſcience? And when he told him that that was too much for a Man's Conſcience to bear, he told him, there were thoſe above, meaning the *South-Sea* Gentlemen, who had done ten times worſe, ruin'd Families, and beggar'd Gentlemen; and that to cut Mens Heads off was but a Trifle to them. That hereon *Carter* told him, he believ'd he ſpoke only in Joke, and by way of Merriment; but *Coke* ask'd him, Whether he thought he ſent for him only by way of Joke? And then ask'd him, whether he could cut off one's Man's Head without Scruple of Conſcience? And when *Carter* told him, No: Then *Coke* told him, if he could not cut off a Man's Head, and lay it down on the Table before him, he was not for his Turn; and then gave him a Glaſs of Brandy, and bid him conſider of it for a Day or two, and if he could cut off a Man's Head without Scruple of Conſcience, he ſhould have plenty of Gold and Silver, and any thing elſe he ſhould ask: Whereto *Carter* replying, That he needed no Conſideration, he could not do it; then he bid him ſend *Woodburne* to him, which he did.

In all this Diſcourſe between *Carter* and *Coke*, I do not find that *Criſpe* was the Perſon named on whom this Outrage ſhould be committed; but *Carter* who is a Tenant of a Houſe of Mr. *Criſpe*'s, ſays, That *Coke* told him he heard the Houſe was out of repair; that it would be his after Mr. *Criſpe*; and ask'd him, Whether he would not like it better for *Coke* to keep it in repair, as he had done before, whilſt he was *Criſpe*'s Steward?

This is the Subſtance of the Evidence given againſt the Priſoners at the Bar, to prove that they maliciouſly, and by lying in wait, have ſlit Mr. *Criſpe*'s Noſe, with an Intent to disfigure him therein.

Woodburne doth not deny the general Fact, that is, the deſign'd lying in wait to aſſault Mr. *Criſpe*, nor the cutting or knocking him down with his Hook; his Confeſſion is not Evidence againſt *Coke*, but it is againſt himſelf; and you hear what he hath own'd; that laſt Barley-Harveſt *Coke* ſent for him to mend his Copper, and then order'd him to meet him at another Place, which was accordingly done; where *Coke* told him, That he had a thing for him to do, but it was not to be done preſently; and if he would do it, he ſhould want for nothing. And when he ask'd him, what it was? He ſaid, To ſet *Criſpe* aſide, that is, to kill him; and *Coke* gave him eighteen Pence. That then he told him, he could not do it; that *Coke* ſollicited him ſeveral times afterwards to murder *Criſpe*; the Particulars whereof I do not enumerate, becauſe they principally relate to *Coke*, againſt whom it is not Evidence; but yet they ſo far relate to *Woodburne*, as to ſhew his Knowledge and Deliberation in this Matter; therefore to come to the Day whereon this Fact was done, *Woodburne* ſaith, That about eight or nine in the Morning *Coke* ſent for him, and told him, that that Day they ſhould have the faireſt Opportunity to kill Mr. *Criſpe*; and it was agreed between them, that *Woodburne* ſhould be in the Churchyard, at Mr. *Morrice*'s Porch, about eight a-clock in the Evening. He accordingly went with his Hedge-Hook or Bill, which hath been here produced. *Coke* came out to him twice by himſelf, and the third time, a little after ten a-clock, *Coke* and *Criſpe* came out together; and then *Coke* whiſtled, which was the Signal between them; and thereon *Woodburne* came up, and owns, that with his Hook he cut and knock'd down *Criſpe*, and that though he never heard *Criſpe* ſwear before, yet that now, as *Criſpe* was falling, he ſwore God damn him; whereon he gave him thoſe ſeveral other Wounds and Blows that *Criſpe* received; and then reflecting on what he had done, immediately went to his own Houſe, where he was about to take a Rope to hang himſelf.

By this Defence of *Woodburne*, you ſee that he doth not deny the aſſaulting and wounding of Mr. *Criſpe*; but that that he chiefly inſiſts on is, that what he did was by the Sollicitation and Procurement of Mr. *Coke*; which is no Juſtification or Excuſe. However, he hath called two Witneſſes, *Ann* and *Sarah Woodburne*, his two Daughters, to prove that *Coke* did frequently ſend for their Father, and often came to him at his own Houſe, and would be in private Conference together, which probably was about this Matter; but if it were, this only confirms what *Woodburne* inſiſts on, that he was ſollicited, and hired by *Coke* to do this Fact; which, as I ſaid, will neither juſtify nor excuſe him; for no Man is to obey the unlawful Commands, or hearken to the illegal Advices of any other Perſon whatſoever.

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As for Mr. *Coke*, that which he principally puts his Defence upon, is, that his Intent was to kill and murther Mr. *Criſpe*, but not to maim him, or to ſlit his Noſe, or to disfigure him in ſo doing; and therefore, tho' in Purſuance and Execution of the Attempt to murther Mr. *Criſpe*, they ſlit his Noſe, or might thereby disfigure him, yet that not being their Intention, and Deſign, he is to be acquitted on this Indictment, wherein the Intent of the Party is one of the principal Ingredients to make him guilty. This ſame Defence will ſerve alſo for *Woodburne*, that they intended to murther, but not to maim; and if they did maim, it was with an Intention to kill, and not to disfigure. Now this Indictment is, as I told you, founded on the 22d and 23d *Car.* II. *c.* 1. for that on Purpoſe, of Malice fore-thought, and by lying in wait, the Priſoners did unlawfully and felonioufly ſlit the Noſe of *Edward Criſpe*, with Intention in ſo doing to maim or disfigure him. *Woodburne* is charged as the Actor or principal Agent, *Coke* as being preſent, aiding, and abetting; which, in Point of Law, is the ſame, as to the Guilt and Conſequence, both being in Law Principals.

That this Attempt on Mr. *Criſpe* was deſigned, malicious, and by lying in wait, the Evidence is very ſtrong; there hath been alſo very ſtrong Evidence given, that the Noſe of Mr. *Criſpe* was ſlit by *Woodburne*, and that *Coke* was preſent on the ſame Deſign with *Woodburne*.

But the Thing chiefly inſiſted on is, that the ſlitting of Mr. *Criſpe*'s Noſe was not with an Intention in ſo doing to maim or disfigure him; and if it were not with that Intent, then the Priſoners will not be guilty upon this Indictment.

Now Gentlemen, what the Intent of theſe Perſons was in ſlitting Mr. *Criſpe*'s Noſe, you are to try; this is a Matter of Fact for your Conſideration and Determination: It is the ſame in other Felonies, where the Intent of the Party makes the Crime. Burglary is breaking open an Houſe in the Night-time, with an Intent to commit a Felony; tho' no Felony be committed, yet if there was an Intent to do it, it is Burglary; which Intent is to be tried by the Jury. Larceny, or Theft, is taking away another Man's Goods, with an Intent to ſteal; if it were without ſuch an Intent, it would only be a Treſpaſs, and no Larceny; but whether it were or were not with ſuch an Intent, is a Matter of Fact to be inquired into and determined by the Jury. Nay, the Intent is ſo neceſſary in all Felonies, that a Perſon who hath no Intent or Deſign, as a Madman, Lunatick, Infant, *&c.* cannot commit Felony for that very Reaſon; becauſe he cannot have any Intent or Deſign in his Actions. So that in this Caſe you are to try no other Matter than what is tried in other Felonies, *viz.* The Intent of the Party.

Now how is the Intent of the Party diſcover'd in other Caſes? By the Facts themſelves, by the precedent, concomitant, and ſubſequent Circumſtances of the Facts, by the Manner of doing, and the like.

There are ſome Caſes where an unlawful or felonious Intent to do one Act, may be carried over to another Act, done in Proſecution thereof; and ſuch other Act will be Felony, becauſe done in Proſecution of an unlawful or felonious Intent: As, if a Man ſhoots at a wild Fowl, wherein no Man hath any Property, and by ſuch ſhooting happens unawares to kill a Man; this Homicide is not Felony, but only a Miſadventure or Chance-Medley, becauſe it was an Accident that happened in the doing of a lawful Act: But if this Man had ſhot at a tame Fowl, wherein another had Property, but not with Intention to ſteal it, and by ſuch ſhooting had accidentally kill'd a Man, he would then have been guilty of Manſlaughter, becauſe done in Proſecution of an unlawful Action, *viz.* committing a Treſpaſs on another's Property: But if he had had an Intention of ſtealing this tame Fowl, then ſuch accidental killing of a Man would have been Murder, becauſe done in Proſecution of a felonious Intent, *viz.* an Intent to ſteal. So a Man of Malice intends to burn one Houſe, in Execution thereof he happens to burn another Houſe; this is a malicious and felonious burning of this other Houſe, becauſe ſprung out of a malicious and felonious Intent. The like may be inſtanced where Poyſon is intended to be given to one Perſon, and another takes and eats it, and thereby dies. And other Caſes there are of the like Nature, where Acts done in Proſecution of felonious Intents, participate of the Nature of their Original from whence they ſpring.

But now the Indictment on this Statute is for a certain particular Intent; for purpoſely, maliciouſly, and by lying in wait, ſlitting Mr. *Criſpe*'s Noſe, with an Intention in ſo doing to maim or disfigure: And you are to conſider, whether the Ingredients neceſſary to make this a Felony within the Statute, have been proved to your Satisfaction. The Facts neceſſary to be proved on this Indictment are, that on Purpoſe, and of Malice fore-thought, and by lying in wait, they unlawfully ſlit the Noſe of Mr. *Criſpe*, with Intention in ſo doing to maim or disfigure. As to the Fact of ſlitting the Noſe, that is directly and poſitively ſworn; There can be no doubt but that it was an unlawful ſlitting. Then the next Thing for your Conſideration will be, whether this unlawful ſlitting was on Purpoſe, of Malice fore-thought, and by lying in wait. As to this, a great deal of Evidence hath been given; and what paſs'd before, and at the Time of the Fact, will guide you herein. And if on a Review of the Evidence, you ſhall be of Opinion, that this unlawful ſlitting of the Noſe was on Purpoſe, of Malice fore-thought, and by lying in wait; then the next Queſtion will be, whether this was an Intention to disfigure? Facts do in ſome meaſure explain themſelves; and the Circumſtances preceding and accompanying thoſe Facts, and the Manner of doing them, do many times more fully explain and declare the Intent of the Party. The Priſoner, Mr. *Coke*, (which Defence goes both to him and *Woodburne*) inſiſts, that their Intention was to murder, and not to maim; and that if they did maim or ſlit the Noſe, it was with an Intention to kill, and not with an Intention to maim or disfigure. On the other Side, it is inſiſted on by the King's Counſel, that tho' the ultimate Intention might be to murder, yet there might be alſo an Intention to maim and disfigure; and tho' the one did not take effect, yet the other might: An Intention to kill, doth not exclude an Intention to maim and disfigure. The Inſtrument made uſe of in this Attempt was a Bill or Hedging-hook, which in its own Nature is proper for cutting and maiming; and where it doth cut or maim, doth neceſſarily, and by conſequence

disfigure. The Attempt intended on Mr. *Criſpe* was immediately to his Perſon, to do him a perſonal Injury. Beſides, the Manner of doing and perpetrating this Fact is proper to be conſidered; That it was done by Violence, and in the dark, where the Aſſailant could not well make any Diſtinction of Blows; but knock'd and cut on any Part of Mr. *Criſpe*'s Body where he could, till he had ſunk him down, and done to him whatever elſe he pleas'd. And if the Intention was to murder, you are to conſider, whether the Means made uſe of, in order to effect and accompliſh that Murder, and the Conſequences of thoſe Means, were not in the Intention and Deſign of the Party; and whether every Blow and Cut, and the Conſequences thereof, were not intended, as well as the End for which it is alledg'd thoſe Blows and Cuts were given.

All theſe ſeveral Things, which I have mentioned, are proper for your Conſideration: You will add to them your own Obſervations; and if, upon the whole, you are ſatisfied from the Evidence, that *Woodburne* did on Purpoſe, and of Malice fore-thought, and by lying in wait, unlawfully ſlit the Noſe of *Edward Criſpe*, with Intention, in ſo doing, to maim or diſfigure; and that *Arundel Coke* was felonioufly preſent at the Commiſſion of this Fact, and aiding and abetting therein; then you will find them Guilty: But if this hath not been prov'd to your Satisfaction, then you are to acquit them, and find them Not Guilty.

Then the Jury withdrew to conſider of their Verdict, and in about half an Hour return'd again.

Cl. of the Arr. Gentlemen, anſwer to your Names.

Here, and ſo the reſt.

Cl. of the Arr. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of the Arr. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of the Arr. John Woodburne, hold up thy Hand; *(which he did.)* Look upon the Priſoner. How ſay you, is *John Woodburne* Guilty of the Felony whereof he ſtands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of the Arr. What Goods or Chattels, Lands or Tenements?

Foreman. None to our Knowledge.

Cl. of the Arr. Arundel Coke alias *Cooke*, hold up thy Hand; *(which he did.)* How ſay you? Is *Arundel Coke* alias *Cooke*, Guilty of the Felony whereof he ſtands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of the Arr. What Goods or Chattels, Lands or Tenements?

Foreman. None to our Knowledge.

Cl. of the Arr. Then hearken to your Verdict, as the Court hath recorded it. You ſay, that *John Woodburne* is Guilty of the Felony whereof he ſtands indicted: You ſay, that *Arundel Coke* alias *Cooke*, is Guilty of the Felony whereof he ſtands indicted; and that neither they, nor either of them, had any Goods or Chattels, Lands or Tenements at the Time of the Felony committed, or at any Time ſince, to your Knowledge. And ſo you ſay all.

Jury. Yes.

Mr. *Coke.* I deſire to know of your Lordſhip, whether the Noſe can be ſaid to be ſlit within the Meaning of this Statute, when the Edge of it was not cut through?

L. C. Juſt. It is true, the Edge of the Noſe was not ſlit, but the Cut was athwart the Noſe; which Cut ſeparated the Fleſh of the Noſe, and cut it quite through into the Noſtril: This I take to be a Slitting of the Noſe; and the Surgeon ſwore the Noſe was ſlit.

On Wedneſday *the Fourteenth of* March, John Woodburne, Arundel Coke *alias* Cooke, *and one* Edward Shorter, *who was convicted of Burglary, were brought to the Bar, in order to receive their Sentence; and the Court proceeded thus.*

Clerk of the Arr. John Woodburne, hold up thy Hand; *which he did.*

Thou haſt been indicted of Felony, on the Statute; for purpoſely, maliciouſly, and by lying in wait, ſlitting the Noſe of *Edward Criſpe*, Gent. with Intention in ſo doing, to maim or diſfigure him. Thou haſt been thereupon arraigned, thou haſt pleaded thereunto Not Guilty, and for thy Trial, thou haſt put thyſelf upon God and thy Country; which Country hath found thee Guilty; what haſt thou to ſay for thy ſelf, why the Court ſhould not proceed to give Judgment of Death upon thee, and award Execution according to the Law?

To which *Woodburne* ſaid nothing.

Cl. of Arr. Arundel Coke alias *Cooke*, hold up thy Hand; *(which he did.)*

Thou haſt been indicted of Felony, on the Statute; for being felonioufly preſent, aiding and abetting *John Woodburne*, in purpoſely, maliciouſly, and by lying in wait, ſlitting the Noſe of *Edward Criſpe*, Gent. with Intention in ſo doing, to maim or diſfigure him. Thou haſt been thereupon arraigned, thou haſt pleaded thereunto Not Guilty, and for thy Trial thou haſt put thyſelf upon God and thy Country; which Country hath found thee Guilty; what haſt thou to ſay for thy ſelf, why the Court ſhould not proceed to give Judgment of Death upon thee, and award Execution according to the Law?

Mr. *Coke.* Tho' your Lordſhip did not think it proper Yeſterday to aſſign me Counſel, yet I hope your Lordſhip will now give me leave to ſpeak for myſelf; eſpecially ſince I am the firſt unhappy Inſtance of an Indictment on this Statute; no Indictment, as far as it appears by the Law-Books, was ever yet founded on this Statute, and therefore ought to be very well weighed.

L. C. Juſt. Call the King's Counſel, that they may hear what is ſaid. *(Then the King's Counſel were ſent for, and being come:)*

L. C. Juſt. Mr. *Coke*, you may now go on with what you have to offer.

Mr. *Coke.* My Lord, I was ſaying, that I am the firſt unhappy Inſtance of an Indictment on this Statute; no Indictment, as far as appears by the Law-Books, was ever yet founded on this Statute, and therefore it ought to be very well weigh'd, eſpecially in the firſt Inſtance to which it appears to have been ever applied. It is a very penal Statute, and conſequently by the known Rule of Law not to be carried beyond the expreſs Letter of

of it; conſequently no Crime, of what Nature or Magnitude ſoever, can fall within the Purview of it, but ſuch as is identically the ſame in every Circumſtance with that deſcribed by the Words of the Statute itſelf.

The Crime deſcrib'd by the Statute is the unlawful cutting out, or diſabling the Tongue, putting out an Eye, ſlitting the Noſe, cutting off a Noſe or Lip, or diſabling any Limb or Member, attended with theſe particular Circumſtances:

Firſt, On Purpoſe and of Malice fore-thought.

Secondly, By lying in wait.

Thirdly, With Intention in ſo doing to maim or diſfigure in any of the Manners beforementioned in the Statute.

Theſe Circumſtances muſt all concur to conſtitute that particular Crime deſcribed by the Statute; and where any of them are wanting, of what Magnitude ſoever the Offence may be, it is not the Offence which the Statute has ſpecified.

If the firſt Circumſtance be wanting, no Man can ſay that any Offence, though attended with the two other, can fall within the Statute; this is ſufficiently plain of itſelf.

As to the ſecond; *A* and *B*, of Malice fore-thought, appoint and meet to fight a Duel; *A* in the Rencounter runs *B* into the Eye, and puts it out; no Body has ever imagined this to be within the Statute, becauſe the Circumſtance of lying in wait is here wanting.

As to the third; ſuppoſe *A* lies in wait to rob *B*, *B* reſiſts, and in the Scuffle is wounded, as the Statute deſcribes, but gets off. This is a Caſe which very frequently happens, yet no one ever thought it to be within the Statute, nor was any one ever indicted for this upon it: The only Reaſon of which muſt be, becauſe the Intention was to rob, and not to maim and diſfigure the Perſon.

In my Caſe, if it be taken upon the Evidence of Mr. *Criſpe*, nothing more appears than the Aſſault itſelf: If my Confeſſion be read, the lying in wait, and the Malice fore-thought will be proved; but then it will be likewiſe proved, that I had no other Intention but to kill, and had no other part, but by giving Orders to *Woodburne* for that Purpoſe; and my Confeſſion muſt be taken together.

Nor is it an Objection to ſay, that the Crime which is proved by the Evidence is much worſe than that which is deſcribed by the Statute; for if it is worſe, then it cannot be the ſame. Even in Caſes of Crimes by the common Law, if upon an Indictment for a Crime of an inferior Nature, the Evidence proves the Fact attended with Circumſtances which brings it within the Deſcription of a Crime of a ſuperior Nature, the Perſon indicted muſt be acquitted. At Summer Aſſizes at *Dorcheſter*, *Anno* 1712, a Woman was indicted before Mr. Juſtice *Eyre*, for the Murder of another Woman; upon this Evidence it appeared, that the Perſon murdered was her Miſtreſs, which made the Crime Petty-Treaſon. The Judge directed this Matter to be ſpecially found, and upon Conference with all the Judges it was held, ſhe ought to be acquitted upon this Indictment, as ſhe accordingly was; and was afterwards indicted for Petty-Treaſon, and convicted and executed thereupon.

Where a new Offence has been created by Statute, or an old one made more penal, the utmoſt Strictneſs has always been us'd to comply with the Letter of the Statute, whatever Inconveniencies might reſult from ſuch a Reſtraint.

As for Example:

By the Statute of the 39 *Eliz. cap.* 15. Clergy is taken away from any Perſon or Perſons who ſhall be convicted of taking any Money, Goods or Chattels out of any Dwelling-houſe, *&c.* in the Day time, to the Value of five Shillings. One *Evans* and one *Finch* were indicted on this Statute, 1 *Croke* 473. *Evans* and *Finch*'s Caſe: The Caſe was thus upon the Evidence, That *Evans* by a Ladder climbed to the upper Window of one *Audley*'s Houſe, and took out thereof forty Pounds; and that *Finch* ſtood upon the Ladder in view of *Evans*, and ſaw *Evans* in the Chamber, and was aſſiſting and helping to the committing of the Robbery, and took part of the Money: Upon a ſpecial Verdict it was adjudged, that becauſe *Finch* did not actually enter the Chamber, and take the Money, though what he did amounted to a taking by Conſtruction of Law, and was ſuch a taking as made him a Felon; yet the very Letter of all penal Statutes muſt be purſued, and therefore he, *id eſt*, *Finch*, had his Clergy, and *Evans* was hanged.

Numerous Caſes might be put of this kind of Nicety in the Conſtruction of penal Statutes.

To mention but one more: By the Statute of 1 *Edw.* 6. *cap.* 12. Clergy is taken away from ſuch Perſons as ſhall be convicted for the felonious ſtealing of Horſes, Geldings or Mares.—— So ſcrupulouſly did the Judges adhere to the Letter of this Law, that there was forced to be another Statute made, *viz.* 2 *&* 3 *Edw.* VI. *cap.* 33. to enact, That a Perſon convicted for feloniouſly ſtealing one Horſe, ſhould be ouſted of his Clergy in the ſame manner as if he had ſtole two.

Nor is it in this Caſe enough to ſay, the Jury are Judges of all this: For as the Evidence now appears, and is admitted, it is Matter of Law, how far this Evidence thus admitted on all Hands is ſufficient to ſupport this Indictment. If it were in a civil Caſe, the Party might demur to the Evidence. But if he is not allowed that Liberty in criminal Caſes, it is upon the common Notion, that the Judges are the Priſoner's Counſel; and are obliged to determine all the Matters in Law ariſing upon the Evidence, as much as if the Perſons had demurred to that Evidence.

And, as in this Caſe, the Priſoner admits the Evidence given to be true, and inſiſts upon it, that it doth not ſupport the Indictment; and therefore has a Right to have the Opinion of the Judges thereupon, as much as if the Evidence were ſtated at length upon the Record (as it muſt be in the Caſe of a Demurrer to Evidence) and nothing ought to be left to the Jury, but under the Judges Directions as to Point of Law.

In all theſe Caſes therefore, my Lord, it has been uſual to allow the Fact to be ſpecially found; which gives the Priſoner the Advantage he might have had by the Demurrer to the Evidence.

Serj. *Selby*. My Lord, I do agree with the Priſoner at the Bar, that this is a very penal Statute, and that theſe Facts muſt be made out to bring his Caſe within the Letter of the Act, *viz.* An Intention or Purpoſe, of Malice fore-thought, to maim or diſfigure in ſuch a Manner as the Statute deſcribes; a lying in wait for

that Purpoſe; a maiming, or disfiguring accordingly; and an abetting and being privy to theſe Facts: Theſe are all Facts which the Jury only could determine, either by poſitive, preſumptive, or circumſtantial Evidence; for no Man's Thoughts or Intentions can be otherwiſe proved, than by his Actions. My Lord Chief Juſtice hath left the whole Evidence of theſe Facts to the Jury, who by their Verdict have found all theſe Facts as laid in the Indictment, againſt which no body can now open his Mouth: We apprehend therefore that no Matter of Law hath ariſen, and that what hath been inſiſted on by the Priſoner, is beſide his Caſe, and needs no Anſwer.

Serj. *Branthwait.* My Lord, the Jury have found him Guilty. I apprehend nothing can properly be alledged now by Mr. *Coke*, that is contrary to the Verdict: If there is any Fault in the Indictment, we are ready to anſwer any Objections he ſhall make againſt it. That he does not pretend to. What is now offered by him is againſt the Verdict, and contrary to what is found by the Jury. I beg your Lordſhip's Leave to give an Anſwer to the Objections he is pleaſed to make againſt the Verdict, however improperly and out of Time made, for the Satisfaction of himſelf, and of the Perſons here preſent. I agree, a penal Act ſhall not be conſtrued by Equity, or carried farther than the Words or Letter of the Act, as the Caſes mentioned by him to prove; but affirm, that this preſent Caſe is within the Words and Meaning of the Act: For though the ultimate Intent of Mr. *Coke* might be to murder Mr. *Criſpe* (as by him is alledged in Excuſe of himſelf) all the Means made uſe of to effect that Intent were alſo on Purpoſe, and ſuch Blows could not be given by an Inſtrument, without an Intent to maim and disfigure. They were given by one lying in wait on Purpoſe; and the Fact and Manner of doing the ſame ſufficiently prove, and are a certain and neceſſary Indication of the Intent. The Defendants might have an Intent to cut off, or ſlit the Noſe; put out an Eye, or diſmember; and an Intent alſo to kill and deſtroy; one Intent did take effect, the other not. The Defendants ought not to anſwer for what was not done, but ought to anſwer for what was done; which was the ſlitting of Mr. *Criſpe*'s Noſe, on Purpoſe to maim and diſfigure him, by one lying in wait; which is all that is required by the Act.

As to the Objection; that if *A* and *B* go together to fight a Duel, if *A* ſlit the Noſe of *B*, this is not within the Act; the Reaſon is, becauſe there is no lying in wait.

As to the Caſe of *A* lying in wait to rob *B*, I with great Submiſſion do ſay, that if *A* lie in wait to rob *B*, and to effect that Purpoſe with the greater Eaſe, *A* on purpoſe diſmembers *B*, or puts out his Eyes, or does any other Fact prohibited by the Act; though *A* be hindred from robbing *B*, he is within the Act of Parliament; for the Intent and Purpoſe to rob, will be no excuſe to one that ſhall commit the Facts prohibited by the Act.

As to the Caſe of *Evans* and *Finch*, *Cr. Car.* 473. on 39 *El.* which takes away the Clergy from him that enters and ſteals: *Finch* was not within the Statute, and had his Clergy; for the expreſs Words of the Statute take away the Clergy from him that enters the Houſe, which *Finch* did not. As to the Indictment of a Servant for Murder, in killing her Miſtreſs; it is plain, that it is a Crime of a higher Degree than Murder, it is an Offence of another Species, it is Petty-Treaſon, and not Murder.

The ſame Anſwer may be given to the other Caſes mentioned, where the Words of an Act of Parliament are expreſs. No Caſe ſhall be conſtrued within a penal Act, but what is within the Words: But as to the preſent Caſe, the Jury have found every Fact that the Act of Parliament requires, that an unlawful Aſſault was made on Mr. *Criſpe* by the Priſoners; that his Noſe was ſlit on purpoſe to maim and disfigure him, by lying in wait. And all theſe Facts were proved by plain, clear, and I believe convincing Evidence, to every Perſon that heard the Trial. I am ſure the Priſoners can't complain of any Hardſhip done them; the Proſecution was carried on for the ſake of Juſtice, for the Safety of his Majeſty's Subjects. This being the firſt Inſtance of a Crime ſo heinous, cruel, barbarous and inhuman, that has been committed ſince the making the Act of Parliament, it is hoped by this Proſecution a ſecond will never be committed; for which Reaſon, I pray your Lordſhip's Judgment for the King againſt the Priſoners.

Mr. *Raby.* My Lord, I did expect at this time I ſhould have heard, from this unhappy Gentleman, ſomething in Arreſt of Judgment; ſomething to ſhew that this Indictment and Record, now before your Lordſhip in Judgment, had been inſufficient, and ſuch as your Lordſhip could not have proceeded upon to give Judgment againſt the Priſoners: But I don't perceive any thing has been objected to this Indictment or Record; and therefore ſince nothing appears, or is objected, they muſt be taken to be ſufficient, and ſuch as your Lordſhip ought by Law to give Judgment upon againſt the Priſoners now at the Bar.

But this Gentleman has been pleaſed to take Notice of the Act of Parliament on which this Proſecution is founded: He has alſo made ſome mention of the Facts which have been given in Evidence againſt him; and cited ſome Caſes (as I apprehend) to ſhew, that penal Statutes, and criminal Acts of Parliament, ought not in Conſtruction to be carried beyond the Letter and Words of the Act. This which he has offered (as I take it) is now meant to ſhew (or at leaſt that he apprehends) that from the Evidence given, it has not fully appear'd he is guilty of the Offence with which he ſtands charged, within the ſtrict Words and Meaning of this Act of Parliament: And for this End he has been pleas'd to make ſome Obſervations from the Words of the Statute, what Things he apprehends to be neceſſary to bring him within the Compaſs of this Act, *viz.* That ſuch Wound or Maiming, as is deſcribed by the Statute, ought to be,

1. On Purpoſe, and of Malice fore-thought.
2. By lying in wait.
3. With an Intention to disfigure.

All theſe have been already admitted to him; and he will ſee every one of theſe Circumſtances not only taken Notice of by us in our Obſervations upon the Evidence, but alſo more fully by your Lordſhip, before the Jury gave their Verdict.

But with what Intent this Fact was done, whether of Malice fore-thought, by lying in wait,

and with Intent to disfigure, are Circumſtances only to be collected from the Evidence and the Facts themſelves; of which neither we nor the Court can determine, but can only be enquired of, and determined by the Jury; and therefore, though it would be a full Anſwer to what is now objected, to ſay, that the Jury have conſidered of the Evidence, have determined upon it, and found you guilty of the Indictment, with all thoſe Circumſtances which the Priſoner objects are neceſſary to bring the Offence within the Statute; though this, I ſay, might be Anſwer; yet for the Juſtice of this Proceeding, and to ſatisfy the Priſoner in his own Objections, and that they ſhould not paſs unanſwered, your Lordſhip will permit me to take Notice of the Caſes cited, and alſo to recollect the Evidence, ſo far as the Priſoner has made it neceſſary to repeat it.

I confeſs, it is with Concern I mention it again; for I would not do any thing which might add to the Weight of thoſe Afflictions which this unhappy Gentleman is under, had not he himſelf made it neceſſary to take farther Notice of it.

As to the Caſes cited, only two of them which he mentions are cited to be adjudged; that at *Dorcheſter* by Mr. Juſtice *Eyre*, that a Woman was indicted for Murder, and upon Evidence it appeared to a different Offence, *viz.* Petit-Treaſon, for ſhe had kill'd her Miſtreſs; and that thereupon Mr. Juſtice *Eyre* cauſed her to be indicted for Petit-Treaſon, and ſhe was convicted. Certainly, my Lord, that Judgment was right, and very juſt; for when it appeared upon Evidence that ſhe was guilty of a diſtinct and different Offence than that of which ſhe ſtood indicted, could any thing be more juſt, than to cauſe her to be indicted for that Offence, of which, upon the Nature of the Evidence, ſhe appeared to be guilty? The ſecond Caſe cited of *Evans* and *Finch* (which is reported in *Cro. Car.*) is no more than this: *Evans* went up a Ladder, opened a Chamber Window in the *Temple*, went in and robbed the Chamber in the Day-time; *Finch* held the Ladder, and ſtood at the Foot of it when *Evans* enter'd: *Evans* was hang'd, *Finch* had his Clergy, and was only burnt in the Hand; and with great Reaſon: For the Statute, 39 *Eliz.* which takes away Clergy, takes the Clergy only from him that enters; and therefore to have taken the Clergy from *Finch* who did not enter, had been unjuſt and reaſonable. And as to what is mentioned of the Statute 2 & 3 *Ed.* VI. *cap.* 33. made in Explanation of the Statute which took Clergy from him who ſtole Horſes, and to take Clergy from him who ſtole only one Horſe, there is ſuch an Act of Parliament; but this Act and the Caſes cited, only ſhew that Regard has always been had, not to extend penal Statutes beyond the Words of them. But before theſe Caſes were mentioned (and indeed had they never been cited) this Rule of Conſtruction had been allowed to the Priſoner; for all the Particulars now inſiſted on by the Priſoner were before taken Notice of by the Court, as Circumſtances neceſſary to make out the Offence againſt the Priſoner: Nor has one of thoſe Circumſtances paſs'd without Obſervation; but the Court did with great Juſtice before declare thoſe Circumſtances to be neceſſary Ingredients to prove this Offence. And as to the other Caſes, they are to the ſame Purpoſe, and not cited as Caſes adjudged; and therefore I need not take further Notice of them. But certainly no Inferences can be drawn from the Caſes cited, or any the leaſt Colour to ſay, thoſe Caſes prove that the Priſoner is not guilty of the Offence he ſtands charged with, and of which he is convicted.

I am ſorry he has given this Occaſion to mention again the Fact which has been proved, from whence it appears that the Jury have given an impartial and juſt Verdict.

It cannot be forgot, that this was conſulted and premeditated for three Years and more before it was put in execution; and therefore it was certainly purpos'd and of Malice fore-thought; alſo that it was by lying in wait. Certainly this unhappy Gentleman cannot have forgot the Signal he gave: And to what Purpoſe was that Signal, if none was in waiting to hear it? And that this was with an Intent to disfigure, muſt be ſubmitted upon the Fact and the Evidence. A Man uſes a Weapon fit to maim and to diſfigure, he cuts another on the Face and does diſfigure him, ſhall he afterwards be at Liberty to ſay, it was not his Intent ſo to do? How dangerous that would be, is obvious to every one; this Act would then be eaſily eluded, if it ſhould be ſufficient, if it ſhould avail an Offender, who has maim'd and disfigur'd another, to ſay, Prove that I intended it: It would be eaſy then to be out of the reach of this Act of Parliament; indeed if that prevailed, none would be within it, it would be an eaſy repeal of this Law. 'Tis objected, his Intent was to kill: He that intends the End, certainly intends the Means, eſpecially thoſe Means which he uſes; and the Means uſed were cutting Mr. *Criſpe* on the Face, and diſfiguring him; and the Weapon is ſuch, that by cutting him on the Face with that Weapon, could leſs be intended or expected? And if the Intent does not appear from this Fact, ſure it never can from any: The Intent of a Man's Mind cannot appear but from the Act which proceeds from his Mind.

It is ſaid, this is the firſt Indictment on this Statute: I believe there have not been many; for this is an Offence ſo barbarous, that I muſt agree it is ſuch as ſeldom happens, and that by the general Laws of our Country, there was not a Puniſhment provided equal to this Offence: For our Laws (as the Laws of moſt Nations alſo do) provide againſt Offences which moſt frequently happen: But this is an Attempt ſo barbarous, that it was ſcarce imagined any Man could be ſo baſe and wicked as to attempt any thing like it, until it happened in the Caſe of Sir *John Coventry*; and then ſuch an Abhorrence was ſhewn by the Parliament, that this Law was made to puniſh it, and to prevent the like for the future: And as this is the like Offence, it ought in Juſtice to have the like Puniſhment.

I ſhall add no more, but pray your Lordſhip's Judgment.

Mr. *Lee*. My Lord, the Obſervations made at the Bar being after a Verdict, and therefore out of Time, I ſhall not trouble your Lordſhip with a Repetition of the Facts that have been proved, further than the Priſoner has made it neceſſary for me to mention ſome Particulars, in order to make the Anſwers to what he hath inſiſted on the more clear and plain.

I believe

I believe it has been truly ſaid by the Priſoner, that the preſent Proſecution is the firſt Inſtance of any Proceedings on this Statute, and I hope it will be the laſt; becauſe it is to be hoped there never will be found any other Perſon ſo wicked, as to give Occaſion for a Proſecution on this Statute.

I believe likewiſe, that the true Deſign of making this Statute was to ſubject Perſons to Death, who intended to maim only, where the maiming was in ſuch manner as is mentioned in the Statute; but I can't think that it does from thence follow, that a Perſon who intends to murder, and only maims, is not within this Statute; for though it ſhould be taken that there was an Intention to murder, yet from the Fact done, from the manner of doing it, and from the Weapon made uſe of, it ſeems apparent that the Priſoner intended to maim; and the Jury have now found that he did ſo intend.

As to the Caſes which the Priſoner has cited, I beg leave to conſider each of them, and offer ſuch Anſwers to them as now occur.

The firſt Caſe he has been pleas'd to cite, is thus put:

A and *B*, of Malice fore-thought, appoint to meet and fight a Duel, *A* in the Rencounter runs *B* into the Eye, and puts it out: The Priſoner ſays, ſuch a Caſe would not be within this Statute.

I agree it would not, becauſe this Caſe has not the Circumſtances which the Statute requires; for in the Caſe thus put there is no lying in wait, which is a Circumſtance required by the Statute.

It is ſaid, that if *A* lies in wait to rob *B*, *B* reſiſts, and in the Scuffle is maim'd in the Manner deſcrib'd by the Statute, that ſuch maiming would not be puniſhable by this Statute; but I don't obſerve any Caſe is cited to prove this Aſſertion: And I am, with Submiſſion to your Lordſhip, inclin'd to think, that if there are a lying in wait, with Malice fore-thought, with Intent to rob, and in proſecuting this Intent the Robbers ſhould aſſault and maim in the Manner deſcribed by the Statute, that ſuch maiming would be within this Statute.

It is ſaid, that though the Intent to murder makes the Offence worſe than if the Intent had been only to maim, yet ſuch Intent proves it not to be the ſame Offence which is mentioned in the Statute: And if a Man be indicted of an Offence of an inferior Nature, and upon the Evidence it appears that he is guilty of an Offence of a ſuperior Nature, the Perſon indicted muſt be acquitted; and to prove this, a Caſe is cited, which is ſaid to have been before Mr. Juſtice *Eyre* at *Dorcheſter* Aſſizes. The Caſe, as put, is this: A Woman is indicted for the Murder of another Woman, on the Evidence it appeared, that the Perſon murdered was her Miſtreſs, which made the Crime Petty-Treaſon: This was found ſpecially, and upon Conference with the Judges, they were of Opinion, that the Woman ought to be acquitted upon this Indictment.

Admitting this Caſe to have been adjudged, I apprehend it does not affect the preſent Caſe.

The Law has diſtinguiſhed Crimes under different Denominations; and as Offences are rank'd under different Species, ſo the Indictment muſt be ſuited to that ſort of Crime whereof the Party is guilty; and therefore proving a Perſon guilty of a Fact, known in the Law by the Name of Petty-Treaſon, does not prove him guilty of an Indictment for Murder; Murder being an Offence which the Law has diſtinguiſhed from Petty-Treaſon, and to which it has aſſigned a different Puniſhment.

But in the preſent Caſe, that Offence which is charged in the Indictment, is proved in every Circumſtance, and the Facts proved do conſtitute that Crime which is made Felony without Clergy by the Statute. The Statute requires lying in wait, it requires Malice fore-thought, it requires ſlitting the Noſe, *&c.* with intent to maim, *&c.* The Indictment charges theſe Facts, the Witneſſes have proved theſe Facts to the Satisfaction of a Jury, who have found the Defendant guilty of the Charge as laid.

The Priſoner ſays farther, that this is a very penal Statute, and that penal Statutes are always taken with the utmoſt Strictneſs; and to prove this, cites a Caſe adjudged on the Statute 39 *Eliz.* by which Statute Clergy is taken away from any Perſon or Perſons, who ſhall be convicted of taking away Money, *&c.* in any Dwelling-houſe, *&c.* in the Day-time, to the Value of five Shillings: And to prove the ſame Matter, an Inſtance is likewiſe put of the Conſtruction on the Statute, 1 *Eliz. cap.* 12. which takes away Clergy from ſuch Perſons as ſhall be convict of felonioufly ſtealing Horſes, *&c.* The Caſe in the Statute 39 *Eliz.* is the Caſe of *Evans* and *Finch*, *Cro. Car.* 473. in which Caſe *Finch* had his Clergy, becauſe he did not actually enter the Chamber and take the Money. The Conſtruction on *Ed.* VI. was, that Clergy was not taken away from a Perſon who feloniouſly ſtole one Horſe.

But I apprehend neither of theſe Caſes come up to the Caſe now before your Lordſhip. As to the Caſe of *Evans* and *Finch*, which was a Caſe upon the Statute 39 *Eliz.* By that Statute a Perſon is ouſted of Clergy who takes away Money to the Value of five Shillings in any Dwelling-houſe, *&c.* *Finch* did not enter into the Houſe, for he only ſtood on the Ladder; and therefore he was not within the Words of that Statute, which ſpoke only of Perſons who took away Goods in an Houſe, *&c.*

As to the Conſtruction upon the Statute 1 *Ed.* VI. it is plain that the felonious ſtealing one Horſe could not be within an Act of Parliament which took away Clergy only from ſuch Perſons as feloniouſly ſtole Horſes. The Reaſon therefore of theſe Caſes was, that the Facts proved did not bring the Perſons accuſed within the Words of the Statute.

But it is not ſo in the Caſe now before your Lordſhip; for the Priſoner is found guilty of a Fact, which is within the Words of the Statute upon which he is indicted; and every Circumſtance required to make him guilty of the Felony mentioned in the Statute has been very fully proved.

My Lord, I am very ſenſible that the Objections taken at the Bar being after Verdict, did not require theſe particular Anſwers; but this being a Caſe wherein Life is concern'd, I hope the Impropriety will be excus'd.

L. C. Juſt. I do agree with the Priſoner, that this is a penal Law, and not to be extended by Equity: That he that is guilty within this Sta-

tute, muſt be guilty of all the Circumſtances within it; and if any one of the Circumſtances preſcribed by the Statute be wanting, he is not guilty. And therefore in all thoſe Caſes put by you, if any one of the Circumſtances preſcribed by the Statute be wanting in any one of them, ſuch Caſe is out of the Statute. But whether all the Circumſtances required by the Statute did not concur in your Caſe, was a Matter of Fact, which the Jury, who are the proper Judges, have tried; and on ſuch Trial they have found them all to concur. You ſeem to argue upon a Suppoſition of this Fact to be otherwiſe than the Jury have found it. The Jury have found you guilty of all the Circumſtances within the Statute. There was no Matter of Law in this Caſe, but Matter of Fact; whether on Purpoſe, and of Malice fore-thought, and by lying in wait, the Noſe of Mr. *Criſpe* was not ſlit, with Intention, in ſo doing, to maim or diſfigure; and whether you were not feloniouſly preſent, aiding and abetting. The Jury had the whole Evidence before them; they conſidered of the whole Matter, of the Preparation and lying in wait to do the Fact, of the Fact itſelf, of the Means and Inſtrument made uſe of to do it, of the Manner of doing it, and of all the other Circumſtances and Particulars relating to the Fact: And on the whole, after they had withdrawn, and conſider'd amongſt themſelves for ſome time, they have found you guilty within the Terms and Circumſtances of the Statute; ſo that tho' all the Caſes put by you ſhou'd be very good Law, yet they do not any wiſe affect yours, becauſe you are actually found guilty of the Crime itſelf: Have you therefore any thing to ſay againſt the Indictment itſelf?

Mr. *Coke*. No, my Lord; I hope I have one Glimpſe more from the King's moſt gracious Pardon, that was publiſhed in the *Gazette*.

L. C. Juſt. If you offer any Pardon by Act of Parliament, or under the Great Seal, I muſt take notice of it, and allow it to you; but if you mean only a Promiſe of a Pardon in the *Gazette*, or other publick Advertiſement, you muſt apply for that in another Place; this doth not belong to me.

Mr. *Coke*. I hope that I ſhall have the Benefit of the Pardon that was promiſed, and that his Majeſty will be graciouſly pleaſed to grant it me.

L. C. Juſt. If you have a Right to it, you need not doubt but you will have it: His Majeſty is ſo juſt, that he will make good whatſoever he hath promiſed; but for this, your Application muſt be immediately to his Majeſty.

Mr. *Coke*. I beg of your Lordſhip that you will give me Time, that I may not be hurried out of the World preſently.

L. C. Juſt. I ſhall conſider of it, and give you a convenient Time.

Cl. of Arr. Cryer, make an *O Yes*.

Cryer. Our Sovereign Lord the King doth ſtraitly charge and command all manner of Perſons to keep Silence, whilſt Judgment is giving upon the Priſoners convicted, upon Pain of Impriſonment.

L. C. Juſt. You that are the Priſoners at the Bar, you have been indicted and convicted of very great and heinous Offences; I am very ſorry that you have been the Occaſion of bringing your ſelves to unfortunate Ends, and that there is this melancholy Neceſſity on me to pronounce the Sentence of Death upon you: But on fair Trials the Jury have found you guilty, and by the Law you have forfeited your Lives.

Mr. *Coke*. My Lord, I am aſhamed of my ſelf; I did not expect to appear at this Time in this Place, where I have appear'd in another manner.

L. C. Juſt. I am ſure, Mr. *Coke*, you ought ſeriouſly to reflect on your paſt Life: You cannot but own that you have been a great Sinner; you have had Malice in your Heart againſt this Gentleman above three Years.

Mr. *Coke*. Indeed, my Lord, I know nothing of it.

L. C. Juſt. *Moon* hath ſworn, that three Years, or three Years and a half ago, you ſent to him, and propos'd to him the knocking Mr. *Criſpe* on the Head.

Mr. *Coke*. I do declare it, my Lord, as I ſhall anſwer it at the Great Day, I never ſpoke to *Moon* about any ſuch Thing.

L. C. Juſt. Suppoſing what *Moon* hath ſaid to be too much, yet the Crimes you own and cannot deny are exceeding heinous. You own that you invited your Brother to ſup at your Houſe, on purpoſe that you might have an Opportunity of murdering him. This is ſuch a Crime as ſhocks human Nature: The bare mentioning of it is frightful and terrible. The deeper therefore your Crime is, the deeper your Repentance ought to be. You have need to humble yourſelves before Almighty God. Beſides the Judgment of the Law, there is alſo his Judgment-Seat, before which you muſt likewiſe appear: There all Things are naked and bare, without Colour or Diſguiſe; every Man muſt there appear, and receive according to the Truth of his Actions, as they were good or bad. How far it may pleaſe God to extend his Mercy to you, I know not; he is infinite in Mercy as well as in every other Perfection: And this we are ſure, that he never denies it to any who are prepared to receive it. Endeavour therefore to reconcile yourſelves to him; improve with Diligence the little Time that may be allotted you: Send for proper Perſons who may adviſe and aſſiſt you: For as to the Judgment of the Law which is to be now pronounced upon you all, it is this;

> That you, and each of you, go from hence to the Place from whence you came, and from thence to the Place of Execution, where you ſhall be ſeverally hanged by the Neck till you be ſeverally and reſpectively dead; and the Lord have Mercy upon your Souls.

Then the Keeper carried away the Priſoners to the Goal to be reſerved till their Execution. And on Saturday the 31ſt of *March*, 1722. they were executed at *Bury St. Edmond's*.

CXC. *The Trial of* Chriſtopher Layer, *Eſq*; *at the* King's-Bench *for* High-Treaſon, Novemb. 21. 1722. Mich. 9 GEO. I.

Die Mercurii 31° *Die Octobris*, 1722.

ON *Wedneſday* the 31ſt of *October*, *Chriſtopher Layer*, Eſq; was brought to the Bar of the Court of *King's-Bench* at *Weſtminſter*, upon a *Habeas Corpus* directed to the Lieutenant of the *Tower* of *London*, in order to be arraigned on an Indictment for *High-Treaſon* in compaſſing and imagining the Death of the King, found by the Grand Jury for the County of *Eſſex* before ſpecial Commiſſioners of *Oyer* and *Terminer*.

Mr. Serj. *Pengelly*. My Lord, we pray the Return of the *Habeas Corpus* may be read.

Mr. Harcourt *Clerk of the Crown reads the Return of the* Habeas Corpus, *by which it appeared that the Priſoner was committed to the* Tower *for High-Treaſon.*

Mr. Serj. *Pengelly*. We pray that the Return may be filed.

Sir John Pratt. *L. C. Juſt.* Let it be filed.

Mr. Serj. *Pengelly*. My Lord, there is an Indictment of High Treaſon found in the County of *Eſſex* againſt Mr. *Chriſtopher Layer*, which hath been removed into this Court by *Certiorari*; the *Certiorari*, and Return thereof hath been filed, and the Priſoner is now brought into Court in order to be arraigned.

L. C. Juſt. Read the Indictment.

Cl. of the Cr. Chriſtopher Layer, hold up your Hand.

You ſtand indicted by the Name of Chriſtopher Layer, *late of the Pariſh of St.* Andrew's Holbourn, *in the County of* Middleſex, *Eſq*; *For that you being a Subject of our moſt ſerene Lord* GEORGE, *now King of* Great Britain, France *and* Ireland, *Defender of the Faith*, &c. *not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance; but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traytor againſt our ſaid Lord the King, your Supreme, True, Lawful, and Undoubted Lord; withdrawing that Cordial Love, and true and due Obedience, Fidelity, and Allegiance, which every Subject of our ſaid Lord the King towards Him ſhould and of Right ought to bear; and deſigning, and with all your Might traiterouſly intending the Government of this Kingdom, under our ſaid Lord the King duly and happily eſtabliſh'd, to change, alter, and ſubvert; and our ſaid Lord the King of and from the Title, Honour, Royal Eſtate, Empire and Government of this Kingdom to depoſe and deprive; and our ſaid Lord the King to Death and final Deſtruction to bring and draw; and the Perſon during the Life of the late King* James *the Second, pretended to be Prince of* Wales; *and after the Deceaſe of the ſaid late King, pretending to be, and taking upon himſelf the Stile and Title of King of* England, *by the Name of* James *the Third, to the Crown, Royal State and Dignity of King of this Kingdom, and to the Empire, Government, and Poſſeſſion of the ſame, to exalt and bring, the twenty-fifth Day of* Auguſt, *in the Ninth Year of the Reign of our ſaid Sovereign Lord the King that now is; and at divers other Days and Times, as well before as after, at* Laytonſtone *in the ſaid County of* Eſſex, *falſely, malicioufly, deviliſhly, and traiterouſly did compaſs, imagine, and intend, our ſaid Lord the King, your ſupreme, true, lawful, and undoubted Lord, of and from the Title, Honour, Royal Eſtate, Empire and Government of this Kingdom to depoſe and deprive; and our ſaid Lord the King to Death and final Deſtruction to put and bring. And that you the ſaid* Chriſtopher Layer, *to accompliſh and bring about your ſaid Treaſon, and deviliſh and traiterous Intents and Purpoſes, did, with divers other falſe Traytors, to the Jurors unknown, on the ſaid twenty-fifth Day of* Auguſt, *in the ſaid Ninth Year of the Reign of our ſaid Lord the King, and at divers other Days and Times, as well before as after, at* Laytonſtone *aforeſaid, in the ſaid County of* Eſſex, *by Force and Arms*, &c. *falſely, malicioufly, deviliſhly, and traiterouſly meet, propoſe, conſult, conſpire, conſent, and agree, to move, raiſe, and levy Inſurrection, Rebellion, and War, within this Kingdom againſt our ſaid Lord the King, for the traiterous Purpoſes aforeſaid. And that you the ſaid* Chriſtopher Layer, *for the more effectual compleating and perfecting the ſaid Treaſon and traiterous Intentions and Purpoſes, on the ſaid twenty-fifth Day of* Auguſt, *in the Ninth Year aforeſaid, at* Laytonſtone *aforeſaid, in the ſaid County of* Eſſex, *by Force and Arms*, &c. *malicioufly and traiterouſly did publiſh a certain malicious, ſeditious, and traiterous Writing, containing and purporting (amongſt other Things) an Exhortation, Incitement, and Promiſes of Rewards, the faithful Subjects of our ſaid Lord the King, to perſuade, move and excite, to take up Arms, and to levy and make War within this Realm, againſt our ſaid Sovereign Lord the King, for the traiterous Purpoſes and Intentions aforeſaid. And that you the ſaid* Chriſtopher Layer, *for the more effectual compleating and perfecting the ſaid Treaſon and traiterous Intentions and Purpoſes, with other falſe Traytors, to the Jurors unknown, on the ſaid twenty-fifth Day of* Auguſt, *in the ninth Year aforeſaid, and at divers other Days*

Days and Times, as well before as after, at Laytonſtone *aforeſaid, in the ſaid County of* Eſſex, *by Force and Arms*, &c. *Falſely, Maliciouſly, Deviliſhly and Traiterouſly did meet, propoſe, conſult, conſpire, conſent and agree, by an armed Force, and by Soldiers to be raiſed and got ready for the traiterous Purpoſes aforeſaid; the ſaid Perſon, during the Life of the ſaid late King* James *the Second, pretended to be Prince of* Wales, *and ſince the Deceaſe of the ſaid late King, pretending to be, and taking upon himſelf the Stile and Title of King of* England, *by the Name of* James *the Third, to the Crown, Royal Eſtate, and Dignity of King of this Kingdom, and to the Empire, Government, and Poſſeſſion of the ſame to exalt and bring; and that you the ſaid* Chriſtopher Layer, *for the more effectual compleating and perfecting the ſaid Treaſon, and traiterous Intentions and Purpoſes aforeſaid, on the ſaid twenty fifth Day of* Auguſt, *in the ninth Year aforeſaid, and at diverſe other Days and Times, as well before as after, at* Laytonſtone *aforeſaid, in the ſaid County of* Eſſex, *by Force and Arms*, &c. *Maliciouſly and Traiterouſly did get ready, raiſe, and retain ſeveral Men, to the Jurors unknown, to take up Arms, and to levy and wage War within this Kingdom, againſt our ſaid Sovereign Lord the King, for the traiterous Purpoſes aforeſaid; and that you the ſaid* Chriſtopher Layer, *for the more effectual compleating and perfecting the ſaid Treaſon, and traiterous Intentions and Purpoſes aforeſaid, on the ſaid twenty fifth Day of* Auguſt, *in the ninth Year aforeſaid, and at divers other Days and Times, as well before as after, at* Laytonſtone *aforeſaid, in the ſaid County of* Eſſex, *with other falſe Traitors, to the Jurors unknown, by Force and Arms*, &c. *Maliciouſly, Deviliſhly and Traiterouſly did meet, propoſe, conſult, conſpire, conſent and agree, the ſacred Perſon of our now Sovereign Lord King* GEORGE, *for the traiterous Purpoſes aforeſaid, moſt wickedly to take, ſeize, impriſon, and detain in Cuſtody, againſt the Duty of your Allegiance, againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided.*

Priſoner. If your Lordſhip will pleaſe to indulge me;

My Lord, I am brought here in Chains, in Fetters and in Chains. My Lord, I have been uſed more like an *Algerine* Captive than a Free-born *Engliſhman:* I have been dragged through the Streets by the Hands of Goalers, and have been made a Shew and a Spectacle of.

I am now in a Court of Juſtice before your Lordſhip, and I hope the Time will come when I ſhall have a candid and fair Trial, and not be made a Sacrifice to the Rage and Fury of any Party, or the Neceſſity of the Times. My Lord, I had not ſaid this, but I have been inſulted ſince I came into the Hall: A Gentleman came and told me, Either you muſt die, or the Plot muſt die. My Lord, this is Uſage inſufferable in a Chriſtian Nation; and I think I can lay my Hand upon my Heart and ſay, I have done nothing againſt my Conſcience.

Mr. Serj. *Pengelly.* If Mr. *Layer* hath any Objections to the Indictment he may make them, but ſhould not go on in this Manner.

Priſoner. My Lord, I hope I ſhall have theſe Chains taken off, that I may have the free Uſe of that Reaſon and Underſtanding which God hath given me. They have given me the Strangury to that Degree that is very painful, and I am told your Lordſhip is afflicted with that Diſtemper.

I hope theſe Chains ſhall be taken off in the firſt Place, and then I hope I ſhall have a fair and a tender Trial.

L. C. Juſt. There have been a great many Things ſaid by which we cannot examine into. You have given a general Charge of ſome People uſing you ill, your Expreſſions are not juſt and right; you charge no particular Perſon; we can take no Notice of them.

As to the Chains you complain of, it muſt be left to thoſe to whom the Cuſtody of you is committed by Law, to take care that you may not make your Eſcape; when you come to your Trial then your Chains may be taken off. Conſider the Matter of this Day; if you have any Objections to the Indictment the Court will hear them; if not, you muſt plead.

Mr. *Att. Gen.* I am ſure nothing is intended but that he ſhould have a fair Trial; but to complain here of hard Uſage, of Chains and Impriſonment, carries with it a Reflection of Cruelty, and we know what Effect theſe Things may have Abroad. Sir *Robert Raymond.*

My Lord, I don't believe there is any Occaſion for ſaying any thing more in anſwer to this, than that the Priſoner hath been kept, as all Perſons in his Circumſtances are, when they have been attempting to make an Eſcape; there was an Attempt of that Nature made by him, and I believe no Body will ſay, but on ſuch an Occaſion, there is Reaſon to take particular Care that he may not eſcape. My Lord, as to any other Matters of Hardſhip, I hope what he ſays is not ſo; I very believe it is not, but that he hath as much Freedom and Liberty as is proper and uſual. And as to what is ſaid in reſpect to the Man that inſulted him in the Hall, I know nothing of it, nor heard of it before; but can't but obſerve that it is an eaſy Matter for People to contrive ſuch a Thing in concert together, with ſome particular Views; and I don't know but if the Fact was ſo, it might be ſome body ſet on by himſelf that did it.

L. C. Juſt. Alas! If there hath been an Attempt to eſcape, there can be no Pretenſion to complain of Hardſhip: He that hath attempted an Eſcape once, if true, ought to be ſecured in ſuch Manner as to prevent his eſcaping a ſecond time. The Gentleman Goaler, what doth he ſay?

Gentleman Goaler. My Lord, He never attempted to eſcape ſince he was in my Cuſtody.

Mr. *Att. Gen.* No, it was before.

Mr. *Soll. Gen.* My Lord, This Complaint is made for no other Purpoſe but to captivate the Minds of the By-ſtanders, without any juſt Grounds in the World; for if the whole of the Complaint made and aggravated in this ſolemn Manner be conſidered, it amounts only to this, That a Priſoner who ſtands charged with ſo great an Offence as High-Treaſon (who I admit, notwithſtanding the Weight of that Charge, ought to have all the Juſtice and all the Opportunity of defending himſelf which the Law allows) I ſay Sir *Philip York.*

it amounts to no more than this; that a Priſoner in theſe Circumſtances is brought up hither under a Guard, and in Fetters, as Perſons in that Condition uſually are. It is very well known that when this Gentleman was in the Cuſtody of a Meſſenger, he not only made attempt to eſcape, but actually eſcaped, got out of a Window two Pair of Stairs high, and from thence over the Water into *Southwark*; and ſince that is ſo, can there be any Colour to ſay that what was done afterwards was unwarrantable? I cannot help ſaying on this Occaſion, that it does not become the Candor a Perſon in the Priſoner's Circumſtances ought to ſhew, to aggravate and make ſuch a Miſrepreſentation of the Uſage he has received. As to what has happened in the Hall we know nothing of it, nor can poſſibly tell how true it is. If any ſuch thing was ſaid, it is not impoſſible to have been by ſome body that was ſet there on Purpoſe by the Friends of this Gentleman. I ſay thus much, my Lord, not becauſe I think it material to the Buſineſs of this Day, but becauſe I would not have it gone away with that there has been any Hardſhip put upon the Priſoner contrary to Law. No, his Majeſty, who makes the Laws of the Land the Rule and Meaſure of all his Actions, though he will have Juſtice done to himſelf and his Government againſt any Perſon that ſhall conſpire to overthrow it, yet he will ſuffer no Hardſhips to be done even to ſuch Perſons, contrary to Law; and nothing has been done in this Caſe but what was legal and abſolutely neceſſary.

Mr. *Hungerford*. My Lord, I beg to be indulged a few Words; That he is in Chains now is demonſtrable; and he hath told me, when in the *Tower* with him, that they are ſo grievous to him that he cannot ſleep but in one Poſture, *viz.* upon his Back, and that he hath not attempted to eſcape out of the *Tower*, is given in Evidence by the Gentleman Goaler, who hath, and will, I verily believe, execute his Authority with all Humanity, for he now helps to hold up his Chains, otherwiſe the Priſoner could not ſtand. My Lord, it is ſaid it is nothing but what is uſual in Caſes of this Nature. My Lord, I believe I might challenge them to give an Inſtance where any Priſoner was ſhackled with Irons in the *Tower* before Mr. *Layer*; his Majeſty's Priſoners of the *Tower* are ſuch Strangers to this Uſage, that they had not the very Materials there, they were ſent for from *Newgate*, and I hope they will be carried back again thither. Your Lordſhip hath hinted it as an Indulgence intended to him when he comes to his Trial, that his Irons ſhall be taken off: But I humbly inſiſt upon it that by Law he ought not to be called upon, even to plead, till his Fetters are off: My Lord *Coke* * is clearly of that Opinion in his Pleas of the Crown; and it is admitted on all Hands, that when he comes to be tried his Shackles muſt be off, and upon a Debate it was ſo determined in *Cranburne*'s † Caſe. The only Reaſon aſſigned for putting of Irons at all upon a Priſoner, is to keep him in ſafe Cuſtody (for the Laws of *England* allow of no Tortures) and the Reaſon why they are taken off in the Courſe of Proceeding againſt him in a Court of Juſtice, ſeems to be that his Mind ſhould not be diſturbed by any Uneaſineſs his Body or Limbs ſhould be under; and as to the Diſtinction that his Chains ſhould be on when he Pleads, becauſe but for a Moment, or a ſhort Time, and off when he is Tried, becauſe that will be of longer Duration; it is poſſible that what we have now to ſay may be as long as ſome Trials. I ſhould (with Submiſſion) think that ſomething of the Dignity of the Court might be conſidered in this Matter, for a Court of Juſtice, the higheſt in the Kingdom for criminal Matters, where the King himſelf is ſuppoſed to be perſonally preſent, to have a Man plead for his Life before them in Chains, ſeems to be very unſuitable. He is now before the ſame awful and juſt Tribunal which he will be before when he is tried, and why not therefore without Chains as well now as then; and as to the ſafe Cuſtody intended by the Irons, is the Man like to run away here? Is he not here too well guarded to eſcape?

* 3 *Inſt.* 35.

† *Trial* 154.

Mr. *Ketelbey*. If your Lordſhip pleaſe to favour me a few Words. My Lord, What hath been his Uſage in bringing him up hither I cannot tell; what the Uſage of the *Tower* is with reſpect to the putting Chains upon Priſoners, I am ignorant of; but this I muſt beg Leave to ſay, that he is entitled to have his Chains off before he pleads, * in point of Law: The Authorities for it are my Lord *Coke* in his third *Inſtit. Fol.* 34. who ſays, that *when Priſoners come in Judgment to anſwer, they ſhall be out of Irons, and all manner of Bonds, that their Pain may not take away their Reaſon, nor conſtrain them to anſwer, but at their Free-Will* *; and in *Fol.* 35. he cites the Words out of the *Mirrour*, Chap. V. Sect. 1. *It is an Abuſe that Priſoners be charged with Irons, or put to any Pain before they be Attainted.* At the Trial of *Cranburne*, when he was brought up here before my Lord Chief Juſtice *Holt*, he inſiſted that his Chains ſhould be taken off before he pleaded, and it was ordered. This was likewiſe mentioned in the Trials of *Dorrel*, *Gordon*, and *Kerr*; when they came up in their Irons to plead, it was moved at firſt that thoſe Irons ought to be taken off. The Court declared, that *if the Priſoners inſiſted on it, it ought to be done*: But they did not inſiſt on it, they rather choſe to wave that Privilege than undergo the Trouble of having them knock'd off in Court. There is a Reſolution in this Caſe. In the 10th *Fol.* of *Kelyng*, it is expreſly declared on a Conſultation of all the Judges in *England*, *That a Priſoner ought to have his Irons taken off before he pleads.*

* *Brit. c.* 5. *fol.* 14.

L. C. Juſt. The Caſe of *Cranburne*, you will find that Authority is when the Party was called upon to plead, and was tried at the ſame Time.

No doubt when he comes upon his Trial, the Authority is that he is not to be *in Vinculis* during his Trial, but ſhould be ſo far free, that he ſhould have the Uſe of his Reaſon, and all Ad-

* *Cum autem capti in judicio produci debeant, non producantur armati, ſed ut judicium recepturi, nec* ligati, *ne videantur* reſpondere *coacti*, Fleet. Lib. I. cap. 1.

The Priſoner at the time of his *Arraignment* ought not to be in *Irons*. *Hales*, *P. C. p.* 212.

Tit. *Arraignment*.

See *Hawkins*'s Pleas of the Crown. *Part* 2. *p.* 308.

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vantages to clear his Innocence. Here he is only called upon to plead by Advice of his Counſel; he is not to be tried now, when he comes to be tried, if he makes that Complaint, the Court will take Care he ſhall be in a Condition proper to make his Defence; but when he is only called upon to plead, and his Counſel by him to adviſe him what to plead, why are his Chains to be taken off this Minute, and to be put on again the next? It hath been ſaid (I cannot underſtand the Meaning of it) he is too well guarded, I don't think a Man charged with High-Treaſon of this Nature, can be ſaid juſtly to be too well guarded, eſpecially if it be true what hath been ſuggeſted, that he hath endeavoured to make his Eſcape; that will juſtify more than what the Law allows in other Caſes.

Mr. *Hungerford*. My Lord, I beg leave to explain myſelf, what I mean by ſaying too well guarded, I mean ſufficiently guarded.

L. C. Juſt. Have you any thing more to offer? This is nothing but to captivate the People, and to make Impreſſions upon them that are not juſt, or elſe what ſignifies his Chains being taken off this Minute, and afterwards put on again the next? This is nothing but to bring the People to have an unjuſt Senſe of the Crime with which he is charged.

Mr. *Hungerford*. My Lord, we might humbly apprehend and hope that the better to prepare himſelf for his Trial, he might continue without his Chains till after that Time.

L. C. Juſt. I am of another Opinion, and if we ſhould order his Chains to be taken off, and he eſcape, I don't know but we are guilty of his Eſcape. As your Client hath ſaid, he ſhall have a fair and a juſt Trial; but to make Objections in Matters of this Nature, is to caſt a Reflection on the Court, for not doing that which is not in their Power to do.

Mr. *Hungerford*. I am, my Lord, of Counſel with the Priſoner, I have been ſo appointed by your Lordſhip, and I aſſure your Lordſhip that I, and I dare anſwer for the other Gentleman that is concerned in the ſame Service with me, ſhall make uſe of that Power and Privilege you are pleaſed to give us, as we ought.

My Lord, I have read over the Record and the Indictment, we have a Copy of both, according to the Direction of the Act of Parliament: I know we have at preſent a Right to object to four ſorts of Things, *viz*. miſwriting, miſpelling, falſe or improper *Latin*: We are confined to make whatever Objections occur to us on theſe Heads at this Time, and have not the Liberty to make it afterwards; but there are likewiſe ſome Objections of another Nature, which we may have Liberty to make at another Time.

I have here in my Hand the whole Record delivered to the Priſoner, in which, not only the Indictment is ſet forth, but the Commiſſion of *Oyer* and *Terminer*. After the Commiſſion hath enumerated the Names of the Commiſſioners, it goes on, and ſays, what are the Offences that they are authorized to enquire of, as High-Treaſon, Miſpriſions of Treaſon, and other Offences of a leſſer Degree; then it goes on and ſays what the Perſons ſhall be, concerning whom this Inquiry ſhall be made, *Et per quos vel per quem, cui vel quibus, quando, qualiter, & quomodo, & de aliis Articulis & Circumſtantiis, præmiſſa & eorum quodlibet ſeu eorum aliquod vel aliqua, qualitercunq; concernen', plenius veritat'*. My Lord, I have look'd into this Form, and conſidered the Words with all the Accuracy I can, and have endeavoured to render them into *Engliſh*, but cannot; I muſt ſay I look upon thoſe two Words *plenius veritat'*, as placed in this Record, to be Nonſenſe, and not capable of being rendered into *Engliſh*, for they import no meaning at all. It is a Blemiſh in the Commiſſion itſelf, and if ſo, the Enquiry taken by Vertue of that Commiſſion muſt fall to nothing, and conſequently this Indictment muſt be naught. I have been ſo exact I have looked into the Forms of theſe Indictments, taken by Vertue of Commiſſions of *Oyer* and *Terminer*. My Lord Chief Juſtice *Coke* hath, for the ſake of Poſterity, I ſuppoſe, given us the Form of the Commiſſion of *Oyer* and *Terminer* in his Time; in that Form of his theſe Words are entirely left out; they ſeem to me to be Words of no Signification, therefore we hope there ſhall be no further Proceedings till this is ſet right, and that the Indictment ſhall be quaſh'd.

Mr. *Ketelbey*. My Lord, there are other Objections, whether is it your Lordſhip's Pleaſure that we ſhould go on this firſt, or that we ſhould mention the others, and ſo go upon them all together?

L. C. Juſt. Make all your Objections together.

Mr. *Hungerford*. Then, my Lord, in the Cloſe of this Commiſſion it is ſaid the Jury were charged to enquire, but doth not ſay for what; but that Objection may be made another Time, and therefore I will not trouble your Lordſhip with it now. My Lord, the firſt Thing that occurs to me in the Indictment itſelf, and which certainly, if we prevail in, the whole Proceedings are wrong; this Gentleman's Name is not writ nor ſpelt right, *Jurator' pro Dno' Rege*, &c. *ſuper Sacramentum*, &c. *quod Chriſtopherus Layer*, *Chriſtopherus* is there writ with an E, whereas it ſhould be *Chriſtophorus* with an O; and if the Dictionaries and Lexicons are any Authority we are right.

Theſe are the Objections which have occurred to me, the Gentleman joined with me in this Service, hath ſome other Remarks to make.

Mr. *Ketelbey*. My Lord, As it is your Lordſhip's Pleaſure to appoint us to be Counſel for this Gentleman, I ſhall not make any Apology for our appearing on his Behalf, leſt I receive the ſame Reproof from the Court, which a Gentleman in my Station once received upon a like Occaſion.

My Lord, we are at this Time proper to lay theſe four Points under your Lordſhip's Conſideration, which if we had ſtaid till after Plea pleaded by the *Priſoner*, would have been too late; that Matter hath been often ſettled and determined by your Lordſhip, and I ſhall ſay no more to that, I believe they don't object to it; now therefore is the only Time to make theſe Objections.

My Lord, The firſt that hath been mentioned by Mr. *Hungerford* is in the Caption of the Indictment as to theſe Words *plenius Veritatem*; in our Copy, it is *plenius Veritat'* with a Daſh, that it may be taken in any Caſe, but I ſubmit it to your Lordſhip whether it can be made Senſe, or is proper *Latin* in any of the Caſes either of the ſingular or plural Number, that there can be made

made any Grammar of it, or that there is any regular or preceding *Verb* that can govern it in any Case whatsoever; they might have put in any Words entirely inconsistent with respect to the Part preceding or subsequent; leave out these Words and the other Part of the Sentence is plain and intelligible, but, put in the Words and it is otherwise.

And especially since we have the Authority of my Lord *Coke* where these Words are not in; how they came to be put in, or of what Use they are, your Lordship will observe on reading the Caption of the Indictment, *Ad Inquirend'*, *&c. plenius Veritat'*.

Taking Exceptions to the Caption of the Indictment hath formerly been objected to, but I believe that Right cannot be disputed at this Time.

As to the second Exception, that, in relation to *Christopherus*, we submit it to your Lordship if that be not expresly within the Defects mentioned in the Act of Parliament Miswriting, Misspelling, false and improper *Latin*; nay, whether it is not subject to censure under each of these four Heads.

My Lord, it was impossible to bring all my Authorities, upon this Point, along with me; but I have here in Court several of the best Dictionaries and Lexicons which shew the true Word to be *Christophorus*; and I believe the Gentlemen of the other Side can't produce one Instance in any authentick Book either *Greek* or *Latin*, but it is always spelt with an O and not with an E, it is *Christophorus* from πέφορα, the *Præteritum Medium* of the *Greek* Verb φέρω; and the Rules of Etymology and Formation of *Greek Verbals* evince that it must be so and cannot be otherwise; and by all the *Latin* Dictionaries, the *Latin* Word for *Christopher* is *Cristophorus*.

L. C. Just. How do we know what his Name is? You must plead it in Abatement; we don't know his Name; he might be christened *Christopherus* for ought we know.

Mr. *Ketelbey*. My Lord, for false Spelling——

L. C. Just. How doth that appear to us? You are wrong in making your Objection at this Time, we can't take notice what his Name is; in the Record of the Indictment he is called *Christopherus*. Can we enquire what his true Name is, whether in *English* it is *Christopher* or *Christopherus*? We can't tell what his Name is, perchance his Name may be *Christopherus*, and the Name by which he might be christen'd; I desire I may not be understood as if I would prevent you from offering any thing that is material for your Client, but if I can satisfy you that you are improper in Form, it may save the Time of the Court; but if you can offer any thing material, we are ready to hear it.

Mr. *Ketelbey*. My Lord, I hope your Lordship will pardon me, here is the Life of a Man concern'd, and as I would not willingly offer any thing to your Lordship that in the like Cases hath been over-ruled, so neither would I omit any thing that may be material for the Prisoner, whose Defence the Court has intrusted us with; therefore I will go on to the other Objections that we think to be improper *Latin*; *compassavit*, *imaginatus fuit*, *& intendebat*. These are the Words, I don't know whether this *Latin* will go down in *Westminster-Hall*, but I am satisfied it would not in *Westminster-School*.

Here is the *Et Intendebat*, *Et* a Conjunction Copulative between Verbs in several Tenses; here is *Compassavit* the Preterperfect Tense, *Imaginatus fuit* the Preterperfect Tense, and *Intendebat* the Preterimperfect Tense: Why should not the last Verb have been put into the Preterperfect Tense, according to the Rules of Classical *Latin*, as well as the two former? Therefore we submit it how far it will go as to vitiating the Indictment in Point of false *Latin*.

My Lord, there is one Word more, *(Seisiend')* the Overt-Act, as laid in the Indictment, is, that the Prisoner *Conspiravit ad sacram Personam Domini Regis capiend', seisiend', & imprisonand'*; by the Words that are coupled with it, I suppose *Seisiend'* is intended to mean, the taking, or laying violent Hands upon his Majesty's Person; but sure there was never such a Word in any Indictment before, nor to be found in any Author whatsoever; 'tis neither Classical *Latin*, Law *Latin*, nor to be met with among *Littleton*'s Barbarisms, never naturalized nor inoculated into antient or modern Use; 'tis a mere fictitious Word coin'd for this very Purpose without any Precedent, any one Instance to warrant it.

My Lord *Coke*, in his *1st Instit. Fol.* 17. says, That the Word *Seisitus* cometh of the *French* Word *Seisin*, and that in the Common Law 'tis properly applied to Freehold, in Contradistinction to *Possessionatus*, which relates to Chattels: For *Seisitus* and *Possessionatus* are mentioned as Terms of Art, Technical Words in the Law, that by long Use have acquired to themselves one peculiar and determined Signification; for that Reason I don't object against the Word *Compassavit* in this Indictment, it having been always used in Indictments of High-Treason to express compassing the Death of the King, ever since the Statute of *Edward* the Third; so *Murdrare*, *Felonia*, and several others, are known Terms of Art in the Law. But, where did they meet with the Word *Seisiend'*? And if they would fancy it to be a Gerund of some unknown Active Verb, how came they to give it this Sense, to make it signify the same as *Capiendum*?

My Lord, I must beg leave to say, that I apprehend the very Gist of this Indictment, (at least so much of it as relates to this Overt-Act) entirely depends upon this Word *Seisiend'*; and if it does appear to your Lordship to be insignificant, barbarous, false or improper *Latin*, I hope we are proper under the Authority of the late Act of Parliament, humbly to insist upon this Objection, and that it is sufficient to overthrow the whole Indictment.

My Lord *Coke*, in *Calvin*'s Case, says, that Indictments for High-Treason ought to be drawn with the greatest Accuracy and Nicety; but if Mr. *Attorney* will please to shew me, that this Word was ever once used to this Purpose, I will wave my Objection, and admit it to be as elegant a Word as any in the whole Indictment.

L. C. Just. I think before the King's Counsel make any Answer to that, we had best have that Part of the Indictment read, that we may the better judge of it.

Cl. of the Cr. reads, *Quod tu* Christopherus Layer, *&c. ad Capiend' Seisiend' & Imprisonand'*, &c.

L. C. Just. *Ad Capiend' & Imprisonand'*. Won't these Words do, suppose the other Word *ad Seisiend'* insignificant?

Mr. Serj. *Pengelly*. My Lord, theſe Objections have been made with ſo much Ceremony, and uſher'd in with ſuch Pomp, as if ſomething elſe was meant, than the quaſhing this Indictment.

We apprehend ſome of them are improper, and others which may be proper at this Time, are of no Force.

The Objections to the Commiſſion, we apprehend are improper; it is not in the Power of the Court to quaſh the Commiſſion, and therefore to make mention of Miſ-ſpelling, and of falſe and improper *Latin* therein, ſignifies nothing. As to the Indictment itſelf, the Court hath a Power, and if they think proper, if there be ſufficient Cauſe, may quaſh it; but the Commiſſion iſſues under the Great Seal, and that Part of it returned here, is not under the Power of this Court to deſtroy; but upon reading it, we think this Objection will quite vaniſh; theſe Words are uſed in all Commiſſions of the like Nature, and are inſerted in the very Form of the Commiſſion, and the Caption of the Indictment publiſh'd in the Treatiſe, allow'd by all the Judges of *England*, call'd, *A Collection of Statutes relating to High-Treaſon, compos'd for the Aſſiſtance of the Juſtices in* Scotland; and becauſe of the ſuppos'd Difficulty of underſtanding theſe Words, I will, for the Sake of the Gentlemen of the other Side, read them in the Order they are to be conſtrued, thus, *Ad Inquirend' plenius Veritatem per ſacrum probor' & legal' Hom', &c. de quibuſcunq; Proditionibus Miſpriſſionib', &c. per quoſcunq; & qualitercunq; Hit' Fact', &c. ac de aliis Articulis, &c. & ad eaſdem Prodition' & al' Premiſs' audiend' & terminand'*; here they are to enquire more fully the Truth, of and concerning all Treaſons, Miſprisions of Treaſon by any Perſon whomſoever committed, *&c.* And if the Words (*plenius Veritat'*) had immediately followed the Word (*Inquirend'*) every Body at firſt reading muſt be ſatisfied that no Objection could be made thereto; and the Objection now is only made on Account of the placing theſe Words at the End of the Sentence. But it makes no Difference in the Conſtruction or Senſe; how otherwiſe can it be conſtrued or underſtood? But to enquire more fully the Truth of thoſe Offences, there enumerated, and what Perſons are guilty, *&c.* And therefore I take it, that the Form of the Commiſſion is proper, and will be juſtified, not only by the Senſe of it, but by the uſual and common Courſe of Proceedings.——— As to the next Objection, we apprehend that hath been already over-ruled; the Word (*Chriſtopherus*) with an *E*, and not with an *O*: And if there be any Difference in the Name, that it muſt be pleaded in Abatement, becauſe if they would take Advantage of it, they muſt plead that his Name is otherwiſe than is expreſſed in the Indictment. This Man's Name *Chriſtopherus* may be with an *E* as well as an *O* for ought appears: But we apprehend, that the Name *Chriſtopher* is ſeldom writ in *Latin* with an *O*, but uſually with an *E*; if they think there is any thing material in the Objection, let them plead it in Abatement, and we are ready to anſwer them.

My Lord, as to the next Objection, that the three Verbs which charge the High-Treaſon, viz. *Compaſſavit, Imaginatus fuit, & Intendebat*, that they are not in the ſame Tenſes; we ſubmit that in the ſtricteſt *Latin*, there is no Neceſſity the laſt Verb ſhould be of the ſame Tenſe with thoſe that go before the Copulative (*Et*): Sure, tho' *Compaſſavit* and *Imaginatus fuit* be in the Preterperfect Tenſe, yet *Intendebat* may be well added in the Preterimperfect Tenſe, and that will make no Difference, they being all three alledged and found in the Time paſt, before the Indictment exhibited.

My Lord, the next Objection which they ſeem to rely upon, is at the Concluſion of the Indictment, and that is to the Word (*Seiſiend', &c.*) They ſay, the Precedents have been look'd into, and there is no ſuch Word to be found in any Indictment of High-Treaſon; I beg leave to ſay in Anſwer, that ſince the Aſſaſſination-Plot againſt King *William*, there hath been no ſuch villanous Attempt of this Nature; therefore no Wonder if it cannot be found in other Indictments where there has been no Occaſion for the Word. This is an Overt-Act of conſpiring and agreeing to take, ſeize, and impriſon, the very Perſon of the King; and it muſt be laid according to the Fact itſelf; but if this be not a proper Word, tho' I think the Word is proper and ſignificant, yet becauſe this is not made uſe of in alledging the Treaſon itſelf, but the Overt-Act or Evidence of the Treaſon, it will not vitiate that Part of the Indictment: For if any one of theſe Words alledged is proved upon the Trial, the Priſoner ought to be found Guilty, whether he compaſſed to take the Perſon of the King, or to ſeize his Majeſty, or to impriſon and detain him; any one of theſe Attempts is ſufficient, if proved, and the Priſoner ought to be convicted. There was an Objection of this Nature taken upon one of the Trials for High-Treaſon, before my Lord Chief Juſtice *Holt*, but he was pleaſed to ſay, that in alledging the Overt-Acts, where ſeveral Overt-Acts are alledged, or ſeveral Words are uſed to expreſs the ſame Overt-Act, if they were miſtaken in one of the Words, yet if there were other Words ſufficient in the Indictment to expreſs the Overt-Act; or although one entire Overt-Act was inſufficiently alledged, yet if there was another Overt-Act well laid, the Court would not quaſh the Indictment, becauſe this would be to deprive the Crown of the Right of giving Evidence to prove any other Part of the ſame Overt-Act, or any other Overt-Act alledged in the Indictment; ſo that we hope this is not a proper Objection, becauſe the Court cannot quaſh the whole Indictment if any other Overt-Act is ſufficiently expreſſed, but the Indictment muſt ſtand. ——But the Word is proper, becauſe the Words *Seiſire ad Seiſiend'* are Terms known in the Law, and it is frequently uſed in Actions of Treſpaſs, *Quod cepit, ſeiſivit, & abduxit*, or *aſportavit*. My Lord, we think the Word *ad ſeiſiend'* is a proper Expreſſion in this Caſe, to ſignify the Attempt or Deſign to ſeize and apprehend the Perſon of his Majeſty; and we hope there is nothing in theſe Objections.

Mr. *Att. Gen.* My Lord, we are not againſt the Gentlemen of the other Side's inſiſting upon every thing that may be for their Client's Service. But ſure theſe Objections have nothing in them; there is no Colour of Reaſon to ſupport them. My Lord, as to the Exception taken to the Commiſſion, let us conſider, if there was any Weight in it, how it can poſſibly be taken at this Time. ——— By Vertue of the Act of Parliament paſſed in the 7th Year of the Reign of his late Majeſty King *William*, it is provided,

That

That no Indictment for any of the Offences aforementioned in that Act, which are Treasons, *&c.* nor any Process or Return thereupon, shall be quashed on the Motion of the Prisoner or his Counsel for Mis-writing, Mis-pelling, or false or improper *Latin* (under which last Words, the Counsel for the Prisoner would entitle themselves to take this Objection) unless such Exception shall be taken and made in the respective Court, where such Trial shall be, by the Prisoner or his Counsel assign'd, before any Evidence given in open Court upon such Indictment.—— But the Commission is a Thing distinct, and neither Indictment, Process, nor Return thereupon. And by Consequence no Objection can be made to the Commission at this Time by Vertue of that Act: But however, because they may not trouble us with these Objections at another Time, we beg leave to answer them now.

My Lord, these Words *(plenius Veritatem)* are the very Point of the Inquiry of the Commissioners of *Oyer* and *Terminer*, for they are to enquire, by the Oaths of lawful Men of the Country, fully of the Truth of all Treasons, Misprisions of Treasons, *&c.* committed in that County, and that is the Tenour of the Commission. In the Book printed by the Approbation of all the Judges of *England*, soon after the Union of the two Kingdoms, all the Rules and Methods of Trial in Cases of High-Treason are laid down, there is the Commission of *Oyer* and *Terminer* printed at large; and it is exactly in the same Words with this; and your Lordship may please to observe, that immediately after those Words *plenius Veritatem* there is a Comma, and none before; the whole Sentence before is entire, and therefore in Construction these Words, *plenius Veritatem*, refer to the Words *ad inquirendum*, at the Beginning of the Sentence; and the Sense is plain, that the Commissioners are to enquire by the Oaths of good and lawful Men of the County, and by other Ways and Means, *&c. plenius Veritatem, de quibuscunque Proditionibus, Misprisionibus, &c.* and then the Commission goes on, and there comes after the Comma, *& ad easdem Proditiones & alia Præmissa hac vice audiend' & terminand' secund' leges, &c.* In our legal Proceedings in *Latin*, we are not so nice as to confine ourselves to the *Latin* of the Classicks; but this is very proper *Latin*, and the disjoining of the Words *plenius veritatem*, from the Words *ad inquirendum*, by which they are govern'd by the Interposition of so many Words, is no Objection; for nothing is more common in the best Authors, than placing the most material Words at the Close of a very long Sentence, which in Point of Construction must refer to others at the Beginning. And therefore I hope we shall hear no more of this Objection.

As to the *Christopherus* being with an E instead of an O, that is not a proper Objection at this Time. No Man will pretend to say, he may not be christen'd by that Name, as *Henry* is the usual Name, *Harry* is the common Nick-name for *Henry*, yet a Person may be christen'd *Harry*, and so have many Persons been.

But, my Lord, we say this is a Word used in all the Law Proceedings for *Christopher*, and spelt in this very manner with an E.

As to the other Objection; as to the Alteration of the Tense in the Words *compassavit, imaginatus fuit & intendebat:* The Objection is made as if we were tied down to those exact Forms of Grammar; if the Sense is plain, if the Facts are explained by proper *Latin* Words, it is enough for us, whether they are carried on sometimes in one Tense, and sometimes in another, provided they sufficiently charge the Fact to be done.

The last Objection is the Word *seisiend'*, that it is not a Word known in the Law; if that would hold, it would not quash the Indictment, because there are several other Words to the same Effect, which sufficiently express this villanous Overt-Act, without this Word *seisiend'*; for it is laid, that the Prisoner did propose, consult, and agree, *ad sacram Personam dicti Domini Georgii nunc Regis, &c. capiend', seisiend, imprisonand', & in Custod' detinend'*. But we insist, that this is a very proper Word. In the Court of Exchequer the Words used in Cases of Seizures is *seisivit*. Writs issue commanding the Sheriff *seisire* such Lands, *&c.* into the King's Hands, and the Sheriff returns *seisiri feci*; so that if this Word was look'd upon as an unknown and unintelligible Word, what must become of many Judgments and Proceedings in that Court? It is a Law Word that is here applied to the Person of our Sovereign, and as it is in the Proceedings beforementioned applied to seizing Lands, *&c.* Why may it not be applied to the Seizing of a Person? And then if *seisire* be proper, the Gerund from that must be *seisiendum*. And therefore we apprehend, my Lord, that this is a plain Answer, and that there is no Colour of Reason for this Objection.

Mr. *Soll. Gen.* My Lord, as I apprehend these Exceptions have no real Foundation, nor scarce any Colour in themselves, so I don't know whether it would not be giving too much Credit to them, for so many of the King's Counsel as attend your Lordship on this Occasion, to spend the Time of the Court in giving Answers to them. The true Answers, and all the Answers which can be given, have been already offer'd and very fully enforced; and therefore I shall not trouble your Lordship with any thing further.

Mr. *Hungerford.* My Lord, I beg a few Words by way of Reply. As to the first Objection, we hope it is not answer'd: We object against the Words *plenius veritat'* as Words of no Sense or Meaning, as ranged or placed in this Indictment. Mr. *Attorney* hath endeavoured to make them Sense by transposing them, and inserting *plenius veritat'* ten Lines before what the Indictment hath. We must take the Words as they are in the Indictment: And if they are not Grammar or intelligible there, the Objection still holds. I know not what Liberty the King's Counsel hath to transpose the Words. I know School-Boys sometimes pick up Words without Regard to Grammar, to make what they call Nonsense Verses: But I never knew an Attempt before by transposing of Words, to make Nonsense Grammar, Prose, or Poetry. There is one Thing that hath been mentioned, that the Judges have settled the Forms of Proceedings in Cases of High-Treason by Direction of the House of Lords, and this *plenius veritat'* is got into the Form inserted in that Treatise: That Book, my Lord, notwithstanding the solemn Allowance of it by the Judges, is not, with Submission, a conclusive Authority: It was denied to be so in the Case of *Matthews*; which Case I can the better speak to, because I was of Counsel in it. The Ob-

Objection taken in the Caſe of *Matthews* was to the Pannel of the Jury, for that the Addition and Places of Abode of the Jurymen were not inſerted in the Pannel, according to the Directions of that Book, the better to guide the Priſoner in his Challenges. My Lord Chief Juſtice *King*, who preſided at that Trial, aſſiſted by all the then Judges of *England*, (except your Lordſhip who was abſent) over-ruled that Exception; and I think the reſt of my Lords the Judges, now preſent, concurred in that Reſolution. Wherefore, if we have no Authority to combat with, but the Authority of that Book, which hath been ſolemnly denied to be a good Authority, we hope this Objection ſhall ſtand.

My Lord, as to the Word *Chriſtopherus*, without doubt the Etymology of the Word is as Mr. *Ketelbey* hath opened; and there is this further to juſtify that way of Spelling which we contend for, even the two firſt Syllables of the Word in the Indictment are *Chriſto*, as the *Greek* with an O, and not *Chriſtu*; and in Conformity with the *Greek* Spelling in the two firſt Syllables of the Word, we hope the next Syllable muſt be ſpelt ſo too: But ſince it is contended, that the Subſtance of this Objection muſt be put into a Plea in Abatement, we ſhall wait the Direction of the Court as to that Matter. As to the Words *compaſſavit, imaginatus fuit & intendebat*, there is ſomething in that Objection too, they all relate to a Time paſt, but they are in different Tenſes or Times; there is the Preterperfect and Preterimperfect Tenſe, and there is the Conjunction Copulative between them, as if both Tenſes implied the ſame Times, which it is certain they do not, and therefore they Charge nought; for a Thing cannot be done lately and formerly, and both at the ſame Time.

As to the other Words *ad capiend'*, *ſeiſiend' & impriſonand'*, we are upon the Forms of an Indictment, and muſt be govern'd by the uſual Forms: I believe there is no Inſtance on Record, where theſe Words are made uſe of in any Accuſation of this Kind; for which Reaſons we humbly hope this Indictment ſhall be quaſh'd.

Mr. *Ketelbey*. My Lord, I beg leave to offer a Word or two by way of Reply: Mr. Serjeant *Pengelly* is pleaſed to ſay, that Senſe may be made of theſe Words, and that *plenius veritatem* as it is, is good *Latin*, by lifting theſe Words from the Bottom of the Sentence to the Top, and making them follow *ad inquirendum*. I believe four Parts in five of the Caption interfere between the *inquirendum* and the *plenius veritatem*, a whole Catalogue of Offences, ſeveral independent Sentences, different Times, Perſons, Places, Things all ſtationed between, and yet theſe Words are to be united: I would be glad to know by what Rule of Grammar this can be done.

As to the Word *Chriſtopherus*, I ſhall not further inſiſt upon that as a proper Objection under this Head, becauſe your Lordſhip ſeems to be of an Opinion that we ought to have pleaded it in Abatement.

As to the Word *ſeiſiend'*, it hath been ſaid it is a Word well known in the Exchequer, but they don't ſhew one Inſtance where-ever it was uſed: Indeed they mention a Precept to the Sheriff *ſeiſiri facias*, and the Return *ſeiſiri feci*, but what is that to *ſeiſiendum*; the one is juſtified by Uſage, the *ſeiſitus* as *ſeiſiri*; beſides *ſeiſiri* is there uſed in the very ſame Senſe which the Law hath impoſed upon it; it is to be put into Poſſeſſion, the Lands are ſo delivered by the Sheriff into the Hands of the King, that he becomes ſeiſed thereof, *ut de feodo & in jure Coronæ*, till an *Amoveas manus* be obtained: But if ever that Word was put into any Indictment to ſignify to ſeize and impriſon the King, 'tis entirely unknown to me.

Indeed here is one Piece of Doctrine offered, that if it holds good puts an End to all our Objections, and even to the Act of Parliament on which they are founded; but I muſt own it is entirely new to me: We are told there are other Words in the Indictment, and other Overt-Acts, and if one Act is ſufficiently expreſſed by any one Word, though there be Words that are improper and falſe *Latin*, yet it ſhall not vitiate the Indictment; what avails then this Act that empowers us to make Objections to Miſ-writing, Miſ-ſpelling, falſe and improper *Latin*? 'Tis impoſſible to ſuppoſe, that whoever hath the drawing of an Indictment ſhould make Faults and blunder on from firſt to laſt: No, in an Indictment for High-Treaſon the greateſt Care is, or ought to be taken in the Drawing of it; and where the Life of a Perſon, and all that is valuable is at Stake, the Law will not ſubject any one to ſuch dreadful Penalties and Forfeitures for an Offence expreſſed only by Words of an unknown or dubious Signification; and therefore, we hope that this goes to the whole, and that the Indictment ſhall be quaſh'd, or elſe it would be nugatory for us to be allowed to take Exceptions to one Part of the Indictment if the other were good.

I believe Mr. *Attorney* won't ſhew any Inſtance, (I ſubmit it to his greater Experience) where he ever knew one Overt-Act in an Indictment ſet aſide, and the reſt of the Indictment held good: Exceptions have ever ſince the making this Act been taken and argued by Counſel, and determined; but if this be a ſufficient Anſwer, ſurely they ſpent the Time of the Court to very little Purpoſe, in debating whether there were any Faults in the Indictment, when it was ſo eaſy to ſhew it was not faulty throughout. Mr. Serjeant *Pengelly* has been pleaſed to mention the Opinion of my Lord Chief Juſtice *Holt*, upon one of the Trials before him, that although one entire Overt-Act was inſufficiently alledged, yet if there was any other well laid, the Court would not quaſh the Indictment; I wiſh he had told us in what Trial, or where it is to be found, for I don't remember it in any of the printed Trials: As to what was mentioned, with regard to the Authority of that Book, for the Words *plenius veritatem*, Mr. *Hungerford* rightly obſerved, that the Authority of that Book was utterly denied at the Trial of *Matthews*; your Lordſhip was not there, my Lord Chief Juſtice *King* preſided then upon the Bench, that Book particularly directed, that not only the Names of the Jurors ſhould be inſerted in the Pannel, but alſo their Additions, and the Places where they lived; inſtead of that, the Copy of the Pannel delivered conſiſted only of a long Liſt of bare Names, no Additions, nor where they lived; whereupon we made our Objection, and inſiſted on the Authority of that Book. Notwithſtanding which, the Objection was then over-ruled, and conſequently we hope we ſhall not be pinn'd down to the Authority of this Book any more in this Caſe, than the other; for theſe Reaſons we hope your Lordſhip will be

of Opinion that the King's Counſel have not given a full Anſwer to our Objections, and that the Indictment ſhall be quaſhed.

Mr. *Hungerford*. My Lord, I beg leave to hand up this Precedent of my Lord *Coke*'s, where theſe Words are entirely left out.

L. C. Juſt. What is the uſe you would make of ſetting up an extrajudicial Opinion of my Lord *Coke*'s, as you call it, againſt the Opinion of all the Judges? Becauſe it is not in my Lord *Coke*'s Form, therefore it is not neceſſary or right; but at the ſame time you would have us governed by my Lord *Coke*'s Opinion, you would have us reject the Opinion of all the Judges. My Lord *Coke* may be wrong; the Opinion of all the Judges in an extrajudicial Caſe may be wrong; but it would be very ſtrange to give a greater Weight to the extrajudicial Opinion of my Lord *Coke*, becauſe he hath left the Words out, than to the Opinion of all the Judges that have put the Words in; neither is concluſive, but certainly the Opinion of all the Judges of later Times, muſt have more Weight, than the extrajudicial Opinion of a ſingle Judge at any former Time.

As to the Matter of this Objection, you ſay that in the Recital of the Commiſſion of *Oyer* and *Terminer*, in the Caption of the Indictment, it is ſaid the Commiſſioners had Authority to inquire *de quibuſcunq; Proditionibus*, &c. *plenius veritatem*; *plenius veritatem* comes in afterwards: We have been told of *Claſſical* and *Ciceronian Latin*, and if there be any Regard to be had to that, is any thing more common in every Part of *Cicero*, than to put Words laſt, that in Conſtruction muſt come firſt? I don't know any Rule that is laid down when the Words coming laſt, are in Conſtruction to be taken firſt, but only this, that the Conſtruction is to be according to the natural Senſe and Import of the Words; and if ſo, then in the Authority of theſe Commiſſioners, where it is ſaid they were to inquire *de quibuſcunq; Proditionibus*, &c. *plenius veritatem*, in Conſtruction the laſt Words muſt be taken firſt. You ſay as they ſtand it is Nonſenſe and ſignifies nothing, and the Words are nugatory; 'tis not material where they ſtand, they muſt be taken in that manner of Conſtruction as would make them ſignificant, that is, by taking the laſt Words, *plenius veritatem*, to go firſt in Conſtruction; then it is very proper and juſt, and all will be well.

As to the Matter of the Miſnomer that you have given up, and very juſtly, for you are proper to plead that in Abatement.

The next Objection is, you ſay here is improper *Latin*, *Compaſſavit* in the *Preterperfect Tenſe*, *Imaginatus fuit* in the ſame *Tenſe*, and *Intendebat* in the *Preterimperfect Tenſe*; take theſe Words by themſelves, ſuppoſe it had been *Compaſſavit* only, *Imaginatus fuit* only, or *Intendebat* only, would not either of theſe Words, whether in the Preterperfect or Preterimperfect Tenſe, have been ſufficient to have charged Mr. *Layer* with having ſome Time before compaſs'd and imagin'd the Death of the King? Every one of theſe Words charge him with the Intent of Compaſſing and Imagining, and that relates to a Time that is paſt, whether *Preterperfect Tenſe*, or *Preterimperfect*, that is not material: Then as to one of the Overt-Acts, as here be a great many to which no Objection is made, the High-Treaſon is compaſſing and imagining the Death of the King; the Overt-Acts are ſeveral, either is ſufficient to maintain the Treaſon of compaſſing and imagining the Death of the King. One of the Overt-Acts is, that he did deſign, conſult, and agree *ad Capiend'*, *Seiſiend'*, *& Impriſonand'*, the Perſon of the King. Suppoſe it had been *ad Capiend'*, *& Impriſonand'*, then you ſay it had been well enough, but the putting in this Word *Seiſiend'*, will vitiate the whole, becauſe it is an improper and vicious Word. I don't know that, nor dare not ſay in a Court of Law that it is an improper and vicious Word: You are told of a Court of Law where the Word is uſed, and hath the ſame Signification as in the Indictment; as to ſeize Lands into the Hands of the King, to ſeize Lands, or to ſeize the King's Perſon, the Word is the ſame, and if *Seiſire* is good, and enough to ſignify to ſeize Lands, *Seiſire* is enough to ſignify to ſeize the King's Perſon; therefore I think it is a proper Word, but whether it is or not, there is ſufficient in the Indictment to maintain the Charge againſt Mr. *Layer*; for he is charged with a Conſultation and Agreement to take the King, with a Conſultation and Agreement to impriſon and detain the King in Priſon: Theſe are ſufficient without the Word *Seiſiend'*, but the Word *Seiſiend'* hath been a Law Word, and uſed in our Proceedings at Law, never objected to; but if we ſay it would not ſignify a Seizing, we muſt ſet aſide half the Proceedings in the Court of *Exchequer*. Theſe are all the Objections you have made, and in my Apprehenſion they can be of no Uſe or Service to your Client; they ſignify nothing.

Mr. *Juſt. Powys*. I am of the ſame Opinion. Not the leaſt Doubt remains with me.

Mr. *Juſt. Eyre*. I think the Caption of the Indictment is in common Form, and the Exceptions to the Indictment itſelf are fully anſwer'd.

Mr. *Juſt. Forteſcue Aland*. I am of the ſame Opinion, and think the Objections to be of no Weight.

L. C. Juſt. The Objections being all overruled: Demand of him what he hath to plead.

Cl. of the Cr. Chriſtopher Layer, hold up your Hand. How ſay you, *Chriſtopher Layer*, are you Guilty of the High-Treaſon whereof you ſtand indicted, or Not Guilty?

Priſoner. I deſire my Plea of Miſnomer may be received. And I plead Not Guilty as to the Fact.

Cl. of the Cr. reads the Plea.

Et Chriſtophorus Layer ad Barram hic duct. in propria perſona ſua venit, & habito duditu Indictament. prædict. dicit quod ipſe eſt perſona in Indictament. prædict. mentionat. & inteſ. per nomen Chriſtopheri Layer, nuper de paroch. Sti. Andræ Holborne in Com. Mid. Ar. & verſus quem Indictament. prædict. prolat. exiſtit pro alt. Proditione prædict. & dicit quod ipſe ad Indictament. illud reſpondere compelli non debet, quia dic. quod ipſe diu ante tempus caption. Indictament. prædict. necnon ante tempus offenſi in Indictament. ill. ſpecificat. & fieri ſuppoſit. Baptizatus fuit per nomen Chriſtophori, & per id nomen Chriſtophori ſemper a tempore Baptization. ſuo hucuſque vocat. nuncupat. & cognit. fuit, & hoc parat. eſt verificare; unde ex quo ipſe non nominatur in Indictament. prædict. per nomen Chriſtophori, petit judicium de Indictament. illo, & ſi ipſe ad Indictament. prædict. ulterius reſpondere compelli debeat, &c. & quoad prodition. in Indictament.

ment. prædict. mentionat. ipſe prædict. Chriſtopherus Layer dicit quod ipſe in nullo eſt inde culpabilis, & inde de bono & malo ponit ſe ſuper Patriam, &c. *

J. Hungerford.
Abel Ketelbey.

L. C. Juſt. Your Plea is received. He hath pleaded in Abatement firſt, and then pleads over to the Treaſon. What ſay you to it?

Mr. Serj. *Pengelly*. It can't be expected that we ſhould have a Replication ready to their Plea in Abatement: We were not aware of this; therefore we ought to have time to draw up a Replication.

L. C. Juſt. What ſay you to it?

Mr. *Hungerford* and Mr. *Ketelbey*. My Lord, we have no Objection to it.

L. C. Juſt. Well, the Plea is recorded. Conſider now, the Queſtion on this Plea is, whether he was baptized by the Name of *Chriſtopherus* or *Chriſtopherus*.

Mr. Serj. *Pengelly*. My Lord, to morrow and next Day being Holy-days (elſe we ſhould have been ready by to morrow) we therefore pray, that he may be brought up again on *Saturday* by Rule of this Court.

Mr. *Hungerford*. I have ſome doubt whether it can be by Rule, or by *Habeas Corpus*.

L. C. Juſt. When once a *Habeas Corpus* hath been granted, and he is brought before us, we can order him to be brought again by Rule. He muſt be taken back again, and brought up here on *Saturday* next.

Die Sabbati 3° die Novembris 1722.

The Priſoner was this Day brought to the King's-Bench-Bar *by the Lieutenant of the* Tower, *in Obedience to the Rule of Court made the 31ſt of* October.

Mr. *Att. Gen.* My Lord, I have demurred to the Priſoner's Plea in Abatement, and pray the Demurrer may be read.

Cl. of the Cr. reads the Demurrer.

Et Robertus Raymond Mil. Attorn. Dom. Regis Generalis qui pro eodem Dom. Rege in hac parte ſequitur habito audit. placiti præd. in caſſation. Indictament. præd. ſuperius placitat. pro eodem Dom. Rege dicit quod idem placit. materiaque in eodem content. minus ſufficien. in lege exiſt. ad ipſum Chriſtopheram a reſpondend. ad Indictament. ill. excuſand. ad quod quidem placit. idem Attorn. General. neceſſe non habet nec per legem terræ tenetur aliquo modo reſpondere. Et hoc idem Attorn. General. pro eodem Dom. Rege parat. eſt verificare prout Cur' &c. Unde pro inſufficient. placit. ill. idem. Attorn. Dom. Regis General. pro eodem Dom. Rege petit judic. & quod Indictament. prædict. bon. & ſufficiens adjudicetur, &c.

Rob. Raymond.

Mr. *Att. Gen.* We pray they may join in Demurrer immediately.

Mr. *Hungerford*. My Lord, it is altogether a Surprize to us, and as the Clerk hath read it, it is impoſſible for us to take the Subſtance of this Demurrer. We therefore hope we ſhall be allowed a few Days to conſider of this Matter of joining in Demurrer. We ſhall not ask many. The Precedents are ſo, the Priſoner was always indulged with ſome time in a Caſe of this Nature. Before the Act of Parliament for regulating of Trials, where Matters of Law were ſtarted, or any ſpecial Pleading did ariſe, the Priſoner was indulged with a great Number of Counſel. *Fitzharris* had five, a greater Number than I ever knew engaged on one Side in Deliberations of this kind, unleſs it were that Number of learned Counſel which met to adviſe upon and adjuſt this Demurrer. But I think in the ordinary Courſe of the Court we are proper to deſire two or three Days. Two or three Days is but a little time, eſpecially when the Life of a Man is concerned. Mr. Attorney took from *Wedneſday* to *Saturday* to conſider of our Plea, we hope at leaſt the ſame time ſhall be allowed to us to conſider of this Demurrer. I have in my Hand the Arraignment of and Proceedings againſt *Fitzharris*, he was indulged ſeveral Days.

Mr. *Ketelbey*. My Lord, I have brought the Book along with me relating to *Fitzharris*: As to the Matter of having time to join in Demurrer, whether we are not entituled to it by the Rules of the Court, I muſt ſubmit to your Lordſhip. It is a Caſe of great Conſequence; and, as I take it, the conſtant Practice is, that a four Days Rule is always given to join in Demurrer. This is always done, as I am informed, on the Crown-ſide as well as the Plea-ſide. The Tenor of the Rule is either to join in Demurrer within four Days, or to wave the Plea; but Mr. Attorney requires us to do it immediately. In *Fitzharris*'s Caſe the Attorney General demurred in Court, and the Counſel on the other Side refuſed to join in Demurrer immediately, and they had from *Wedneſday* to *Saturday*. We hope therefore there ſhall be a four Days Rule for us to join in Demurrer as in all other Caſes. If we are not regular in inſiſting upon four Days, we hope at leaſt your Lordſhip will indulge us with ſome time; or if we do immediately join in Demurrer, that we ſhall have ſome time to prepare ourſelves to argue it.

L. C. Juſt. How ſay you, Mr. *Harcourt*? How is the Courſe of the Court?

Mr. *Harcourt*. My Lord, in criminal Proſecutions for Miſdemeanors, two four Day Rules to plead are given, and a peremptory Rule moved for; and then if there be a Demurrer, one four Days Rule to join in Demurrer is given, and a peremptory Rule moved for: But in capital Caſes there is no Rule given, either to plead or join in Demurrer; all Proceedings on ſuch Caſes being at Bar, the Priſoner is oblig'd on all Occaſions to anſwer immediately, nor can there be any Inſtance ſhewn to the contrary.

L. C. Juſt. The Courſe of the Court is againſt you.

Mr. *Hungerford*. As to the Courſe of the Court, I know no better Deſcription of it, than that it is the uninterrupted Uſage of the Court warranted by Reaſon, or at leaſt not contradicted by it. The Officer tells you that in criminal Caſes

* The right Way ſeems to be, that *ph* ſhould be followed with an *o*, and *f* with an *e*, the firſt being derived from the *Greek*, and the other from the *Latin*. See *Lewick*'s Indictment, Trial 155. where it is *Chriſtophorus Knightley*. See alſo *Co. Entr.* 51. a 55. b. 215. c. 309. c. d. 310. a. b. 319. a. 321. b.

which

which are not capital there are Rules for four Days, and four Days to plead, and likewiſe a four Days Rule to join in Demurrer; and ſurely, if in a criminal Caſe, which is not capital, a Man is indulged four Days; ſurely in a criminal Caſe as this is, which is capital, and doth touch a Man's Life, his Poſterity, and his Eſtate, by Parity of Reaſon, the Indulgence ought to be more than four Days. I beg leave to obſerve one thing in the Caſe of *Fitzharris* now in my Hand. My Lord Chief Juſtice there asks the Priſoner, will you plead over? If you will, you may have any Time in Reaſon. Now, my Lord, we have pleaded over, we have pleaded Not Guilty as to the Offence; ſo that for that Reaſon we might have till *Hillary Term* next, becauſe we have forwarded them in their Journey already by pleading Not Guilty as to the High-Treaſon. And we hope therefore the Gentlemen of the other Side won't contend with us for two or three Days in a Caſe of this Nature.

Mr. *Ketelbey*. My Lord, I only beg leave to mention this ſingle Word, that we don't inſiſt upon this for Delay, or to put off the Trial; we have pleaded over to the Treaſon, and in caſe we ſhould join in Demurrer, whatever Time is taken up in arguing it, cannot obſtruct the Proceedings in order to the Trial: Nay the Trial may be had before the Matter of the Demurrer be determined.

L. C. Juſt. In caſe you ſhould join in Demurrer, what can you do elſe?

Mr. *Ketelbey*. I believe we ſhall. If we had not thought our Plea would have ſtood a Demurrer, we had not made uſe of it.

Mr. Serj. *Pengelly*. My Lord, What he prays is againſt the Rules of the Court; in all capital Caſes there are no Rules given to plead or join in Demurrer, but the Proceedings are all *Inſtanter*, the Priſoner being preſent in Perſon, and therefore, my Lord, there is nothing in what they aſk. When they put in a Plea in Abatement here at the Bar, which cannot be expected or thought of, it is reaſonable that there ſhould be ſome time to conſider of that, to ſee the Nature of it, and conſider what to anſwer to it. We have demurred to their Plea; no doubt they had conſidered of their Plea whether it was a good Plea in Law or not; if it be not good, can they amend their Plea in Abatement? It was never allowed: if they can make no Alteration in that, what can they do? They can do nothing elſe but join in Demurrer; it is all they can do; and when they have joined in Demurrer, we ſhall ſee if they have any Reaſon for further Time. But as to what they ſay, that as to the Sufficiency of the Plea, it may be argued another time; and as they have pleaded over to the Treaſon, there needs be no Delay as to the Trial; I would be glad to ſee whether by this they do not deprive the Crown of the Election to proceed in ſuch Manner as ſhall be thought moſt advantageous for the carrying on the Proſecution: But is it adviſeable to leave a Plea in Abatement to the whole undetermined, and to try the Iſſue firſt? I believe they can ſhew no ſuch Inſtance, and therefore in all capital Caſes, as well as in criminal, the Plea in Abatement goes to the whole, to deſtroy the whole Indictment, and indeed ought to be determined before the Court goes on with the Trial. My Lord, we are ſurprized at what they mean by this, when they can do nothing elſe but join in Demurrer, and therefore we hope they ſhall join immediately.

Mr. *Att. Gen*. My Lord, what we inſiſt upon is not a new thing; the conſtant Practice in Caſes of this Nature has been, that if a Demurrer is put into the Priſoner's Plea, he muſt join in Demurrer *inſtanter*. I believe the Gentlemen of the other Side can't ſhew one Inſtance to the contrary. The Priſoner can do nothing but join in Demurrer. As to what has been ſaid about our having time from *Wedneſday* to *Saturday*, the Reaſon was becauſe *Thurſday* and *Friday* were no *Weſtminſter-Hall* Days, for which Reaſon we could not have the Priſoner brought up before this Day. The putting in a Demurrer to this Plea can be no Surprize to the Counſel for the Priſoner; for Yeſterday we ſent Copies of our Demurrer to them. Mr. *Pember*, the Priſoner's Clerk in Court, had a Copy of it by two of the Clock in the Afternoon; and the Priſoner himſelf had one about four o' Clock. As to the Caſe of *Fitzharris* which has been cited, it was a Plea looked upon to contain Things of very great Difficulty; the Time aſked for there was not to join in Demurrer, but the Time applied for was for ſettling the Plea; but as ſoon as Mr. *Fitzharris* had pleaded, and the Attorney General had demurred to it, the Court ordered the Priſoner to join in Demurrer *inſtanter*. As to what has been ſaid, that we may proceed to Trial on the Plea of Not Guilty before the Demurrer to the Plea in Abatement is determined, that is by no Means adviſeable; the Conſequence of that may be very miſchievous; for if the Court ſhould be of Opinion that the Plea in Abatement is good, after we have diſcloſed the whole Evidence againſt the Priſoner upon the Trial, though we obtained a Verdict for his Majeſty, the whole muſt be ſet aſide; and therefore we hope your Lordſhip will not break into the common Method of Proceedings, but make the ſame Rule for the Priſoner as always has been made in Caſes of the like Nature; which is, that he ſhall join in Demurrer immediately.

Mr. *Soll. Gen*. My Lord, I agree with the Counſel for the Priſoner that we are in a Caſe of Life, and that is the Reaſon why their Client ſhould have all the Indulgence the Law will allow him. But I beg leave to obſerve, that we are not now on a Queſtion that directly concerns the Merits of the Caſe, nor whether a Priſoner who is to anſwer for his Life at this Bar, ſhould have time to ſend for his Witneſſes, or prepare for his Defence. That indeed might be of a different Conſideration. But we are now barely upon a frivolous dilatory Plea, as frivolous a Plea as ever was offered in any Caſe whatſoever; and the Queſtion is, whether they, who have prepared and put in this dilatory Plea, ſhall have time given them to conſider whether they will join in Demurrer upon it or not. As to the Caſe of *Fitzharris*, whatever they have inferr'd from it, I think it rather turns againſt them. Was that a Plea of *Miſnomer*? A Letter pretended to be miſtaken in a Name, which I beg leave to ſay, when conſider'd, will appear to have been always ſo written in legal Proceedings? No, it was a Plea of the Pendency of an Impeachment for the ſame Offence, ſent up by the *Houſe of Commons* to the *Houſe of Lords*, and by Conſequence, in that Caſe, the Prerogative of the Crown, the Juriſdiction of the Lords,

and the Privileges of the Commons were highly concerned. This was a Queſtion of as great Weight, and perhaps of as great Difficulty, as could come before the Court, and therefore the Priſoner had time given him to plead that Matter; but when the Attorney General demurred to it, the Priſoner join'd in Demurrer inſtantly: And as Mr. *Harcourt* acquaints your Lordſhip, the Practice is, that there is no ſuch Rule for proceeding upon Demurrers in capital Proſecutions as in other Caſes; and this appears by their never being ſet down in the Paper to be argued, as Demurrers always are in other Cauſes. So it was in the Caſe of *Fitzharris*. That was argued by four or five Counſel of a Side, without being ſet down in the Paper. In the Caſe of the Priſoner, which is your preſent Conſideration, more hath been done for him than was done for *Fitzharris*. Here is not only a Demurrer given in by Mr. Attorney at the Bar, but the Priſoner's Attorney had a Copy of the Demurrer at Noon the Day before, and conſequently they could not want Notice that we intended to demur, nor be under any Surprize from it. What then would they take time for? Can they do any thing but join in Demurrer? Can they amend in capital Caſes? Or could they amend a Plea in Abatement in any Caſe? They know very well that they cannot. Can they withdraw their Plea? I believe they cannot do that neither without the Conſent of Mr. Attorney General. If this be ſo, would they take time to conſider whether they ſhall join in Demurrer, when they have no Choice, when it is impoſſible for them to do any thing elſe? But, my Lord, the Method of proceeding we are now inſiſting upon, hath been always taken in capital Caſes. I agree when the Queſtion has concerned the Merits of the Priſoner's Caſe, or when he has been to prepare and conſider of ſome Matter which has been, ſtrictly ſpeaking, his Defence, time hath been allowed, but not in other Inſtances. Where the Exception taken hath been to the Juriſdiction of the Court, and time has been deſired to make it good, it hath been denied; as in the Caſe of my Lord *Preſton*, who was tried before my Lord Chief Juſtice *Holt*, and other Judges at the *Old-Baily*. My Lord *Preſton* inſiſted, that he was a Peer created by Letters Patent of King *James* the Second, and conſequently that the Court at the *Old-Baily* had no Juriſdiction to try him; and he prayed time to produce his Letters Patent in order to prepare and make good his Plea; but the Court refus'd to give him time for that Purpoſe. And I believe it will be found, that in all Inſtances where Pleas have appeared on the firſt View of them to be merely dilatory, and offered for no other Reaſon but to delay that Juſtice which ought to be done to the Crown, the Judges have refuſed to aſſiſt the Priſoner with any Time beyond the ordinary Rules of the Court.

Mr. *Reeve*. I ſhall not take up your Lordſhip's Time much in this Caſe. My Lord, we think, in Civil Actions the Court on Motion would ſet this Plea aſide, but in a Caſe of Life it is received, and Mr. *Attorney* has thought fit to demurr to it. Is any Advantage loſt, for the Priſoner to join in Demurrer inſtantly? I apprehend what they move for is to have Time to join in Demurrer. Are they not as ready to do that now, as if they had a Week or ten Days Time given them? Is there any thing elſe can be done? And is there any Occaſion for Time to do that which muſt be done? And cannot they as well join in Demurrer now, as if they had more Time to do it? Certainly they may, my Lord, ſince by the Rules of the Court (as Mr. *Harcourt* informs your Lordſhip) there is no Rule given, but they are to join inſtantly. There is no Reaſon to allow them Time, ſince they can loſe no Benefit or Advantage by joining inſtantly. So then, as we apprehend, we are in the Courſe of the Court, and there is no Reaſon why the Courſe of the Court ſhould be altered in this Caſe, we therefore hope that they ſhall join in Demurrer immediately.

Mr. *Weſt*. My Lord, I think there is nothing in the Exception of his Counſel not being ready to argue his Plea: No doubt they conſidered of it before they brought it in; and when they had produced their Plea, Mr. *Attorney* demurred to it. I can't ſee why they ſhould inſiſt ſo much for Time, when they can do nothing elſe but join in Demurrer; therefore we hope that they ſhall inſtantly join in Demurrer.

Mr. *Hungerford*. My Lord, I beg leave to ſet a Matter of Fact right, that is as to the Caſe of *Fitzharris*, which was mentioned as an Authority againſt us by Mr. *Attorney*, but in truth is not ſo; for though *Fitzharris*'s Counſel did join in Demurrer immediately (or *inſtanter*, as 'tis call'd) yet that was not by the Coercion of the Court, but they voluntarily offered to join in Demurrer, upon an Opinion (as I preſume) of their own great Abilities and Self-ſufficiency in the Matter. But we have not that Opinion of our *extempore* Performances, but deſire time to conſider of this Matter. As to my Lord *Preſton*'s Caſe, quoted by Mr. *Sollicitor*, it is true the Court did not give him leave to ſend for his Letters Patent, becauſe, as my Lord himſelf had opened them, and the Truth was, his Letters Patent were dated at St. *Germains*, and granted by K. *James* there, after his Abdication; and it would have been the higheſt Indignity both to the Court and the Government, to have ſuch Letters Patent pleaded, or inſiſted on; and I believe no Gentleman at the Bar then, or now, would have ſigned ſuch a Plea, which if allowed would have implied that the Government was not well ſettled in their Majeſties King *William* and Queen *Mary*, and that King *James* (though at St. *Germains*) had a Right to create Peers, and conſequently was really King. But if my Lord *Preſton* had had Letters Patent regularly granted by King *James* or King *William*, in his Chambers, can any one ſay they would not have given him leave to ſend for them? Moſt certainly they would; but it appeared they were dated at St. *Germains*, and granted to him there; that, with humble Submiſſion, was the Reaſon why they would not indulge him with Time, and that Precedent therefore, I hope, is of no Weight in this Caſe. It is ſaid we are tied down by our Plea; we knew our own Strength when we pleaded it, and therefore ought to be ready to argue it: But if my Memory doth not fail me (and therefore I ſpeak it with ſome Doubt) I believe there are Inſtances where even in a criminal Caſe a Plea hath been amended. I believe it was ſo done in the Caſe of my Lord *Banbury*, which was a Plea to the Juriſdiction of the Court.

My Lord, we ſhall deſire but a very little Time, which I hope will be granted us.

Mr. *Ketelbey*. My Lord, as to *Fitzharris*'s Caſe, the Plea was amended there: The firſt time it was brought in by Mr. *Fitzharris* himſelf to the Bar, the Plea was brought in and read in Court; after the Plea was read the Court aſſign'd him Counſel, and gave him from *Saturday* to *Wedneſday* to put the Plea in a regular and legal Method, and it was altered and brought in again on *Wedneſday*. As to what the *Attorney* ſays, that the Court compelled him to join in Demurrer inſtantly, the Words of the Book which I have in my Hand are; "We that are aſſign'd Counſel for "the Gentleman at the Bar, we don't deſign to "delay the Proceedings, but do declare that we "will join in Demurrer with them immediately." Theſe are the Words of the Book; ſo that it was the voluntary Act of the Counſel, and they were not at all compelled to it by the Court. As to what Mr. *Harcourt* obſerves to be the Courſe of the Court, and that we can't ſhew one Inſtance to the contrary; I don't know whether they can ſhew one Inſtance for it, except in the Caſe of *Fitzharris*; if they can ſhew in any capital Caſe one Inſtance, we ſhall ſubmit.

It is called a frivolous Plea, the Variation of one Letter, and never writ otherwiſe. Whether it is frivolous or not will appear when it comes before your Lordſhip in Judgment: As to its never being wrote otherwiſe than with an *E*, I don't believe they can find it in any Book either great or ſmall ſpelt ſo, unleſs they have met with it in *Inſtructor Clericalis*: All the Books of Authority are otherwiſe; I believe that one carries with it but little Weight. As to my Lord *Preſton*'s Caſe, which Mr. *Sollicitor* is pleaſed to cite againſt us, that the Court would not allow him time to make out his Plea, Mr. *Hungerford* hath given an ample Anſwer to that, and a true one as to the Circumſtances; but if the Caſe of that Lord had been ſuch as the Gentlemen of the other ſide are pleaſed now to ſtate it, What doth it prove, but the contrary to what the Court did in *Fitzharris*'s Caſe, and therefore the moſt that can be made of it is one Authority againſt another? and where Authorities are equal, we hope the Indulgence of the Court will interpoſe in favour of Life, and grant us ſuch reaſonable time as the Nature of the Thing requires, and not compel us inſtantly to join in Demurrer.

Mr. *Att. Gen.* My Lord, I beg leave to ſtate one Fact right, and that is as to *Fitzharris*'s Caſe: They ſay the Plea was put in, and afterwards amended; that is a Miſtake; the Fact was that his Wife brought a Plea into Court, and offer'd it to the Court, and preſs'd it might be received; but Mr. *Fitzharris* was adviſ'd to conſider what he did, and thereupon he took it back, and afterwards brought a Plea in, which was receiv'd, and after that it was never alter'd.

L. C. Juſt. I dare ſay it is the firſt time that ever in a capital Caſe, when a Plea in Abatement was pleaded, and the *Attorney-General* thought fit to demurr to it, that the Party deſir'd time to join in Demurrer. You are not entitled to any time by the Courſe of the Court, you can't ſhew any Inſtance to prove it: The Queſtion then is, Whether you have given any Reaſon for us to indulge you with time, that never was granted in a Caſe of this Nature.

You have pleaded in Abatement; you were enabled ſo to do by having a Copy of the Indictment; you brought your Plea ready engroſs'd, and put it in. Mr. *Attorney* not being aware of any ſuch Plea, it could not be expected he ſhould be ready with a Demurrer in his Hand to this Plea, and therefore he deſired time to conſider of it. The next Day it could not be, nor the next after that, they being Holy-Days; but then the very firſt time that he had an Opportunity to come, he comes and demurrs to your Plea: But you deſire time, and why ſhould you not have time when they had time, to conſider whether you ſhall join in Demurrer.

Do you want time to conſider whether you ſhall join in Demurrer, after you have had time to plead and to draw up your Plea, and have brought it in to Court? Why ſhould you have time? Can you do any thing elſe but join in Demurrer? You can do nothing elſe: And unleſs you can ſhew any Reaſon why the Court ſhould indulge you, if you don't think fit to join, we muſt give Judgment againſt your Plea. You tell us of the Caſe of *Fitzharris*; that is as widely different from this Caſe as any thing can be. It was a Caſe of great Difficulty, that required great Conſideration, when a Party comes and informs this Court, and inſiſts he is not within the Juriſdiction of the Court. When a Matter is urged to us as a Queſtion of Law, if we were not bound as we are by Act of Parliament, we would certainly aſſign Counſel to the Priſoner to plead a Matter of that Nature; and when the Court in *Fitzharris*'s Caſe had aſſigned him Counſel, were thoſe Counſel to argue immediately? It was nothing but Juſtice to give them time after they were aſſigned, to argue a Plea of that Nature; a Plea in which the Prerogative of the Crown, the Juriſdiction of the Houſe of Lords, and the Rights of the Commons were concerned. The Court would not run haſtily into the determining of that Matter, without hearing it debated by Counſel, and therefore they gave the Counſel time, upon which they might be able to give a juſt Judgment. Is there any thing in this Caſe like it? You have pleaded in Abatement. Mr. *Attorney* hath demurred to your Plea, and you deſire we would give you time to do that which you muſt do, or do nothing at all. Is there any Pretence? Could you in this Caſe come with any Colour or Pretence of Juſtice, and deſire of us to amend your Plea? Is there any thing elſe you can do? This is nothing but a pure dilatory Plea, and he puts in this Plea. The Queſtion is whether it ſhould be an *O* inſtead of an *E*. You are not entitled to any thing of this Nature; it is nothing but an affected Delay; and it cannot be thought to be for any other Reaſon; therefore you muſt join in Demurrer immediately: If not, we muſt give Judgment againſt your Plea.

Mr. *Juſt. Powys*. My Lord Chief Juſtice hath given ſo full and clear an Account of the Matter, that I am ſatisfied, and do think you muſt inſtantly join in Demurrer.

Mr. *Juſt. Eyre*. I am of the ſame Opinion. In capital Caſes the Party is obliged to plead *inſtanter*; for the Proceedings are carried on at the Bar without giving Rules: This is the conſtant Courſe; and the Courſe and Practice muſt be the ſame, in regard to the time for joining in Demurrer: But the Court is ſtill at liberty to allow

further time, if it be neceſſary to the Juſtice of the Cauſe; and if it could be of any Uſe to the Priſoner in the next Step he is to make, I ſhould not be againſt it: But as the Caſe now ſtands, that he has nothing to deliberate upon, that he can lay no new Matter before the Court, but is obliged to abide by his Plea, and can neither withdraw nor amend it without Conſent, but muſt neceſſarily join in Demurrer, and has no other Choice; I think it would be a manifeſt Delay of Juſtice to allow further time; and am therefore of Opinion, that he ought to join in Demurrer immediately.

Mr. *Juſt. Forteſcue Aland.* I am of the ſame Opinion. The Priſoner can have no Benefit by our giving him time to join in Demurrer, except it be to put off the Trial: The Court makes a Difference in all Caſes, both Civil and Criminal, between dilatory Pleas and other Pleas. An affected Delay is never to be ſuffered, more eſpecially in a capital Caſe; and here it is plain, that when the Counſel for the Priſoner brought in this Plea, that they had conſider'd it before, and thought it of Service to the Priſoner, and nothing more remains now than to join in Demurrer. The *Attorney-General*, by his Demurrer, ſays it is not a good Plea; and the Priſoner has nothing further to ſay, but that it is a good Plea; and if he does not think fit to ſay that, we muſt give Judgment againſt him. I remember in the Caſe of the King and *Gordon*, when the Priſoner came to the Bar, having lapſed the time of taking Exceptions, in order to quaſh the Indictment, he moved the Court for time to plead in Abatement; but the Court refuſed it, alledging they would give no Opportunity for a dilatory Plea; and I think there is the ſame Reaſon, if not ſtronger, in this Caſe, where the Priſoner has nothing to do but to join in Demurrer; that is to ſay, to ſubmit to the Judgment of the Court, whether this be a good Plea or not; and that may be done immediately, as well as if the Priſoner had never ſo much time for it.

Priſoner. My Lord, I know not how conſiſtent this Rule of Court may be, that in a capital Caſe of the higheſt Nature whatſoever that I ſhould not be allowed time to join in Demurrer, when in criminal Caſes of an inferior Nature there is a Four-days Rule given. The Counſel for the King were indulged from *Wedneſday* to *Saturday*: I hope I ſhall have the ſame Indulgence on my Part, to conſider whether I ſhall join in Demurrer or not.

I am ſo far from deſiring to give any Delay, tho' I am ſatisfied how maliciouſly this Proſecution is carried on, and am pretty well acquainted with every Step taken in the Management in *Eſſex*; and I am willing, rather than to continue to be thus hunted up and down the World, to retract my Plea, and plead generally Not guilty.

L. C. Juſt. If Mr. *Attorney* conſents to it.

Priſoner. I am obliged to my Counſel for the Care they have taken of me, and have here in my Hand a Joinder in Demurrer engroſſed and ſigned by them, and ready to deliver in; but I won't offer it, becauſe I won't give any Delay to the Juſtice of the Court.

Mr. *Hungerford.* He ſtands upon his Plea of Not guilty to the Indictment.

L. C. Juſt. You have pleaded Not guilty; you have likwiſe pleaded a *Miſnomer*, which hath been demurred to: Your Plea therefore now muſt be as pleaded in chief, and as put in at the time when it was firſt pleaded; you don't deſire you may plead the ſame Matter again this Day?

Mr. *Hungerford* and Mr. *Ketelbey.* We do not.

Mr. *Att. Gen.* If I underſtand the Priſoner right, he pretends to be deſirous that his Trial may come on, and therefore he is willing to withdraw his Plea in Abatement, and abide by his Plea of Not guilty: 'Tis what we deſire likewiſe; and I wiſh we could go on in this Caſe as we ought, in a decent Manner, without having groundleſs Reflections continually made. Something hath been ſaid of the Maliciouſneſs of this Proſecution, and indirect Management, by ſome Body, 'tis not ſaid whom, in the County of *Eſſex*. My Lord, I defy any Man to ſhew any ſingle Step taken in carrying on this Cauſe, but what is perfectly right and juſtifiable.

I wiſh, out of Charity, that the Priſoner would conſider the Circumſtances he is in; if he did, he would not ſay this Proſecution is carried on by Malice; for if I know any thing of Evidence, I have no Reaſon to doubt but at the proper time there will enough appear againſt him to convict him.

Mr. *Hungerford.* I dare ſay the Priſoner did not entertain a Thought of reflecting upon any of the Profeſſion concern'd in carrying on this Proſecution. But pray, my Lord, give me leave humbly to repreſent, that the Man's Caſe is hard; he tells you he is in Chains, and I ſee he is in great Pain even now; and I earneſtly wiſh that he were eaſed in that Matter. I do not pronounce theſe Words out of any Affectation of Popularity, or to captivate the Auditory, as was inſinuated in the Beginning of this Proceeding, but in mere Compaſſion I have to the Priſoner, and to all Mankind, which Temper I have ſhewn thro' all the Stages of my Life.

L. C. Juſt. You have been told by the Court already our Opinion, that it is not in our Power. We were told, and I perceive it is not denied, that he did once eſcape after he was taken; and if ſo, for the better ſecuring him he was put in Chains: Do you aſk us to take thoſe Chains off? Can we do it? Or ſhould we do it? If he ſhould eſcape out of the *Tower*, ſhall not we be guilty of that Eſcape? The Circumſtances of the Caſe ought and muſt govern. He ſays he is Innocent, and I hope he is; and if he be, he takes the propereſt Meaſures to knock his Chains off, let him make his Innocence appear; and it will appear whether he is Innocent or not, when we come to try the Cauſe.

Priſoner. If I thought it was contrary to Law to take off theſe Chains I ſhould not mention it. I deſire to obſerve, that theſe Chains were not put on till after a fourth or fifth Examination.

As to the Eſcape out of the Meſſenger's Hands, he never ſhewed me his Warrant, and I did not know any Authority he had to keep me. As to eſcaping out of the *Tower*, it is not in my Power, neither is it in my Inclination. I deſire therefore to be eaſed of theſe Chains.

And another thing I deſire is, that I might have an Opportunity to ſee my Relations, my Wife, that ſhe might come to me.

Mr. *Ketelbey.* That was granted in *Fitzharris*'s Caſe.

L. C. Juſt. As to the taking off the Chains you have had the Opinion of the Court, we cannot, we ought not to do it, it is a Breach of our Duty; as to the other Matter, he deſires to ſee his Relations, what do you ſay to it?

Mr. *Att. Gen.* My Lord, as to *Fitzharris*'s Caſe, there was a great Deal of Caution uſed as to the Perſons permitted to ſee the Priſoner; before they went in they were to be ſearched, and they were to be with him only in the Preſence of the Keeper.

Mr. *Ketelbey.* It is mentioned there, that the Wife had miſbehaved herſelf, and that a particular Caution ought to be taken with reſpect to her; but the Acceſs of a Wife to her Huſband under ſuch unfortunate Circumſtances was never denied, I believe, in any Caſe whatſoever.

L. C. Juſt. Upon a proper Application to the Court, the Court hath ſometimes ordered that Perſons named in their Rule may have Acceſs to the Priſoner in the Preſence of the Jaylor, and not otherwiſe, and that they ſhould be ſearched before they come in. If you think fit to deſire it on thoſe Terms, the Court will conſider of it.

Priſoner. My Lord, I muſt deſire upon thoſe Terms as the Court thinks fit, and that my Siſter may have Liberty to come with my Wife.

L. C. Juſt. Your Wife and Siſter: It may be reaſonable for them to have Acceſs to you, but they are not to be with you but in the Preſence of the Jaylor *.

Mr. *Serj. Pengelly.* My Lord, I beg leave to obſerve, whether it is uſual for the Court to make ſuch Rule: On the Trial of Sir *John Friend*, there it was only intimated by my *Lord Chief Juſtice Holt*, but the Court did not order it by making any Rule; they know they may apply properly, and there may be Directions given to the Lieutenant of the *Tower*: As to the Counſel, that is allowed in the Act of Parliament; and as the Court hath a Power to aſſign Counſel, it is proper for the Court to give Directions for them to be admitted at all Seaſons, and at all times.

L. C. Juſt. Why the Wife and the Siſter?

Priſoner. Yes, my Lord, my Wife and Siſter. I don't put in a Number of Relations.

L. C. Juſt. I do think, Brother *Pengelly*, that the Court are truſted in a Matter of this Nature, and may regularly give Directions with what proper Cautions they think fit. Why, he ſays, he is denied the Comfort of his Wife; he deſires that his Wife and Siſter may be admitted to come to him. You ſay it hath been ſometimes intimated, but not ordered; if it was intimated by us, and not complied with, I believe I ſhould make no Difficulty to order it, provided it be with a reaſonable Caution, and no Inconvenience in it.

Whether is it the Wife or Siſter you deſire? I think one is enough, and ſhe muſt ſubmit to be ſearched †.

Mr. *Serj. Pengelly.* Before your Lordſhip makes any Rule in this Caſe for the Priſoner, I beg that he may be obliged to amend his Plea of Not guilty, and that he may plead by the Name of *Chriſtopherus*, by which he is indicted. You have been brought to the Bar, and have put in a Plea by the Name of *Chriſtophorus*; if you are in Earneſt that you deſire to wave your Plea in Abatement and have it withdrawn, you muſt change the Name wrote in the Commencement of the Plea, and make it as it is in the Indictment, that there may be no Embarraſſment in the Proceedings in the End.

L. C. Juſt. You conſent to have it amended?

Mr. *Hungerford.* The Priſoner at the Bar hath conſented to withdraw his Plea in Abatement; and though the Plea were ſuch that he might have prevailed upon it, yet after his pleading *Not Guilty* in general, there is not in the Courſe of this Proceeding any Period of time wherein he can avail himſelf with the Matter of this Plea in Abatement; and therefore we ſubmit it to the Court, and to the King's Counſel themſelves, to put this Matter into ſuch a Form, that the Priſoner may come to a fair Trial upon the Iſſue of *Guilty* or *Not Guilty*.

Mr. *Ketelbey.* I believe the Priſoner is willing to come into the Method offered; and though this Plea hath been called a frivolous Plea, yet the Precaution taken by the Gentlemen of the other Side ſeems to give a Sanction to it, and makes it not ſo frivolous as hath been repreſented.

L. C. Juſt. What do you mean, Mr. *Ketelbey?* Here is nothing aſked of you: You do deſire to wave and withdraw your Plea; we deſire to know, if you do, whether you will plead by the Name as it is in the Indictment.

Mr. *Ketelbey.* My Lord, we do.

Mr. *Att. Gen.* We deſire the Plea of Not guilty may be amended, upon the Conſent of the Priſoner.

Mr. *Hungerford.* We offer now, let the Piece of Parchment be entirely aboliſhed, take it entirely out of the way, and we plead Not guilty.

L. C. Juſt. Your Plea muſt be now *& prædict' Chriſtopherus ductus hic ad barram*, &c.

Mr. *Ketelbey.* We ſubmit it.

Priſoner. I deſire to withdraw and retract the other Plea, and do plead Not guilty.

L. C. Juſt. No, it muſt be mended; you will hear how it is when it is ſtruck out and amended, and then you will tell us whether it is mended according to your Intent or no.

Cl. of the Cr. *Et prædictus Chriſtopherus Layer allocutus exiſtens per Cur' hic de alt' prodition' prædicta per Indictament' prædict' ei ſuperius impoſit' qualiter ſe velit inde acquietari, Idem Chriſtopherus Layer dicit quod ipſe in nullo eſt inde culpabilis & inde de bono & malo ponit ſe ſuper Patriam.*

L. C. Juſt. Is this according to your Intention?

Priſoner. Yes.

Mr. Serj. *Pengelly.* My Lord, I believe it is uſual in theſe Caſes for the Court to appoint a Time for the Trial; the laſt Return but one in this Term is the 19th of *November*, ſo if you pleaſe it may be the *quarto die poſt*, which I think is *Wedneſday*, if that be ſuitable and convenient to the Court.

L. C. Juſt. What ſay you to it?

Priſoner. I deſire your Lordſhip would give me a longer Day to prepare for my Trial. I have a great Number of Witneſſes, twenty or more, moſt of them People of the firſt Quality. I hope I ſhall have the common Proceſſes of the Court to bring them here; and, my Lord, another thing I deſire is, that I may have a *Habeas Corpus ad teſtificand'*, to bring my Lord *North* and *Grey* and my Lord *Orrery* at my Trial. That,

* See *Hambden*'s Trial, N°. 136. and *Rookwood*'s Trial, N°. 153.

† See the Proceedings againſt *Fitzharris*, N°. 102.

my Lord, you would pleaſe to give me as long a Day as you can to prepare for my Trial; if your Lordſhip pleaſe it may be *Monday* the 26th, and then your Lordſhip will have a Day of Reſt between.

L. C. Juſt. That will be out of the Return.

Mr. *Hungerford.* They muſt appear, and then may be adjourned.

L. C. Juſt. It cannot be adjourned over beyond the Return.

Mr. *Ketelbey.* My Lord, the Priſoner hath ſhewn that he hath in no Reſpect affected Delay.

L. C. Juſt. It cannot be.——God forbid that we ſhould deny the Priſoner to have a reaſonable time to prepare for his Defence; it is three Weeks from hence; you have been aware of it long before; you have known the Indictment was found; you have had a Copy of it; you have known your Charge; and is not all this Time enough? Conſider, the Term draws toward an End, and it interferes with the common Buſineſs of the Term if we carry it to a further Day: we do agree the *Venire* to be returned *Octab. Martini*, and the Trial then muſt be the *quarto die poſt*, which will be *Wedneſday* the 21ſt. And it is proper for us to give you an Intimation now, not to expect any further time, or the Jury to be adjourned; do but conſider what a Multitude muſt be brought up, eighty at leaſt: The Priſoner hath a Privilege to challenge thirty five peremptorily, and after, for Cauſe, as many as he pleaſes; ſo that a great Number muſt be brought up; and for them to be forced to attend here the 21ſt, and ſtill the Trial to be put off, it will be a great Inconvenience and a great Charge, therefore that muſt be the Day, we ſhall not conſider to put it off till any farther Time.

Priſoner. I beg leave for one Word more; I have a Witneſs that is to come from *Edinburgh*, and I can hardly have him here by the 21ſt. If I could but be indulged a few Days longer——

L. C. Juſt. We cannot do it, without making an Error in the Proceedings.

Priſoner. Is there no other Return for a *Venire* to be returnable?

L. C. Juſt. No, there is none but that, and the laſt Return of the Term; and it is impoſſible to try him that Day, without doing a manifeſt Wrong and Injuſtice to the People of *England.*

Priſoner. My Lord, where a Man's Life is at Stake, if I ſhould not be indulged over till the laſt Day of the Term, for want of a Witneſs I may be in danger of my Life: I hope therefore your Lordſhip will pleaſe to indulge me.

L. C. Juſt. You have had a great deal of Time already, Time ſufficient to bring your Witneſs from *Edinburgh*, or any other Place, and we cannot do it. To put you off to the laſt Day of the Term, is to do a manifeſt Wrong to the People of *England.*

Priſoner. The Reaſon why I mention it over and over again, is becauſe I would not give your Lordſhip the Trouble to be turned over to another Day, on troubling your Lordſhip with Affidavits.

L. C. Juſt. In what you lay before us as Matter proper for Conſideration, we ſhall do what is juſt. It is not proper for you to tell us what we have to do, and to make Bargains with us. That is the Day of Trial; it muſt be on *Wedneſday* the 21ſt: Your Counſel will tell you it is impoſſible to comply with your Requeſt, without doing the manifeſteſt Injuſtice in the World. Or elſe, whether to try you upon the 21ſt, or in two, or three, or four Days after, I don't think the Conſequence worth diſputing, but we can't do it without doing Wrong and Injuſtice to the People of *England.*

Priſoner. I hope I ſhall be indulged two or three Days.

L. C. Juſt. We can ſay no more. The Time you have had for Preparation for your Trial we think abundantly ſufficient to prepare your ſelf, therefore we are of Opinion that the Trial go on at that Day; and we order it accordingly.

Mr. *Ketelbey.* Your Lordſhip will pleaſe to order a Rule for his Wife and Siſter to come to him.

L. C. Juſt. No, not for his Wife and Siſter.

Priſoner. My Lord, for a ſingle Woman to come thro' the Courts and the Guards, to be examin'd by her ſelf, it's not ſo proper, my Lord.

L. C. Juſt. You ſhall have a Rule from the Court for your Wife to come; as for your Siſter, we muſt leave that to the Direction from another Place. We muſt not be too forward in granting Women to come, we remember an Eſcape occaſion'd by a Woman coming thither.

Mr. *Att. Gen.* There muſt be a Rule to bring him up at the Day of his Trial.

Mr. *Ketelbey.* My Lord, as to having his *Habeas Corpus ad Teſtificand'* for my Lord *North* and *Grey*, and my Lord *Orrery.*

L. C. Juſt. You muſt give Notice, and then move what you pleaſe.

Mr. *Hungerford.* By what was ſaid, I did underſtand, I muſt confeſs, that though the Rule was made for the Wife only, yet that it might be in the Power of the Gentleman Jaylor to permit her Siſter to come with her.

L. C. Juſt. We give no Direction concerning it. He will have a Rule from the Court that will be his Direction, unleſs he receives any additional Direction from another Place, but the Court names his Wife only.

Mr. *Ketelbey.* There was another thing mentioned, that he may have Copies of his Papers that were ſeized.

L. C. Juſt. Give Notice for what you think fit, and move it.

Die Mercurii 21 *die Novembris* 1722.

THIS Day *Chriſtopher Layer*, Eſq; was brought to the Bar, in Cuſtody of the Lieutenant of the *Tower*, in purſuance of the Rule of Court made for that Purpoſe, in order to his Trial.

Cl. of the Cr. You *Chriſtopher Layer*, now Priſoner at the Bar, theſe Men which you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death: If you will challenge them, or any of them, your time is to challenge them as they come to the Book to be ſworn, and before they be ſworn.

Heneage Norton, Eſq;

Mr. *Hungerford.* My Lord, we deſire that his Irons may be taken off.

L. C. Juſt. The Irons muſt be taken off; we will not ſtir till the Irons are taken off.

Priſoner. I hope, my Lord, that the Irons ſhall be now taken off.

L. C. Juſt.

L. C. Juſt. They ſhall be taken off.

Mr. *Hungerford.* The poor Man hath been ſo oppreſs'd by theſe Chains, that he was not able to prepare his Brief. I had it not till late laſt Night; and it is ten Sheets of Paper.

Mr. *Att. Gen.* Whoſe Fault is that? You have had Time enough.

Mr. *Hungerford.* It is the Fault of the Irons, Mr. *Attorney*, the Brief was not brought to me till Eleven of the Clock laſt Night.

L. C. Juſt. It was an Omiſſion; they ſhould have been taken off before he came to the Bar.

Mr. *Att. Gen.* There was Direction given for their being taken off before; how they came not to be taken off, I can't tell.

L. C. Juſt. Are the Irons taken off?

Gent. Jaylor. Yes.

L. C. Juſt. Go on.

Cl. of the Cr. Heneage Norton, Eſq;

L. C. Juſt. You muſt call over all the Jury.

Mr. *Hungerford.* I thought they would be all called over once, before any one is endeavoured to be ſworn.

Cl. of the Cr. They have been called over already.

Mr. *Hungerford.* When? Not ſince the Court ſate, I am ſure. I would know whether the Intention is, that all the Pannel be called over before any one of them is ſworn, or that the Pannel is to be called over but once, and the Jurymen ſworn as they then appear. What I have obſerved is, the Clerk calls over the whole Pannel firſt, to ſee how many appear; and then calls it over again, and ſwears them as they anſwer to their Names, if not challenged.

L. C. Juſt. What you obſerve is what hath been done at the *Old Bailey*; there they call them over firſt, and then they call them over again, and as they appear they are ſworn preſently. But by the Courſe of the Court here they are called over before the Court is ſitting, and they mark thoſe that appear. That is not ſufficient; but they are called over again in Court, and then their Appearance and Non-appearance being marked, they do call thoſe over again that did appear; and as one appears, if there is no Objection to him, he muſt be ſworn.

Mr. *Hungerford.* I have obſerved them to be called over when no Body is by, in civil Caſes; but in ſuch a Caſe as this, a Caſe of High Treaſon, where peremptory Challenges are allowed, it is ſome Guide to the Priſoner in making his Challenges, to know before-hand who do and who do not appear.

Mr. *Ketelbey.* My Lord, with Submiſſion, in all criminal Caſes there is no other Method than calling over the Pannel according as it is tranſmitted into Court. 'Tis probable ſeveral of the Jurors who did not appear at their being called over before the ſitting of the Court will now appear; and therefore what we pray is that the whole Pannel may be now called over in the Order as it ſtands, not only thoſe who anſwered to the firſt Call, but thoſe alſo who then made Default.

Mr. *Att. Gen.* I can't imagine what they mean.

L. C. Juſt. This Debate ariſes from not underſtanding one another: You have the Direction of the Court; the Pannel is to be called over, if any Man doth not appear, his Default is mark'd and recorded. When any one doth appear, and he is not challenged, he is to be ſworn.

Mr. *Ketelbey.* I came thro' the Hall juſt now, and there is ſuch a Crowd that it is almoſt impoſſible for any one to hear when they are called.

Priſoner. My Lord, I hope they ſhall be once called over before they come to be ſworn; for as to their being called before, that was before I came; it will ſpend but a little time to read over forty or fifty Names.

L. C. Juſt. Call them over. I would not deny any thing that is deſired in Reaſon by or on the Priſoner's Behalf: Conſider what you are doing; the Priſoner hath had a Copy of the Pannel, he hath examined it, and conſidered who are proper for him to challenge peremptorily, and he hath conſider'd who they are that he may challenge with Cauſe.

I can't imagine; it was never done in this World: We have aſk'd our Officer: They ought to call over all the Pannel; but if they do not appear, their Default is mark'd; if they do appear, the Priſoner knows whether he likes them or not.

Therefore when they come to the Bar, if not challenged, they muſt be ſworn.

Conſider what this Demand is; we ſhall be an Hour calling them over the firſt time, that it may appear to the Priſoner whether they appear or not; then afterwards you are to call them over again, and to have them brought up again when they come to be ſworn. But if it ever hath been done, it is fit it ſhould be done now; but our Officer tells us it never was done, and why ſhould you inſiſt upon it now? you have had all the Indulgence the Law allows you.

Priſoner. I have not had a Copy of the Pannel above two Days before. Here hath been in this Cauſe all the vile Practices—

L. C. Juſt. You muſt keep within due and proper Bounds. You are come now to be tried for an Offence you are charged withal; but you are not to arraign and challenge every Body elſe; you have no Right to do it. If in proper time it appears you have been ill uſed, the Court will do you Juſtice, and puniſh thoſe that have been guilty of any Misbehaviour.

Mr. *Serj. Pengelly.* My Lord, if they have any Objection to the Jury, they are to challenge them peremptorily when the Jury come to be ſworn. Then is their time; they are not to entertain the Court with Speeches before.

L. C. Juſt. No, it is not proper.

Conſider how unreaſonable it is for the Priſoner to arraign ſome Body's Miſbehaviour without naming him. But in this Method he is inſinuating Objections, which we can't examine whether they are true or falſe, on purpoſe to captivate People; and it may be, miſlead them in the Trial of the Cauſe.

Mr. *Ketelbey.* As I came in, I obſerved that all the Avenues to the Court are barricadoed up, and only a narrow Place left on the Stone Steps, and a Guard kept there to keep out whom they don't think fit to let in.

Mr. *Att. Gen.* I know nothing of it; and I dare ſay no Body will give any Countenance to hindering either Jury-men or Witneſſes coming into Court, when their Attendance is required here.

Mr. *Ketelbey.* I had much ado to get in my ſelf.

L. C. Juſt. There ſhall be due Care taken, that any of the Jury that appear, we will order Way to be made for them.

Mr. *Hungerford.* My Lord, I will take up but very little of your Time in this Matter; I find I was not underſtood before; that which I contend for is, that the Pannel be read thro' once in the Priſoner's Preſence, to ſee what Jury-men appear, before any Jury-man is ſworn. The Priſoner hath a Right to challenge thirty five peremptorily, or without aſſigning any Cauſe at all. Now, my Lord, this is a Favour, an Indulgence granted to him by Law, and he is therefore entitled to it in Juſtice. It is of great Uſe to the Priſoner, in order to enjoy the true Benefit of this Indulgence that the Law gives him, that he knows who doth and who doth not appear, for this Reaſon perhaps, if he did know that ſuch an one appears he will take him, and if he knows that ſuch an one appears he will challenge him. And if he know that ſuch an one, who perhaps ſtands low in the Pannel, and of whom he has a good Opinion for being an honeſt Man, will appear, he will challenge as many as he can of the preceding Perſons, in order to have him, that honeſt Man, of his Jury. And as to the Time the reading of the Pannel will take us, (tho' by the way it might have been over by this time) I am ſure your Lordſhip and the Court will not regard what Proportion of Time you ſpare us, to let the Priſoner enjoy the Benefit of the Law in this Caſe, and to have a full Enjoyment of the Indulgence of the Act of Parliament in its full Latitude, that he may know and judge (as far as the Law hath enabled him) who is to paſs upon him as to his Life and Death. I beg therefore, my Lord, that the whole Pannel may be called over once before the Priſoner is put to challenge.

Priſoner. My Lord, What we humbly move for is what is every Day done at the *Old Bailey*, that they may be once called over.

All I deſire is what is done there, and by the ſame Reaſon ought to be done here in the ſame Caſe where a Man's Life is concern'd. I humbly move it that they may be called over.

L. C. Juſt. We ſhall grudge no Time to do the King and you Juſtice. It is dangerous to make a Precedent, an Innovation: But if you deſire it, I don't find the King's Counſel object to it.

Call over the Pannel.

You don't expect all ſhould be brought into Court, but only to know if they do appear?

Mr. *Hungerford* and Mr. *Ketelbey.* No, no.

L. C. Juſt. The Priſoner hath a Sollicitor; let ſome Body go down upon the Steps, the Sollicitor be preſent, and then he will hear who do and who do not appear.

Mr. *Hungerford.* We humbly thank your Lordſhip; this is a real Indulgence, and we humbly thank your Lordſhip for it.

Cl. of the Cr. calls over the whole Pannel.

You the Priſoner at the Bar, theſe Men which, *&c.*

Mr. *Ketelbey.* If your Lordſhip pleaſes to ſtay till the Sollicitor comes in, becauſe he went out to obſerve who did appear, and who did not appear.

Cl. of the Cr. Heneage Norton. Have you ten Pounds a Year Freehold and Copyhold in the County of *Eſſex?*

Norton. I have no Freehold, only Copyhold.

[Then he was ſet aſide.]

John Wilks. [Ask'd the ſame Queſtion, as were all the others who appear'd, before they were either challenged or ſworn.]

Priſoner. I challenge him.

Mark Froſt.

Priſoner. I challenge him.

Thomas Clarke.

Priſoner. I don't challenge him.

Crier. Thomas Clarke. Sworn.

Henry Longbotham.

Priſoner. I ſay, I think his Name is wrong ſpelt.

Mr. *Soll. Gen.* We are not now upon Exceptions for Miſ-ſpelling. If his Name is written as he is uſually called, it is right.

Priſoner. He ſays his Name is with an *o*, and it is written here with an *a*.

L. C. Juſt. Doth the Copy deliver'd to you agree with the Pannel? if it doth, as long as it hath the ſame Sound, it will do.

Priſoner. With humble Submiſſion, in the Caſe of *Francia* there it was allowed.

Mr. *Hungerford.* My Lord, it is not the ſame Sound *Longbothàm* and *Longbothòm*, and in *Francia*'s Caſe the Difference of a Letter was allow'd to be a good Exception.

L. C. Juſt. You are by Law to have a Copy of the Pannel deliver'd to you; if that Pannel varies from the other, it is a juſt Exception; but if you object againſt a Jury-man becauſe his Name is not right ſpelt, and that hath the ſame Pronunciation, and he may be called ſometimes one and ſometimes another, it is well enough.

Mr. *Ketelbey.* My Lord, as to this Objection, whether the *Longbotham* is right, or the *Longbothom*, whether it is with an *A* or an *O.*——

Cl. of the Cr. You miſtake, it is *Longbotham*, and not *Longbothom.*

Priſoner. The laſt ſhould be an *O* inſtead of an *A*, *Longbothom.*

L. C. Juſt. Therefore we will aſk the Gentleman how his Name is uſually pronounced, whether it is not pronounced ſometimes *Longbothom* as well as *Longbotham.*

Mr. *Longbothom.* Yes, My Lord, it is.

Priſoner. He ſays he ſpells his Name with an *O*, and here it is with an *A.*

Longbothom. I always ſpell my Name with an *O*, but my Letters are generally directed to me with an *A.*

Mr. *Hungerford.* He hath a Copy of the Pannel deliver'd him by vertue of the Act of Parliament; if the Copy be not a true Copy, it is not right according to the Direction of the Act.

L. C. Juſt. Right.

Mr. *Hungerford.* Now the Pannel which the Priſoner hath is ſpelt with an *A*, and the Pannel of which this is a pretended Copy, is, I take it, ſpelt with an *O.*

Cl. of the Cr. No, they are both ſpelt alike.

L. C. Juſt. You know it, Gentlemen, as well as can be. Don't let us ſpend Time where there is nothing in it; we will hear what is proper for our Conſideration.

Suppoſe a Man is called and writ ſometimes *Longbothom*, and ſometimes *Longbotham*; and ſuppoſe he was called by either of theſe Names, may he not therefore be called by one as well as the other? Is that an Objection to ſay he writ with an *O*, but People write to him with an *A?* there is nothing at all in it.

Priſoner. Then I challenge him.

Cl. of the Cr. Iſaac Buxton.

Priſoner. I challenge him.

Cl. of the Cr. Richard Scott.

Priſoner. I challenge him.
Cl. of the Cr. *John Wormlayton.*
Priſoner. I challenge him.
Cl. of the Cr. *John Andrews.*
Priſoner. I don't challenge him.
Mr. *Att. Gen.* I challenge him for the King.
Cl. of the Cr. *Thomas Waterhouſe.*
Stephen Huff.
John Thorowgood.
Chriſtopher Baily.
Challenged by the Priſoner.
Iſaac Potter. Sworn.
Cl. of the Cr. *William Lord.*
Priſoner. I challenge him.
Cl. of the C. *Hezekiah Haynes.* Sworn.
Thomas Heckford, jun.
Priſoner. I challenge him.
Cl. of the Cr. *Richard Waglett.*
Priſoner. I don't challenge him.
Mr. *Att. Gen.* I challenge him for the King.

Mr. *Ketelbey.* Mr. *Attorney* is pleaſed to challenge him for the King; we humbly inſiſt on it, that Mr. *Attorney* is to ſhew his Cauſe of Challenge immediately. I own it has been otherwiſe in one or two late Inſtances; but I ſubmit it, if that Practice ſhould prevail, whether the Act of Parliament made on that Occaſion would not be in Effect thereby abrogated. The Act is the 33 *Edward* I. and the Words of it are: "If they "that ſue for the King will challenge any Ju- "ror, they ſhall aſſign of their Challenge a Cauſe "certain, and the Truth of the ſame ſhall be in- "quired of according to the Cuſtom of the "Court." Now, my Lord, I beg leave to obſerve upon this Pannel there are one hundred and odd Perſons, if Mr. *Attorney* is not obliged to ſhew his Cauſe of Challenge, when he challenges for the King, till all the Pannel is gone through, this Act of Parliament will be of no Validity whatſoever. If there had been but a few returned (twenty four, or ſuch a Number,) then there might have been ſome Colour for going through the Pannel before there was any Cauſe aſſigned for the Challenge; but ſince this modern Practice has obtained to make ſo numerous a Pannel, if they are not obliged to ſhew Cauſe till the Pannel is gone through, that Law is intirely a dead Letter, and of no Significancy.

L. C. Juſt. You know your Objection is of no Validity; you cite an Act of Parliament, and you know the conſtant Practice is againſt you.

Mr. *Juſt. Eyre.* Though the Counſel for the King muſt aſſign their Cauſe of Challenge, yet they are not obliged to do it till the Pannel is gone thro', and the Jury-men returned, who are not challenged, are all ſworn: This is a Rule laid down in *Hale*'s Pleas of the Crown, and has been always the conſtant Practice in Caſes of this kind.

Mr. *Hungerford.* What your Lordſhip directed in the laſt Caſe is certainly precedented; but I would propoſe it as a Convenience that the *Attorney* ſhould, as he is every ways entitled, have the Precedence, and might challenge firſt, and then we will determine after him.

L. C. Juſt. No, we muſt not do that.
Cl. of the Cr. *John Lowry.* Sworn.
Cl. of the Cr. *John How.* Set aſide for want of Freehold.
Cl. of the Cr. *Thomas Pratt.* Sworn.
Cl. of the Cr. *Richard Rogers.*
Priſoner. I don't challenge him.
Mr. *Att. Gen.* I challenge him for the King.
Cl. of the C. *Edward Pierſon.*
Thomas Bland.
William Spilltimber.
Alexander Weller.
Thomas Rand.
John Engliſh.
Joſeph Unwin.
George Frye.
Challenged by the Priſoner.
Cl of the Cr. *Weſton Stileman.*
Priſoner. I don't challenge him.
Mr. *Att. Gen.* I challenge him for the King.
Cl. of ths Cr. *John Cruſh.*
Priſoner. I don't challenge him.
Mr. *Att. Gen.* I challenge him for the King.
Cl. of the Cr. *Thomas Howlett.*
Priſoner. I challenge him.

Mr. *Serj. Pengelly.* I don't know this Method of proceeding: If the Priſoner makes any Challenge, it muſt be before he comes to the Book to be ſworn; but when he comes to lay his Hand upon the Book, he is too late to challenge then.

Priſoner. Whenever I make a full Stop and don't ſay I challenge, you do.

Mr. *Att. Gen.* My Lord, the Priſoner is to declare whether he challenges or not; afterwards the King's Counſel are to declare whether they challenge for the King, and the Jury-man is not to put his Hand on the Book till then.

L. C. Juſt. He ought not to put his Hand on the Book till he is allowed a Jury-man; that if the King or the Priſoner challenge him, they may do it before he lay his Hand on the Book.

Cl. of the Cr. *Joſeph Capon.*
Priſoner. I don't challenge him.
Mr. *Att. Gen.* I challenge him for the King.

Mr. *Hungerford.* More have been challenged for the King, than hath been known in any publick Trial in my Remembrance.

Mr. *Att. Gen.* I am ſurprized at this Obſervation, when the King has an undoubted Right of challenging whom he pleaſes, without ſhewing Cauſe till the Pannel is gone through.

L. C. Juſt. It is always done.
Cl. of the Cr. *John Clarke.*
Priſoner. I challenge him.
Cl. of the Cr. *William Chandler.* Set aſide for want of Freehold.
Cl. of the Cr. *William Burrowes.*
Priſoner. I challenge him.
Cl. of the Cr. *Francis Aylett*, Sen. Sworn.
Cl. of the Cr. *George Bailey.*
John Weekes.
Thomas Ruggle.
Challenged by the Priſoner.

The Priſoner ſpoke to the Jury-man.

Mr. *Sol. Gen.* My Lord, it hath been intimated to the Priſoner once already, that he ought to propoſe his Queſtions to the Court.

L. C. Juſt. You are to aſk no Queſtions your ſelf, if you will tell us the Queſtion, we will propoſe it.

Priſoner. Only to know how he ſpells his Name.

Cl. of the Cr. *William May.*
Abraham Lake.
Challenged by the Priſoner.

Mr. *Hungerford.* My Lord, it will be of ſome little uſe to know for certainty how many he hath challenged; they differ here in the Computation.

Cl. of the Cr. He hath challenged twenty eight peremptorily.

Cl. of the Cr. *Nathaniel Weſsley.*

Priſoner. I don't challenge him.

Mr. *Att. Gen.* I challenge him for the King.

Cl. of the Cr. *Benjamin Rutland.*

Priſoner. My Lord, I deſire he may be aſked whether he doth not farm ſomething under the King or on the Foreſt.

L. C. Juſt. If it was of any Service to you it ſhould be done; but if it is ſo, it is no Objection.

Mr. *Ketelbey.* The Objection was once made in the Caſe of Sir *William Perkins*. It was recommended to the King's Counſel.

L. C. Juſt. I deny it. It was not recommended to the King's Counſel, but the King's Counſel did not inſiſt upon it.

Mr. *Juſt. Forteſcue Aland.* The Court in that Caſe gave their Opinion, that to be a Servant to the King was no good Cauſe of Challenge, and my *Lord Chief Juſtice Holt* and *Treby* were preſent, and Mr. *Attorney General* did not inſiſt on the Jury-man ſo challenged, but waved the Matter without any Recommendation of the Court.

Mr. *Ketelbey.* I know no other ways, than if Mr. *Attorney* will do it, as it was done in that Caſe.

Mr. *Att. Gen.* I know nothing of the Fact.

L. C. Juſt. What do you do, do you challenge him or no?

Priſoner. I challenge him.

Cl. of the Cr. *Alexander Marſhall.*

Thomas Selby.

Challenged by the Priſoner.

Cl. of the Cr. *John Milligande.*

Mr. *Hungerford.* My Lord, he is ſearching for a Paper; he challenges him for Cauſe.

Priſoner. My Lord, what I have to offer is, that this Mr. *Milligande* hath been heard to ſay, before he came here, that I ought to be hanged; and I apprehend that is good Cauſe for challenging him, if I make it out.

David Martin call'd.

Cryer. You ſhall true Anſwer make, *&c.*

Mr. *Hungerford.* Do you know Mr. *Millegande?*

Martin. Yes.

Mr. *Hungerford.* What have you heard him declare concerning the Priſoner at the Bar?

Martin. I heard him in Converſation ſay, that he hoped he ſhould be hanged, for he believed he was Guilty.

Mr. *Hungerford.* This Objection ſure is right.

[Mr. *Milligande* was not ſworn.]

Cl. of the Cr. *Robert Walker.*

Priſoner. I challenge him.

Cl. of the Cr. *William Nicholſon.* Sworn.

Priſoner. My Lord, I have very near all my Challenges, I think they may go on as they are called, if Mr. *Attorney* will challenge no more.

Mr. *Att. Gen.* You may go on your own way, I ſhall make no Bargains with you.

Mr. *Ketelbey.* We don't offer any Bargain, but only an Expedient to ſave the Time of the Court.

Cl. of the Cr. *Nicholas Freeman.*

Priſoner. I challenge him.

Cl. of the Cr. *Chriſtopher Hill.* Sworn.

Cl. of the Cr. *Stephen Wood.*

Priſoner. I think I have done all my Challenges.

Cl. of the Cr. You have two more.

Priſoner. Let them take them then as they come.

Mr. *Att. Gen.* I challenge him for the King.

Cl. of the Cr. *Richard Bridge.*

Priſoner. I challenge him.

John Bains, ſet aſide by Conſent, by Reaſon of Infirmity.

Cl. of the Cr. *Robert Barnard.* Sworn.

Cl. of the Cr. *Leonard Bennett.*

Priſoner. I don't Challenge him.

Mr. *Att. Gen.* I challenge him for the King.

Cl. of the Cr. *William Sandford.*

Priſoner. My Lord, I have the ſame Objection to this Gentleman as to the other, he hath declared his Opinion before-hand, and that he muſt make a Sacrifice of me.

L. C. Juſt. Call your Witneſs.

Mr. *Martin* ſworn.

Mr. *Ketelbey.* Mr. *Martin*, do you know *William Sandford* of *Rumford?*

Martin. Yes.

Mr. *Ketelbey.* Have you had any Diſcourſe with him about the Priſoner at the Bar?

Martin. He ſaid, before he was ſummoned on the Jury, that if he was one of the Jury, he would be for hanging of him. Set aſide.

Cl. of the Cr. *Thomas Waters.*

Priſoner. Sir, I apprehend I have challenged thirty five.

Cl. of the Cr. You have one more.

Priſoner. I will challenge no more, let them go on.

Cl. of the Cr. *Thomas Waters.* Sworn.

Richard Gray. Sworn.

William Wheatley.

Mr. *Hungerford.* I hope that what I am going to offer is proper. There is ſome little doubt how far he is gone in his Challenges, it is ſaid he hath one more, if the Court would indulge us ſo far as to let the Perſons challenged be called over.

Cl. of the Cr. It is impoſſible that we ſhould miſtake.

Mr. *Hungerford.* You ſay he hath one more.

Cl. of the Cr. Yes.

William Wheatly. Sworn.

Then the twelve Jurors who were ſworn were counted, and their Names were as follow, *viz.*

Thomas Clarke, Gent.	*William Nicholſon*, Eſq;
Iſaac Potter, Gent.	*Chriſtopher Hill*, Gent.
Hezekiah Haynes, Gent.	*Robert Barnard*, Gent.
John Lowry, Gent.	*Thomas Waters*, Gent.
Thomas Prat, Gent.	*Richard Gray*, Gent.
Francis Aylett, Gent.	*William Wheatly*, Gent.

Cl. of the Cr. *Cryer*, make Proclamation.

Cryer. O yes. If any one can inform, *&c.*

Cl. of the Cr. *Chriſtoper Layer*, Hold up your Hand. Gentlemen of the Jury, look upon the Priſoner, and hearken to his Cauſe.

He ſtands indicted by the Name of *Chriſtopher Layer*, late of the Pariſh of St. *Andrew's Holborn*, in the County of *Middleſex*, Eſq; For that he, *&c.* —— Upon this Indictment he hath been lately arraigned, and thereunto hath pleaded Not guilty, and for his Trial hath put himſelf upon God and the Country, which Country you are. Your Charge is to enquire whether he be guilty of this High Treaſon, in Manner and Form as he ſtands indicted, or Not guilty. If you find him

him Guilty, you ſhall enquire what Goods or Chattels, Lands or Tenements he had, at the Time of the ſaid High Treaſon committed, or at any Time ſince. If you find him not Guilty, you ſhall enquire whether he fled for it. If you find that he did fly for it, you ſhall enquire of his Goods and Chattels, as if you had found him Guilty. If you find him not Guilty, and that he did not fly for it, ſay ſo, and no more, and hear your Evidence.

Mr. *Wearg.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Indictment againſt the Priſoner for High Treaſon. The Indictment ſets forth, That he being a Subject of his preſent Majeſty King *George*, but not having the Fear of God in his Heart, nor conſidering the Duty of his Allegiance, as a falſe Traitor againſt his ſupreme, true, lawful, and undoubted Lord, contriving and to the utmoſt of his Power intending to change, alter and ſubvert the Government of this Kingdom, lawfully and happily eſtabliſhed under his preſent Majeſty, and to depoſe and deprive his ſaid Majeſty of his Title, Honour, Royal State and Government of this Kingdom; and to advance to the Crown and Government of this Realm, the Perſon in the Life of the late King *James* II. pretended to be Prince of *Wales*, and after the Deceaſe of the ſaid King *James* pretending to be and taking upon himſelf the Stile and Title of King of *England*, by the Name of *James* III. did upon the twenty fifth Day of *Auguſt*, in the ninth Year of his preſent Majeſty's Reign, and at ſeveral other Days and Times, at *Layton-Stone*, in the County of *Eſſex*, falſely, maliciouſly, and traiterouſly, compaſs, imagine, and intend to depoſe our ſaid ſovereign Lord King *George*, from his Title, regal State and Government, and the ſaid King to kill and bring to utter Deſtruction.

The Indictment further ſets forth, That he the ſaid *Chriſtopher Layer*, to perfect and bring to Effect his Treaſon and traiterous Purpoſes, on the ſaid twenty fifth Day of *Auguſt*, and at ſeveral other Days and Times, at *Layton-Stone* aforeſaid, together with divers other falſe Traitors, to the Jury unknown, did falſely, maliciouſly, and traiterouſly meet, conſult, conſpire and agree, to move and ſtir up an Inſurrection and Rebellion in this Kingdom, againſt our ſaid Sovereign Lord the King.

The Indictment further ſets forth, That he the ſaid *Chriſtopher Layer*, to perfect and compleat his Treaſon and traiterous Purpoſes, on the ſaid twenty fifth of *Auguſt*, at *Layton-Stone* aforeſaid, with Force and Arms, did falſely, maliciouſly, and traiterouſly publiſh a certain malicious, ſeditious, and traiterous Writing, containing in it ſelf, and purporting to be, an Exhortation and Promiſe of Rewards to the Subjects of his ſaid Majeſty, to perſuade and excite them to take up Arms, and levy War againſt our ſaid Sovereign King *George*.

The Indictment further ſets forth, That the ſaid *Chriſtopher Layer*, together with other falſe Traitors, to the Jury unknown, to compleat and bring to Effect his traiterous Purpoſes, on the ſaid twenty fifth Day of *Auguſt*, at *Layton-Stone* aforeſaid, with Force and Arms, did falſely, maliciouſly, and traiterouſly meet, conſult, conſpire and agree, to exalt to the Crown and Royal Dignity of this Realm the Perſon in the Life of the late King *James* II. pretended to be Prince of *Wales*, by means of an armed Force and Troops of Soldiers, for that Purpoſe to be raiſed and levied.

The Indictment further ſets forth, That the ſaid *Chriſtopher Layer*, to perfect his ſaid Treaſon, on the ſaid twenty fifth Day of *Auguſt*, at *Layton-Stone* aforeſaid, maliciouſly and traiterouſly did raiſe, levy, and retain ſeveral Men, to the Jury unknown, to take up Arms and levy War within this Kingdom, againſt our ſaid Sovereign Lord the King.

That the ſaid *Chriſtopher Layer*, to perfect his treaſonable Purpoſes on the ſaid twenty fifth Day of *Auguſt*, at *Layton-Stone* aforeſaid, together with divers other falſe Traitors, to the Jury unknown, did falſely, maliciouſly, and traiterouſly meet, conſpire and agree, to take, ſeize, impriſon and detain in Cuſtody the Sacred Perſon of our ſaid Sovereign Lord the King, againſt the Duty of his Allegiance, againſt the Peace of the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. To this Indictment the Priſoner hath pleaded, Not Guilty.

Mr. *Serj. Pengelly.* May it pleaſe your Lordſhip, and Gentlemen of the Jury; the Priſoner at the Bar, Mr. *Layer*, comes now to be tried before you, for a wicked and deteſtable Conſpiracy againſt the Perſon of his Majeſty, and againſt his Government; and this, in favour of an attainted and abjured Pretender; a Pretender whom the Priſoner himſelf has abjured in Words, and ought to have renounced in his Heart.

The Indictment contains a Charge of High-Treaſon againſt the Priſoner at the Bar, for compaſſing and intending the depoſing the King, and alſo his Death and Deſtruction.

The particular Facts laid to prove this traiterous Imagination and Intent, and which the Priſoner put in Execution, in order to bring to Effect his treaſonable Purpoſes, are five.

The firſt is; That the Priſoner, with other Traitors, did conſult, conſpire, and agree to raiſe a general Inſurrection and Rebellion in this Nation againſt his Majeſty.

The next; That he did publiſh a ſeditious and treaſonable Declaration, containing Incitements, and Promiſes of Rewards, whereby to excite and ſtir up his Majeſty's Subjects to take up Arms, and to levy War againſt his Majeſty within this Realm.

And farther; That he, with other Traitors, conſpired, conſulted and agreed, by an armed Force, to exalt, and bring the Pretender to his Majeſty's Crown, to the Throne of theſe Kingdoms, and to put him into the Poſſeſſion of the Government thereof.

That he hath provided, levied, and retained ſeveral Perſons, to take up Arms, and to levy War againſt his Majeſty within this Kingdom, for the executing theſe traiterous Purpoſes.

The laſt Overt-Act alledged, and to finiſh this Conſpiracy, is, That he, with the other Traitors, conſulted, conſpired, and agreed to ſeize upon, and to impriſon the ſacred Perſon of his Majeſty.

Gentlemen, it is unneceſſary, when theſe Facts are opened to you, to acquaint you, that an Attempt of this Nature, if it had ſucceeded, would have been the Subverſion of the preſent happy Eſtabliſhment, and the Proteſtant Succeſſion, ſo often confirmed by the Conſent of the whole Na-

tion, and the only Security of your religious and civil Rights and Liberties; they would all have been expoſed to the Arbitrary Power of a popiſh Faction, under the Tyranny of the Pretender.

Gentlemen, having ſaid this to ſhew the Nature of the Offence; we (who are Counſel for his Majeſty) ſhall proceed to lay before you the particular Evidence againſt the Priſoner at the Bar: Gentlemen, we have been ſo fortunate as to diſcover, and ſhall produce before you, the very Plan it ſelf, upon which theſe Conſpirators proceeded, and which was to be put in Execution.

We ſhall produce the Plan under the Priſoner's own Hand-writing, and ſhew his acting correſpondent to that Plan, and in the Execution thereof; this Plan is a compleat Scheme of a treaſonable Inſurrection, if that may be called compleat which tends to utter Deſtruction; for if the ſeveral Parts therein contained had been executed, it would have been a total Overturning of the Government and Conſtitution.

But you may obſerve a Regularity going thro' the whole Scheme.

The Place of Action, and the Scene where this Conſpiracy was firſt to be put in Execution, was in the City of *London*, and tho' in the Plan it ſelf the Day is not mentioned, yet we ſhall ſhew to you, by the Priſoner's own Declaration and Diſcovery, the Time when it was to be executed; it was at the breaking up of the Camp of his Majeſty's Forces in *Hide-Park*.

Gentlemen, the Plan contains a Diſpoſition of ſeveral Officers, who were appointed to their particular Stations, and were to be ſupply'd with Men deſigned to be procured for the Execution of this Plan; and, as the Conſpirators hoped to debauch part of the Army, theſe Officers were to be diſpoſed at ſeveral Places, to receive the private Men, who, to the Number of about two Hundred (towards the Evening of the Day agreed upon for Execution) were to go ſingly out of the Camp, without their Arms, that they might more eaſily paſs without Obſervation, and were to be collected together at a Place of Rendezvous appointed them.

Gentlemen, from the management of the Conſpiracy, and the Method they had taken to carry it on, and the Hopes they had entertained, the Conſpirators concluded, they ſhould have that Number of two hundred Men ready in one Body, to be commanded by proper Officers, to make the firſt Attempt, and the firſt Stand.

At the Place of Rendezvous they were to be ſupply'd with Muskets ready loaded, and to receive their Arms, which were to be diſtributed to them a little before the Hour of Nine; at which Hour exactly, they were to march directly to the *Tower* of *London*, (as the Plan propoſes, and as the Priſoner agreed and declared) where they might expect to be admitted, by the Help and Aſſiſtance of their Friend, the Officer upon the Guard; and as ſoon as they had entered, they were to ſhut up the *Tower* Gates, and ſeize the Arms.

Their General was to make his Stand in Perſon at the *Royal Exchange*; at the ſame time, it is directed by the Plan, and was conſulted upon, and agreed by the Priſoner himſelf, they were to attempt to arreſt the Perſons of ſeveral great Men; and although the Plan doth not name the Perſons, yet the Priſoner hath explain'd it fully, and from his own Mouth we ſhall prove, who the particular Perſons are, thus intended to be ſeized.

A Declaration was to be diſperſed to excite People to come in to the Rebels; the Gates of the City of *London* were to be ſhut up, and Cannon brought down againſt them: They were then to ſet a Guard over the *Bank*; but in the firſt Place, they were to take out Money ſufficient to pay their Men, ſuch as they hoped would appear in their Intereſt: Their ſeveral other Parties were to ſecure the Artillery in the *Camp*, the Guns in the *Privy-Garden*, the Cannon and Ammunition near the *Horſe-Guards* in St. *James's Park*.

Theſe were the firſt Operations: But to finiſh this villanous and execrable Deſign, at the Time the *Tower* was ſeized, and the City in Arms, they were to ſend a Detachment to ſeize the Perſon of his Majeſty; and this they expreſs'd in their Plan to be, for the ſecuring his Perſon from the Mob. But our King was to be delivered to their General at the *Tower*, and to be put under his Cuſtody. Thus the Life of his Majeſty was to be in their Power.

After this, there are ſeveral other Diſpoſitions of Officers, and other Perſons, in order to excite and carry on the Rebellion: Some were to appear in *Tothil-Fields*, ſome in *Southwark*, who were to give Arms to the *Minters*; ſome at *Greenwich*, to engage the Watermen, and ſeize the Magazine and Powder there, and others at other Places.

Gentlemen, you will find in this Plan a Preparation to make an entire Conqueſt of the Cities of *London* and *Weſtminſter*; upon which the Conſpirators hop'd the reſt of the Kingdom would declare for the Pretender: And there is one particular Proviſion in the Plan, that as they proceeded here, and found Succeſs, the General ſhould immediately diſpatch Meſſengers into the ſeveral Counties of *England*, to give Intelligence of their Progreſs, and to perſuade thoſe, who they look'd upon to be in their Intereſt, to declare for the Pretender, and to riſe in their reſpective Counties with their Adherents.

This is the Plan upon which the Conſpiracy is carried on; and as we ſhall produce this Plan, which the Priſoner hath ſupplied himſelf with, and written with his own Hand, we beg leave to inſiſt upon that, as ſtrong Evidence againſt the Priſoner, upon the Overt-Acts alledged in the Indictment, of his conſulting and conſpiring to raiſe a Rebellion and Inſurrection in the Nation, and to ſeize the King's Perſon.

Gentlemen, upon this Plan, which the Priſoner at the Bar had thus furniſh'd himſelf with, you will find, on the Examination of our Witneſſes, that he conſtantly acted; he declared for, and promoted the Execution of the principal Parts of it.

Gentlemen, the Witneſſes we ſhall call, who were engaged with the Priſoner at the Bar, in this Deſign, are *Stephen Lynch* and *Matthew Plunkett*; (which laſt had been a Serjeant in the Army) with whom the Priſoner conſulted, and whom he engaged in this deſperate Attempt; and we ſhall call ſome other Witneſſes to confirm ſeveral Circumſtances in their Evidence.

Mr. *Lynch* is a Perſon the Priſoner might have reaſonable Hopes of engaging in this Service: He had been formerly acquainted with one Dr. *Murphey*, who (I am inſtructed) was in the Rebellion

that

that broke out in the Beginning of his Majeſty's Reign: Mr. *Lynch* having been abroad, and abſent for ſome time, retuned into *England* in *April* laſt: Upon his Return, Dr. *Murphey*, his old Acquaintance, meets with him, bids him welcome to *England*, and tells him that an Affair was going on by which he might make his Fortune, and adviſes him not to go out of *England*: That there was an Intention to riſe in Favour of the Pretender, whom he called his King, and he would take Care to recommend Mr. *Lynch* to a Perſon who had a great Part in that Affair.

Mr. *Lynch* having ſuffered before, and run a great Hazard, was unwilling immediately to enter into any Engagement, but propoſed, that if he could have ſufficient Encouragement, and what he expected as a Reward, he ſhould be willing to ſtay. Some time after Dr. *Murphey* introduces *Lynch* to the Priſoner at the Bar: The firſt time they met, I think it was the Beginning of *June* laſt, they went to the Priſoner's Lodgings, which were then at the upper End of *Chancery-Lane*; and he being about to remove his Goods, deſired them to go to a Tavern hard by, the *Griffin* Tavern in *Holbourn*. To this Place the Priſoner at the Bar came, where Dr. *Murphey* preſented *Lynch* to Mr. *Layer*, as the Getleman Dr. *Murphey* had before recommended to him; Mr. *Layer* received Mr. *Lynch* at that time with great Civility, and tells him, that the Recommendation he had received of *Lynch* from Dr. *Murphey*, made him not to doubt of his Integrity and Ability. Then they entered upon a Conſultation as to the carrying on of this Deſign; Mr. *Layer* introduced it with repreſenting an Uneaſineſs in the Nation in general, and how fair an Opportunity there was to bring about a Revolution: But Mr. *Layer* tells him, that one of the firſt and principal Steps was to ſeize upon a General, or other great Man, (which you will obſerve is one part of the Scheme) and upon Dr. *Murphey*'s Recommendation of him as a fit Man for that Service, *Layer* propoſes to *Lynch* to undertake it. At this time *Lynch* acquainted *Layer* with the Difficulties he had been in, and that an Affair of this Nature would take up ſome time before it could be put in Execution, and he could not well engage in it without ſome farther Encouragement, and a Reward in Money, in order that he might live eaſy and well while he ſtaid here. Upon that, the Priſoner at the Bar promiſed him Supplies of Money for his Subſiſtence and Expences, what ſhould be neceſſary, beſides future Rewards; and in purſuance of that Promiſe, *Layer* hath ſeveral times ſupplied *Lynch* with Money, to engage him more effectually in this Deſign, and to ſupport him in it. By theſe Aſſurances *Lynch* was prevailed upon, and then agreed to enter into this Conſpiracy, and to take upon him the Part therein that ſhould be ſignified to him.

Gentlemen, the Priſoner did not then make a full Diſcovery of the Perſon that was to be ſeized; but they were to meet again, as they did, about the latter end of *June*, at the ſame Tavern: There the Priſoner diſcloſed to the Witneſs the particular Perſon who was deſigned to be firſt ſeized. He acquaints the Witneſs, that the Perſon he (the Priſoner) intended at their former Meeting, and whom he deſigned the Witneſs ſhould ſeize, is the General of the Army, the Earl *Cadogan*; and *Lynch* was to find out ſuch other Perſons as he could rely upon, for the aſſiſting in, and effecting that Enterprize; whereunto *Lynch* agreed. *Layer* then acquainted him what Steps were already made in the Conſpiracy, and that they were to be headed and commanded by a General, who had Wit and Courage and Reſolution, and who were ſupported by a great many Friends, who had full Power and Authority from the Pretender (whom he called King) to act, and who was Intruſted with a Commiſſion as his General, and whoſe Orders *Lynch* was to obey.

The Priſoner and *Lynch* had ſeveral other Meetings, ſome at the *Griffin* Tavern, and others at the Priſoner's own Houſe in *Old Southampton Buildings*, where the Priſoner always encouraged *Lynch* to perſiſt in the Undertaking, by aſſuring him, that all Things went on well, and that the Deſign was ſo well laid, that it could not probably miſcarry: That they ſhould be aſſiſted by a great many Officers, as ſoon as any Motion was made, and that the common Soldiers would declare upon the firſt Opportunity: and being aſked by *Lynch*, whether they had no Foreign Aſſiſtance to depend on; the Priſoner anſwered, when we begin the Buſineſs, we ſhall not want Relief, if requiſite. At one of theſe Meetings the Priſoner revealed to the Witneſs, that, upon the Riſing, the *Tower* would be delivered up to them, by means of an Officer, who was to be upon the Guard there on the Day of Execution; and that the People in the *Mint* in *Southwark* would come in to them; who, and all others that ſhould repair to their Party, ſhould have Arms delivered to them; and that the whole Deſign ſhould be put in Execution at the Breaking up of the Camp, which would be the moſt proper Time for the ſpeaking with the Souldiers in the Army.

But at a Meeting they had, ſome time in *Auguſt*, at the *Queen's Head* Tavern in *Great Queen's Street* near *Lincoln's Inn Fields*, *Lynch* complaining of the Delay in putting their Deſign in Execution, and repreſenting the Danger of it, and withal preſſing to know his intended General and Commander, the Priſoner gave him great Encouragement, from the good Proſpect of their Affairs, and the Vigilance of the Noble-Man at the Helm, who would loſe no Opportunity, when a convenient Time ſhould offer; and promiſed the Witneſs, that he ſhould be preſented to this noble Perſon in due time, from whom *Lynch* ſhould receive his Orders, or Commiſſion for executing his Part, and entering upon his Enterprize.

And accordingly, upon the twenty fourth Day of *Auguſt*, Mr. *Layer* invites *Lynch* to ride out of Town with him the next Day to take the Air, which *Lynch* comply'd with; and on the twenty fifth of *Auguſt* in the Morning, *Lynch* went to the Priſoner's Houſe, who appointed *Lynch* to go before, and to ſtay without *Aldgate*.

At that Time the Priſoner aſked the Witneſs, whether he mounted with Furniture or Piſtols; who anſwering, that he did not, but that he had a Double-Barrel Fowling-Piece, which the Priſoner's Servant might carry; the Priſoner directed him to get his Piece ready loaden, becauſe he *(Layer)* ſhould carry ſomething with him, which he would not loſe for all the World. *Lynch* and the Priſoner met without *Aldgate* at eleven before Noon, and the Priſoner's Servant carried the Gun, and they rode together towards *Epping* in *Eſſex*, which was the Place they were going to.

Upon the way as they proceeded, Mr. *Layer* told the Witneſs, that they were going to the Houſe of the Lord *North* and *Gray*, where he would preſent *Lynch* to his Lordſhip, as a particular Friend of his (the Priſoner's). When they came to the *Green Man* at *Layton-Stone*, at the Entrance upon *Epping Foreſt*, the Priſoner ſaid, it might be beſt to eat ſomething there, becauſe they ſhould be too late for the Lord *North* and *Gray*'s Dinner; and accordingly they ſtopt at this Houſe to Dine.

Gentlemen, You will hear from the Witneſs, that at this Place, the Priſoner and *Lynch* had another Conſultation, wherein there was a Repetition and Confirmation of the whole Deſign and Conſpiracy. At this *Green Man*, in your County, Gentlemen, you will find every principal Part of the Conſpiracy, which was to be executed, conſulted upon, and agreed unto by them both: The Time and Manner of the Inſurrection, the Preparations making for it, the Aſſiſtance to be provided and expected from the Army, from many in the City of *London*, and from the Generality of the Nation, as was then ſuggeſted; the Seizing the Earl *Cadogan* as the firſt Step, and the Surprizing the *Tower* in the Manner mentioned in the Plan, by the Help of the Officer upon the Guard; and then they proceeded to conſider and approve the moſt daring and execrable Part of the Plan, which was then expreſly repeated by the Priſoner, the making a ſtrong Detachment to Seize on his Majeſt's Perſon.

The Priſoner then declared his great Satisfaction, in having engaged a Perſon of ſuch Courage and Conduct as Mr. *Lynch*, in the Attempt of Seizing the Earl *Cadogan*; and likewiſe named the ſeveral other great Men, hinted at in the Scheme, whoſe Perſons were to be ſeiſed, and of whom he had made up his Collection in purſuance of the Plan; and then expreſs'd his Wiſhes ſo to bring Matters to bear, that Mr. *Lynch* might likewiſe have the ſole Direction of apprehending the Perſons of ſome of his Majeſty's Miniſters, the Lords *Townſhend* and *Carteret*, his Majeſty's principal Secretaries of State, and Mr. *Walpole*, firſt Lord Commiſſioner of the Treaſury.

Theſe Perſons, moſt immediately intruſted in his Majeſty's Service, were in the firſt Place to be ſeized, in order to facilitate the Deſign, and to make it ſucceſsful. By this means the Conſpirators were to weaken his Majeſty's Power of Defending himſelf, when they had deprived him of his General, who was to command and conduct his Army; of his two Secretaries, who were to maintain and carry on his Intelligence; and of the firſt Commiſſioner of his Treaſury, who was to take Care for his Supply.

At this Place theſe things were debated and conſidered between them: Mr. *Lynch* then again complained of the long Delay, and wiſhed that the Affair might be carried on with more Expedition: The Priſoner thought no time ſo proper as the Breaking up of the Camp, when they might be ſupplied with Soldiers; yet he was willing to hear any Propoſal from Mr. *Lynch*, and deſired Mr. *Lynch*, that if he could think of any ſpeedier Method, or better Scheme, to let him know it: But the Witneſs was not capable to propoſe any way more proper, than what had been agreed upon the Foot of the Plan, as it had been explained by the Priſoner himſelf, and therefore Mr. *Lynch* acquieſced therein.

Gentlemen, at that time, and at the ſame Place, the Overt-Act laid in the Indictment, of publiſhing the treaſonable Writing, was committed; which was a Declaration framed in the Handwriting of the Priſoner, to be publiſhed immediately on the firſt Breaking out of the Conſpiracy, to excite the King's Subjects to take up Arms. and to enter into a Rebellion againſt him; and that it might have an Influence on the Army, where their Hopes were placed, it took Notice, that that the King's General was ſeized, and in their Cuſtody.

In this Declaration particular Rewards are promiſed to the Horſe and Foot in the Army; different Allowances are made, to every Horſe-man and Serjeant three Guineas; two Guineas to every Corporal, and one Guinea to every common Soldier: All had Promiſes of Encouragement, Favour, and future Reward.

Gentlemen, after this was read, the Priſoner put this Declaration up into his Pocket again; and afterwards (as he acquainted the Witneſs) he himſelf made an Alteration therein; it containing at firſt a general Invitation to a Revolt, but was not directed in the Name of any particular Perſon, therefore the Priſoner thought fit afterwards to alter it, (as he informed *Lynch)* and to make it in the Name of the Pretender, as King.

Gentlemen, though their Hopes and Expectations were founded on corrupting and Debauching the Army; I mention it only, as it was their Expectation and Deſign, without any Imputation on the Honour or Fidelity of the Gentlemen of the Army: But Perſons who undertake an Affair of this Nature, are always forward to expect that their Deſigns will be ſucceſsful.

This, Gentlemen, which I have mentioned to you, which will be more fully and particularly given in Evidence to you, againſt the Priſoner at the Bar, was tranſacted and committed in the County of *Eſſex*.

My Lord, this will be Evidence of moſt of the Overt-Acts alledged in the Indictment in the County of *Eſſex*; but we ſhall confirm this Evidence by the Confeſſion of the Priſoner, proved by two Witneſſes, in whoſe Preſence he acknowledged the ſeveral Facts, which will be charged upon him in the County of *Eſſex*, by the Teſtimony of Mr. *Lynch*; and ſhall make Proof of other Overt-Acts in the County of *Middleſex*; for it was impoſſible a Deſign ſo extenſive ſhould be confined to one or two particular Places within the ſame County: Their Conſultations muſt be transferred from Place to Place, as Opportunity offered, and as they thought moſt conducive to the Purpoſe they were engaged in.

But the Facts I have mentioned, were tranſacted, Gentlemen, in your County. After the Priſoner and Mr. *Lynch* had ſettled theſe Affairs at the *Green Man*, they went to the Houſe of my Lord *North* and *Gray* at *Epping:* They ſtaid there all Night, and dined there the next Day; the Witneſs was introduced and preſented to his Lordſhip by *Layer*, and was civilly received and entertained; and the Priſoner at the Bar, as he and *Lynch* returned home, aſked the Witneſs how he liked his Lordſhip, and aſſured Mr. *Lynch* for his Encouragement, that he had greatly recommended him (the Witneſs) to his Lordſhip.

The Priſoner and *Lynch* met a ſecond time at the Lord *North* and *Gray*'s Houſe, where *Lynch* declared

declared he would withdraw himſelf, if things were not put in Execution; to which *Layer* replied, they would be ſooner put in Execution than *Lynch* imagined.

Gentlemen, you may perceive, by this Evidence, the Priſoner's Explanation of the whole Scheme, and his Execution of it, ſo far as was in his Power; tho', bleſſed be God, theſe, or any farther Attempts of this kind, have not hitherto prevailed.

The Priſoner proceeds farther; and the next Witneſs who will be produc'd againſt him, is one who had been a Serjeant in the Army, *Matthew Plunkett*. *Plunkett* had been formerly acquainted with the Priſoner, and done him a piece of Service; he was made uſe of to reſcue ſome Goods, when they were taken in Execution at the Houſe where *Layer* lodged, which was the beginning of their Acquaintance: This, with ſome other Recommendations from Perſons engaged in this Deſign, induced the Priſoner at the Bar to make Offers to him, as you will hear from the Witneſs.

In *June* 1722, another Perſon of the ſame Name, one *James Plunkett* was directed by Mr. *Layer* to go to this Serjeant *Plunkett*, and deſire him to meet *Layer* at the *Italian* Coffee-houſe in *Ruſſel-Court*. The Witneſs could not at that time, at leaſt did not think it proper to go to the Place appointed; but a Day or two after, Mr. *Layer* meets him in *Lincoln's-Inn Fields*, and takes him aſide under a Gate-way near *Turn-ſtile*: *Layer* then told *Plunkett*, he would inform him of a Matter that would be of great Advantage and Benefit to him; there *Layer* let him into this Conſpiracy, and engaged the Witneſs in it, not only by aſſurance and promiſe of Reward, but by actual Reward and Money given him; and to induce and to encourage *Plunkett* the more, *Layer* acquainted him, that there were ſeveral Perſons of great Eſtates, who were reſolved to reſcue themſelves, and the Nation from the Calamities and Slavery that they then endured; and that they intended to bring about a Revolution, and reſtore their King the Pretender; *Plunkett* objected, that the Pretender was a Papiſt; but the Priſoner reply'd, there was no difference between a Papiſt and a Lutheran King, and therefore, that ought to make no Impreſſion upon *Plunkett*, to hinder him in joining to bring in a Papiſt.

The Priſoner enquired of *Plunkett*, whether he had not an Acquaintance in the Army, with ſome Officers, and with the common Soldiers; and then engaged *Plunkett* to levy what Perſons he could in their Service; and when the Witneſs told *Layer*, he knew twenty or thirty Serjeants in the Army, proper Perſons to be applied to, the Priſoner gave *Plunkett* Directions to make Application to them, and to have them enroll'd; and at that Meeting the Priſoner gave the Witneſs Money for his Encouragement; and as they had ſeveral other Meetings after this, to provide and levy Men, the Direction and Employment given by *Layer* to the Witneſs, was, to take care to find out their Lodgings, and to make Liſts of the Men, of their Names, and Places of Abode, that they might be ready upon Notice.

The Priſoner not only employed *Plunkett* to procure, and inroll as many as he could get; but gave him Money for one particular Perſon, one *Child*, who had ſerv'd in the Army, and who was recommend to *Layer* by *Plunkett*, as a Perſon that had been diſoblig'd by having been turned out of the Service; *Layer* himſelf gave *Plunkett* half a Guinea, for to give to this Perſon, to engage him in this Conſpiracy, which *Plunkett* accordingly paid *Child*; *Layer* likewiſe ordered Money at other times to be given to *Plunkett*, and at one time particularly acquainted him, that the Priſoner had left a Guinea with one *Jefferies* a Non-juring Parſon, to give to him, who had given *Plunkett* but half a Guinea.

The Priſoner at the Bar, to encourage *Plunkett*, acquainted him with the Perſons, whom *Layer* expected to join in this Conſpiracy; and aſk'd the Witneſs his Opinion of ſeveral, the Witneſs will tell you the Names of the Perſons, and what Anſwers he gave; particularly that *Layer* aſk'd him what he thought of the Lord *North* and *Gray*, for an Officer to be at their Head? The Witneſs anſwer'd, though he had never ſerv'd under him, he look'd upon his Lordſhip as a great Man.

They had Meetings at ſeveral times, when *Layer* informed him, that things were in a great Forwardneſs, tho' it was not yet a time to put their Deſign in Execution; but it went on ſo well, that it could not miſcarry; that the Duke of *Ormond* was to come with a ſingle Ship, with ſome Officers; and that the Deſign had been diſcover'd to the *French* Embaſſador, who had given Intelligence thereof to his Majeſty, or elſe the Affair had been done before that time.

This *Plunkett* was employed, from time to time, to prepare Liſts of, and to collect and inroll fit Perſons to go on with this Deſign; and particularly a Number of Serjeants, about twenty five, being diſmiſs'd from the Army, the Priſoner engaged *Plunkett* to go immediately to thoſe Perſons, and take care to ſecure them.

Gentlemen, theſe traiterous Conſults and Tranſactions were in *July* and *Auguſt*; and the Witneſs will acquaint you more fully with the ſeveral Particulars. There was one Encouragement which the Priſoner gave to this Witneſs, which he did not mention to the other; he told *Plunkett* there would be an Army of *Dutch* to come over in Aid of his Majeſty, but the Witneſs ſhould ſee a Number of half-pay Officers, eſpecially thoſe of the Name of *Fitzgerald*, on the Side of his King (the Pretender) that they could not doubt of Succeſs.

Gentlemen, Under theſe Encouragements and Promiſes, and with theſe Rewards, both theſe Perſons, the two Witneſſes, were engaged by the Priſoner, to enter into, and go on with this Conſpiracy: The Priſoner met them apart from time to time; they concerted and carried on ſuch Meaſures as they thought proper to execute this Deſign, upon the Foot of the Plan, which hath been mentioned, and will be produced to you.

After we have produced the Scheme, and likewiſe examined theſe two Witneſſes, who will give you an Account of the Progreſs which the Priſoner made in this Treaſon; we ſhall give you other plain and evident Proof, which will demonſtrate the treaſonable Intent of the Priſoner at the Bar, and his Hopes of Succeſs.

We ſhall prove that the Priſoner had been at *Rome*, and by his own Confeſſion, that he had ſeen the Pretender, and had Conferences with him.

We ſhall prove that the Priſoner had blank promiſſory Notes, or Receipts for Money, ſigned with

with the Pretender's own Hand, by the aſſumed Title of *James Rex*, found amongſt *Layer*'s Papers, which were remitted to him from *Rome*, and which he has acknowledg'd were ſent over to him, for the raiſing of Money to carry on the Cauſe of the Pretender. This is a ſtrong Evidence of the Truſt and Credit repoſed in him to execute this Conſpiracy; that the Priſoner is a Perſon fully intruſted; the Receipts are in Blank, and the Priſoner had Power to raiſe Money on them, and to fill them up with ſuch Sums, as he thought proper and neceſſary.

Gentlemen, on the Examination of our Witneſſes it will appear that Mr. *Layer* declared he had expended great Sums of Money in this Affair, and that he has made it an Excuſe, why he had not Money to ſupply ſome Demands, becauſe he had disburs'd ſo much.

This therefore was to be his full Power to raiſe Money towards bringing the Pretender to the Throne.

Beſides theſe Receipts, he had furniſhed himſelf with Liſts of the Officers of the Army, in order to know the Situation and Condition of the Army, and to conſider what Advantage he could make by any of thoſe in the Liſts: He had provided himſelf with Liſts of the Officers of the *Tower*, which we apprehend, was to render the Deſign of ſeizing the *Tower*, when their Friend the Officer was on the Guard, more probable and hopeful.

Beſides this, we have Letters which will be produced, that paſſed between Sir *William Ellis*, an Adherent of the Pretender's at *Rome*, and Mr. *Layer*, by the Name of *Fountain*, (a Name he went by) encouraging him to go on with this Deſign: We have the Cypher, and the Explanation of the Cant Words uſed in thoſe Letters. In one Letter *Ellis* ſays, the beſt Method of carrying on the Manufactory, (which is the Inſurrection) is to get good Workmen, (by which is meant Soldiers) and particularly to gain ſome of the ableſt of Mrs. *Barbara Smith*'s, (by Mrs. *Barbara Smith* is ſignified the Army) and this would be very agreeable to all concerned, particularly to Mr. *Atkins* (which by their Cypher or Key is a Name for the Pretender.)

And in another Letter, there is particular Mention of Mr. *Layer*'s intended General; you will find in the Letter an Explanation of him, thus; that he, who the Priſoner in his Letter called *Simons*, and deſcribed as a Tenant, tho' his Name was not then found in the Rentall, this Writer believed he ſhould be called *Simmes*, and ſays he is of the *North*, a grey hair'd ancient Man, for whom his Friend has a particular Eſteem and Value, as a very good Tenant. This is the Deſcription, and this is the Cant that paſſed between them; the Explanation you will apprehend, by the Cyphers that were found amongſt the Priſoner's Papers.

Mr. *Layer* was not wanting in other Preparations for this Attempt; for he had provided Arms in his own Houſe, more than he could have Occaſion for, as a private Subject; he had ſeveral Muſquets and other Fire-Arms; he had forty or fifty Cartridges loaded with Bullets, ready made up for ſo many Diſcharges, which might be delivered out to the People who ſhould come in to them: If he had any uſe for ſuch a Quantity, he will ſhew upon what Occaſion.

The Diſcovery of the Facts made by the Witneſſes, occaſioned the apprehending Mr. *Layer*, in whoſe Houſe theſe Arms were likewiſe ſeized.

Mr. *Layer* was ſo conſcious of his own Guilt, that after he was apprehended, he made his Eſcape out of the Cuſtody of the Meſſenger, in whoſe Houſe he was placed; he offered a great Reward to Watermen to carry him off: This is a Demonſtration of his Guilt, from the Conviction of his own Conſcience.

Gentlemen, there are ſome other Matters and Papers which it will be proper to offer to your Conſideration; and moſt of theſe particular Facts, which I have mentioned, or the moſt material of them, have been confirmed by Mr. *Layer*'s own Confeſſion which he made upon his Examination before the Lords of the Privy Council. And when we have laid before you this Evidence, as according to my Inſtructions we ſhall very fully, I don't doubt but that you will do your Duty as honeſt Men.

We don't apply to your Zeal, as you are Proteſtants and Engliſhmen; but upon the Weight of the Evidence, we ſhall appeal to your Juſtice, to your Oaths and to your Conſciences; whether upon the whole Proof to be laid before you, you will not remain fully ſatisfied, that the Priſoner at the Bar is guilty of the High-Treaſon whereof he ſtands indicted, and then that you do find him ſo.

Mr. *Att. Gen.* May it pleaſe your Lordſhip and you Gentlemen of the Jury, I am Counſel on the ſame Side for his Majeſty againſt the Priſoner at the Bar, who ſtands indicted for High-Treaſon, in compaſſing and imagining the Death of the King. The Preſervation of the Life of the King is of that great Importance to the Safety and Proſperity of his Subjects, that even Imaginations and Intentions (which are but Acts of the Heart) to take it away, manifeſted by Overt-Acts are an Offence of the higheſt Nature which the Law takes notice of; but as Imaginations and Intentions of Men are ſecret, and can't be diſcover'd but by their Actions, there muſt be Proof of ſome Fact done in order to carry ſuch Intentions into Execution, to make the Offenders guilty of Treaſon: Therefore in this Indictment five ſeveral Overt-Acts are laid; the firſt is, that the Priſoner at the Bar propoſed, conſulted and agreed with divers Perſons unknown to the Grand-Jury, to raiſe an Inſurrection and Rebellion within this Kingdom againſt his Majeſty; the ſecond, that he publiſhed a traiterous Writing, purporting an Exhortation, Encouragement and Promiſe of Rewards, to perſuade his Majeſty's faithful Subjects to take up Arms againſt him; the third, that he propoſed, conſulted and agreed to ſet the Pretender on the Throne by armed Force; the fourth, that he liſted Men to levy War againſt the King; and the fifth, that he propoſed, conſulted and agreed to ſeize and impriſon his Majeſty's ſacred Perſon.

Gentlemen of the Jury, you will readily agree with me that nothing can be more dreadful to a true *Briton* who hath any Regard to himſelf or his Poſterity, or Love to his Country, than the fatal Conſequences that muſt have inevitably attended ſuch wicked Deſigns, had they been carried into Execution with Succeſs: Suppoſe a Rebellion had been only raiſed, what could any Man have expected from a Rebellion in the Heart of the Kingdom, but Plunder and Rapine, and Murder, a total Suſpenſion of all Civil Right, and as long as the Storm had continued, a juſt

but

but terrible Apprehenſion of ſomething yet worſe to come: This would certainly have been the Caſe, though the Attempt ſhould have been diſappointed at laſt. But had it been attended with Succeſs, had his Majeſty's ſacred Perſon been ſeized and impriſoned, and had the Pretender been placed on the Throne, what a Scene of Miſery had open'd! A mild Adminiſtration, govern'd by the Law of the Land under an excellent Prince, and as juſt and merciful as ever wore the Crown, muſt have given way to Arbitrary Power; all your Eſtates and Properties muſt have been at the Will of a provok'd and exaſperated Uſurper; Liberty muſt have given Way to Slavery, and the beſt of Religions to Popiſh Idolatry and Superſtition; and this, humanly ſpeaking, without any Proſpect or Hopes of Relief: Nor would theſe dreadful Calamities have been confin'd within the Bounds of the King's Dominions, for ſhould the preſent happy Eſtabliſhment in his Majeſty and his Royal Family (the chief Bulwark and Support of the Proteſtant Intereſt) be deſtroyed, the Proteſtant Religion in general muſt be reduced to the loweſt Ebb, if not totally extinguiſhed.

This is the Nature of the Crime, and theſe ſome of the fatal Conſequences that muſt have enſued, if the Deſigns charged upon the Priſoner by the Indictment had took Effect. But whether he is guilty of this great Offence, is what you Gentlemen of the Jury are now to try.

My Lord, 'tis my part to open the Nature of the Evidence that we ſhall produce to prove the ſeveral Overt-Acts laid in the Indictment; and in ſtating it to your Lordſhip and the Jury, I ſhall follow the Courſe of Time in which the Facts were done, that the Caſe may be more eaſily apprehended, and ſhall open nothing but what I believe will be clearly verified by Proof.

This Priſoner at the Bar, tho' brought up to the Profeſſion of the Law, and a Practiſer in it, went beyond Sea in the Year 1720, and at the Cloſe of that Year, according to our Stile, or the Beginning of the Year 1721. arrived at *Rome*, where the Pretender then was; while the Priſoner was there, he procured himſelf to be introduced to the Pretender, and had two private Conferences with him, in which (but by what Methods or Repreſentations is beſt known to himſelf) 'tis plain he obtained the Pretender's good Opinion ſo far, that he thought him a fit Perſon in whom a Confidence for carrying on any Deſigns againſt his Majeſty, and for ſetting himſelf on the Throne, might be ſafely repos'd: For this Purpoſe a Correſpondence was then ſettled between the Priſoner and ſome Perſons of Diſtinction about the Pretender, and a Cypher of Names of Perſons and Things was agreed on, in order to carry this Correſpondence on. The Priſoner returned to *England* about *July* 1721. after which he writ Letters to his Correſpondent at *Rome*, and Anſwers to them came from thence, whereby it will appear, that the Priſoner had undertook a conſiderable Part in the Deſign then carrying on to bring the Pretender in; and altho' theſe Letters are in obſcure and cant Terms, and fictitious Names, yet by the Help of the Cypher and from the Nature of the Letters themſelves, it will eaſily appear to a common Underſtanding for what Purpoſe they were writ: This Cypher and Letters we ſhall prove to have been found among the Priſoner's Papers, which were ſeized ſoon after his Commitment, and your Lordſhip and the Jury will ſee, when they come to be read, that notwithſtanding the obſcure Terms, and the myſterious Expreſſions inſerted to dazzle the Eye of the Reader, when compar'd with the Cypher they will be ſo intelligible, that they will be a plain Evidence that a Deſign was carrying on of raiſing a general Rebellion in favour of the Pretender; for which Purpoſe a Scheme in Writing was prepared, which we ſhall lay before your Lordſhip and the Gentlemen of the Jury, that was likewiſe found among the Priſoner's Papers; we ſhall prove it to be writ with his own Hand.

Mr. *Serjeant Pengelly* opened the Nature of this Scheme very fully, I ſhall not trouble your Lordſhips with a Repetition of what he ſaid; when it comes to be read it will appear to be calculated for a general Riſing, it will prove a form'd Deſign to ſeize the Tower, to ſeize Perſons in great Stations, to ſeize the Bank, and then at laſt to ſeize the Perſon of the King himſelf, and to ſeize his Royal Highneſs the Prince of *Wales*. This we apprehend will be a ſtrong Evidence of the Overt-Acts laid in the Indictment, and will confirm the Teſtimonies of the Witneſſes which we ſhall produce.

There are two Witneſſes we ſhall call to prove the Overt-Acts laid in the Indictment, they have already been mentioned to your Lordſhip, Mr. *Stephen Lynch*, and Serjeant *Matthew Plunkett*. Mr. *Lynch* will prove the ſeveral Overt-Acts laid in the Indictment to have been committed by the Priſoner in the County of *Eſſex*, where this Indictment was found; as alſo Overt-Acts of the ſame Nature committed by him in the County of *Middleſex*. But as 'tis improper to fall directly upon the Proof of thoſe Facts, without firſt proving ſome other Facts by way of Introduction, as how the Acquaintance between Mr. *Lynch* and the Priſoner at the Bar began, and how they came to be ſo intimate as to enter into a Deſign of this Nature, Mr. *Lynch* will give your Lordſhips and the Jury an Account; that there had been an Acquaintance between this Mr. *Lynch* and one Dr. *Murphey* eight or nine Years ago, that they had agreed to join in the Rebellion which was in the beginning of his Majeſty's Reign; after that was over Mr. *Lynch* went beyond Sea, and continued there ſome time, and arrived in *England* in *April* laſt; that their Acquaintance continued, and their Principles were not altered; Mr. *Lynch* meeting Dr. *Murphey*, Dr. *Murphey* (who hath been mentioned to your Lordſhips on a late Occaſion in this Court, and is not now to be found, but had a great Acquaintance with the Priſoner at the Bar) told him he had ſomething advantageous to communicate to him, and appointed a Meeting next Morning at a Coffee-Houſe in *Cornhil*, where they accordingly met, and *Murphey* then adviſed him not to go out of *England*, becauſe he had an Opportunity of making his Fortune, telling him there would be a general Riſing in Favour of the Pretender (whom he called King) and that it was carry'd on by Gentlemen of Note and Credit; and if he would accept of the Service, he would recommend him to one greatly concerned in that Affair; Mr. *Lynch* after Conſideration agreed to ſtay—— After ſeveral other Meetings between this Dr. *Murphey* and Mr. *Lynch*, at which their Diſcourſe generally turned upon this intended Riſing; about the Beginning of *June*, Dr. *Murphey* introduced Mr. *Lynch* to the Priſoner, as a Perſon fit to be entruſted in the intended Enterprize;

terprize; they went to the *Griffin* Tavern in *Holbourn*; Mr. *Layer* there expreſſed the good Opinion he had of Mr. *Lynch* upon the Character he had received of him from ſo good a Friend as this Dr. *Murphey*. They ſoon enter'd upon Buſineſs, and the Priſoner after having made a Repreſentation of the Uneaſineſs of the Nation in general, and of the fair Opportunity there was to bring about a Revolution, propos'd to Mr. *Lynch* to ſeize ſome General, to which the Witneſs agreed. After this they had ſeveral other Meetings, at which their Diſcourſe turn'd upon the ſame Subject of a general Riſing in order to ſet the Pretender on the Throne, and at one of them the Priſoner declared he intended *Lynch* ſhould ſeize the Earl of *Cadogan*, and that the Scheme was laid on a ſound Foundation, having a great Man at the Head of Affairs, who wanted neither Wit, Courage nor Reſolution, and who would be backed by his Friends. Several other Propoſitions were made by the Priſoner tending to the ſame End; to all which Mr. *Lynch* agreed, and they conſulted how they might put thoſe things in Execution. In *July* laſt, Mr. *Layer* went into the Country for fourteen or fifteen Days, and after his Return in the beginning of *Auguſt*, in Purſuance of what they had concerted, Mr. *Lynch* and he went to view the Earl of *Cadogan*'s Houſe, to ſee how practicable that Deſign of ſeizing him at his Houſe was. Mr. *Lynch* thought it feaſible, but he grew uneaſy at Delays, and frequently told the Priſoner that his Circumſtances would not permit him to continue here at his own Expence; therefore to encourage him to ſtay, and perſevere in the Deſign, Mr. *Layer* gave him ſeveral Sums of Money.

My Lord, upon the twenty fourth of *Auguſt* laſt, the Priſoner and Mr. *Lynch* agreed to ride out the next day to take the Air; on the twenty fifth, according to Appointment, (which brings us now to the Overt-Acts in the County of *Eſſex*) they rid out together; the Priſoner thought it proper to ride with Arms, alledging that he had things about him he would not loſe for any thing in the World. Upon the Road he told Mr. *Lynch* they would go to Lord *North* and *Grey*'s, with whom the Priſoner had the Honour to be well acquainted, and he would preſent Mr. *Lynch* to my Lord as his particular Acquaintance. It happened to be too late to get to Lord *North* and *Grey*'s by Dinner, whereupon they put in at the *Green-Man* near *Epping-Foreſt*, which, Gentlemen, is at *Layton-Stone* in your County. Dinner not being ready at their coming thither, they enter'd into Converſation on the former Topicks, and Mr. *Lynch* deſiring to give him ſome inſight into the Scheme that was formed, the whole ſubject matter of their former Conſultations and Diſcourſes were repeated about ſeizing Lord *Cadogan*, ſeizing the Miniſters of State, of getting Part of the Army to declare for them, and for ſeizing the King's Perſon; and theſe things were then agreed to by them. At this Place it was, that the Priſoner pulled out of his Pocket, and ſhew'd to Mr. *Lynch* the traiterous Writing laid in the Indictment, which was a Declaration to encourage a general Riſing, writ, as the Witneſs believes, in the Priſoner's own Hand; and that Part which contained the Promiſes of Rewards to be given to the Soldiers and other Perſons to encourage them to come into their Deſigns; was read by the Witneſs, after which Mr. *Layer* took his Paper away, and put it up in his Pocket again. My Lord, when they had dined, they went on to Lord *North* and *Grey*'s Houſe (whom your Lordſhip will hear mention'd by the Evidence as the Perſon thought on to be General in this Undertaking) they ſtaid there that Night, and dined there next Day, and afterwards they had a ſecond Meeting at Lord *North* and *Grey*'s. Your Lordſhip, and the Jury will be pleaſed to obſerve that this Evidence will be a full and poſitive Proof by this Witneſs, that the Overt-Acts of publiſhing this traiterous Writing, encouraging Perſons to take up Arms againſt his Majeſty, of the Conſultations and Agreement to levy War, to ſet the Pretender on the Throne, and to ſeize his Majeſty's Perſon, were done at the *Green-Man* in the County of *Eſſex*: And this will likewiſe be an Evidence, that all the Overt-Acts laid in the Indictment (except publiſhing the traiterous Writing) were done in the County of *Middleſex*.

My Lord, the next Witneſs we ſhall produce is *Matthew Plunkett*, formerly a Serjeant in ſome Regiment; he had been formerly acquainted with, and had been ſerviceable to the Priſoner, and was very well acquainted with one *James Plunkett*, which *James Plunkett* was a great Acquaintance of the Priſoner's. This *James Plunkett* deſired the Witneſs *Matthew Plunkett* to meet the Priſoner in *July* laſt, at the *Italian* Coffee-houſe in *Ruſſel-Court*, which the Witneſs could not comply with; but the Witneſs met the Priſoner the *Sunday* following in *Lincoln's-Inn Fields*, they were together near an Hour, the Priſoner gave him an Account of the intended general Riſing, and aſk'd the Witneſs if he knew any old Serjeants or Soldiers who could diſcipline a Mob, agreed with him to procure ſuch, mentioned to him ſeveral Perſons fit to be at the head of this Enterprize; and in order to make him diligent, he gave him at that time half a Crown: And Money was not only given him at that time, but a Promiſe was made to him of further Rewards. The Priſoner having Occaſion to go into the Country, one *Jeffreys*, a Nonjuring Clergyman, was ſent to *Matthew Plunkett* by *Layer* (and this Fact that I am going to open muſt not be barely conſidered as an Act between *Jeffreys* and *Plunkett*, but it will be brought directly home to the Act of *Layer* himſelf.) *Jeffreys* told *Plunkett* he came from the Priſoner, and that he was employ'd by him to go to ſuch as the Witneſs was, who were old Serjeants, to get a Number of them together to diſcipline the Mob, in order to the general Riſing: The next Day they met again, and had the like Diſcourſe, and *Jeffreys* gave *Matthew Plunkett* half a Guinea; and what brings this home to the Priſoner, is, that he told *Plunkett* he had left a Guinea with the Nonjuring Parſon to give him, and talked with him on the ſame Subject that *Jeffreys* had diſcourſed the Witneſs before. But in fact *Jeffreys* did not give *Plunkett* the Guinea, he gave him but half a Guinea.

My Lord, after Mr. *Layer* went out of Town *Plunkett* gave him an Account what Progreſs he had made in the Affair. *Plunkett* told him that he had got ſeveral old Soldiers that would bear a Part in this Buſineſs: The Priſoner ſaid he muſt take care to keep a Liſt of their Names, and the Places where they lived, that they might be in a Readineſs when they ſhould have Occaſion for them. And on *Sunday* before the Priſoner was taken up, he told this *Plunkett* that a great

many

many of his Countrymen were turned out of the Guards, and aſk'd him if he knew where they lodg'd, and upon the Witneſs's Anſwer that he did not, the Priſoner directed him to take a Liſt of their Names and Places where they lodg'd, that he might have them when Occaſion required. So that here is Mr. *Lynch* a poſitive Witneſs as to the Overt-Acts in *Eſſex*; Mr. *Lynch* and Mr. *Plunkett* poſitive as to the Overt-Acts in *Middleſex*, and their Teſtimony confirmed by the Scheme under the Priſoner's own Hand, and other Papers which we ſhall produce, found among his Papers, which will leave no room to doubt of the Truth of their Evidence. Beſides, my Lord, the Priſoner being ſeized in *September* laſt, we ſhall give an Account when he was in Cuſtody of a Meſſenger lock'd up in a Room two Pair of Stairs high, he made a ſhift to make his Eſcape, got to the Water-ſide, and got a Sculler to carry him over the River; he actually got over the River, but he was retaken again in St. *George*'s *Fields*, and brought back to the Meſſenger, and offer'd very conſiderable Sums to the Perſons who retook him to let him go. I believe it is hardly to be imagin'd, a Perſon perfectly innocent would venture to get out of a Room two Story high, and in the manner he did, and offer to give ſuch a Reward to the Perſons who retook him to let him get off; he muſt be conſcious to himſelf that he was in very great Danger. There were likewiſe found in his Houſe Arms more than neceſſary for his Uſe, and which he has confeſſed were to be uſed if there had been a Riſing.

My Lord, to corroborate the Teſtimony of the Witneſſes, we ſhall lay before your Lordſhip and the Gentlemen of the Jury, the ſeveral Papers which were found, I may ſay, in Mr. *Layer*'s Cuſtody; I don't ſay they were actually taken in his Cuſtody, but it will come to the ſame thing; for he had delivered them in two Parcels to Mrs. *Maſon* the Witneſs, whom we ſhall produce, with Directions that ſhe ſhould take particular Care of them; and they were ſeized in her Cuſtody not long after the Priſoner was committed to the Cuſtody of a Meſſenger; ſhe ſaw every one of them mark'd by the Perſons who ſeized them, and marked them her ſelf: There are not only the Scheme and the Cyphers and Letters mentioned before, but alſo ten promiſſory Notes ſubſcribed by the Pretender: Theſe promiſſory Notes run,

I Acknowledge to have received from the Sum of which Sum I promiſe to repay with an Intereſt for it at the Rate of per Ann. JAMES *R.*

Can any Man imagine, if there was nothing elſe to explain them, that theſe Notes were there for nothing? Every Body muſt believe that they were intended to be made uſe of to carry on the Conſpiracy: But we ſhall ſhew by the Priſoner's own Confeſſion, that they were ſent over to him by Sir *William Ellis*, in order to be made uſe of as Occaſion ſhould ſerve, to promote theſe Deſigns in favour of the Pretender. Among theſe Papers ſeveral Liſts were found, which will be produced, ſome of which contain the Number of the Officers and of the Soldiers in the Guards, ſome the Names of other Officers and Soldiers, and ſome the Number of the Officers belonging to the Tower. It muſt be owned, that in ſome of thoſe Liſts, there are the Names of ſeveral Perſons of as great Honour, Loyalty, and Fidelity to his Majeſty, as any Subjects his Majeſty hath; yet the procuring theſe Liſts could be for nothing but to get an Information of the Number and Character of the Perſons in his Majeſty's Service, to know the Strength of his Majeſty's Forces, that Intelligence might be given and Schemes framed accordingly, and that there might be tampering with ſuch as there could be any Hopes of bringing over into the Pretender's Intereſt: If the Priſoner can put any other Conſtruction upon his having theſe Liſts in his Cuſtody, he will have an Opportunity to do it. Theſe things being proved, I apprehend there remains no doubt but that the Priſoner will appear to be guilty of the Crime charged on him in this Indictment: But beſides all this we ſhall prove his Confeſſion, by two Witneſſes, whereby he has confeſſed every Overt-Act laid in this Indictment, the ſeveral Tranſactions that Mr. *Lynch* and *Plunkett* will give account of, and almoſt all the Facts that I have mention'd before. I ſhall conclude with this, Gentlemen of the Jury, that if we make out theſe Facts as they have been opened, and according to my Inſtructions I have no Reaſon to make the leaſt Queſtion of it, it muſt be left to your Conſideration whether the Priſoner at the Bar is guilty of the Offence for which he ſtands indicted or not: If you ſhall be ſatisfied by the Evidence that he is, I do not doubt but you will do Juſtice (which is all that is deſired of you) and find a Verdict for the King.

Mr. *Soll. Gen.* If your Lordſhip pleaſes, we will now proceed to examine Witneſſes; and we deſire that room may be made for the Witneſſes to come into Court. Call Mr. *Stephen Lynch*.

L. C. Juſt. You muſt make way there.

Priſoner. My Lord, I humbly deſire, before this Witneſs be ſworn, that he may be examin'd upon a *Voyer dire*, whether he hath not a Promiſe of Pardon, or ſome other Reward, for ſwearing againſt me.

L. C. Juſt. Sir, you can't ask him that Queſtion.

Mr. *Hungerford.* I hope we ſhall be at Liberty, and have a Right to enter into an Examination of this Matter. If a Man is repreſented to be in the ſame Circumſtances with the Priſoner, and the Priſoner led into the ſame Circumſtances by the Perſon propoſed as a Witneſs, and afterwards by him involved in the ſame Offence; if the Perſon therefore propoſed as a Witneſs, hath a Promiſe of Pardon or ſome Reward, upon Condition that he would ſwear againſt the Priſoner, he cannot by Law be a good Witneſs; the Perſon propos'd as a Witneſs muſt be a credible Witneſs, muſt be a legal Witneſs, muſt be not convicted of Perjury or any other notorious Offence, a free Witneſs that is not under Reſtraint for the Offence he accuſes another of; and therefore we hope we have a Right of aſking whether he acts under the Influence of any Promiſe of Reward, or the Promiſe of a Pardon: And the Right we have of examining him to the Promiſe of a Reward or Pardon, is ſupported by the Authority of my Lord Chief Juſtice *Hale*, as reported by *Kelynge*.

Mr. *Ketelbey*. My Lord, I would not take up your Lordſhip's time, and ſubmit the Weight of what Mr. *Hungerford* has offered to your Conſideration, but we found our Right of asking this Queſtion upon my Lord Chief Juſtice *Hale's* expreſs Declaration, ſet forth at large in *Kelynge*'s Reports *fol.* 18, which I have here in my Hand.

I muſt likewiſe beg Leave to obſerve to your Lordſhip, that this Queſtion was formerly asked in the Trial of *Gordon* and *Dorrell* to one *Adams* that had been in the ſame Conſpiracy with thoſe that were brought to Trial for High-Treaſon, and was then produced as a Witneſs againſt them; the Book was then brought into Court, and the Quotation read before your Lordſhip, and according to my Notes of that Trial, which I have here brought with me for my Juſtification, (I ſubmit to your Lordſhip's Correction if I don't ſtate it right) *Adams* was ask'd that Queſtion, though it was long objected to by the King's Counſel. The Diſtinction my Lord Chief Juſtice *Hale* made was this.

Mr. *Juſt. Eyre.* Read the whole Paragraph.

Mr. *Ketelbey.* I will, my Lord. The Words are theſe: "It was reſolved that ſome of thoſe "Perſons equally culpable with the reſt, may "be made uſe of as Witneſſes againſt their Fellows, and they are lawful Accuſers or Witneſſes "within the Statute 1 *Ed.* VI. 12. 5 & 6 *Ed.* VI. "*c.* 11. & 1 *Mar.* I. and accordingly at the Trial of theſe Men, ſome of them who were Parties in the Treaſon were made uſe of againſt "the reſt: For lawful Witneſſes within thoſe "Statutes are ſuch as the Law alloweth; and "the Law alloweth every one to be a Witneſs, "who is not convicted or made infamous for "ſome Crime; and if it were not ſo all Treaſons would be ſafe, and it would be impoſſible for one who conſpires with never ſo many "Perſons to make a Diſcovery to any Purpoſe.

I was aware of what was here laid down, and therefore did ſubmit Mr. *Hungerford*'s Reaſon to your Lordſhip's Conſideration, and did not inſiſt farther upon it; the ſubſequent Words are theſe, "But the Lord Chief Baron *Hale* ſaid, That if "one of theſe culpable Perſons be promiſed his "Pardon, on Condition to give Evidence againſt "the reſt, that diſableth him to be a Witneſs "againſt the others, becauſe he is bribed by ſaving his Life to be a Witneſs: So that he makes "a Difference where the Promiſe of Pardon is "to him for diſcloſing the Treaſon, and where "it is for giving of Evidence. But ſome of the "other Judges did not think the Promiſe of "Pardon, if he gave Evidence, did diſable "him. But they all adviſed that no ſuch Promiſe ſhould be made, or any Threatnings uſed "to them in caſe they did not give full Evidence.

So that, my Lord, we have not only the Authority of that Book with us, but a ſolemn Precedent in this Court in point eſtabliſhed upon a long Debate, and grounded on that very Authority. And when I moved this Matter at the Trial of *Dorrell*, *Gordon* and *Ker*, I then cited another Inſtance where it had been allowed by the Court, and that was before Mr. Juſtice *Powell* at *Worceſter* Aſſizes, upon the Trial of *Palmer* and *Symonds* for the Murder of Mrs. *Palmer*: There a third Perſon concerned in the Fact came in as a Witneſs againſt the other two, and after it had been argued by Counſel, and that learned Judge had read upon the Bench, and conſidered this Authority, the Witneſs was at laſt asked this Queſtion upon a *Voyer dire*: And for the Truth of this Caſe as I reported it, I appealed to my Lord *Lechmere*, then Attorney-General, and who had been one of the Counſel at *Palmer*'s Trial.

Mr. *Serj. Pengelly.* My Lord, we hope if there is any room for this Pretence which is inſinuated, it only goes as to his Credit, and does not diſable him from being a Witneſs; the Authorities produced are no more: The Judges directed that no ſuch Promiſe ſhould be made, but if ſuch a Promiſe was made, they agreed it doth not diſable him from being a Witneſs, as was mentioned by my Lord Chief Baron *Hale*; it is not like Money given, which is an actual Corruption; the Promiſe of Pardon is a thing voluntary in it ſelf: Who is the Promiſe to be made by? Is it in the Power of any Perſon but his Majeſty to perform it? If there is any thing in the Suppoſition, it is not proper to aſk in relation to it upon a *Voyer dire* to prevent the Witneſs from being ſworn to give Evidence; but when he hath been ſworn, if they think fit to aſk the Queſtion, they may.

Mr. *Att. Gen.* The aſking the Witneſs this Queſtion, as 'tis irregular, ſo if it was anſwered in the affirmative, wou'd be of no Service to the Priſoner; for with Submiſſion, it will not diſable Mr. *Lynch* from being a Witneſs. Every Man is bound in Juſtice to give Evidence if required, and a Promiſe to have a Pardon if he gives Evidence againſt the Priſoner, can be looked on only to induce him to do that which by Law he ought to do according to the Truth: It does not import that he was to give a wrong or a falſe Evidence; ſuch a Queſtion he cannot be obliged to anſwer. And the greateſt Uſe the Priſoner could make of this, if ſuch a Promiſe was made to the Witneſs (which is not admitted) wou'd be only againſt the Credit of the Witneſs, but not entirely take off his Teſtimony; his Credit, as well as the Credit of all Witneſſes, muſt be left to the Conſideration of the Jury. As to the Opinion of my Lord Chief Baron *Hale* cited out of *Kelynge*, the other Judges differ'd with him, and therefore we hope Mr. *Lynch* ſhall be ſworn.

Mr. *Soll. Gen.* We who are Council for the King don't oppoſe the asking this Queſtion, out of any apprehenſion that the Anſwer would come out againſt us, but for fear of overturning a Point that hath been long ſettled. As to the Book, which theſe Gentlemen cite to ſupport their Objection, with Submiſſion, it is rather an Authority to over-rule it. The Opinion they found themſelves upon is, that of my Lord Chief Baron *Hale*, but the reſt of the Judges were of Opinion againſt him; ſo that we apprehend the Authority is with us, and likewiſe the Reaſon of the thing. I take it that no Queſtion is to be asked a Man upon a *Voyer dire*, but to a Fact that would take off his Teſtimony. Suppoſe then, for Argument ſake, that there was a Promiſe of Pardon made to a Man upon Condition that he ſhould give Evidence; I apprehend that would not diſable him from being a Witneſs, any more than if the Condition had been that he ſhould declare the Truth, which it was his Duty to have done, although no ſuch Promiſe had been made: And ſurely the Promiſe of a Pardon upon a Condition to do that which was his Duty before, won't take off his Teſtimony. If they would ask the Witneſs whether he has accepted a Promiſe of a Pardon upon Condition to give falſe Teſtimony, that is a Queſtion, to which, with great Submiſſion, he is not bound to anſwer; becauſe that would be to examine him to accuſe himſelf of a thing which is unlawful. For theſe Reaſons, as well as upon account of the Authority they produce, we apprehend there is no Force in the Objection.

Mr. *Serj. Cheſhyre.* My Lord, I know not whether it would not be laying too great a

Weight upon the Objection, for ſo many of the King's Counſel to anſwer it; for my part I think it would.

Mr. *Hungerford.* I urge it thus far: Whatſoever Perſon is produced in a Court of Juſtice for a Witneſs, he muſt appear to be utterly unconcerned in point of Intereſt in the Conſequence of of the Trial. If a Man produced as an Evidence to prove the Debt upon the Defendant, ſhall, upon being examined upon a *Voyer dire*, diſcloſe that he is to have a part of the Money recovered, is not ſuch a Perſon diſabled from being a Witneſs at all? And is not a Promiſe of Pardon to the Witneſs, in Caſe he convicts the Criminal, a greater Byaſs than the Witneſſes's having part of the Money recovered? In a Civil Cauſe the Queſtion is not whether the Witneſs be tempted to ſwear a Truth or Falſhood, but whether the Witneſs doth not appear to be ſo far concerned in Intereſt, that he ought not to be examined at all? And therefore I humbly inſiſt that we ought to have an Account whether the Witneſs *Lynch* hath the Promiſe of a Pardon, or any Reward for that which he is to do here, *viz.* for the Evidence he is to give againſt the Priſoner. As to the Conſequence of ſuch an Enquiry, it is indifferent to me whether it will diſable him from being a Witneſs abſolutely, or go to his Credit only: For if it ſhould come out that he hath ſuch a Promiſe, we ſuppoſe no Jury or Man living will believe him, and that is much the ſame as if he were not produced; tho' it ſeems more agreable to the Practice in Civil Caſes, that he ſhould not be admitted as a Witneſs at all.

Mr. *Ketelbey.* Mr. *Sollicitor* miſtakes the Words of the Book as I read them; he is pleaſed to underſtand them as if all the reſt of the Judges differed in Opinion from my Lord Chief Baron *Hale*; but the Book does not ſay ſo, 'tis only that ſome of the other Judges were of Opinion that it did not diſable him, but all agreed that it went to his Credit, and that was all I read in the Book; and I would not have offered it otherwiſe than as it was truly there, upon any Conſideration whatſoever; but whether this Queſtion be asked at firſt or laſt, ſo as we have an Anſwer to it, I am contented.

L. C. Juſt. You ſee the moſt you can make of it is, that it is an Objection to his Credit; and if it goes to his Credit, muſt he not be ſworn, and his Credit left to the Jury? He muſt be examin'd as a legal Witneſs; but if this Man, under Expectation and Promiſe of a Pardon, comes here to ſwear that which is not true, and you would ask him to that, he is not obliged to anſwer it. No body is to diſcredit himſelf, but always to be taken to be innocent till it appears otherwiſe. It is expreſſed that he has a Promiſe of Pardon: What to do? To give Evidence. Give Evidence! Why ſhould he not? Is he not obliged to't? Suppoſe he gives Evidence according to the Truth, he would be entitled as much to his Pardon, as if he gave Evidence of that which is not true. The moſt you can ſay is, he has a Promiſe of Pardon if he gives Evidence; and can you conclude from thence that he can give no Evidence except a falſe Evidence? If they who ask the Queſtion inſinuate any thing like that, it ought not to have an Anſwer: But if he hath a Promiſe of Pardon if he gives a true Evidence, it is no Objection to his being a Witneſs, or to his Credit.

Priſoner. My Lord, I humbly hope our Objections will thus far prevail, and that we ſhall come at the Fact.

L. C. Juſt. When he is ſworn you ſhall ask him what Queſtions you pleaſe.

Mr. *Juſt. Eyre.* The Objection which gives Occaſion to inſiſt upon this Queſtion, ariſes from the Influence which the Hopes of Pardon may poſſibly have upon the Witneſs; and if this be a Reaſon for ſetting aſide a Witneſs as incapable, no Accomplice who diſcovers a Conſpiracy can ever be allowed to prove it upon Oath; for I believe, no Man ever yet made a Diſcovery but with the Hopes of Pardon; and a Government is obliged in Honour to grant it, where the Confeſſion appears to be ingenuous and ſincere: And therefore if the Hope or Proſpect of Pardon, which is all that can be inferr'd from a Promiſe, ſhould be an Objection to the Competency of a Witneſs, no Government would be ſafe; for treaſonable Conſpiracies might be form'd and carried on with Impunity, when the Perſons concern'd, from whom alone a full Diſcovery can be had, are utterly incapable of proving the Fact, though they give all poſſible Marks of their Sincerity and Truth. They have therefore been always allowed to be Witneſſes; and I don't remember that ever any Objection was made to their Competency, 'till the Caſe of the King and *Gordon*, when the Council for the Priſoner would have asked the ſame Queſtion which is now propoſed, but the Court did not think it proper before the Witneſs was ſworn; for no Perſon produced as a Witneſs can be examin'd to any Matter which only affects his Credit, and is no Objection to his Competency, till after he is ſworn to give Evidence, and has been examin'd.

Mr. *Juſt. Powys.* Mr. *Hungerford* would do well to remember the ſeveral Acts of Parliament made to give Encouragement, by a Reward of forty Pounds, for the apprehending and convicting of every falſe Coiner, Highwayman and Houſe-breaker; and if a Criminal in thoſe Offences ſhall come in, and diſcover and convict two of his Accomplices, he ſhall be entitled to a Pardon; and by the expreſs Words of the 5th of Queen *Anne*, ſhall have the Reward of forty Pounds for each Houſe-breaker, and ſhall alſo himſelf be entitled to a Pardon; ſo that the Parliament thought it proper to give even Money as well as a Pardon to ſuch Diſcoverer. Yet ever ſince the making of thoſe Acts, the Perſons ſo promiſed and encouraged, have upon thoſe Trials been admitted as good Witneſſes even before a Pardon. And indeed there cannot be too great Encouragement given to Criminals to become honeſt, and to come in and impeach their Accomplices, it being often impoſſible fully to diſcover thoſe ſecret Confederacies, but by ſome of the Accomplices and Actors therein.

The Law thinks theſe are fit Witneſſes, and you will find it in the Book that Mr. *Ketelbey* hath mention'd that they were thought fit to make Diſcoveries of thoſe ſecret Combinations; I don't ſay to come in and give falſe Evidence, but to make a fair Diſcovery.

Mr. *Hungerford.* My Lord, we ſubmit; we ſhall ask the Queſtion whether he hath any ſuch Promiſe made; let the Truth come out, and we ſhall be ſatisfied.

Mr. *Juſt. Forteſcue Aland.* I was Council in the Caſe of the King and *Gordon*; and I very well remember

remember the Council of the other Side inſiſted the Witneſs produced ſhould be ask'd this Queſtion on a *Voyer dire*, his Name was *Mayer*. The Reaſon the Court gave that it was improper to ask this Queſtion on a *Voyer dire*, was, that if he had this Promiſe, ſuch Promiſe was made either to ſpeak the Truth, or to ſpeak a Falſhood; if it were to give a juſt and true Evidence, there was no Harm in it; and if it was a Promiſe of Pardon for ſpeaking that which was not true, the Witneſs was not bound to anſwer that Queſtion, and conſequently it can be of no Uſe whatſoever, therefore the Witneſs muſt be ſworn.

Mr. *Stephen Lynch* was ſworn.

Mr. *Soll. Gen.* Do you know the Priſoner at the Bar?

Lynch. Yes.

Mr. *Soll. Gen.* How long have you known him?

Lynch. I firſt knew him about the Month of *June* laſt.

Mr. *Soll. Gen.* Pray give an Account to the Court and the Jury by what Means you firſt became acquainted with him.

Lynch. I became acquainted with him by Dr. *Murphey:* About the Month of *April* laſt I came into *England* from *Flanders*; at my Arrival in *England* I met with Dr. *Murphey*, that was my Acquaintance ſeveral Years before, who met me and told me he had ſome particular Buſineſs to tell me, and deſired me to meet him at *Cooper*'s Coffee-houſe in *Cornhill*, where I met him; and he told me that material Things were acting in the Kingdom in order to a Riſing, and if I would be of the Party, he would recommend me to a Gentleman that had the Management of it: I ask'd Time to conſider it, and in two or three Days time I told him that I was reſolved to be of the Party. I frequently told him I was impatient to know who the Gentleman was that I was to be recommended to; about the Month of *June* he told me I ſhould go with him to his Lodgings, which were at the upper End of *Chancery-Lane*, right over againſt the *White-Hart*.

Mr. *Soll. Gen.* Whoſe Lodgings did you go to?

Lynch. The Lodgings of Mr. *Layer*: Mr. *Layer* was at home, and deſir'd us to go to the *Griffin* Tavern in *Holborn* and he would meet us there; we went, and in a little while Mr. *Layer* came to us; and then Dr. *Murphey* told him that I was the Gentleman he had ſpoke to him of. Mr. *Layer* was glad of my Acquaintance, and told me that he had had ſuch a ſtrong Recommendation of me, that he was fully ſatisfied in me; and then he held a Diſcourſe about a Riſing that was to be in the Kingdom in favour of the Pretender, and that it would be back'd by a great many of the Army and the Guards, and ſeveral other Gentlemen.

Mr. *Hungerford*. The Overt-Act is laid in *Eſſex*, and here is an Evidence given of an Overt-Act in *Middleſex*; with Submiſſion, they can give no Evidence of an Overt-Act in another County, till they give Evidence of an Overt-Act in *Eſſex*, where the Indictment is laid.

L. C. Juſt. All they ſay of Matters in the County of *Middleſex*, unleſs they give Evidence of an Overt-Act in the County of *Eſſex*, it ſignifies nothing.

Mr. *Hungerford*. My Lord, with Submiſſion, they ought not to be ſuffered to give Evidence of any Overt-Act in *Middleſex*, before they give Evidence of ſome Overt-Act in *Eſſex*; for the proving ſome Overt-Act in *Eſſex* is the only thing which can entitle them to prove any Overt-Act elſewhere. For by the Method they would go on in, the Jury may be captivated with a Story of the *Griffin* Tavern, and of Mr. *Layer*'s other Aſſignations and Actions in *Middleſex*, which cannot be imputed to him upon this Indictment until ſome Treaſon be proved in *Eſſex:* I hope therefore the King's Council ſhall receive your Lordſhip's Directions to go on regularly, to begin to give an Account of the Overt-Acts in *Eſſex*, before they go into another County.

L. C. Juſt. Mr. *Hungerford*, you muſt give them leave to go on in their own Method, of that that firſt happened in *Middleſex*, and afterwards of what happened in *Eſſex*; and if you dare not truſt them and us, but will have your own Method, it would be to put us into Confuſion.

Mr. *Soll. Gen.* My Lord, we inſiſt upon it in point of Law, that we are intitled to give Evidence of Overt-Acts of the ſame Species of Treaſon laid in the Indictment, though done in any County in *England*, provided we alſo prove an Overt-Act in the County of *Eſſex*; which we muſt do, otherwiſe this will paſs for nothing. Mr. *Lynch*, go on, and give my Lord and the Jury an Account of what Mr. *Layer* ſaid, when you were together at the *Griffin* Tavern.

Lynch. The firſt thing he told me was, That he was very glad to meet me, that he had had a good Recommendation of me from Dr. *Murphey*, as being a Man he could confide in; and beginning his Diſcourſe of an Inſurrection in the Kingdom, he told me, that they were back'd with a great many of the Army and the Guards; that there was a great many of the Nobility and Gentry of the Country that would come in to 'em: He told me then, that he wanted a Man of Reſolution that would take upon him the ſeizing of ſome Perſon of Note, as a General, or ſome other great Man. The Diſcourſe run all upon the ſame thing.

Mr. *Soll. Gen.* Recollect as well as you can, the Particulars Mr. *Layer* told you relating to this Deſign.

Lynch. He told me the general Deſign of a Revolution in the Kingdom, in favour of the Pretender, and that they were back'd by a great many of the Army, and a great many of the Nobility and Gentry; and then he told me he wanted a Man of Reſolution, to undertake with ſome others, to ſeize a great Man, as a General or ſome other great Man: At that Time I took upon my ſelf to do it, ſo at that Time we diſcours'd no more.

Mr. *Soll. Gen.* How long were you together?

Lynch. About half an Hour.

Mr. *Soll. Gen.* When had you the next Meeting?

Lynch. A Day or two afterwards.

Mr. *Soll. Gen.* At what Place?

Lynch. At the ſame Tavern, the *Griffin* Tavern; when I came there, I ſent a Boy for Mr. *Layer*, as he had ordered me to do when I wanted to ſee him.

L. C. Juſt. When was your firſt Meeting?

Lynch. About the Month of *June*.

L. C. Juſt. And the ſecond Meeting was two or three Days after the firſt?

Lynch.

Lynch. Yes, my Lord.

Mr. *Serj. Cheſhyre.* At your parting after the firſt Meeting, what did Mr. *Layer* ſay to you?

Lynch. Mr. *Layer* told me, if I had Occaſion to ſpeak to him that I ſhould not come to his Lodgings, but to go to a Tavern and ſend for him, which I did; I ſent a Boy for him, and he came to me. Then talking over a Glaſs of Wine, he told me that he had pitched upon me to ſeize the Earl of *Cadogan*, and that I ſhould chuſe as many Perſons as I thought fit who would anſwer the ſame Deſign; and he being the principal Man in the Army, it wou'd diſcourage the King's Party, and animate the Pretender's Party; which, as I ſaid before, I agreed to undertake, and to do the utmoſt of my Endeavours to do it.

Mr. *Serj. Pengelly.* Was you to do it alone, or was you to have any Aſſiſtance?

Lynch. Yes, I was to have Aſſiſtance.

Mr. *Serj. Pengelly.* What Aſſiſtance?

Lynch. Such that I ſhou'd chuſe; ſuch People that I cou'd confide in.

Mr. *Soll. Gen.* Did you undertake it?

Lynch. Yes, I did undertake it, and to pitch upon ſuch Perſons as ſhou'd be proper to aſſiſt me in it.

Mr. *Soll. Gen.* Was any thing ſaid at that time relating to any Perſon, who was to have the Conduct of the Deſign?

Lynch. He told me that there was ſome great Man that did not want Wit, Courage or Reſolution, and was at the Head of this Affair, who wou'd at a proper time give me an Order to effect ſomething further about it.

Mr. *Soll. Gen.* Had you any more Diſcourſe with the Priſoner about this Affair?

Lynch. Yes, we had ſeveral Diſcourſes about it.

Mr. *Att Gen.* Tell my Lord and the Jury what more Diſcourſe you had, if you can remember.

Lynch. The chief Part I was to act was to ſeize the Earl of *Cadogan*, with ſuch Gentlemen as I ſhould think proper to anſwer the end of ſeizing him.

Mr. *Serj. Cheſhyre.* Was there any other Meeting, and when, and how long after?

Lynch. After that I came to a Tavern in *Holborn.*

Mr. *Serj. Cheſhyre.* How long after?

Lynch. Some few Days; it was at the *Caſtle* Tavern in *Holborn.*

Mr. *Att. Gen.* Who was with you at the Tavern?

Lynch. I came to the Tavern and ſent for Mr. *Layer.*

Mr. *Att. Gen.* Did he come to you?

Lynch. Yes, he came to me.

Mr. *Att. Gen.* What Diſcourſe had you with him at that time?

Lynch. We had no particular Diſcourſe, but in general we talk'd about the Uneaſineſs of the Nation, and the fair Opportunity there was to riſe.

Mr. *Att. Gen.* Pray give an Account of what elſe paſſed.

Lynch. I ſay, the Diſcourſe that we had at two Meetings before, he repeated, and ſaid, Now is a fair Opportunity, the Uneaſineſs of the People being ſuch, to bring about a Revolution, ſince they would be back'd by the Army and the Guards, and ſeveral other People. Soon after that we parted.

Mr. *Serj. Cheſhyre.* When had you any other Meeting?

Lynch. Some Meetings we had at Mr. *Layer's* Houſe in *Southampton-Buildings.*

Mr. *Serj. Cheſhyre.* How long after?

Lynch. A few Days only.

Mr. *Serj. Cheſhyre.* At the ſeveral Meetings at his Houſe, what was the Subject of your Diſcourſe?

Lynch. It was upon the ſame, about the Riſing and Uneaſineſs of the People, and the fair Opportunity of bringing about a Revolution; of the Diſpoſition of the Army and the Guards.

Mr. *Serj. Cheſhyre.* Did he give you any Encouragement?

Lynch. After I met him at his Houſe in *Southampton-Buildings*, I told him of my Uneaſineſs; becauſe he had told me at the beginning, that theſe Things would be ſoon put in Execution: I told him, if they were delay'd, I was afraid they wou'd not ſucceed. He then animated me, by telling me that there was no fear of its ſucceeding; and that I ſhould not be diſcouraged, for there was a great Man, a Man of Wit and Conduct, that was at the Helm, and that had the Management of the Scheme: That I ſhould always keep a good Heart; and that Things went on very well.

Mr. *Weſt.* Did he tell you in whoſe Favour this was to be?

Lynch. Yes, in Favour of the Pretender. He mentioned him by the Name of King.

Mr. *Serj. Cheſhyre.* Do you know any thing about his going into the Country?

Lynch. After I met him at his Houſe, he went into the Country and ſtaid ſixteen or ſeventeen Days; at his Return I went to ſee him, expreſſing how uneaſy I was about the Delay.

Mr. *Serj. Pengelly.* About what Time was this?

Lynch. I believe it was in *July.* And then I told him again how uneaſy I was at the Delay. To which he anſwer'd, keep a good Heart, all Things go on very well.

Mr. *Serj. Cheſhyre.* Had you any Apprehenſions that all was to be done at home, or that you was to have any foreign Aſſiſtance?

Lynch. In my Diſcourſe to him of the Uneaſineſs I was under at the Delay, I asked him if he had any Promiſe of any Succour from any Power Abroad? He told me, if we once made a Beginning, we ſhould not want them: But did inſinuate, that we ſhould not want Encouragement from the Court of *France.*

Mr. *Att. Gen.* When you expreſſed your Uneaſineſs at the Delay, what did he ſay to encourage you?

Lynch. The Reaſon he told me was, that Things went on very well, and would very ſoon be put in Execution.

Mr. *Att. Gen.* In what manner did you expreſs your Uneaſineſs?

Lynch. Nothing but that I was uneaſy, and I was afraid that Things did go wrong.

Mr. *Soll. Gen.* What did you ſay, did you ſay any thing relating to your own Circumſtances?

Lynch. In the Beginning I told Dr. *Murphey*, becauſe it would be a long while, ſome five or ſix Weeks, before I was to be introduced to Mr. *Layer's* Company, that I came on my own particular Buſineſs, and my Circumſtances would not permit me to be long here at my own Expence.

At

At the meeting with Mr. *Layer*, when I firſt made this Complaint to him, Mr. *Layer* told me I ſhould not want for a ſmall Matter, to maintain me in *England*. Accordingly Mr. *Layer* gave me ſome Money.

Mr. *Att. Gen.* Do you remember how much that was?

Lynch. I cannot remember.

Mr. *Att. Gen.* Did he give you Money at any other Time?

Lynch. Mr. *Layer* gave me ſome Money the firſt Time, and afterwards he ſent me ſome Money by Dr. *Murphey*.

Mr. *Serj. Pengelly*. Did he give you any Money at any other Time?

Lynch. Yes, the laſt Time I was with him I had more.

Mr. *Att. Gen.* How many Times had you Money of him?

Lynch. Five or ſix Times.

Mr. *Att. Gen.* Do you know what the Sums did amount to together?

Lynch. I can't recollect; but I believe about eight or ten Guineas.

Mr. *Att. Gen.* What was it given you for?

Lynch. To keep me in *England*, and to aſſiſt in the intended Deſign of a Revolution.

Mr. *Serj. Pengelly*. After you went to him, upon his Return out of the Country, do you remember the Diſcourſe that paſſed between you then?

Lynch. Yes: After I came to his Houſe, I expreſſed my Uneaſineſs at the Delay: Upon which he encouraged me, giving me to hope that Things went on very well, and our Deſign would effectually take Place.

Mr. *Serj. Pengelly*. Did you ask him any thing about the Army?

Lynch. I asked him if he had any Encouragement from the Guards and the Army? He told me, Yes, he had; that a great many of the Officers would not engage themſelves now, being well paid; but he ſaid he had ſpoke with ſeveral Officers of the Guards, who had aſſured him, that moſt of the common Soldiers would come in, as ſoon as we made a Beginning.

Mr. *Serj. Pengelly*. Did he mention any thing of the Time?

L. C. Juſt. When you asked him if he had any Encouragement from the Army, what did he ſay?

Lynch. He told me, that he had Encouragement from many of the Officers of the Army: That he had diſcourſed with ſeveral Serjeants of the Guards, who told him that the common Soldiers would be glad, after they had made a Beginning, to come in to 'em.

L. C. Juſt. Did he give you any Reaſon for this?

Lynch. Mr. *Layer* told me, the Serjeants told him ſo before they were encamped, and complained of their ill Uſage, and hard Uſage from the ſubaltern Officers.

Mr. *Serj. Pengelly*. Was you acquainted with any Time or Day that was fixed?

Lynch. There was no fix'd Time: Mr. *Layer* told me, it was to be on the riſing of the Camp; becauſe they could not talk with the Soldiers ſo well, while they were encamped, as they could afterwards, when they were in their Quarters.

Mr. *Serj. Cheſhyre*. Was there any Conſultation of viewing any one's Houſe?

Lynch. Afterwards, in Diſcourſe he told me, that it was fit to go and view the Earl of *Cadogan*'s Houſe; in caſe it was neceſſary to ſeize the ſaid Lord in his Houſe.

Mr. *Serj. Cheſhyre*. Where is his Houſe?

Lynch. In *Pickadilly*. Accordingly we appointed a Day to go; and I came to his Lodgings, and we took Coach, and away we went; and talking to him about it, he told me, he was very well acquainted with my Lord *Cadogan*, and had ſome Buſineſs with him, about an Eſtate which his Lordſhip was about buying: We went to his Houſe, but my Lord was not to be ſpoke with, or was not within, I don't remember which, but we were conducted into his Houſe; we view'd the inner Part of the Houſe, afterwards we went into the Garden, we view'd the lower Part of the Garden, then we went out in the Yard, and took a View of the Avenues round about the Houſe. I don't remember exactly the Time, but it was that Day that a Soldier ſhould have been ſhot in *Hyde-Park*.

Mr. *Serj. Cheſhyre*. Had you any Diſcourſe about the Feaſibleneſs of it?

Lynch. Yes, that it was eaſy to be done; if we had but ſome reſolute Gentlemen to ſtand by us, that it was very feaſible to be done.

Mr. *Serj. Cheſhyre*. Had you any Talk at that Time relating to the *Tower*?

Lynch. He told me, the *Tower* would be immediately ſurrender'd to the Party; on the Day the Plot was to be put in Execution, a certain Officer of the Guards would take upon him to mount the Guards there, who would facilitate the Delivery of the *Tower* to them.

Mr. *Serj. Cheſhyre*. Was there any talk of the Mint?

Lynch. Yes, afterwards: He ſaid there would be no doubt of the Mint; they would be glad to take the Opportunity to ſhake off their Confinement: And that they would put Arms into their Hands, according as they repaired to their Party.

Mr. *Att. Gen.* When did you ſee the Priſoner next after the Time that you ſpeak of viewing my Lord *Cadogan*'s Houſe?

Lynch. I ſaw him at his own Houſe, and at ſeveral Taverns in the City; and once he wrote to me, deſiring me to come to his Lodging; accordingly I went, and when I came to his Houſe, I met with a little Paper that was left for me, directing me to go to the *Queen's-Head* Tavern in *Great Queen's-Street* near *Lincoln's-Inn Fields*, and to enquire there for one Mr. *Wilſon*; which I did, and I was conducted into a Room where they ſaid Mr. *Wilſon* was, with Mr. *Layer* and another Man, who ſeem'd, by his Clothes to be a Serjeant of the Guards. I do not know the Man.

Mr. *Att Gen.* What paſſed then?

Lynch. We ſtaid a little while there, we talk'd over the Buſineſs, and drank good Succeſs to the Enterprize.

Mr. *Serj. Cheſhyre*. Your Lordſhip will pleaſe to take Notice, that when he went to Mr. *Layer*'s Lodging, he found a Letter there, directing him to go to the *Queen's-Head Tavern*, and enquire for one *Wilſon*; that when he came there, *Wilſon* was there, and Mr. *Layer*, and another Man.

Mr. *Serj. Pengelly*. What paſſed at that Time?

Lynch. Nothing material.

Mr. *Att. Gen.* You talked about drinking good Succeſs to the Enterprize: Who drank that?

Lynch. We all drank that.

Mr. *Att. Gen.* Did the Prisoner at the Bar drink it?

Lynch. Yes, he did. I told the Prisoner, when he went out, that I was mighty uneasy at the Delay of this Affair. He told me, I need not be uneasy, for every Thing went on well; and they had a Nobleman at the Helm, who had Authority from the Pretender, and would lose no Opportunity when a fit Time offered.

Mr. *Serj. Pengelly.* What did he call the Pretender?

Lynch. He called him the King. I was uneasy at the Delay, for fear of being discover'd.

L. C. Just. What Reason did he give you, why you should not be uneasy?

Lynch. Because their Designs were quickly to be put in Execution; and there was a Nobleman at the Helm who would put the Design in Execution, as having full Power and Authority from the King to act as he thought proper.

L. C. Just. Did you ask who that Nobleman was?

Lynch. Yes; but he never told me his Name, but said, that I should, in a proper Time, be presented to him, and receive my Commission and Orders from him to seize my Lord *Cadogan*.

Mr. *Serj. Pengelly.* My Lord, we shall now gratify the Prisoner's Counsel, with an Account of what happened in *Essex*; I hope they will not be impatient to hear that: Therefore, pray acquaint my Lord, and the Jury, when you went out of Town with Mr. *Layer*.

Lynch. My Lord, I was at Mr. *Layer*'s House the Day when the Bishop of *Rochester* was sent to the *Tower*; he ask'd me, if I would ride abroad with him the next Day to take the Air; I consented to it, and came the next Morning to his House; and Mr. *Layer* asked me if I mounted with Furniture: I told him no; but that I had a double Barrel Fowling-piece, which if his Servant would carry, would do as well. He then desired me to go and stay for him without *Aldgate*, and get my Gun ready loaden, for he had that about him which he would not lose for any thing in the World. I went and staid till about ten or eleven a Clock, when Mr. *Layer* met me, and gave the Gun to his Servant to carry. On the Road he told me, we were going to my Lord *North* and *Grey*'s, whom he was very well acquainted with, and that he would recommend me to him as a Friend of his. When we got to the *Green Man*, he told me, we had better go in and dine there, because Dinner-time would be over before we could get to my Lord *North* and *Grey*'s. Whilst Dinner was getting ready, we had several Discourses on the same Subject, Of the Uneasiness of the Nation, and its Inclination to a Revolution, and how to bring it about; upon which he pulled a Paper out of his Pocket, and gave it me to read the latter Part of it.

Mr. *Serj. Pengelly.* Can you remember what it contained?

Lynch. I remember some Lines of it; which was, in general, to invite the Nation to an Insurrection, and to shake off the Calamities and Miseries they endured under the present Ministry. And it was mentioned in the said Paper, that the Earl of *Cadogan* was actually in their Custody; thereby encouraging the Army to revolt, with an Offer of three Guineas to every Horseman and Serjeant, and two Guineas to every Corporal, and one Guinea to every common Soldier, to be paid immediately on their joining the Party, and a Promise of farther Preferment.

Mr. *Att. Gen.* Did you read this?

Lynch. I did, out of the Paper in Mr. *Layer*'s Hand.

Mr. *Att. Gen.* Do you know whose Handwriting it was?

Lynch. According to our Discourse, I thought it might be his writing.

L. C. Just. But he produced it?

Lynch. Yes, my Lord, he produced it.

L. C. Just. You say you imagine, from some Discourse between you, that it was his Handwriting; what Reason was there in all his Discourse, that induced you to think so?

Lynch. He talk'd of it as being of his own making; besides, there were several Interlineations, Dashings-out, and Interlineations afterwards. He was very well satisfied and easy as to me, and said, he could wish that he could bring Matters about so, as that I could have the sole Direction of seizing some of the Ministry, and namely, my Lord *Townshend*, my Lord *Carteret*, and Mr. *Walpole*.

Mr. *Att. Gen.* Was there any Discourse about seizing the King?

Lynch. He said, when the Design was put in Execution, the Army would declare in their Favour, and they would send a strong Guard to take care of the King's Person.

Mr. *Att. Gen.* How to take care of the King's Person? What was you to do?

Lynch. Nothing but to secure the King's Person; by what he told me, it was for the Publick Good of the Kingdom; that they did not mean, nor had they any Design on the King's Person, but only to keep him in Security from any Insult.

Mr. *Att. Gen.* What more passed at that Time?

Lynch. Nothing more in particular.

Mr. *Att. Gen.* Had you any talk relating to the Army?

Lynch. I said before what related to the Army.

Mr. *Serj. Pengelly.* Was there any Discourse about a Scheme or Plan?

Lynch. He told me there was a Scheme laid on that Foot, of which I told you the first Step was to seize the Earl of *Cadogan*, and then, according as the Army came over, to take care and seize the King's Person; and he thought the proper Time to put this in Execution, would be at the Rising of the Camp in *Hyde-Park*.

Mr. *Serj. Pengelly.* Was there any Objection made to this?

Lynch. No; I made no Objection, only shew'd my Uneasiness at the long Delay.

Mr. *Serj. Pengelly.* When you so expressed your Uneasiness, what did he say?

Lynch. He told me, if I could think or propose any Thing more proper, that I should do it. After that we rode toward *Epping*, and went to my Lord *North* and *Grey*'s; and there Mr. *Layer* introduced me as his Friend. We staid there all Night, and dined there the next Day. In the Evening we came away, in company with another

ther Gentleman that I did not know; but we talk'd on the Road about the Situation of my Lord's Houſe; and Mr. *Layer* told me he had recommended me to his Lordſhip as his particular Friend, and asked me how I liked him.

Mr. *Serj. Pengelly.* Did he ask you any Queſtions? Do you remember what he called his Lordſhip?

Lynch. I don't remember any other Name but *My Lord.*

Mr. *Serj. Pengelly.* When he asked your Opinion of him, and how you liked him, did he deſcribe him in any other manner, or only called him *My Lord?*

Lynch. He only called him my Lord *North* and *Grey*; he only asked me how I liked my Lord *North* and *Grey.*

Mr. *Serj. Pengelly.* Liked his Lordſhip, for what?

Lynch. That was all.

Mr. *Reeve.* Had you any Talk with him about the Perſon that was to have the chief Command?

Lynch. Yes; but he never named the Perſon.

Mr. *Weſt.* Had you never any Diſcourſe who was to command the Party that was to ſeize my Lord *Cadogan?*

Lynch. I was to command that Party.

Mr. *Weſt.* Was you any other time at my Lord *North* and *Grey*'s?

Lynch. Yes; another time I went to my Lord *North* and *Grey*'s, where I found Mr. *Layer*, and expreſſed to Mr. *Layer* the Uneaſineſs I was in at the long Delay, and that I was afraid our Hopes would vaniſh; and told him, if things were not ſoon put in Execution, I would withdraw my ſelf. Mr. *Layer* bid me not be uneaſy, Things might perhaps be ſooner put in Execution than I imagined.

Mr. *Weſt.* Where was this?

Lynch. At *Epping*, at my Lord *North* and *Grey*'s.

Mr. *Weſt.* Did you come home together?

Lynch. No; I came home that Night: Mr. *Layer* remained there.

Mr. *Serj. Pengelly.* Did you ſee him ſome time afterwards?

Lynch. I met him at his own Houſe, where I expreſſing my Uneaſineſs as formerly, he ſaid, I ſhould not be uneaſy, for Things would ſoon take Effect; and bid me get my ſelf ready to execute my Deſign; becauſe they had Notice the Camp would ſoon break up, which was the Time deſigned to put Things in Execution. And at another time he told me, that the Declaration which he had ſhewn me at the *Green Man*, had mentioned no particular Perſons, but in general the Safety and Publick Good of the Kingdom: There was nothing mentioned of the Pretender in it, but that he had thought fit to put it now in the Pretender's Name.

Mr. *Serj. Pengelly.* Who was you to receive your particular Orders from, for the executing your Deſign?

Lynch. From that Nobleman, who was to act as General in this Affair.

Mr. *Serj. Pengelly.* Did you never hear from Mr. *Layer* who that was?

Lynch. No; I don't recollect he was ever named by Mr. *Layer*; he told me, that the Declaration was afterwards put in the Name of the Pretender.

Mr. *Serj. Pengelly.* What was it he recommended you to my Lord *North* and *Grey* for?

Lynch. He recommended me to him as one of his particular Friends.

Mr. *Serj. Pengelly.* What Diſcourſe had you at that Time?

Lynch. We talk'd indifferently; we diſcours'd nothing of the Revolution at that Time: He told me he had given the Declaration to a Non-juring-Miniſter to get printed, and had given twenty Guineas for that Purpoſe.

Mr. *Soll. Gen.* Was you acquainted before with my Lord *North* and *Grey?*

Lynch. No; he introduced me as one of his Friends.

Mr. *Serj. Cheſhyre.* Did you know when Mr. *Layer* was firſt taken up?

Lynch. Yes.

Mr. *Serj. Cheſhyre.* How long before that had you been with him?

Lynch. I can't recollect the Time. I firſt became acquainted with Mr. *Layer* about *June.*

Mr. *Serj. Cheſhyre.* What paſſed the laſt time you was with him, before he was taken up? Was there any particular Conference between you?

Lynch. I told you about the Declaration, and about my Uneaſineſs, and that he told me Things would ſucceed ſooner than I thought for.

Mr. *Serj. Cheſhyre.* When you expreſs'd your Uneaſineſs, did he uſe any Vehemence of Expreſſion, as to what Part he would act?

Lynch. He told me ſeveral times, when I was ſo irreſolute and uneaſy, ſaith he, don't you be uneaſy; rather than all ſhould fail, I will ſtir up and be a ſecond *Maſſinello.*

Mr. *Weſt.* Had you any Converſation about the taking up of any Perſon?

Lynch. He only told me at that Time, that if the Nobleman at the Head of Affairs ſhould be taken up, every thing would be quaſh'd.

Mr. *Serj. Pengelly.* That Nobleman was not taken up at that Time then?

Lynch. No.

Mr. *Serj. Pengelly.* What Recommendation had you to my Lord *North* and *Grey?*

Lynch. Only as a Friend of Mr. *Layer*'s, to paſs away the Time in Summer.

Mr. *Hungerford.* I preſume they have done with giving the Evidence, which they intend, of any Overt-Act in the County of *Eſſex*; if they have, I would crave the Liberty to obſerve.

Mr. *Serj. Pengelly.* We have not done; if you have any thing to obſerve, it muſt be when we have gone through our Evidence.

L. C. Juſt. When they have given all their Evidence, then will be your proper time to object to the Evidence, and to ſhew whether 'tis competent or no.

Mr. *Hungerford.* I do not preſs to make any Remarks upon their whole Evidence; but if they have given all the Evidence they intend to give of any Overt-Act in *Eſſex*, for on that depends the Fate of this Gentleman at the Bar, I hope we are now (before they ſhall be permitted to give Evidence of any farther Overt-Act of Treaſon in another County) at Liberty to object, that the Tranſaction in *Eſſex* is not an Overt-Act at all of the High-Treaſon laid in this Indictment.

Mr. *Soll. Gen.* We have not done. When we have given our Evidence, then it will be proper for them to make their objections to the Whole.

Mr. *Hungerford.* I humbly offer it to your Lordship's Consideration, whether it is right and proper to go on in such a Method, and to take up the Time of the Court, when the Gentlemen on the other Side say, they have done with giving Evidence as to any Overt-Act in the County of *Essex*.

Mr. *Soll. Gen.* No; we have not done with that Evidence.

Mr. *Ketelbey.* I don't know whether your Lordship will indulge us to ask the Witness a Question or two now.

L. C. Just. Propose your Questions, and we will tell you.

Mr. *Ketelbey.* Whether he hath any Offer of Pardon propos'd to him to induce him to give Evidence against the Prisoner at the Bar; which if he hath, we apprehend will invalidate his Evidence.

Lynch. No, Sir; I have no Promise of Pardon at all: I only do this out of Justice, to make what Reparation I can, and to save the Blood of many People.

Mr. *Ketelbey.* I beg leave to ask him a few more Questions. I think you say the first time you were introduced into this Gentleman's Company, the Prisoner at the Bar, was at the *Griffin-Tavern* in *Holborn*, and that he then told you he had great Designs in hand; and that there was an Insurrection design'd, and they wanted a Person of Resolution to seize a General: This, you say, was the first Time that ever you saw the Prisoner at the Bar. How came you to have that Share of Confidence in a Man that you never saw before?

Lynch. I told you I was in Discourse with Dr. *Murphey* a great many Days and Weeks before I saw Mr. *Layer*; I told you how every Day I saw him, and always discours'd about the Insurrection, and how he told me then that he would recommend me to a Man that had the Management of the greatest Part in this Affair; and I ask'd every Day when I should be introduced to him: He told me, the Time was not come yet; but when it was a proper Time, he would introduce me.

Mr. *Ketelbey.* I think you give that for a Reason, why you had that Confidence in him, because you had been recommended by one Dr. *Murphey*. How came you to have that mighty Dependence on Dr. *Murphey?*

Lynch. Because Dr. *Murphey* and I had been acquainted several Years ago.

Mr. *Ketelbey.* I hope you was not in any wicked Design with Dr. *Murphey*, and so much acquainted, as to recommend you in a Case of Treason.

Lynch. There was a common Friendship between us.

Mr. *Ketelbey.* How came he to trust you? Would you have trusted him in a Business of Treason?

Lynch. We have been concerned in Affairs together.

Mr. *Ketelbey.* How long was you at the *Green Man* with Mr. *Layer?*

Lynch. I can't say exactly the Time.

Mr. *Ketelbey.* I don't ask you exactly to a Minute or two; but was you there an Hour, or two, or three Hours?

Lynch. I can't say whether we were there an Hour or two; but we had something dress'd for Dinner, and the Matter was discoursed of by us before Dinner.

Mr. *Ketelbey.* When you first alighted from your Horses, what Room was you shewn into?

Lynch. We were shewn into a Room up one Pair of Stairs on the right-hand, the first Room.

Mr. *Ketelbey.* Was it towards the Street, or backwards?

Lynch. It look'd into the common Road.

Mr. *Ketelbey.* Did you look out of the Window and see a Person of your Acquaintance?

Lynch. I saw two Gentlemen, but did not know them.

Mr. *Ketelbey.* Did you not look out of the Window, and say, you saw a Gentleman of your Acquaintance?

Lynch. I said I saw two Gentlemen that I thought I had seen before.

Mr. *Ketelbey.* Did not you go down to those Gentlemen?

Lynch. No; I did not go down to them.

Mr. *Ketelbey.* Did not you go down to them?

Lynch. No.

Mr. *Ketelbey.* Did not you say so to Mr. *Layer*, in the Drawer's Presence?

Lynch. No.

Prisoner. Did not you tell me that those Gentlemen were your Acquaintance?

Lynch. I told you, those two Gentlemen I had seen before.

Prisoner. How long were we together at the *Green-Man?* Were the Horses put up, or not?

Lynch. I can't tell.

Prisoner. Was there any thing dress'd for our Dinner but a Beef-Stake?

Lynch. No, nothing else.

Prisoner. Did not you go down Stairs, pretending you went to those Gentlemen?

Lynch. No, I did not tell you I went to those Gentlemen.

Prisoner. Did you not go down Stairs?

Lynch. Yes, I did; and came up again immediately.

Prisoner. Was not Dinner on Table when you came up again?

Lynch. I went down twice before Dinner.

Prisoner. Then you must consequently leave me in the Room.

Lynch. I went down to make Water.

Prisoner. What did you go down the second Time for?

Lynch. Out of Curiosity.

Prisoner. How long did you stay?

Lynch. Not both Times above two Minutes.

Prisoner. I was then alone, when you went down.

Lynch. Yes.

Prisoner. Was this Discourse before or after Dinner?

Lynch. It was before Dinner.

Prisoner. When you came up the second Time, was not Dinner on the Table?

Lynch. It was come up.

Prisoner. And yet the Discourse we had was before Dinner?

Lynch. Yes, it was before Dinner.

Priſoner. How much Time might we ſpend before Dinner, half an Hour, or an Hour?

Lynch. I don't remember; but it was a good while.

Priſoner. Was not the double Barrel Gun in the Room?

Lynch. I don't know whether it was there, or whether your Servant had it.

Priſoner. At the Time of Dinner, was my Servant, or Drawer, in the Room?

Lynch. Neither of them was in the Room.

Priſoner. You ſay we were a good while, you and I, alone; pray, how long?

Lynch. I cannot ſay poſitively how long.

Mr. *Hungerford.* Have you any Copy of that Part of the Paper he gave you to read, and which you read?

Lynch. No.

Mr. *Hungerford.* Was the Whole of it of any Length?

Lynch. To the beſt of my Remembrance it was a common Sheet of Paper.

Mr. *Hungerford.* Did you read the Whole?

Lynch. No: He doubled it down, and gave me the latter Part of it to read.

Mr. *Ketelbey.* Some Things you ſeem to remember, and ſome Things you don't remember: Was it printed, or written?

Lynch. It was written.

Mr. *Ketelbey.* Did he not mention it to be the Prince of *Orange*'s Declaration?

Lynch. No, he did not.

Priſoner. Was not the Paper blotted?

Lynch. In that I ſaw there were two or three Places interlined.

Mr. *Hungerford.* My Lord, I think the Gentlemen did ſay they had not done with their Evidence, with relation to an Overt-Act in *Eſſex*; if they have not, they will do well to go on now: But we hope they ſhall not go into Overt-Acts committed in any other County, till they make the whole of their Proofs of an Overt-Act in *Eſſex*.

L. C. Juſt. You have been told, they ſhould proceed in their own Method, and when they have done, you may make what Obſervations may be of Service to your Client.

Mr. *Hungerford.* Relations of Fact ariſing in another County, which have no Relation to the Fact ariſing in *Eſſex*, we hope they ſhall not go into, to amuſe or captivate the Jury, the Court, and the Auditory.

L. C. Juſt. Sure never any Thing was like this! It is our Province to give Directions, and we think it not proper to interrupt the King's Counſel, but that they ſhould proceed in their own Method: You ſhall be heard as long as you pleaſe, when you come to make your Obſervations.

Mr. *Soll. Gen.* The Priſoner hath a Right to ſay any thing that is proper to the Court and the Jury, in his Defence, but he muſt ſay it openly; he is not to talk privately with the Jury; tho' I am ſure they are Gentlemen of ſo great Worth and Honour, as not to be influenced.

Mr. *Att. Gen.* I dare ſay the Jury won't be influenced; but he talks to his Counſel ſo loud, that the Jury may eaſily hear every Word he ſays.

L. C. Juſt. He muſt not ſpeak ſo loud.

Mr. *Att. Gen.* I juſt now heard him ſay, It was ſtrange to go on with Evidence that would not be to the Purpoſe. I heard him, as I ſat here; let him deny it if he can.

L. C. Juſt. I hope you will not offer any thing of that Kind, Mr. *Layer:* You have a Right to diſcourſe with your Counſel, but you muſt do it in ſuch a Manner as the Jury may not hear.

Mr. *Hungerford.* Indeed, my Lord, he ſhall have no Encouragement from us for any ſuch Conduct.

Matthew Plunkett ſworn.

Mr. Serj. *Cheſhyre.* Tell my Lord and the Jury, whether you know the Priſoner at the Bar.

Plunkett. Yes, I do know him.

Mr. Serj. *Cheſhyre.* Will you tell my Lord and the Jury, upon what Account, and by whoſe Means, you firſt became acquainted?

Plunkett. One Major *Barnewell* brought me firſt acquainted with Mr. *Layer*; he had an Execution in his Houſe in *Great Queen-Street*, and this Major *Barnewell* came to me, and deſired me to get a Couple of Grenadiers. I brought him two; we went to Mr. *Layer*'s Houſe, and his Clerk let us in at the Back-door, and the Grenadiers turned the Officers out, and Mr. *Layer* gave them a Crown, and a Glaſs of Brandy.

Mr. Serj. *Cheſhyre.* When was this?

Plunkett. As near as I can gueſs, it is going on of five Years.

Mr. Serj. *Cheſhyre.* Tell my Lord and the Jury, what Month in this laſt Year you renew'd the Acquaintance, and who brought you to him?

Plunkett. The next Acquaintance I had afterwards, was by Major *Barnewell*, who was arreſted, and he ſent me with a Letter to his Houſe, to deſire him to relieve him.

Mr. Serj. *Cheſhyre.* Do you know any thing of one *James Plunkett?*

Plunkett. Yes: He came to me from Mr. *Layer*, in *July* laſt, to deſire me to meet him; but how this Counſellor *Layer* and this *James Plunkett* came acquainted I don't know.

Mr. Serj. *Cheſhyre.* What was he?

Plunkett. I don't know what he is; he is acquainted with Mr. *Layer*.

Mr. Serj. *Cheſhyre.* What Profeſſion is he of?

Plunkett. I don't know; nor how he lives, or gets his Bread.

L. C. Juſt. Go on.

Plunkett. Mr. *Layer* paid the Charges for Major *Barnewell*, and brought him out of the *Marſhalſea*.

Mr. *Reeve.* How long was this ago?

Plunkett. To the beſt of my Knowledge, four Years ago.

Mr. *Reeve.* He is giving an Account how he came to be acquainted with Mr. *Layer*; the firſt Time was upon the Account of reſcuing Mr. *Layer*'s Goods; the other Time was by Mr. *Layer*'s redeeming Major *Barnewell* out of the *Marſhalſea*, and paying his Debt: Give an Account how you came laſt acquainted with him.

Plunkett. I being at Home, in my own Room.

Mr. *Reeve.* How long ago?

Plunkett. I believe, as near as I can gueſs, it was laſt *July*.

Mr. *Reeve.* Give an Account of what happened then.

Plunkett. Now this *James Plunkett* came into my Room, ſat down, and he aſked me how I

did, and ſaid, he was glad to ſee me; and he aſked me, Are you not well acquainted in the Army? Yes, ſaith I, I know a great many in the Army, both Officers and common Soldiers. Do you know, ſaith he, any of the Serjeants of the Guards? I know ſome of 'em, ſaid I. He brought me out of the Room, becauſe my Wife was there, and then he opened his Mind to me: Saith he, Do you know one Mr. *Layer?* (I had forgot the Gentleman, being ſo ſlightly acquainted with him;) No, ſaith I, I don't know him. No matter, ſaith he, I have appointed a Place for you to meet him at, at the *Italian* Coffee-Houſe in *Ruſſel-Court*; and at the End of this, Mr. *Plunkett* aſked me to keep Correſpondence with them for the Pretender's Service. I did not go to the *Italian* Coffee-Houſe, not being in a proper Station, nor having Money for that Purpoſe: So I did not think proper to go to the *Italian* Coffee-Houſe; but the *Sunday* following I went to St. *Andrew*'s Church, and meeting with ſome Friends, they told me Dr. *Sacheverel* preach'd there; and ſo they decoyed me to go and hear him preach there. When Service was over, to the beſt of my Knowledge, as I was going Home, between twelve and one a-Clock, I met Mr. *Layer* accidentally in *Lincoln's-Inn-Fields*; Mr. *Layer* he look'd at me, he was really a perfect Stranger to me, for I did not know him again; ſaith he, Is not your Name *Plunkett?* Yes, ſaith I. Was there not one with you t'other Night, one *James Plunkett?* Yes, Sir, ſays I. Where did he deſire you to go? ſaid he. I anſwer'd, He deſired me to go to the *Italian* Coffee-Houſe in *Ruſſel-Court*. Saith he, 'Tis well enough: Do you not know me? No, ſaith I, you have the Advantage of me; I aſk your Pardon, for I don't remember you. Don't you remember one *Layer?* ſaid he. Then I call'd to Mind that I knew the Gentleman. Saith he, Will you walk on this Side? I walked back again towards *Little Turn-Stile*, and we ſtruck up the Wall-Side; and juſt as we came under a great Coach-Houſe Gate-Way, we went in, and in the Gate-Way he talk'd to me; ſaith he, I am told that you are a very honeſt Man, and well-affected ſo and ſo.

Mr. *Reeve*. Well-affected, to whom?

Plunkett. Well-affected as to the Buſineſs of the Pretender. At the ſame Time we had this Talk, he bid me not mention it to *James Plunkett*, that I had ſeen him: Then he aſked me if I knew any Serjeants in the Guards; for, ſaith he, I want ſuch old Soldiers as you are your ſelf, that could diſcipline a Mob, for we have other Men enough amongſt us; but if we could get ſome old Soldiers, if that could be managed, they would be finely rewarded. But Sir, ſaith I, the Pretender is a Papiſt. Saith he, what Difference is there between a Papiſt King, and a *Lutheran* King?

Mr. *Reeve*. He ſaid he wanted ſuch old Soldiers as you; for what?

Plunkett. He wanted them to diſcipline a Mob, and to put them in Order. Then we began to reaſon about the Pretender; Why, ſaith he, we had as good have a Papiſt for our King as a *Lutheran*.

Mr. Serj. *Cheſhyre*. What did you object?

Plunkett. I ſaid he was a Papiſt. Says he, We had as good have a Papiſt for our King, as to have a *Lutheran*, I don't know what Difference there is; but as it was, the Nation was enſlaved, and the People were obliged to be Slaves. I aſked him, Sir, who is the Promoter of this, that may join us? You ſee, ſays he, what Injuſtice is done to you, you have ſerved Abroad, and others are put over your Head; you have had and found great Hardſhips. I aſked him who promoted this? He ſaid, the Lord *North* and *Grey*. Says I, He is a Peer of the Realm. Saith he, He is a fine General. And the Earl of *Strafford* he mentioned.

Mr. *Reeve*. Who did he ſay was a fine General?

Plunkett. He ſaid my Lord *North* and *Grey* was a fine General; and aſk'd me what I thought of him? I ſaid I had never been under his Command, but I look'd upon him to be a great Man, and one of the Peers of the Land. And then he mentioned my Lord *Strafford*, What do you think of him? To which I made the like Anſwer. And what do you think of General *Primroſe?* I ſaid I had lately ſeen him at *Chelſea*, paſſing by in his Coach, but that he was an old Man; however, Mr. *Layer* ſaid he was a brave General. Then he aſk'd me what I thought of General *Webb?* I ſaid I had heard of his Fame.

Mr. Serj. *Pengelly*. When he ſaid my Lord *North* and *Grey* was a fine General, and when you aſk'd who promoted it, whether did Mr. *Layer* tell you what their Deſign was to do? When Mr. *Layer* aſk'd you, what do you think of this Perſon, and the other Perſon, what were they to do?

Plunkett. To raiſe a Rebellion.

Mr. Serj. *Pengelly*. Was that talk'd of at that Time?

Plunkett. Not at that Time.

L. C. Juſt. You ſaid he wanted ſuch old Soldiers as you; for what Purpoſe? You ſay he wanted them to diſcipline a Mob, and put it in Order.

Plunkett. Yes, my Lord.

L. C. Juſt. Did he tell you how many he wanted?

Plunkett. No; he did not ſay how many.

Mr. Serj. *Cheſhyre*. Was there any thing ſaid about their Names at that Time?

Plunkett. Mr. *Layer* would have me take a Liſt of their Names, and to enroll them, that they might know where they lodg'd, and where they quartered; that ſo when he wanted them, he might ſend for them to be in Readineſs.

Mr. Serj. *Cheſhyre*. Was there any Number he aſk'd you the Names of?

Plunkett. I ſaid I knew a great many, and that I could get twenty five. Saith he, you ought to have a Liſt of their Names, where they lodge, that they may be in Readineſs for a Call: And ſaith he, This would have gone on ſome Time ago, only Somebody made Diſcovery of it to the *French* Ambaſſador, and he wrote to the Regent, and ſo it was diſcovered to the King: And, ſaith he, The Duke of *Ormond* was to come in one Ship, and General *Dillon* in another, and they would bring their Numbers with them; and then I ſhould ſee that the Army would not oppoſe them. And when I parted from him, he gave me half a Crown to drink.

Mr. Serj. *Cheſhyre*. What was that to do?

Plunkett. It was to encourage me. And he ſaid he would ſend a Meſſenger to me; and in a Day or two afterwards there came a Meſſenger from him: I was not at home, but he ſpoke with my Wife.

Mr. Serj. *Cheſhyre*. Who was that?

Plunkett. The Un-juring Miniſter,

Mr. *Att. Gen.* What was his Name?

Plunkett. His Name was *Jeffreys.*

Mr. *Att. Gen.* You ſay you was not at home the firſt Time; did he come again?

Plunkett. Yes.

Mr. *Att. Gen.* How long after?

Plunkett. A matter of five or ſix days after.

Mr. *Att. Gen.* Did you ſee him?

Plunkett. Yes, I ſaw him.

Mr. *Att. Gen.* What paſſed between you?

Plunkett. He aſk'd me if I knew Mr. *Layer?* I told him I did. He then carried me to the *Caſtle* Tavern in *Drury-Lane*, where we drank two Pints of Wine, which he paid for; after the Nonjuring Parſon told me he came from *Layer*, who gave his Service, and told me that he was employed by Mr. *Layer* to go to ſuch as I was, who were old Serjeants, to get a Parcel together to diſcipline Citizens, and other Mob in the Country.

Mr. *Att. Gen.* What further paſs'd between you and Mr. *Jeffreys?*

Mr. *Ketelbey.* I beg leave to object to that Queſtion.

Mr. *Att. Gen.* If I don't bring it home to Mr. *Layer*, it will ſignify nothing.

L. C. Juſt. Mr. *Ketelbey*, you know that many times in Diſcourſe it is neceſſary to mention Introductions, to let in what is material: Whatever paſs'd between him and *Jeffreys*, don't affect your Client.

Mr. *Hungerford.* It is a conſtant Rule, if a Man ſpeaks of a third Perſon's Tranſactions, it is declared as nothing, and commonly ſtop'd from being given in Evidence.

L. C. Juſt. If they begin right, they will give Evidence in ſuch a Method as to be underſtood: By declaring what paſſed between him and *Plunkett*, the Evidence may be the better underſtood.

Mr. *Ketelbey.* I don't doubt your Lordſhip's giving Direction right; but I obſerve this, leſt ſome of the Jury ſhould not take it right.

L. C. Juſt. Let the Evidence be given in ſuch a manner as may be underſtood; what is introductory goes for nothing, but it is in order to explain the Evidence.

Mr. *Att. Gen.* What paſs'd between you and the Nonjuring Parſon, at the *Caſtle* Tavern?

Plunkett. He talked to me of the ſame Subject, deſiring me to get Men in Readineſs; he told me, he had a great many Places to go to beſides me with this Errand, and then we parted. Another time he came to me, we went to an Ale-Houſe, to the *Cock* and *Bottle* in the *Strand*, where he gave me half a Guinea, and ſaid, there is a Token, Mr. *Layer* had ſent it me to give me Encouragement.

Mr. Serj. *Pengelly.* At that Time that Mr. *Layer* ſaid he would ſend a Meſſenger to you, did he mention any thing of Money?

Plunkett. Mr. *Layer* ſaid he would ſend Money by the Meſſenger to me.

L. C. Juſt. You ſay he told you, that he would ſend you Money by the Meſſenger.

Plunkett. He told me ſo.

L. C. Juſt. Afterwards you ſay, one came to you as from him, and encouraged you, and gave you half a Guinea.

Plunkett. He did: I am upon my Oath before God and Man, I will ſay nothing but the Truth.

Mr. Serj. *Cheſhyre.* Did you receive any Meſſage from *Jeffreys* to appoint a Meeting with Mr. *Layer?*

Plunkett. Some Time afterwards I met Mr. *Layer*, at eight a-Clock, at the *Caſtle* Tavern in *Drury-Lane*; there was the Landlord, and Mr. *Layer*, who had two Bottles of Wine, and ſome Bread and Cheeſe: He would have had me eat, but I told him I could not eat; but I drank of the Wine. When he had diſcours'd with me about the Affair, to encourage me he gave me a Crown; I went croſs *Lincoln's-Inn-Fields*, ſo went home.

Mr. *Weſt.* What did he give you the Crown for?

Plunkett. To encourage me to liſt Men for the Pretender.

Mr. *Att. Gen.* Had you any Letter by the *Penny-Poſt?*

Plunkett. That Morning Mr. *Layer* was going to *Norfolk*, *Plunkett* told me Mr. *Layer* was going out of Town, and would be glad to ſee me. I went to Mr. *Layer*, and his Horſes were at the Door; he deſired me to walk up two Pair of Stairs forwards, and by the ſame Token order'd his Servant to charge his Blunderbuſs in the Room. Saith Mr. *Layer*, I have given a Guinea to the Nonjuring Miniſter to give you, to do what Service you can; and when I am abroad, you may be ſure I ſhall not be idle.

Mr. *Reeve.* Was any Propoſal made to any other Perſon?

Plunkett. I brought an old Soldier who had been in the Service many Years.

Mr. *Reeve.* What was his Name?

Plunkett. John Child; I brought him as thinking he might have been of Service to them.

L. C. Juſt. What was it Mr. *Layer* ſaid when he was going into the Country?

Plunkett. He told me he would not be idle there.

Mr. Serj. *Pengelly.* What did he deſire of you?

Plunkett. He deſired me to ſee and get what Soldiers I could for him: I came to the Nonjuring Miniſter, and told him I had got twenty five. Then Mr. *Layer* aſk'd me, why I did not bring a Liſt of them, that he might know where their Habitations were, and that they might be in Readineſs at the Time. I diſputed with Mr. *Layer* what would they do for Arms? No fear of Arms, ſaith he; Arms will be provided for them. After he returned from the Country to the Town, this Mr. *Plunkett* was the firſt Meſſenger that was ſent to me; he came and told me Mr. *Layer* was come to Town; and this Nonjuring Parſon ſent me a Letter by the *Penny-Poſt*; Mr. *Child* was in my Room and read it; the Contents were, *Mr.* Layer *is come to Town, and would be very glad to ſee you: No more, but your humble Servant*, William Jeffreys. By this I knew his Name.

Mr. *Att. Gen.* By this Letter he told you Mr. *Layer* would be glad to ſee you; did you go to him?

Plunkett. Yes, I went to him.

Mr. *Att. Gen.* Where? To his own Houſe?

Plunkett. Yes, to his own Houſe.

Mr. *Att. Gen.* What paſſed between you and Mr. *Layer* at that Time?

Plunkett. I remember at that Time, when I came to him, he gave me a Guinea with his own Hand.

Mr. *Att. Gen.* Who gave it you?

Plunkett. Mr. *Layer*, after he came from the Country, gave it me, and I recommended Mr. *Child* to him.

Mr. Serj. *Pengelly.* When you recommended Mr. *Child*, what did *Layer* ſay?

Plunkett. He ſaid he had no Buſineſs for him.

Mr. Serj. *Pengelly.* For what Purpoſe was *Child* recommended to Mr. *Layer?*

Plunkett. I recommended him as an honeſt Man, as one that was well-affected, as he deſired me.

Mr. Serj. *Pengelly.* Upon what Account did you recommend him?

Plunkett. Upon the Account to be a Pretender's Man.

Mr. Serj. *Pengelly.* Did you ever receive any Money to give to *Child?*

Plunkett. I receiv'd half a Guinea from Mr. *Layer* to give to Mr. *Child.*

Mr. Serj. *Pengelly.* For what Purpoſe was it?

Plunkett. For to encourage him in the Service, to be truſty to him, and to be a Pretender's Man.

Mr. Serj. *Pengelly.* By what Name did he call the Pretender?

Plunkett. He called him the King.

Mr. Serj. *Pengelly.* Had you any Talk with him any other Time?

Plunkett. The *Sunday* before he was taken up I was with him, and he was talking and ſaying the King was as fine a Shooter as any in *Europe.*

Mr. Serj. *Pengelly.* Whom did he mean by the King?

Plunkett. The Pretender, that he was as fine a Shooter as any in *Europe*; he ſhot nineteen out of twenty. I ſaid, that was fine ſhooting.

Mr. *Att. Gen.* Where was this Diſcourſe?

Plunkett. In his own Parlour.

Mr. *Att. Gen.* Can you recollect any other Diſcourſe there was at that Time, beſides that of Shooting?

Plunkett. Yes, there was; we talk'd of thoſe Men that would do Service. I aſk'd him what Rewards thoſe Men, that would do Service for their King and Country, ſhould have; he told me, that they, and their Families, were to be for ever taken Care of.

Mr. Serj. *Pengelly.* Was there any other Promiſe made to you?

Plunkett. There was no Promiſe; only he was the Man who ſaid, if I would follow his Directions, he would promote me; that he would engage to do great Matters for me; and what I ſuffer'd in the Army, he would make me Amends for.

Mr. Serj. *Pengelly.* Had you any Diſcourſe about the Diſpoſition of the Nation?

Plunkett. He ſaid, that moſt of the Nation was tir'd with the preſent Government; and he ſaid, that King *George* was for ruining of the Nation.

Mr. Serj. *Pengelly.* Had you any Talk of any Perſons at Court?

Plunkett. Yes; he ſaid, what ſignified the Government; there were but only eight or nine Upſtarts that belong'd to King *George*'s Court; that the ancient Peers of the Realm would not be run down; for they ſhould be made Slaves, if they did not prevent it.

Mr. Serj. *Pengelly.* Had you any Diſcourſe any other Time about the *Dutch* or the *French?*

Plunkett. Yes; I do remember that he ſaid, here is a *Dutch* Army come in upon this Nation, and then the *French* Army will come in, and take our Rights and Liberties from us: You will keep a *Dutch* Army, and it will be to make a War among our ſelves.

Mr. Serj. *Cheſhyre.* What would he have to cure all this?

Plunkett. He told me, that when the Inſurrection was, there would be a great many Half-Pay-Officers as I knew that would be on the Pretender's Side, and eſpecially thoſe of the Names of *Fitzgerald*; but I never knew any *Fitzgerald* Abroad.

Mr. *Att. Gen.* We have done examining this Witneſs.

Priſoner. You ſay your firſt Acquaintance with me was in *Queen's-Street*, and that Major *Barnwell* deſired you to aſſiſt me, there being an Execution in my Houſe; was it not ſo?

Plunkett. Yes.

Priſoner. At the ſame Time you called me Counſellor *Layer?*

Plunkett. Yes; I came to your Houſe.

Priſoner. Did I employ you?

Plunkett. Major *Barnwell* ſent me to get a Couple of Grenadiers, and you ordered your Clerk to let them in at the Back-Door; and the two Grenadiers, which were confined in the *Savoy* afterwards for it, drove the Officers out.

Priſoner. Was it the Landlord of the Houſe's Goods, or my Goods?

Plunkett. I cannot tell; how ſhould I know whether they were yours, or his? they were in your Houſe.

Priſoner. You ſaid it was about five Years before I ſaw you in *Lincoln's-Inn-Fields.*

Plunkett. It was when the Army was broke; and I came over from *Ireland.*

Priſoner. Well, you ſay, five Years afterwards I met you in *Lincoln's-Inn-Fields*, and gave you half a Crown to drink. I told you my Lord *North* and *Grey* was to be General: That my Lord *Strafford* was concerned in it.

Plunkett. No; you told me they were Promoters of it.

Priſoner. Promoters of what?

Plunkett. Of this Conſpiracy.

Priſoner. So you did not know me? nor I did not know you.

Plunkett. Yes, you knew me; therefore, Sir, ſaid I, you have an Advantage againſt me; for I don't know you. Afterwards we met one another by Accident. Says you, Don't tell *Plunkett* you met me.

Priſoner. What *Plunkett?*

Plunkett. *James Plunkett.*

Priſoner. Where lives *James Plunkett?*

Plunkett. I don't know: However that's not material.

Priſoner. Did not you come to my Houſe ſome time after this; and deſire me to lend you thirteen Shillings, upon Account of being Bail in an Action in the *Marſhal*'s Court?

Plunkett. That was two Months after: There was a Soldier which was arreſted by a *Marſhal*'s Court Writ.

Priſoner. And I lent you thirteen Shillings in order to diſcharge him?

Plunkett. Yes, you did.

Priſoner. Did not you afterwards aſk me for ſome Money on Account of Sir *Daniel Carrol?*

Plunkett. No.

Priſoner.

Priſoner. Did not you make a Demand on Sir *Daniel?*

Plunkett. No: I told you my Affairs with Sir *Daniel.* You ſaid you would not meddle your ſelf, but you would write to him.

Priſoner. Did you not bring a Paper, and ſay, Sir *Daniel* had agreed to pay you twenty Pounds when he received his Pay?

Plunkett. No: I brought no Papers to you.

Priſoner. Did not you tell me, it would be the greateſt Kindneſs in the World to you to advance twenty Shillings for you?

Plunkett. I never aſk'd you in the Courſe of my Life.

Priſoner. Did you never borrow any Money of me?

Plunkett. No; I never borrowed any Money of you, otherwiſe than to get Men liſted for the Pretender.

Priſoner. I ſhall ſhew that you are a little miſtaken by and by.

Mr. *Hungerford.* You ſaid you was decoyed to Church?

Plunkett. Decoyed! I ſaid it was out of my Way, when my own Pariſh Church was nearer.

Mr. *Hungerford.* What do you uſe to go to Church?

Plunkett. Yes.

Mr. *Ketelbey.* You ſay, the firſt time you ſaw this *James Plunkett*, he came to you when your Wife was in the Room?

Plunkett. The firſt time I ſaw him, was, when Mr. *Layer* releas'd Major *Barnewell* out of the *Marſhalſea.*

Mr. *Ketelbey.* When *James Plunkett* came to your Houſe, he took you by the Arm, and told you, he came from Mr. *Layer*; did he tell you that firſt time, he came from Mr. *Layer?*

Plunkett. Upon my Oath he did.

Mr. *Ketelbey.* What Diſcourſe had you the firſt Time? Did he only aſk you to go and meet Mr. *Layer?*

Plunkett. He came to me, and deſired me to meet Mr. *Layer* at the *Italian* Coffee-Houſe in *Ruſſel-Court.*

Mr. *Ketelbey.* Did *James Plunkett* talk to you about liſting Men for the Pretender the firſt time he ſaw you?

Plunkett. No; he only was ſent on an Errand from Mr. *Layer.*

Mr. *Ketelbey.* And then you came to the Nonjuring Parſon: The Unjuring Parſon, as you call him. What Diſcourſe had you with him?

Plunkett. The ſame Diſcourſe paſs'd between us about liſting Men.

Mr. *Ketelbey.* What, the firſt time you ſaw *James Plunkett*, and the firſt Time you ſaw the Nonjuring Parſon?

Plunkett. Becauſe he came from Mr. *Layer.*

Mr. *Ketelbey.* So you truſted both of 'em at firſt Sight, and talk'd to 'em about liſting Men for the Pretender?

Plunkett. Yes, both talk'd to me.

Mr. *Ketelbey.* How many times had this Unjuring Parſon been with you, before you knew his Name?

Plunkett. He had been with me two or three times; he told me his Name was *Jeffreys*, but did not tell me his Chriſtian Name.

L. C. Juſt. Did he tell you his Name was *Jeffreys* the firſt time?

Plunkett. He told me his Name was *Jeffreys.*

L. C. Juſt. How long after was it that this Letter was ſent to you by Mr. *Jeffreys?*

Plunkett. It was the time when Mr. *Layer* came from the Country.

L. C. Juſt. How long ago was that?

Plunkett. I believe about ten Moths ago: I mean ten Weeks ago.

Mr. *Ketelbey.* I would not ſurprize you; I would have you conſider you are upon your Oath: Is it ten Months, or ten Weeks?

Plunkett. Ten Weeks.

Mr. *Ketelbey.* How came you to remember the Contents of the Letter ſo exactly?

Plunkett. I heard it repeated over.

Mr. *Ketelbey.* Pray repeat it over again.

Plunkett. Mr. Plunkett, *Mr.* Layer *is come to Town; I ſhould be very glad to ſee you: So I reſt your humble Servant,* William Jeffreys.

Mr. *Ketelbey.* Where is that Letter?

Plunkett. I don't know; the Letter is loſt.

Mr. *Ketelbey.* Do you remember how long 'tis ſince this Letter was loſt?

Plunkett. Why, I miſs'd it about two Months ago, or more.

Mr. *Ketelbey.* Two Months ago, or more. How long was it after you receiv'd it that you miſs'd it?

Plunkett. I kept the Letter in my Pocket ſome time.

Mr. *Ketelbey.* How long?

Plunkett. I believe I had it three Weeks.

Mr. *Ketelbey.* So that 'tis ten Weeks ſince you received this Letter, two Months ſince you loſt it; you kept it in your Pocket three Weeks: You can read Writing?

Plunkett. No, I cannot.

Mr. *Ketelbey.* What not read Writing?

Plunkett. No, Sir.

Mr. *Ketelbey.* How can you be ſo particular as to the Writing?

Plunkett. I have heard it read often enough.

Mr. *Ketelbey.* Who read it to you?

Plunkett. John Child read it over to me two or three times.

Mr. *Ketelbey.* Why, this is mere Romance, that at twice hearing it read, you can remember it, the very Words.

Plunkett. I can remember thoſe Words, to the beſt of my Knowledge.

Mr. *Hungerford.* How can he tell, when he cannot read at all? There is nothing in it. If one was to aſk him, whether can you recite the Articles of the Creed, I believe he cou'd not do it; and yet is ſo exact in repeating the Words of this Letter.

Priſoner. What Countryman are you?

Plunkett. An *Iriſhman:* You knew that long ago; you need not aſk me that Queſtion now.

Mr. Serj. *Pengelly.* My Lord, we ſhall now proceed, and produce the Plan of this Conſpiracy, which was found among the Papers taken in Mrs. *Maſon*'s Poſſeſſion; and ſhall ſhew how they came to be in Mrs. *Maſon*'s Poſſeſſion; and we ſhall prove this Plan to be Mr. *Layer*'s own Hand-Writing.

John Turner, one of the Meſſengers, ſworn.

Mr. *Att. Gen.* Look upon theſe Papers.

[Turner *looks upon the Papers.*

Mr. *Att. Gen.* Do you know any thing of thoſe Papers, and where they were found?

Turner. My Lord, by Warrant from my Lord *Carteret*, Principal Secretary of State, dated the 29th

29th of *September* laſt, I was directed to ſearch for one Mrs. *Maſon* and Mrs. *Cook*, and the very ſame Day I executed that Warrant. I found out Mrs. *Cook*'s Houſe in *Stone-Cutters Yard* in *Little Queen-Street* near *Lincoln's-Inn-Fields*, and in ſearching the Houſe——

Mr. Serj. *Pengelly*. Who lodg'd there?

Turner. One Mrs. *Maſon* lodg'd there: I found her in the Houſe; and in her Lodging there was a Trunk, and being demanded to open the Trunk——

L. C. Juſt. Was your Warrant to ſearch for both Mrs. *Maſon* and Mrs. *Cook*.

Turner. For both; and in Mrs. *Maſon*'s Lodgings there was a Trunk which the other Meſſenger and I demanded to be open'd: She open'd the Trunk, and in the Trunk there were two Bundles of Papers ſeal'd up; which Papers being open'd, this Paper was found amongſt them, *(meaning the Plan or Scheme.)*

Mr. Serj. *Pengelly*. Look upon it: How do you know that to be the ſame?

Turner. I know it to be the ſame, becauſe I writ upon't, I ſet my Mark upon it.

Mr. *Att. Gen*. You ſay that theſe Papers were found in the Trunk, in two Bundles ſeal'd up?

Turner. Yes.

Mr. *Att. Gen*. *(Shewing the Witneſs another Paper)* Look upon that; ſee if that was in the ſame Bundle with that you laſt gave an Account of?

Turner. Yes that was in the ſame Bundle.

And ſo he was examin'd as to ſeveral particular Papers, which he ſwore to have been all found in the two Bundles taken out of Mrs. Maſon's *Trunk, and that he had ſet his Mark upon them.*

Mr. *Ketelbey*. I beg leave to aſk Mr. *Turner* a Queſtion or two. Mr. *Turner*, I think you give a poſitive Account of ſeveral Papers, what they are I know not; of ſeveral Papers handed to you from Mr. *Paxton*. You had a Warrant to ſearch for Mrs. *Cook* and Mrs. *Maſon*, and in a Trunk you found theſe Papers ſeal'd up in a Bundle.

L. C. Juſt. He ſaid he had Directions from my Lord *Carteret*, to ſearch for Mrs. *Cook* and Mrs. *Maſon*. That he ſearched Mrs. *Cook*'s Houſe, and found Mrs. *Maſon* there; he ſees a Trunk in the Houſe, in Mrs. *Maſon*'s Lodgings, and he demanded the Trunk to be open'd, and in the Trunk is found two Bundles of Papers; in theſe Bundles are theſe Papers which have been ſhewn to the Witneſs. When he is aſk'd how he knew them to be the ſame that were in the Bundle, he ſays, he knows them to be the ſame, becauſe he ſet his Mark upon them.

Mr. *Juſt. Forteſcue Aland*. Were the Bundles ſeal'd up?

Turner. Yes, my Lord, they were ſeal'd up when we took them out of the Trunk.

Mr. *Att. Gen*. In whoſe Lodgings were they found?

Turner. At Mrs. *Maſon*'s Lodgings, in her Bed-Chamber.

Mr. *Ketelbey*. You ſay theſe Papers handed to you, you found in the Trunk in Mrs. *Maſon*'s Lodgings. Where have they been ever ſince? How come you to be ſo poſitive that theſe Individual Papers are the ſame Papers that you found in Mrs. *Maſon*'s Room?

Turner. I put my Name upon 'em.

Mr. *Ketelbey*. Is your Name put upon thoſe?

Turner. Yes, upon each of them at that time.

Mr. *Ketelbey*. How long were they in your Cuſtody?

Turner. About an Hour.

Mr. *Ketelbey*. Who did you deliver them to, when you parted with them?

Turner. I think, to Mr. *Stanyan*.

Mr. *Ketelbey*. I aſk you, when you put your Name on each of them, was it before you firſt parted with them?

Turner. After the Trunk was open, and the Bundles were open'd; in the Bundles finding Papers of Conſequence, I was directed to go and fetch Mr. *Stanyan* as being a Magiſtrate, to give that Perſon her Oath. While I was gone, I deliver'd the Papers into my Brother Meſſenger's Hand, and he ſigned them.

Mr. *Ketelbey*. So you only ſwear for your Brother Meſſenger. How long after your firſt ſeizing the Papers was it before you put your Name upon them?

Turner. I believe three Quarters of an Hour.

Mr. *Ketelbey*. Who had you left them with?

Turner. I left them with this Man, my Brother Meſſenger.

Mr. *Ketelbey*. You left them with your Brother Meſſenger before you ſet your Mark upon 'em; how comes it that you are ſure they are the ſame? How can you ſwear they are the ſame, when you went away and left them in your Brother Meſſenger's Hands, and did not ſet your Name upon them, 'till you returned?

Mr. *Soll. Gen*. You ſay theſe Papers were ſeized in Mrs. *Maſon*'s Lodgings, and that ſhe was by, and unlock'd the Trunk, and you took out the two Bundles.

Turner. Yes.

Mr. *Att. Gen*. You ſay you delivered the ſame Papers to this Perſon here?

Turner. Yes, Sir.

Priſoner. Mr. *Turner*, in Mrs. *Maſon*'s Lodgings you ſay you ſeized two Bundles of Papers ſeal'd up?

Turner. Yes.

Priſoner. When Mrs. *Maſon* had them lock'd up, were they then ſeal'd up?

Turner. They were then ſeal'd up.

Priſoner. Did not the Seals appear to have been broke open?

Turner. No.

Priſoner. You ſaw two Bundles?

Turner. Yes.

Priſoner. You ſaw this Paper, and that, and all the Papers taken out of the Bundles. What Bundle was this Paper in? *(Meaning the Plan or Scheme.)*

Turner. This was in the ſame Bundle.

Priſoner. Was there a ſmall Bundle, and a great Bundle?

Turner. Yes; there were two Bundles.

Priſoner. And this was out of one of the Bundles?

Turner. Out of the ſmall Bundle.

Priſoner. Did you ſee them taken out of the Bundle?

Turner. I can't ſay that.

Mr. *Hungerford*. If I obſerve that Paper or Bundle right, it is one that conſiſts of ſeveral Sheets of Paper; I deſire he may hold it in his Hand, till we have done examining of him.

Mr. *Ketelbey*. Mr. *Turner*, that conſiſts of

more

more Sheets than one; did you ſign your Name to each Leaf, or only to the firſt and the laſt Leaf of the Book?

Turner. I ſign'd my Name to each Sheet.

Edward Speare, ſworn.

Mr. *Att. Gen.* Mr. *Speare*, Did you go with Mr. *Turner* to ſeize any Papers at Mrs. *Cook*'s Houſe?

Speare. Yes; I did.

Mr. *Att. Gen.* Give an account of what you know of ſeizing any Papers there.

Speare. My Lord, by a Warrant directed to us from my Lord *Carteret*, Mr. *Turner* and I were to ſeize Mrs *Cook* and Mrs. *Maſon*; and ſearching Mrs. *Cook*'s Houſe, I found Mrs. *Maſon* there. At Mrs. *Cook*'s I found no Papers in the firſt Room; I proceeded into a ſecond Room, where there was a Trunk, which I ordered to be opened, and I took two Parcels out of it; one of 'em was ſeal'd with three ſeals, which I looked at; they did not appear to have been open'd and ſeal'd up again. I open'd them, and mark'd them.

Mr. *Att. Gen.* Who was by?

Speare. Mrs. *Maſon* was.

Mr. *Att. Gen.* Was ſhe there when you open'd them?

Speare. She was by when they were open'd.

Mr. *Att. Gen.* Look upon them, are they the ſame Papers?

Speare. I have look'd upon them, and know them to be the ſame.

Mr. *Att. Gen.* Are thoſe the Papers that were taken out of the Trunk?

Speare. The very Papers.

Mr. *Att. Gen.* In whoſe Room were they taken?

Speare. In Mrs. *Maſon*'s Room.

Mr. Serj. *Cheſhyre.* Were they ever out of your Cuſtody, till you mark'd them?

Speare. No, Sir.

Mr. *Soll. Gen.* During the Time that *Turner*, your Brother Meſſenger, was gone for Mr. *Stanyan*, who had the Cuſtody of the Papers?

Speare. I had the Cuſtody of them.

Mr. *Soll. Gen.* Were any of them taken away, or was there any Alteration in, or Addition to them, during that time?

Speare. No, Sir.

Mr. Serj. *Cheſhyre.* Do you remember that Mr. *Turner* ſet his Name upon them?

Speare. Yes, he did.

L. C. Juſt. How long after your Brother Meſſenger returned back to you, was it before you ſet your Name upon them?

Speare. Immediately, my Lord.

Mr. *Ketelbey.* How long did you ſtay in the Place after the Return of *Turner*?

Speare. I believe I might ſtay there an Hour, or an Hour and an half.

Mr. *Ketelbey.* When did you firſt part with the Papers out of your Cuſtody?

Speare. I gave them to Mr. *Stanyan.*

Mr. *Ketelbey.* How long after you firſt ſeized thoſe two Bundles was it before Mr. *Stanyan* came to you?

Speare. I believe about half an Hour, or three Quarters of an Hour.

Mr. *Ketelbey.* What, did you deliver them to Mr. *Stanyan* then?

Speare. After Mr. *Turner* and I had ſign'd them, I deliver'd them to Mr. *Stanyan.*

Mr. *Ketelbey.* Was it not before you ſign'd them?

Speare. No, upon my Oath.

Mrs. *Elizabeth Maſon*, ſworn.

Mr. *Att. Gen.* Mrs. *Maſon*, Give an Account of what you know of theſe Papers?

Mrs. *Maſon.* Mr. *Layer* left two Parcels of Papers with me: He told me they were of the Value of 500*l.* He afterwards took them away from me; and afterwards brought them to me again.

Mr. Serj. *Cheſhyre.* You ſay, he deliver'd two Bundles firſt?

Mrs. *Maſon.* No; he deliver'd only one, and that was the largeſt Bundle: He told me it was of the Value of 500*l.* and deſir'd me to take care of it, and lock it up.

Mr. Serj. *Cheſhyre.* When was the leſſer Bundle deliver'd to you?

Mrs. *Maſon.* Some time after; and after that, he took them away from me; and in four or five Days time he brought them to me again: He took them away, and brought them to me again, and told me they were a few Love-Letters; and begg'd of me not to let Mrs. *Cook* know it, for ſhe would make a Diſturbance, and tell his Wife.

Mr. Serj. *Cheſhyre.* When had you the leſſer Bundle?

Mrs. *Maſon.* I had that ſome time after.

Mr. Serj. *Cheſhyre.* What Directions had you with the little Bundle?

Mrs *Maſon.* He deſired me to take the ſame Care of that, as of the other.

Mr. Serj. *Cheſhyre.* Was that ſeal'd up?

Mrs. *Maſon.* They were both ſeal'd.

Mr. Serj. *Cheſhyre.* Where did you put them?

Mrs. *Maſon.* I put them into my Trunk.

Mr. Serj. *Cheſhyre*, After this; you know when the Meſſengers came?

Mrs. *Maſon.* Before that, he came one Day in the Afternoon to our Houſe, and aſk'd where I was. It was the Beginning of *Bartholomew-tide.* I was not at home: He left a Meſſage for me, that I ſhould bring thoſe Writings home. I carry'd them home.

Mr. Serj. *Cheſhyre.* Home! What do you mean by Home?

Mrs. *Maſon.* Mr. *Layer*'s own Houſe: He left word, that he wou'd be at home by eight a-Clock that Night. I was there about eight a-Clock: I aſked the Maid where he was? She ſaid he was in the Back-Parlour. I aſked her if any body was with him? She ſaid, there were two Gentlemen. Said I, tell your Maſter that I am here.

L. C. Juſt. You ſay the great Bundle was taken from you again, and afterwards he brought the leſſer Bundle; and after this you receiv'd a Meſſage, or Intimation, that you ſhou'd bring home that Bundle?

Mrs. *Maſon.* My Lord, I had two Bundles. He left word, that I ſhould bring his Papers Home; for he ſtay'd at Home 'till eight a-Clock that Night. I went to his Houſe: And when I knock'd at the Door, the Maid came to the Door. I aſk'd her, if her Maſter was within? ſhe told me, yes, he was in the Back-Parlour; and that there was a Gentleman or two with him. I deſir'd her to go and tell her Maſter that I was there. And he came out to me; and I gave him the Writings; and he deſired me to come again the next Morning; which was on a *Saturday*, about eleven a-Clock, for he was going out of Town: And that I would come and take thoſe Writings again. Which accordingly I did. It

was in the Morning, at the Time that the Bell was ringing at *Lincoln*'s-*Inn* Chapel, when I went to him, and he deliver'd me the Papers again.

Mr. *Soll. Gen.* Can you recollect the Day that he left Word for you to come to him?

Mrs. *Maſon.* It was the Beginning of *Bartholomew-tide.*

Mr. *Soll. Gen.* What Day of the Week was it?

Mrs. *Maſon.* It was on a *Friday* Night that I went and carried them to his Houſe.

Mr. *Soll. Gen.* And when was it that he deſired you would come and call for them again?

Mrs. *Maſon.* It was the next Morning at eleven a-Clock, or near the matter, that I went to his Houſe; and he gave me the Writings again, and charged me to take Care of them.

Mr. Serj. *Cheſhyre.* What was you to do with them?

Mrs. *Maſon.* To take care of them.

Mr. Serj. *Cheſhyre.* Did you meddle with them, or open them?

Mrs. *Maſon.* No, Sir; I put them in my Trunk: They lay there all the time.

Mr. Serj. *Cheſhyre.* Were they there when the Officers came?

Mrs. *Maſon.* Yes, Sir.

Mr. Serj. *Cheſhyre.* Was you there when the Bundles were opened?

Mrs. *Maſon.* I was there.

Mr. Ser. *Cheſhyre.* Did you mark the Papers your ſelf?

Mrs. *Maſon.* I did.

Mr. Serj. *Cheſhyre.* Look upon the Papers, and ſee if you find your Mark on thoſe Papers?

Mrs. *Maſon.* Yes, this is my Mark.

Mr. Serj. *Cheſhyre.* Mr. *Speare*, you was preſent at the opening of them?

Mr. *Speare.* I was. They were ſealed up when I opened them.

Mr. Serj. *Cheſhyre.* Did you put your Name on them?

Mr. *Speare.* I did put my Name on them.

Mr. Serj. *Cheſhyre.* Were they out of your Cuſtody before you put your Name on them?

Mr. *Speare.* No; they were not.

Mr. Serj. *Cheſhyre.* Did Mr. *Turner* put his Name to them?

Mr. *Speare.* He put his Name to them, before ever they were out of my Cuſtody.

Mr. *Att. Gen.* You have mark'd all thoſe Papers. You are ſure thoſe are the Papers you took out of the Trunk in Mrs. *Maſon*'s Lodging?

Mr. *Speare.* I am ſure they are.

Mr. *Att. Gen.* Shew them to Mrs. *Maſon.* Mrs. *Maſon*, were thoſe Papers in the Bundles that were deliver'd to you by Mr. *Layer?*

Mrs. *Maſon.* Yes, Sir; they were.

Mr. *Att. Gen.* You have mark'd thoſe Papers, have you not?

Mrs. *Maſon.* Yes, I have.

Mr. *Soll. Gen.* You ſaid, you gave the Bundles back to Mr. *Layer* on a *Friday*, about the Beginning of *Bartholomew-tide.* Do you remember whether it was upon *Bartholemew* Day or not?

Mrs. *Maſon.* Indeed I don't know.

Mr. *Soll. Gen.* What did Mr. *Layer* ſay when you brought them to him again?

Mrs. *Maſon.* He only thanked me; and deſired me to come the next Day and take them from him again: Which I did.

Mr. *Soll. Gen.* Did he mention then, that he was going out of Town?

Mrs. *Maſon.* Yes: And it was about eleven a-Clock on a *Saturday* Morning that I went to him, and he deliver'd the Papers to me again.

Mr. *Hungerford.* Can you write?

Mrs. *Maſon.* No.

Mr. *Hungerford.* Have you made the ſame Mark on all thoſe Papers?

Mrs. *Maſon.* I was ſo frightned at that time, that I hardly knew what Mark I made.

Mr. *Hungerford.* If you was frightned at that time, and did not know what Mark you made, how can you be ſure you know your Mark again?

Mrs. *Maſon.* Yes, I can tell it very well.

Mr. *Hungerford.* When you ſay you was ſo frighted you did not know what Mark you made?

Mrs. *Maſon.* Yes, ſure I do.

Mr. *Hungerford.* Upon the Oath you have taken, hath any Body ſeen thoſe Papers before they were taken by the Meſſengers; whether Sir *John Meres*, or his Man *Thomas* hath ſeen them?

Mrs. *Maſon.* No.

Mr. *Ketelbey.* Nor his Man *Thomas?*

Mrs. *Maſon.* No, nor his Man *Thomas.*

Mr. *Ketelbey.* I aſk you, can you write or can you read Writing?

Mrs. *Maſon.* I told you I can't.

Mr. *Ketelbey.* You only can make your Mark?

Mrs. *Maſon.* No.

Mr. *Ketelbey.* Do you only make but one Mark, or uſe ſeveral Marks?

Mrs. *Maſon.* I make but one Mark.

Mr. *Ketelbey.* Pray make the Mark you generally uſe? With Submiſſion, my Lord, I deſire ſhe may have a Pen and Ink to ſee if ſhe can make the ſame Mark again.

Mr. *Hungerford.* Surely we are regular in deſiring that?

L. C. Juſt. What you deſire is proper. She ſays ſhe knows them to be the ſame Papers, becauſe ſhe hath ſet her Mark upon them; they doubt whether ſhe may miſtake in her Mark, and deſire ſhe may make her Mark again.

Mr. *Ketelbey.* My Lord, we deſire ſhe may make her Mark again.

Mr. *Soll. Gen.* We deſire ſhe may have a convenient Place to do it in, and that ſhe may ſit down while ſhe writes?

Mrs. *Maſon.* No, I can do it without. (*A Pen and Ink and Paper is given to her, and ſhe ſets her Mark an* E *and an* M.)

Mr. *Soll. Gen.* Here are the Letters *E* and *M* ſet to the Papers produc'd; and tho' in this Confuſion ſhe ſhould not make her Letters exactly like thoſe, yet I apprehend that would weigh very little.

Mr. *Att. Gen.* My Lord, I can't tell what they mean? this doth not depend——

Mr. *Ketelbey.* My Lord, I deſire to go on with our Queſtions. I aſk you——

L. C. Juſt. (*Having compared the Letters made by Mrs.* Maſon *in Court, with thoſe on the Papers*) The Character which ſhe now writes is like what ſhe writ on thoſe Papers, and ſo confirms her Evidence.

Mr. *Ketelbey.* After the delivery of thoſe two Bundles to you by Mr. *Layer*, I aſk you whether Sir *John Meeres*'s Man *Thomas* ever ſaw thoſe Bundles open'd?

Mrs. *Maſon.* No he never was up in my Room; there was no ſuch Familiarity between us.

Mr. *Ketelbey*. Did one *Wilſon* ever ſee them?

Mrs. *Maſon*. No.

Mr. *Ketelbey*. Did ever you produce them to one *Binks*.

Mrs. *Maſon*. No.

Priſoner. No: Nor did Sir *John Meeres*'s Man *Thomas* never ſee them?

Mrs. *Maſon*. No, never upon my Oath.

Mr. *Ketelbey*. Did you ever produce them ſealed up? Did you ever let *Thomas* or *William*, or Sir *John Meeres*, himſelf ſee either of thoſe Bundles as they were ſealed up?

Mrs. *Maſon*. No, they were in my Trunk: I always kept them in my Trunk; perhaps as I open'd my Trunk, they might ſee them lie in my Trunk.

Mr. *Ketelbey*. Do you know one Mrs. *Buda?*

Mrs. *Maſon*. No: I don't know the Name. I don't know one Mrs. *Buda*.

Priſoner. Did you ever know one Mrs. *Herbert?*

Mrs. *Maſon*. I know many of that Name.

Priſoner. Did you ever go by that Name?

Mrs. *Maſon*. No.

Priſoner. Did you ever go by the Name of *Corbet?*

Mrs. *Maſon*. No.

Priſoner. Did you ever go by the Name of *Bevan?*

Mrs. *Maſon*. No, I never did go by the Name of *Bevan*.

L. C. Juſt. Mr. *Ketelbey*, I don't know what the Meaning of this Examination is; when it appears beyond Contradiction, that this Woman was an Acquaintance of your Client's.

Mr. *Ketelbey*. My Lord, if we prove her to be an ill Woman, I hope it will take off her Credit ſo that her Evidence will not weigh with your Lordſhip, or the Jury.

L. C. Juſt. At the Time when theſe Bundles were ſeized, had they Mr. *Layer*'s Seal upon them?

Mrs. *Maſon*. Yes, the Seal of Mr. *Layer* was upon them.

L. C. Juſt. What ſays the Meſſenger? At the time that you ſeized theſe two Bundles of Papers, was there any Seal upon them?

Meſſenger. There were three Seals upon one, and ſome Seals upon the other; the Seal was ſomething of a ſmall Head.

L. C. Juſt. What is Mr. *Layer*'s Seal?

Mrs. *Maſon*. Something of a Head, but I can't tell what Head.

Mr. *Ketelbey*. Do you know Mr. *Layer*'s Seal?

Mrs. *Maſon*. Yes. It is ſomething of a Head.

Mr. *Ketelbey*. Was it the Repreſentation of a Man's Head, or the Head of a Beaſt?

Mrs. *Maſon*. It is a Head, with ſomething of a Ruff about it.

L. C. Juſt. Mrs. *Maſon*, look upon the Head. Is that Head the Seal of Mr. *Layer?*

Mrs. *Maſon*. Yes. Upon my Oath it is.

L. C. Juſt. What ſays the Meſſenger. Was that Seal of a Head upon them, when you ſeized them?

Meſſenger. Yes, it was.

Mr. *Ketelbey*. Before that time that the two Meſſengers came, Mr. *Turner* and Mr. *Speare*, and ſeiz'd the Papers, and afterwards one of them went for Mr. *Stanyan*; I aſk you, whether you had ſhewn thoſe Bundles to any Body before that time?

Mrs. *Maſon*. No; I had ſhewn them to no Body.

Mr. *Att. Gen*. She hath ſaid ſo two or three times before.

L. C. Juſt. Indeed, Mr. *Ketelbey*, we muſt direct you not to ſpend the time of the Court ſo. You have aſk'd her that Queſtion two or three times over.

Mr. *Ketelbey*. My Lord, I would very fain have the Truth come out.

Mr. *Hungerford*. I will aſk you a Queſtion or two. What Trade or Buſineſs do you follow? What is your Trade or Ocupation.

Mrs. *Maſon*. What is that to you? I have no Trade.

Mr. *Hungerford*. I ſhould have aſk'd you another Queſtion before; Have you not a Promiſe of Reward for the Service you do here, in giving this Evidence?

Mrs. *Maſon*. No, I have not.

Priſoner. Nor you have received none?

Mrs. *Maſon*. No. You are an unjuſt Man.

L. C. Juſt. Are you promiſed any Reward! Why don't you aſk her whether ſhe is to ſwear for Hire? Is that a proper Queſtion to aſk a Witneſs?

Mr. *Ketelbey*. I ſubmit it to your Lordſhip, whether it is not proper to aſk her this Queſtion; whether ſhe hath not told any Perſon, and whom, that ſhe was to have a Reward for coming hither?

Priſoner. The Queſtion is, whether ſhe hath never owned and confeſſed to any Body, that theſe Papers were opened before a Friend of hers, before the Meſſenger ſeized them?

Mrs. *Maſon*. No, my Lord, I never did. I never opened them before any Body.

Mr. *Att. Gen*. They have ask'd you what Names you went by; do you know what Names the Priſoner at the Bar has gone by?

Mrs. *Maſon*. He had once given me Orders, that if any Letter came directed in the Name of *Fountaine*, that I ſhould take it in; accordingly in two or three Days time, there came a Letter, directed to Mr. *Fountaine*, and I took it in; and when he came, I gave it to him, and he opened it, and read it.

Priſoner. Where is your Houſe?

Mrs. *Maſon*. Where! Where you left the Writings.

Priſoner. How can you tell how that Letter was directed, which you took in, ſince you ſay you cannot Read?

Mrs. *Maſon*. It was directed to Mr. *Fountaine*.

Priſoner. Did you read the Superſcription?

Mrs. *Maſon*. No. Mrs. *Cook* did.

L. C. Juſt. You ſay you was deſired by Mr. *Layer*, when any Letter came directed to Mr. *Fountaine*, to take it in; and that a Letter came directed to Mr. *Fountaine*, and you took it in. The Queſtion is aſked you, ſince you cannot read, how could you tell it was directed to Mr. *Fountaine?*

Mrs. *Maſon*. My Landlady told me it was for Mr. *Fountaine*, and ſhe knew he went by the Name of *Fountaine* ſometimes.

Priſoner. She ſaid ſhe read it.

Mrs. *Maſon*. No. I ſaid I gave it to you, and you open'd it, and you read it.

L. C. Juſt. The Occaſion of this Queſtion is, that this *Miſnomer* was approved of by you. She ſays that you order'd her, that if any Letter came directed to Mr. *Fountaine*, ſhe ſhould take it in; a Letter did come directed ſo, ſhe took it in, and then deliver'd it to you; and you receiv'd it from her, and open'd and read it; but how, ſay they, cou'd you know this Letter was directed

to

to Mr. *Fountaine*, when you can neither write nor read? She having received ſuch an Order, when there was a Letter come, it was natural enough, that ſhe that could not read, ſhould aſk her Landlady the Directions of the Letter, and it was directed for *Fountaine*; it was natural enough for her to take it in, and give it to you.

Who brought the Letter?

Mrs. *Maſon*. A Porter.

L. C. Juſt. Did he ſay from whence he came?

Mrs. *Maſon*. He told me he came from the *Ditch-Side*, and aſk'd me if Mr. *Fountaine* lodg'd there.

Mr. *Hungerford*. This Trunk that the Papers were in, did it uſe to be kept open, or was it lock'd up?

Mrs. *Maſon*. It was always lock'd up.

Mr. *Doyley*, ſworn.

Mr. *Att. Gen.* Mr. *Doyley*, do you know Mr. *Layer*; and how long have you known him?

Doyley. I have known him about ſeventeen or eighteen Years; he was my Clerk; 'tis thereabouts, I believe.

Mr. *Att. Gen.* Do you know his Writing?

Mr. *Doyley*. I believe I do.

Mr. *Att. Gen.* Look upon that Paper. (*He is ſhewn the Scheme.*)

Mr. *Att. Gen.* Do you take that to be his Hand?

Doyley. If you aſk me as to my Belief, I believe it is.

Mr. *Att. Gen.* Have you often ſeen him write?

Doyley. Yes, Sir.

Mr. *Att. Gen.* Have you ſeen him write ſince he left your Service?

Doyley. I have had ſeveral Letters from him, ſince he was my Clerk.

Mr. *Att. Gen.* Look upon that Paper; can you ſwear that you believe that is his Hand-Writing?

Doyley. I have ſeen the Paper before, and I do believe it to be his Hand-Writing.

Priſoner. Have you ſeen me write any thing but my Name, theſe fourteen Years?

Doyley. I can't particularly recollect whether I have or no.

Priſoner. How long is it ſince I was your Clerk?

Doyley. About fourteen or fifteen Years.

Priſoner. Have you ſeen me write ſince?

Doyley. I can't ſay I have, or I have not.

L. C. Juſt. How long is it ſince you received any Letters from him?

Doyley. About five Years ago.

L. C. Juſt. How do you know thoſe Letters came from him?

Doyley. Becauſe he was my Client, and writ to me about Buſineſs; and I anſwered thoſe Letters, and did the Buſineſs that he deſired me to do by thoſe Letters.

L. C. Juſt. Did he pay you for that Buſineſs done?

Doyley. Yes, very honourably.

Priſoner. You ſay you don't remember you have ſeen me write ſince I came from you; as to that Paper which you ſay you believe to be my Hand, have you compar'd it with thoſe Letters?

Doyley. I have.

Priſoner. Is that what you found your Belief upon?

Doyley. That is what I chiefly found my Belief upon.

Priſoner. Conſider, Mr. *Doyley*, my Life is at Stake, and you ſay you have not ſeen me write theſe fourteen Years?

Doyley. I don't know that I have.

Priſoner. Have you any of my Letters in Court?

Doyley. I have not your Letters in Court.

Priſoner. You ſay, you found your Belief only by Compariſon of thoſe Letters. Now I wiſh you had brought thoſe Letters here.

Mr. *Att. Gen.* He doth not ſay ſo.

Mr. *Doyley*. If you had deſir'd it, I cou'd have brought 'em.

Priſoner. I deſir'd it! I little thought to have ſeen you here on ſuch an Occaſion.

Mr. *Att. Gen.* Mr. *Doyley*, I aſk you, if you had no Dealings with him ſince he was out of his Clerkſhip?

Mr. *Doyley*. Yes, I was his Agent.

L. C. Juſt. Whoſe Name is ſubſcribed to thoſe Letters?

Mr. *Doyley*. *Chriſtopher Layer*'s.

L. C. Juſt. You did the Buſineſs mentioned in thoſe Letters; and he honourably paid you for it?

Mr. *Doyley*. Yes, my Lord.

L. C. Juſt. I ſuppoſe, in your time, that you will ſhew that other People writ Letters in your Name?

Mr. *Ketelbey*. You ſay, you believe that Paper to be Mr. *Layer*'s Hand-writing. And if I did not miſunderſtand you, I took it down in Writing, you founded your Belief on the comparing that Writing with the Letters which you receiv'd?

Mr. *Doyley*. I ſaid, I chiefly founded my belief upon ſuch Compariſon of Hands.

Mr. *Ketelbey*. That you chiefly did ſo; and you have not thoſe Letters here in Court, on which you chiefly founded this Belief.

Mr. *Soll. Gen.* Mr. *Doyley*, I think you ſay you have ſeen him write ſeveral Times?

Mr. *Doyley*. I don't remember that I have ſeen him write theſe fourteen Years.

Mr. *Soll. Gen.* During the Time he was your Clerk, you have ſeen him write?

Mr. *Doyley*. Yes; he was but two Years with me: He had been Clerk with Mr. before.

Mr. *Soll. Gen.* Then he had been us'd to Buſineſs before he came to you; and had form'd his Hand.

Mr. *Hungerford*. How old was he, when he was your Clerk?

Mr. *Doyley*. Indeed I don't know.

Mr. *Hungerford*. You form your Belief upon the Remembrance you have of what was his Hand-writing fourteen or fifteen Years ago?

L. C. Juſt. You ſay, you have received Letters ſubſcribed by his Name five Years ago?

Mr. *Doyley*. Yes, my Lord.

L. C. Juſt. Was the Character of thoſe Letters that you receiv'd five Years ago, agreeable to the Characters that he writ when he was your Clerk?

Mr. *Doyley*. Yes, my Lord.

L. C. Juſt. Then I aſk you upon the whole, whether you believe it to be his Hand-Writing, or not?

Mr. *Doyley*. Yes, I do believe it to be his Hand.

Priſoner. Since my unhappy Circumſtances, have you had no Promiſe of being reſtored to your Place again, or the Promiſe of ſome other Office or Place?

Mr. *Doyley*. No; I never, to my Knowledge, have ſeen one Man that had the Power to put me in my Place again; nor ever convers'd with any one Great Man upon that or any ſuch Affair.

Mr. Serj. *Pengelly*. We think we are entitled to read it: However, that there may be no Diſpute, we deſire to call Mr. *Delafaye* and Mr. *Stanyan*, in whoſe Preſence the Priſoner at the Bar confeſs'd it to be his Hand-Writing.

Mr. *Delafaye* was ſworn.

Mr. Serj. *Pengelly*. Sir, was that Paper ſhewn to the Priſoner at the Bar?

Mr. *Delafaye*. I was not near enough when he was before the Lords of the Council, to ſee what was on the Table; neither did I look upon the Table, to ſee whether this Paper was on it or not. But upon a Queſtion that was aſk'd him, relating to ſome Arms, if he knew where any were lodg'd in ſuch a Place, he ſaid, no: Upon which, one of the Lords of the Council held up a Paper; it might be this, for ought I know; and ſaid, here is your own Paper, your own Hand-Writing; which ſays, Arms that are there lodged; ſays he, I ſhould have writ Arms that ſhould be there lodged.

L. C. Juſt. Whether is that the Paper or no, and did he own that Paper that was then ſhewn to be his?

Mr. *Delafaye*. The Queſtion was not aſk'd, is this your Paper and your Hand-Writing? But it was ſhewn to him as ſuch; and he ſaid, I ſhould have wrote Arms that ſhould be there lodg'd.

Mr. *Stanyan*, ſworn.

Mr. *Att. Gen*. Mr. *Stanyan*, do you remember whether this Paper was ſhewn to the Priſoner at the Bar, or any Queſtions aſk'd him about it, when he was before the Lords of the Council?

Mr. *Stanyan*. Upon the Queſtion that was aſk'd him about the Arms, this Paper was ſhewn him; I think this is the Paper: I was nearer to the Table than Mr. *Delafaye*, and did obſerve this Paper to lie upon the Table before the Lords, and do take this to be the individual Paper that was ſhewn him then.

Mr. *Att. Gen*. What was ſaid to him at that time?

Mr. *Stanyan*. The Queſtion was aſk'd him, what he knew of any Arms that were lodg'd in *Weſtminſter*? He ſaid, he knew of none. Then this Paper was ſhewn to him, and a Queſtion was aſk'd him; here the Arms are ſaid to be lodg'd in this Scheme of your own Hand-Writing; how came you to write ſo, if there be no Arms lodg'd? Mr. *Layer* ſaid, it was a miſtake: It was not intended Arms that are there lodg'd, but Arms that ſhou'd be there lodg'd. He ſaid, I ſhou'd have writ Arms that ſhou'd be lodg'd, inſtead of Arms that are lodg'd.

Mr. Serj. *Cheſhyre*. The Queſtion was concerning a Paper of his own Hand-Writing?

Mr. *Stanyan*. Yes, it was concluded, that the Paper was of his own Hand-Writing, and he did not deny it.

Mr. *Att. Gen*. Did he ſay it was not his own Hand-Writing?

Mr. *Stanyan*. No, he did not.

Mr. *Ketelbey*. Was the Queſtion aſk'd, whether that Paper was his Hand-Writing, or no?

Mr. *Stanyan*. No, I believe not.

Mr. *Ketelbey*. Then if there was no Queſtion aſk'd; whether did he own it to be his Hand-Writing, or no?

Mr. *Stanyan*. He did not expreſly own it to be his Hand-Writing.

Mr. *Att. Gen*. He was not aſk'd that Queſtion, whether it was his Hand-Writing, or no?

Mr. *Stanyan*. No, Sir.

Mr. Serj. *Pengelly*. He did not deny it to be his own Hand-Writing?

Mr. *Stanyan*. No, Sir.

Mr. *Weſt*. Whether the Lords in their Queſtion did ſtate it ſo, as taking it for his own Hand-Writing?

Mr. *Stanyan*. It was taken for granted that it was ſo, and he made no Offer to deny it.

Priſoner. Pray, Sir, let me aſk you one Queſtion about the Arms? When I was aſk'd, if there were any Arms lodg'd, did I not anſwer in the Negative, and ſaid, No?

Stanyan. Yes.

Priſoner. In relation to the Arms, you ſay, that I ſaid Arms that ſhou'd have been lodg'd?

Stanyan. That was upon the Lords aſking you, to explain that part of the Scheme relating to Arms; and when you ſaid you knew of no Arms that were lodg'd, then ſaid they, how come you to mention in this Scheme of your own Hand-Writing, Arms that are lodg'd? To which you anſwered, I ſhou'd have writ Arms that ſhou'd be lodg'd.

Priſoner. When I was aſk'd, why I did ſay Arms that are lodg'd? Why, ſaith I, my Lords, I know of no Arms. If that was my Paper, and I had writ it, I ſhould have writ Arms that ſhou'd be lodg'd.

Mr. *Att. Gen*. My Lord, we pray that the Papers may be read.

Mr. *Hungerford*. My Lord, we hope that theſe Papers, (tho' for my Part I know not what they are; for there is no Hint of them in my Brief,) ſhall not be read, for this Reaſon; the Evidence which hath been given for the King, hath not brought them home to the Priſoner. There is no legal Proof that the Papers are of his Hand-writing; and conſequently he cannot be affected by any thing that is in them. As to what is ſaid of the Likeneſs of Hands, that we humbly hope is no Evidence at all. The firſt Witneſs, Mr. *Doyley*, he hath ſaid it is like his Hand; but he gives that Opinion of his, on the Knowledge he had of the Priſoner's Hand fourteen Years ago; and by ſome Letters he received from him about five Years ſince. Men's Hands may differ and vary even in five, much more in fourteen Years.

What follows is the Evidence that hath been given by the Gentlemen belonging to the Secretaries Office.

I perſonally know them to be Gentlemen of good Senſe, Integrity and Honour, and for my part I believe every word they ſay; which is more than I can ſay of the other Witneſſes hitherto produced. But what theſe ſay, doth not, with Submiſſion, affect the Priſoner: They were preſent when the Priſoner was examin'd before the Lords of the Council; none of them heard the Priſoner acknowledge that the Papers were writ by him, or that he did own them as his; neither was he aſked any Queſtion to that Purpoſe; neither did the nature of the Examination my Lords of the Council were then upon, lead them to ſuch a Queſtion: The Lords were not aſking Mr. *Layer* Queſtions to fix an Evidence upon himſelf. But the Lords having ſome Papers before them, and, according to the Duty of their high Stations, being intent upon diſcovering what might be of Danger to his Majeſty and the Publick; they aſk'd Mr. *Layer*, where the Arms were depoſited at *Weſtminſter*? He anſwers, that he knew of none there,

there, or to that Purpoſe. It cannot in Law or Reaſon be from hence inferr'd, that he did own the Papers to be of his own Hand-Writing. The only Evidence therefore which can be inſiſted on to entitle theſe Papers to be read, is the Evidence of Likeneſs of Hand, which is no Evidence at all in a criminal Caſe.

In my Lady *Carr*'s Caſe, it was not allow'd to be Evidence; and yet that was not a Capital Caſe, but a Caſe of Miſdemeanor only, it was Perjury. But there is an Authority beyond all that; we have the Act of Parliament for the Reverſal of the Attainder of Colonel *Sidney*, who had been convicted upon Evidence given of the Similitude of Hands, and that a much ſtronger Proof than what appears here; for *Cook* and *Cary*, two famous Goldſmiths, ſwore they believ'd the treaſonable Libel laid to Colonel *Sidney* to be writ by him; and aſſign'd that for a Reaſon of their Belief, for that they had receiv'd ſeveral Bills from him of the like Hand-Writing, which they conſtantly paid. Nay, one of the Goldſmiths ſwore, (as I remember the Tryal) that he ſaw the Colonel write a Receipt. Some other Caſes of this Nature might be quoted, but we depend upon the Authority of my Lady *Carr*'s Caſe, and the Act for reverſing the Attainder of Colonel *Sidney*, which is *inſtar omnium*; for in that Act the Reaſon aſſign'd for reverſing the Attainder, is, for that the Conviction and Attainder was founded upon a Similitude of Hands. We have an atteſted Copy of the Act here ready to be read. In Conſequence of this Act, my Lord, Similitude of Hands is never to be given as Evidence in a criminal Caſe: And therefore we humbly hope, that this Paper is not ſo prov'd, as to be read in any Court, but muſt be rejected: It is not proved to be his Hand by any that ever ſaw him write; neither hath any body heard him own it to be his.

Mr. *Ketelbey*. My Lord, I beg Leave to ſay a few Words in Support of this Objection. We don't know what is the Purport of this Paper. I dare ſay, Mr. *Hungerford*, as well as my ſelf, hath not ſeen one Tittle relating to it whatſoever; but I hope, for the Sake of Evidence, the ſacred and eternal Rule of Evidence, that ſimilitude of Hands ſhall not go for Proof, where a Perſon is charg'd with a Capital Offence. We ſhall in due time endeavour to lay before the Court ſeveral material Objections to the Credit of ſome of the Witneſſes; but at preſent we muſt ſuppoſe them unexceptionable, and conſider, with reſpect to this ſingle Point, whether this Paper is ſufficiently proved to be his Hand-Writing, ſo as to be read. Mrs. *Maſon* and the Meſſengers have endeavour'd, by a jumbling Evidence, to prove the Identity of the Papers, and to hand them down from one to another: But how do they appear to be of the Priſoner's Hand-Writing? Mr. *Doyley* ſays, fourteen or fifteen Years ago he was his Clerk; that five Years ago he receiv'd Letters from him; and that he chiefly founded his Opinion that it was the Priſoner's Hand-writing, becauſe he had compared it with thoſe Letters, and that the Hands were alike: And yet thoſe Letters with which he compar'd this Paper, he hath not in Court to produce. This is the Subſtance of *Doyley*'s Evidence.

My Lord, I humbly inſiſt, that this is not ſufficient; and if compariſon of Hands was to be Evidence, ſurely this would not do, unleſs he produced thoſe Papers, on which he owns he founded his Opinion. I refer it to the Jury, whether he may not poſſibly, nay probably make an erroneous Judgment. Shall a Man be believ'd out of his Life, becauſe the Witneſs ſaw him write fifteen Years ago, and received Letters from him five Years ago? Is any thing more changeable than a Man's Hand-Writing? Can either of you Gentlemen, take upon you to ſay what is or is not your Writing after ſo great a Length of Time? Wou'd not the different Subjects, the one a common Letter of Buſineſs, the other a treaſonable Scheme, make a ſenſible Variation even in a Man's uſual Character?

The Caſe of my Lady *Carr* is reported in *Siderfin*, *fo.* 419. and was upon an Indictment of Perjury, an Offence of a much lower Nature than what this Gentleman is now tried for: There a Witneſs ſwore he believed the Paper produced in Court to be her Hand-Writing, yet it did not amount to ſuch a Proof as to make her guilty: Nay, the Court ſaid expreſly, that it was not Evidence, and ſhould not be admitted; and accordingly ſhe was acquitted. But the higheſt Authority is what Mr. *Hungerford* hath named, the Act of Parliament for the Reverſal of the Attainder of Col. *Sidney*; and we have a Witneſs here ready, that examined it with the Record, that proves it to be a true Copy. *Algernoon Sidney* was attainted of High-Treaſon by ſimilitude of Hands, and that was the Reaſon of the Reverſal.

The two next Witneſſes are Mr. *Delafaye* and Mr. *Stanyan*, Gentlemen of Honour, and that would not ſtrain a Point upon any Account whatſoever. Mr. *Delafaye* doth not know whether this Paper was on the Table, when Mr. *Layer* was examined before the Lords of the Council, or no: Mr. *Stanyan* ſays, he was ſomewhat nearer the Table, and he takes the Paper that is now produced to be the ſame Paper that was upon the Table in the Room before the Lords of the Council, when Mr. *Layer* was there; becauſe when it was produced there, and ſhewn to him, he ſaid, I ſhou'd have wrote Arms that ſhou'd be lodg'd.

Mr. *Stanyan* owns, that he never was aſk'd the Queſtion, whether it was his Hand-Writing or no? How then ſhou'd he deny it, if it was never put to him? And therefore to ſay, becauſe he did not deny a Queſtion that was never aſked him, that that ſhall import, as to this particular Matter, a Confeſſion, is to me ſtrange and unaccountable! The natural Senſe of the Priſoner's Words, as proved, is no more than this: No, if I had writ it, I ſhou'd have rather wrote Arms that ſhou'd be lodg'd, than Arms that were lodg'd. Therefore, my Lord, we humbly apprehend they have not given Evidence in this Caſe, ſufficient Evidence to ſupport the Reading of thoſe Papers.

Your Lordſhips are now to lay down a perpetual Rule of Evidence: For lateſt Poſterity will pay a juſt Regard to the preſent Determinations; and if Compariſon of Hands in this Caſe be allowed as Evidence, the ſame Rule muſt for ever hold in all parallel Caſes; and God knows what may be the Conſequence of ſuch a Reſolution, or who may be affected by it.

Mr. Serj. *Pengelly*. My Lord, we hope, that notwithſtanding what hath been objected to the Reading of this Paper, that we are proper to have it read: Tho' they have mentioned ſome Caſes for to maintain their Objection, yet the later

Authorities, and the conſtant Courſe of Evidence ſince, as we think, are directly with us: As the Caſe of my Lord *Preſton*, where eight or nine of the Judges were preſent.

In the Caſe of the Lady *Carr*, there is that Opinion inſiſted on given at the End of the Caſe in a ſhort unintelligible Manner.

[Here Mr. *Hungerford* interrupted.]

Mr. *Hungerford*. My Lord, I don't know whether we ſhall be at Liberty, when the King's Counſel have done, to read the Act; and therefore I offer it to your Lordſhip's Conſideration, whether we ſhould not read it now.

L. C. Juſt. Read the Act of Parliament.

Mr. *Ketelbey*. Call Mr. *Tbeedam*.

Mr. *Att. Gen*. We are apprized of that Act of Parliament; I have an examined Copy of that Act; but we apprehend it will not come up to what they cite it for.

Mr. *Ketelbey*. We have five Acts of Parliament that we have examin'd with the Records; we did not know where they would ſhoot at us, and therefore were reſolved to be armed *Cap-a-pee*.

Mr. Serj. *Pengelly*. As to my Lady *Carr*'s Caſe, it will be hard to maintain that Opinion, becauſe the Letters they produced were not in the direct Inſtance of the Perjury.

Even the Act of Parliament, which they produce, it takes Notice, that a Paper was found in the Cloſet of Mr. *Sidney*, and was read, without proving it to be his own Hand-Writing: Is this Paper found without any Owning and Acknowledging it by the Priſoner? Is not this Paper delivered by Mr. *Layer* himſelf to Mrs. *Maſon*? Had not he this Paper in his Cuſtody, and it proceeded from him?

In the Caſe of my Lord *Preſton*, there were a great Number of Judges, My Lord Chief Juſtice *Holt*, Lord Chief Juſtice *Pollexfen*, and others; there the Indictment of my Lord *Preſton* was his adhering to the King's Enemies, and amongſt other Overt-Acts alledged his carrying ſeveral Papers of Inſtructions to inform the *French* King how to attack the Kingdom: Mr. *Warer*, who had been an Under-Secretary to my Lord *Preſton*, ſwore that he believed ſome of thoſe Papers to be like the Lord *Preſton*'s Hand, and they were all read in that Caſe by the Opinion of the whole Court, though they were the very expreſs Overt-Acts alledg'd in the Indictment it ſelf: How doth this ſtand here, ſuppoſing no Uſe is made of the Evidence of Mr. *Doyley*? When this Paper is ſhewn to Mr. *Layer* himſelf, before the Lords of the Council, and was mentioned as a Paper of his own Writing, and he is aſked how he came to write Arms that are ſaid there to be lodg'd, his Anſwer is, I ſhould have wrote, Arms that ſhou'd be there lodg'd; Is not this ſufficient Evidence to prove a Confeſſion? Doth not this amount to an Evidence of his confeſſing it to be his own Writing? So here is, as we apprehend, the Evidence not only of the Thing it ſelf, but likewiſe the Priſoner's own Declaration, that he was the Perſon who wrote it. In Sir *Henry Vane*'s Caſe, the Warrant given in Evidence againſt him was proved only by Witneſſes who believed it to be his Hand; but here is a particular Fact which (we apprehend) amounts to a Confeſſion, and is a proper Evidence for the Jury to conſider of, whether this be not a Confeſſion.

Mr. *Att. Gen*. My Lord, I apprehend that we have given very proper Evidence to intitle us to read this Paper: My Lord, I beg leave to obſerve firſt, that it hath been proved that this Paper was found among the Papers, which the Priſoner delivered to Mrs. *Maſon*, to be kept for him, which were ſeized in her Lodgings, as the Witneſſes have before acquainted your Lordſhip, and if that were all, this Paper muſt be read. As to that, the Lord *Preſton*'s Caſe is direct in Point, and ſo determined by ſix or ſeven Judges, *viz.* that Papers found in the Poſſeſſion of the Priſoner may be read without further Proof. But we inſiſt that this Paper is legally and regularly proved to be his Writing by the Evidence of Mr. *Doyley*, and the Priſoner's own Confeſſion: The Counſel for the Priſoner have mentioned Lady *Carr*'s Caſe, and the Act for the Reverſal of the Attainder of Col. *Sidney*, and ſay they have a great many other Caſes to the ſame Purpoſe.

I defy them to ſhew any one ſingle Caſe, wherein it has been determined, that Proof of a Perſon's Hand by a Witneſs, who ſwears he has ſeen him write, and knows his Hand, and believes the Paper produced to be of his Hand-Writing, is not a ſufficient Proof in a criminal Proſecution, that that Paper is ſuch a Perſon's Hand, before my Lady *Carr*'s Caſe; if that Caſe does ſupport the Opinion they have laid down: In all Actions ſuch Evidence hath been conſtantly allowed; then I ſhould be glad to know what Law or what Reaſon has made a Difference as to ſuch Evidence, between civil Actions and criminal or capital Proſecutions. As to my Lady *Carr*'s Caſe, the Book is very dark and obſcure; I believe the Priſoner's Counſel cannot make it ſupport what they now contend for.

Lady *Carr* was indicted for Perjury, ſuppoſed to be committed in an Anſwer ſworn by her before a Maſter in Chancery: What is there ſaid about a Letter does not appear at all to relate to the Caſe there; and if any Judge did lay down ſuch a Poſition, as has been mentioned by the other Side, the Meaning muſt be, that an Anſwer on Oath ſhall not be falſified by a Letter only under the Party's Hand; and that ſuch a Letter ſhould not be a ſufficient Evidence to convict him of Perjury.

As to the Caſe of Col. *Sidney*, 'tis very well known that he was a Gentleman of Quality, and in his Study a Writing was found, *viz. A General Treatiſe of Doctrines and Poſitions*, which were very diſtaſteful to the then Government, writ in anſwer to a Book formerly publiſhed. It was not a Scheme for raiſing a Rebellion, nor was it deſign'd, for any thing that appeared, that it ſhould go out of his own Cloſet, but his Papers being ſeized, this Paper was found there among them; and for this he was indicted of High-Treaſon. It was generally thought extremely hard to make his having by him ſuch a General Tract, writ in anſwer to a particular Book, and kept private in his Cloſet, an Overt-Act of Treaſon. However, he was found guilty, and attainted. No wonder then, when this came into Parliament, that they reſented this Proceeding, and revers'd his Attainder. And the Reaſons recited in the Act, as Inducements for this Reverſal, are accumulative; every Step taken in that Proceeding is complained of, and there is not Streſs laid only upon the Proof of this Paper, but

The Act recites, *That Col.* Sydney, *by Means of an illegal Return of the Jury, by denying him his lawful Challenges to the Jurymen, for Want of Freehold, and without ſufficient legal Evidence of any Treaſons committed by him, there being produced a Paper found in his Cloſet, ſuppoſed to be his Hand-Writing, which was not proved by any one Witneſs to be written by him; but the Jury was directed to believe it by comparing it with other Writings of his: And beſides that Paper ſo produced, there was but one Witneſs to prove any Matter againſt him, and by a partial and unjuſt Conſtruction of the Statutes of Treaſons was moſt unjuſtly attainted. And then the Act reverſes the Attainder.* Surely, if the Nature of the Evidence we have given, to prove this Paper to be the Priſoner's Hand is conſider'd, it ſtands clear of any material Objection that can be raiſed from that Act. This is not barely proved by a compariſon of Hands; here is a Witneſs, that often ſaw him write, ſwears it to be his Hand-Writing: There was a Multitude of Papers, ſome offered to be proved by ſimilitude of Hands, and every one of them was read in my Lord *Preſton*'s Caſe.

Beſides, here is that, which I beg Leave to inſiſt upon, as a Confeſſion by Mr. *Layer*, that this Paper was his Writing; if the Queſtion propoſed to the Priſoner by the Lords of the Council and his Anſwer are conſider'd, it amounts to a plain Confeſſion of it; therefore we muſt inſiſt on it, that we have given a ſufficient Evidence for the Reading of this Paper; and I hope we ſhall have your Lordſhip's Direction that it ſhall be read.

[Here ſome other of the King's Counſel offered to ſpeak.]

L. C. Juſt. If there was any Occaſion, you ſhould be heard; but there is no Occaſion.

It is proved by the Witneſſes that theſe Papers were in Mr. *Layer's* Poſſeſſion, that he delivered them to Mrs. *Maſon*, that ſhe lock'd them up in her Trunk, ſealed as they were delivered to her by Mr. *Layer*, and afterward taken out of her Trunk by the Meſſengers, ſo that if they reſt it here, and no other Evidence had been given, the Papers ought to be read, as being his Papers, which he once had in his Poſſeſſion, if nothing elſe had been the Caſe.

Can any thing in the World be an Authority more expreſs, than that of my Lord *Preſton*, where all the Papers which were in his Cuſtody, and taken out of his Cuſtody, were read without any Offer of Proof that they were his Hand.

And then conſider, this goes further; it is not only a Paper found in his Cuſtody, but it is a Paper written with his own Hand! How do you prove that?

The Maſter of this Gentleman tells you he was his Clerk, lived with him two Years; afterwards he received Letters from him about Buſineſs, which Buſineſs he did according to the Direction of thoſe Letters, and was paid honourably by him for it, and that he believes it to be his Hand. If they had gone no further, nobody could have doubted, but that according to the uſual Courſe and Rule of Evidence it ought to be read. Then they make an Objection, and aſk how long it is ſince he was his Clerk? Why about fourteen or fifteen Years ago: His Hand may be altered in that Time very much; therefore how can you ſwear it, when it is ſo long ſince, that it is his Hand? Why, ſays he, becauſe I have received Letters from him five Years ago; I dealt for him as his Agent; this Gentleman, Mr. *Layer*, was my Client, he ſent Letters to me, and the Characters of the Letters I have compared with this Paper, and from hence it is I believe that his Character is not changed. How do you know he writ thoſe Letters? I anſwered thoſe Letters, and they were about buſineſs which I did for him, and afterwards he paid me very honourably for it; and therefore I believe they were his Writing, and therefore I believe he hath not changed his Character; and upon the whole Matter, ſays he, I very believe it to be his own Hand-Writing. Conſider, this is confirmed by his own Confeſſion; but if it had been an independent Evidence, it is an Evidence ſufficient for to have had this Paper read; becauſe if a Man ſays he verily believes it to be his Hand-Writing, it is always allowed to be read. You did aſk him, but upon what Grounds do you believe his Character is not changed? Why, ſays he, I do principally believe it from the Letters I received from him, which I ſhould have doubted on the Hand, which he writ fourteen Years ago, whether it was changed or not; and I believe it is not changed, becauſe it is agreeable with the Characters he writ, when he was my Clerk; and upon the whole, I believe it to be his Hand-Writing.

Then they tell you of an Examination of this Gentleman before the Lords of the Council, when they asked him about Arms, he knew nothing of them; then they ſhew him this Paper, and aſk him, how came you in a Scheme, all of your own Hand-Writing, to ſay, Arms that are provided? What was more natural than for him to ſay, here is a Paper that doth mention it, I deny it to be my Hand-Writing? But he was ſo far from denying it, that, as the plain Senſe and import of the Words ſpoken muſt be underſtood, he owns it to be his Hand.

It is a Miſtake, ſays he, I ſhould have writ which ſhould have been provided.

How ſhould he have writ that, if he had not writ the other?

So conſidering the whole Contexture of the Buſineſs, and Courſe of Proceeding, it is, and I believe none can doubt it, as plainly proved to be his own Hand-Writing, as if he had ſaid in ſo many Words, it is my Hand-Writing. It muſt have been read as a Paper found in his Cuſtody. The other Evidence, that is given to the Jury, will be a Matter proper for their Conſideration; but if that Evidence had not been, they muſt have been read; they offer that as of greater import, becauſe it is of the Priſoner's own Hand-Writing.

You tell us of the Lady *Carr*'s Caſe, which was an extraordinary Caſe, when ſhe in her Anſwer in Chancery ſwore that it was not her Hand, they come to convict her of Perjury, by proving it to be her Hand by a Letter they produced.

Gentlemen, there is no Pretence to make this a Queſtion. Do you think that the Paper, which you offer, ſhall convict this Woman of Perjury? No, when ſhe had ſworn it was not her Hand, they come to prove it by a Witneſs, that ſays he believes it to be her Hand, becauſe they produce a Letter, which they ſay is her Hand. Upon this the Court determines that this Evidence ſhould not be allowed, that is, that it could

could be of no Conſequence to falſify any Matter, which ſhe had declared upon Oath.

But as this Caſe is, ſure there is not the leaſt Doubt but if the Proof of his Hand had been out of the Caſe, it muſt be read as a Paper that was in his Cuſtody, and taken out of the Cuſtody of one, with whom he had depoſited it, which is proved beyond all Contradiction.

And in Caſe of my Lord *Preſton*, and in a thouſand Caſes, it hath been ſo, and never was denied.

True; if they come and ſay, is this his Hand? and the Witneſs ſays I don't know whether it is his Hand or no; I have ſeen ſomething of his Hand, and I don't know but it may be his Hand; it is not right; but the Witneſs muſt ground his Belief ſtronger; I have ſeen him write, and I know his Writing; therefore I believe it to be his Hand. If they had reſted it on that, that the firſt Evidence knew his Hand fourteen Years ago, that muſt be left to the Jury, whether they believe Mr. *Doyley*'s Evidence; becauſe, ſays he, I ſaw him write fourteen Years ago. The Poſſibility of that, if there was nothing elſe in the Caſe, might be left to the Jury, whether that Evidence was ſufficient to ſatisfy them, that it was his Hand. Upon the Whole, never was any thing clearer than that this muſt be read as a Paper found in his Cuſtody, that hath in the uſual Manner and Method the Proof of being his Hand-writing.

Priſoner. If I am out of Time I beg your Lordſhip's Pardon; I will not take up your Lordſhip's Time; I only beg a Word or two; whether there is any legal Evidence as to the Publiſhing; the Indictment ſays, *publicavit quoddam malitioſum ſeditioſum & proditorium ſcriptum*, and that is not that, that is the Declaration.

L. C. Juſt. Whatever you ſay or offer, although it happen to be out of Time, we will diſpenſe with you, when out of Time; but what you offer now is upon a Miſtake, we are not upon the Paper you ſhould apply it to, that is, the Matter of your Declaration, but we are upon the Scheme Paper, not whether you publiſhed it, but whether you writ it.

Priſoner. I am charged in the Indictment as publiſhing a malitious, ſeditious and traiterous Writing.

L. C. Juſt. You are charged with that as an Overt-Act of the Treaſon, of Compaſſing and imagining the Death of the King; that you did publiſh a malitious, ſeditious, and traiterous Paper, that is the matter of the Declaration. The Matter now is, not for Publiſhing, but whether there is a reaſonable Proof given that it is your Hand-Writing.

Mr. *Juſt. Powys.* This is only a Circumſtance, not an Overt-Act ſufficient to convict you.

Mr. *Soll. Gen.* My Lord, we offer this Paper as a ſtrong Evidence corroborating and confirming every Thing which hath been ſworn by the Witneſſes, and we pray it may be read.

Mr. *Hungerford.* I was reading the Act of Parliament when they——

Mr. *Soll. Gen.* My Lord, we muſt beg leave to inſiſt upon the Courſe of Proceeding, that the Counſel ſhall not go on to argue a Point, after the Opinion of the Court has been given.

L. C. Juſt. Now you have heard the Opinion of the Court, you muſt not go on.

Mr. *Hungerford.* I was looking upon the Act of Parliament——

L. C. Juſt. You remember *Francia*'s Caſe, there was a Letter taken up at his Bedſide, it was diſputed whether that ſhould be read, at laſt a Witneſs came and ſaid, I have ſeen him write ſeveral Times, and I believe it to be his Hand; and it was read.

Mr. *Hungerford.* Ay, haſtily read.

Clerk of the Crown reads the whole Scheme.

The SCHEME.

Au défaut de la force, il faut employer la ruſe.

1. LET the General, and only one Officer of Note in the Camp, agree upon a Day for Execution.

2. Let the Officer that Day put himſelf on the *Tower-Guard.*

3. And as there is eight Serjeants (*viz.*) three of the firſt Regiment of Foot-Guards, three of the Second, and two of the Third, all ready at an Hour's warning to obey Orders; early that Morne, let the Officer ſee a ſingle Perſon; namely *George Wilſon*, who manages theſe Serjeants, and give him Directions to bring them all to ſome convenient Place at four that Afternoon.

4. Then the Officer muſt give each Serjeant Money ſufficient for the Purpoſe, and direct 'em, that each Serjeant order twenty five Men (making together two hundred, which they have ready) to go ſingly out of the Camp, and meet together at Church-Yard, exactly half an Hour paſt eight in the Evening, when and where another *Officer* that they know, muſt meet 'em, and take the Command, give 'em Muſkets ready loaded, and march with them in a Body to the *Tower-Gate* at nine that Night exactly.

5. Our Friend, the Officer within, muſt preciſely at that Hour of nine be on the Guard at the *Tower-Gate*, and ſeeing this Body of Men appear, order the Garriſon to let 'em in, as a Recruit ſent to the *Tower-Guard.*

6. As ſoon as ever they have entered to ſeize the Arms at the *Tower-Gate*, ſhut the Gate up, and ſecure every one in the *Tower*; that the Officer on Guard gives them Orders to ſecure, but not to ſhed any Blood.

7. The *Tower* being thus ſeized, to leave only a ſmall Guard there under that Officer who lets 'em in, and then, with all thoſe that join you, march directly to the *Exchange*, where the great Doors muſt be ready opened, and the *General* there in Perſon.

8. At the exact Hour of nine, that the *Tower* ſhall be thus ſeized, the Perſons of ſome great Men to be arreſted *at their Houſes*, brought directly into the City, and delivered to the General.

9. That upon our Meeting at the *Exchange*, the annexed Proclamation to be ſpread about; the Gates of the City to be ſhut up, and Pieces of Canon brought down againſt 'em, but every Man that deſires to enter the Gates, before any regular Force appear, to be admitted to come in, and after the General has appointed a Guard at each Gate, and Inlets of the City, with proper Officers to command there; let him march back to *Tower-Hill*, for a Place of

General Rendezvous under the Canon of the *Tower*, and order the Lord Mayor a good Guard to watch over the *Bank*, but firſt take Money from thence to the *Tower*, in order to pay the Men.

10. That on the Morne of this ſame Day, our General to have an Interview with ſome other *principal* Officer of the Camp, and order him to engage all Friends to attend at their reſpective Poſts, and expect a [a] Token to be ſent to each of them as that very Night, on receipt of which Token they are to draw their Men out, and march directly to the *Artillery in the Camp*, as a Place of General Rendezvous; and that the Captain of the Artillery may not be alarm'd, let this *Principal Officer* previouſly ſend a Meſſage to him, that Orders are come from the General (*Cadogan*) to double the Guard of the Artillery, on a Rumour that is ſpread of the Mob being up in the City.

11. The Party being come to the Artillery with the ſaid Principal Officer at the Head of 'em, let 'em immediately draw the Guns round 'em, and ſtand upon their Defence, without making any Declaration, until the ſaid principal Officer, who commands in chief there, receive certain [b] Intelligence from our General that the *Tower* is ſeized upon, and the City all in Arms, and then under a Pretence of ſecuring the King's Perſon from the Inſults of the Mob, let this Officer make a Detachment to take him into Cuſtody, and ſend him into the City to the General at the *Tower*.

12. To facilitate theſe Proceedings, let the General the ſame Day ſpeak to the *Horſe-Officers* in the Camp, who he knows to be our Friends, and upon the very firſt Alarm of the City's having revolted, let 'em march their Men to either *Ludgate* or *Newgate*, on pretence to ſuppreſs the Mob; and when they are at the Gate, as a Token of their being Friends, let the Watch-Word be *This Morning*, and upon giving us the Word there, to open the Gates and let 'em in, and as ſoon as they are entered, to march directly to *Tower-Hill* and join themſelves with the General there.

13. Let the General alſo the ſame Day, order four of the Half-pay Captains to take upon 'em the following Commands, (*viz.*)

14. Firſt Captain to go into *Southwark*, and exactly at the Hour of nine, to make a Bonfire in the Fields there, and give ſome Money among the Mob, and when you have got a Number together, ſend an Account to the General, take the Arms that muſt be lodg'd there, and diſtribute out amongſt 'em to your Acquaintance in the firſt Place, and to thoſe which they recommend, and then iſſue out the Declarations; and after the Receipt of a Token from the Captain next mentioned, who is to command in *Palace-Yard*, to ferry over thither in Lighters, with the Watch-Word *This Morning*, and join the Captain in *Palace-Yard*.

15. Second Captain exactly at the Hour of nine, to be in *Privy-Garden*, adjoining to *White-Hall*, with a few Gentlemen armed, and ſeize upon the great Guns there, and then ſpread the Declarations, and ſtay there under the Cannon till a greater Body join you from *Southwark*; or otherwiſe nail up the Cannon, and march directly to the next Captain in *St. James's Park* with the Watch-Word *This Morning*, and then ſend the Token, as above, to the firſt Captain in *Southwark*, and let the Meſſenger you ſend, conduct him and his Men to you in *St. James's Park*.

16. Third Captain, at the ſaid Hour of nine, to go into *St. James's Park*, with the Key that is given you of the Private-Door out of *Arlington-Street*, and appoint only ſome few Gentlemen to meet you there exactly at that Hour and ready, one to have the Watch-Word you give 'em, which muſt be *This Morning*. Let your firſt Rendezvous be at the little Grove under the Wall near the Gate leading to *Hyde-Park*; and and there you'll meet Fire-Arms ready charged. Then march down to the Parade next the Horſe-Guard, and ſeize upon the Cannon there, and Ammunition in the Store-Houſe, and the better to ſecure *St. James's Park* for a Place of general Rendezvous, you ſhall have an Officer out of the Camp exactly at the Hour of nine come to your Aſſiſtance with ſome Men, as he and you ſhall agree in the Morne of this Day, and as ſoon as you have ſeized the Canon here, and Ammunition aforeſaid, you are to put your ſelves in a Poſture of Defence, and publiſh the Declaration, and ſend forthwith to the General at the *Tower* to let him know of your Situation, and alſo ſend to the Captains in *Palace-yard*, *Southwark*, and *Tuttle-Fields*, that they immedialy come and join you.

17. Fourth Captain, exactly at the Hour of nine, the Evening of the ſame Day to be in *Tuttle-Fields*; raiſe the *Weſtminſter* Mob there, and with the Arms that are there *lodg'd*, equip 'em as you can; publiſh the Declarations, and march directly to *St. James's Park* and join with 'em there, who, on your giving 'em the Watch-Word, are to admit you into the Park.

18. So here being two Bodies of Men thus gotten together the firſt Night, *viz.* One on *Tower-Hill*, and the other in *St. James's Park* (beſides our Friends at the Artillery in *Hyde-Park*) The next Morning, if not ſooner, let our *General* order a Detachment to *Lincoln's-Inn-Fields*, and ſome Cannon to be placed on the Terras of the Garden there, leſt the Enemy come in there between *St. James's Park* and the City.

19. A proper Captain muſt be appointed to head the Watermen belonging to the *Thames*, and previous to the Day of Execution, he muſt agree with the Duke's Bargemen, that upon the leaſt Notice to be given 'em, that they alarm all the Watermen, and bring 'em to a Rendezvous the ſame Hour of nine that Night of Execution, and this Captain's Rendezvous muſt be at *Greenwich*, where he muſt ſeize the Magazine of Powder, and take out ſuch part of it as each Man will carry, then blow up the reſt, march from thence to the *Tower*, and join his Men with the General there, to whom he muſt firſt ſend a Meſſenger with the Watch-Word, and an Account of his Numbers.

20. Some Time before Execution, the General to ſend a Meſſenger to particular Men in the Country, that they riſe in their reſpective Counties upon the firſt News of what is done here.——

21. An Officer, *&c.* to go to *Richmond*, and at the exact Hour of nine to ſeize upon Prince *Pritty Man*, and bring him away to *Southwark* to ſome particular Place appointed, where an Agent from the General muſt meet 'em with his further Orders.

[a] It may be a Note in Writing thus, Sir, I'll meet you at nine to Night, don't fail me. *J. S.*

[b] A verbal Meſſage by a third Perſon that muſt be by, when the General and this Chief Officer conſult together in the Morne.

Mr. Serj. *Pengelly.* We read this as an Evidence that cannot be miſtaken, which is all of his own Hand-Writing.

Mr. *Att. Gen.* My Lord, we apprehend that this confirms what both the Witneſſes have ſworn.

Mr. Serj. *Pengelly.* We ſhall now produce ſome Receipts ſubſcribed by the Name of *James* R. and pray that they may be read, theſe were likewiſe among thoſe Papers, as hath been proved in the Manner you have heard already.

Clerk of the Crown reads one of them.

I Acknowledge to have received from the Sum of which Sum I promiſe to repay with an Intereſt for it at the Rate of per Annum

James R.

L. C. Juſt. They are not read as if proved, the Hand is not proved, but as Papers found on him.

Mr. *Soll. Gen.* In my Lord *Preſton*'s Caſe, his Lordſhip was taken in the Hold of a Ship lying upon the Ballaſt, and *Aſhton* there near him, and between his Lordſhip and *Aſhton* was found lying alſo upon the Ballaſt, a Pacquet of Papers, which *Aſhton* ſnatch'd up, and put into his Boſom, from whence they were preſently taken; two Seals, which appeared to be my Lord *Preſton*'s when he was Secretary of State, were found lying near to the Papers. Upon this Proof thoſe Papers were read as Evidence againſt my Lord *Preſton*, without any Proof made of their being his Hand-Writing, in order to the Reading of them.

Mr. *Hungerford.* My Lord *Preſton* was taken on board a Ship going to *France*, then in War with *England*, theſe Papers were found in the Boſom of Mr. *Aſhton*, who was going with him; my Lord endeavoured, ſo far as he could, to throw them over-board: The Offence did not turn upon the Papers being writ by my Lord *Preſton*, or not; in my Lord *Preſton*'s Caſe the Papers contained a Diſcovery of the Condition of the Fleet and Garriſons of *England* and *France*, in order to enable *France to invade us*; it ſignify'd nothing who writ the Papers, the Crime was the having them, knowing the Contents of them, and endeavouring to carry them to *France*, ſo the Circumſtances of my Lord *Preſton* widely differ from this.

Mr. *Ketelbey.* I beg leave to mention another Thing, there the Papers were found in the Cuſtody of my Lord *Preſton*, here they were found in the Cuſtody of a third Perſon, whoſe Evidence we ſhall controvert by a Number of Witneſſes, when it comes to our turn. I believe it will appear that ſome of the Papers were found on the Table in my Lord *Preſton*'s Caſe, and others taken out of his Pocket.

Mr. *Soll. Gen.* No, they were firſt found lying on the Ballaſt.

Mr. *Ketelbey.* What were found on *Aſhton*, and taken out of his Boſom, were ſeen lying on the Ballaſt, but there were other Papers ſeized at that Time.

Mr. *Soll. Gen.* They were the ſame Papers that were afterwards taken out of *Aſhton*'s Boſom, which were read as Evidence againſt my Lord *Preſton* upon the Circumſtances I have mentioned.

Mr. *Ketelbey.* As I remember, ſome of them were found on the Table in the Cabin.

Mr. *Juſt. Eyre.* No, they were found on the Ballaſt in the Hold of the Ship.

L. C. Juſt. You ſay that they were found in my Lord *Preſton*'s Poſſeſſion, and not in the Poſſeſſion of *Aſhton*; you ſay my Lord *Preſton* had no Counſel, but you know 'tis the Duty of the Court not to ſuffer any thing to be read in Evidence that ought not. You ſay you ſhall controvert this Matter, and give an anſwer to it, and that it appears they were not in his Cuſtody, they were taken out of this Witneſs's Cuſtody, and under his Seal, and therefore the Difference it makes is nothing at all. Beſides, the Proof in my Lord *Preſton*'s Caſe is not ſo ſtrong as the Proof of the Scheme againſt the Priſoner, becauſe the Scheme is proved to be his own Hand-Writing, which was not in the Caſe of my Lord *Preſton*.

Mr. *Ketelbey.* My Lord, will not your Lordſhip think it neceſſary that they give further Evidence that they are his Papers before they are read.

L. C. Juſt. Read them.

Cl. of the Cr. I acknowledge to have received, *&c.* here are *ten of them*, that are the ſame.

Mr. Ser. *Pengelly.* Mr. *Stanyan*, do you remember whether any Queſtions were aſk'd him with relation to thoſe Receipts?

Mr. *Stanyan.* What I recollect is this: Upon the Lords aſking Mr. *Layer* the meaning of thoſe Receipts ſigned by the Pretender, and what Uſe he made of them, he ſaid that during the Time he was at *Rome*, he had ſettled a Correſpondence with Sir *William Ellis*, and ſome time afterwards he writ to Sir *William Ellis* according to the Directions he gave him, and he told him, if he could ſend any Receipts ſigned by his Majeſty, or the King, as he called him, he thought Money might be rais'd upon them for carrying on the Cauſe, theſe were the Words, as near as I can remember.

Mr. *Att. Gen.* Mr. *Delafaye*, was you by?

Mr. *Ketelbey.* It was for raiſing Money to carry on his Cauſe, you mean Sir *William Ellis*'s Cauſe?

Mr. *Stanyan.* No, Sir.

Mr. *Hungerford.* He acknowledged to have received them from Sir *William Ellis?*

Mr. *Stanyan.* Yes.

Mr. *Ketelbey.* You ſaid he own'd he had them from Sir *William Ellis*, having ſettled a Correſpondence with him, that Money might be raiſed by theſe to carry on his Cauſe; he told you he had Buſineſs to do for Sir *William Ellis.*

Mr. *Stanyan.* No. I know nothing of Sir *William Ellis*'s Buſineſs, but that he had appointed to correſpond with Sir *William Ellis*, and Sir *William Ellis* gave him his Addreſs how to direct to him, and he acknowledged to have received a Letter or Letters from Sir *William Ellis*, in the Name of *Jones*, and that he writ to him in Anſwer to 'em.

Mr. *Ketelbey.* Are you ſure as to thoſe Words, or only to the Purport of 'em?

Mr. *Stanyan.* I think they are near the Words, but I am ſure they are the Purport of them?

Mr. *Ketelbey.* Was it reduc'd into Writing?

Mr. *Stanyan.* It was reduced into Writing in this Manner. It was a very long Examination, about four or five Hours.

Mr. *Ketelbey.*

Mr. *Ketelbey.* I aſk you, whether it was reduced into Writing?

Mr. *Stanyan.* Yes it was; the Lords ſent to me, to aſſiſt Mr. *Delafaye*, upon Mr. *Layer*'s being examined. Mr. *Delafaye* took the Heads of the Queſtions propounded; and I ſate near the Table, look'd over Mr. *Delafaye*; attended to the Queſtions and Anſwers; ſo that we could ſet one another right when we came to conſider them.

Mr. *Ketelbey.* This you wrote, was it read over to the Priſoner?

Mr. *Stanyan.* No.

Mr. *Ketelbey.* Do you believe the Priſoner at the Bar ſaw you write.

Mr. *Stanyan.* Yes, I believe he ſaw us write.

Mr. *Ketelbey.* Do you believe he thought any Perſon was taking his Confeſſion in Writing?

Mr. *Stanyan.* I think it cannot be otherwiſe.

Mr. *Ketelbey.* I aſk you, do you believe that Mr. *Layer* knew that you was taking his Confeſſion at that Time?

Mr. *Stanyan.* The Lords ſpoke thus; *Pray take Notice*, and then take down ſuch a Thing, and ſuch a Thing; and I believe Mr. *Layer* heard them ſay, *Take down that, and take down that.*

Mr. *Ketelbey.* Was it ever known for one to take down the Queſtions, and the other the Anſwers; and then to compare them together, in Order to make a Confeſſion?

Mr. *Stanyan.* No. Mr. *Delafaye* wrote down the Queſtions and Anſwers.

Mr. *Hungerford.* How was the Poſition of Mr. *Layer*, with reſpect to you; was your Back or Face towards him?

Mr. *Stanyan.* It was on one Side.

Mr. *Hungerford.* Was you in the Room when Mr. *Layer* came in firſt?

Mr. *Stanyan.* I was, I called in Mr. *Layer* by the Lords Order.

Mr. *Hungerford.* Was it ever read to him?

Mr. *Stanyan.* No.

Mr. *Hungerford.* Was it drawn up in Form, ſo that you might call it an Examination?

Mr. *Stanyan.* I will tell you what we underſtood by it; it was the Minutes of an Examination to be drawn out in Form: But the Lords finding Mr. *Layer* not ſo candid and ingenuous as they thought he would have been, did not aſk him to ſign it; and we only make uſe of it to refreſh our Memories.

Mr. *Ketelbey.* He calls it an Examination, and it appears by what Mr. *Stanyan* ſaith, that he and Mr. *Delafaye* took it; one takes one Part, and the other takes another Part.

Mr. *Soll. Gen.* He did not ſay any ſuch Thing.

Mr. *Ketelbey.* His Confeſſion was never read over to him.

Mr. *Soll. Gen.* Mr. *Stanyan*, when the Lords directed Mr. *Delafaye* and you to write this or that particular Thing, was the Priſoner ſo near, that in your Apprehenſion he might hear their Lordſhips give ſuch Directions?

Mr. *Stanyan.* Yes, he was.

Mr. *Hungerford.* Sure they are not contending, that any Confeſſion ſhall affect a Man, unleſs it was read to him; and it ought to be ſigned by him: My Lord, the Man is no Way anſwerable for any Thing taken in Writing, without his Conſent or Privity, in a criminal Caſe. It is called Minutes of an Examination, which they might enlarge as they pleaſe; therefore we humbly ſubmit it to your Lordſhip, whether it ought to be offered in Evidence at all as a Confeſſion.

Mr. *Ketelbey.* What will be the Conſequence, if this be allowed here? Is a Perſon to be convicted of Treaſon upon a Confeſſion taken, without its being read to him, and without his ſigning it? A Confeſſion to a Juſtice of Peace, in Caſes of Felony, unleſs read to the Party, and ſigned by him, muſt not be given in Evidence.

L. C. Juſt. Mr. *Ketelbey*, you ſeem to miſtake what it is that is contended for by the King's Council; they are not going to offer any thing to be read in Evidence: Your Objection would prevail, if they were going to read a Confeſſion as Evidence, which was neither read to him, nor ſigned by him; but if there is no Examination reduced into Writing, and ſigned by the Party, the Conſequence of that is, that the Witneſs is at Liberty to give an Account of what was ſaid; and he may look to his Notes to refreſh his Memory: If you will ſay, it is not ſo great an Evidence, of ſo great Weight, as an Examination taken, and ſigned by the Party, there is ſome Room left, ſome Foundation to ſuppoſe the Evidence may be miſtaken.

He ſays, he was examined before the Lords of the Council; and he took Minutes of his Examination: And afterwards to refreſh himſelf, he looks upon them, and ſays, he believes that is the Subſtance of what he confeſſed at that time. You ſay, there is no Precedent for it; for God's Sake! Recollect your ſelf, it is every Day done at the *Old Bailey*: If a Perſon confeſſeth, and it be not in Writing, they do prove his Confeſſion, *Vivâ Voce.*

Mr. *Soll. Gen.* My Lord, *Coleman*'s Caſe, which was during the time that Sir *William Jones* was Attorney General, went further than this: There his Letters were laid in the Indictment, as the very Overt-Act of the High-Treaſon charged againſt him; and yet one of thoſe Letters was proved by his Confeſſion, upon an Examination before a Committee of the Houſe of Lords; and that Confeſſion was proved, *Vivâ Voce*, by Sir *Philip Lloyd.*

Mr. *Ketelbey.* Whether that Caſe ſhall be a Precedent? I never heard it ſo reckon'd.

Mr. *Hungerford.* And I hope it never will be one.

Mr. *Delafaye*, ſworn.

Mr. Serj. *Cheſhyre.* Mr. *Delafaye*, pray give an Account what Mr. *Layer* declared before the Lords of the Council concerning theſe Receipts.

Mr. *Delafaye.* The Account he gave——

L. C. Juſt. Mr. *Delafaye*, you was preſent at the Time of taking this Examination; you ſay, you took Minutes in Writing; you have told us the Reaſon why it was not in Form, and read to Mr. *Layer:* If you have not already done it, you may look to your Minutes, and refreſh your Memory. That which the Court demands of you is, what Mr. *Layer* did confeſs at the Time of his Examination before the Lords of the Council.

Mr. *Delafaye.* He told the Lords, that he did write to Sir *William Ellis*, that he would ſend over ſome blank Receipts under the King's own Hand, that might be made uſe of, for the carrying on his Cauſe: That he did receive ſuch

Receipts, and his Intention was to have tried his Friends; and to have raiſed Money on thoſe Receipts.

Mr. Serj. *Cheſhyre.* Did he give any Reaſon why he went into that Method?

Mr. *Delafaye.* For a Precedent, he ſaid, a little before the Reſtoration of King *Charles* II, a Method of this Kind had been uſed.

Mr. *Att. Gen.* My Lord, we ſhall now proceed to read the Letters that were ſent and paſs'd between them, Sir *William Ellis* and Mr. *Layer.* But it will be proper firſt to lay before you the *Cyphers* which they made uſe of to explain ſeveral cant Words and Expreſſions, which they us'd in their Letters.

L. C. Juſt. Were the *Cyphers* found among Mr. *Layer*'s Papers?

Mr. *Att. Gen.* Yes, my Lord.

Mr. Serj. *Cheſhyre.* Pray read No. 38.

Mr. *Att. Gen.* I don't know whether we ſhall trouble your Lordſhip to read the whole *Cypher*; it is very long, but when we meet with a Word in the Letters which wants Explanation, we may have Recourſe to the *Cypher.*—— Read the Letter No. 38.

Cl. of the Cr. reads. This Letter is ſign'd *Euſtace Jones*, &c.

Dear SIR,

I Receiv'd with a great deal of Pleaſure and Satisfaction, a Letter of the 24th of November, *from my worthy Friend, with an Account of his ſafe Arrival; of which I was in ſome Doubt before, and in no ſmall Pain on that Account: I eaſily conceive, he muſt needs have had a great deal of Buſineſs on his Return, as well of his Unkle's as of his own; and therefore, I don't think much that I heard no ſooner from him, believing he was much better imploy'd, and that Buſineſs is to be preferr'd before Compliment.*

I was entirely of his Opinion as to the Method of carrying on the Manufactory; *the procuring of good* Workmen, *is the firſt Step to be made, and if he can get ſuch, the reſt will be eaſy; and particularly, if he could gain ſome of the ableſt of Mrs.* Barbara Smith's, *I know it would be very agreeable to all concern'd, and particularly to Mr.* Atkins, *to whom he ſpoke of Writing; and which, I am ſatisfied, will be very acceptable: And if he thinks fit to incloſe it to me, I ſhall convey it ſafely to his Hands, who, I find, was very glad to hear of him, counts very much upon his Friendſhip, and hopes for the Continuance of it.*

I made his Compliments to Mr. Timothy Watſon's Wife, *who took them very kindly, and returns hers, with her moſt humble Service. She and her Charge are very well, God be prais'd, as are alſo all Friends here.*

He having read over ſeveral times the Paper I ſhew'd him, and having a good Memory, I don't think it neceſſary to ſend a Copy of it.

I am, with great Eſteem and Reſpect, ever moſt entirely,

Dear SIR,

Your moſt affectionate,

moſt humble and moſt

obedient Servant,

Euſtace Jones.

30th *January.*

For *James Fountaine*, Eſq; to be left at *Howell's-Coffee-Houſe*, in *Great Wild-Street*, LONDON.

Mr. *Att. Gen.* Your Lordſhip is pleaſed to remember, Mr. *Stanyan* ſaid that Sir *William Ellis* was to write by the Name of *Jones.*

Mr. *Stanyan.* My Lord, he did ſay, that he had received a Letter ſince he had ſettled a Correſpondence with Sir *William Ellis* ſubſcribed by the Name of *Jones.*

Mr. *Att. Gen.* In the *Cypher* Sir *William Ellis* is called *Jones.*

Cl. of the Cr. reads. This Letter is ſign'd *Euſtace Jones*, dated 30th *January*, no Year, *Dear Sir, I receiv'd*, &c.

Mr. *Att. Gen.* Your Lordſhip will be pleaſed to obſerve the Expreſſions in this Letter, the procuring good *Workmen*: Now look in the *Cypher*, and *Soldiers* are meant by *Workmen*; Manufactory is not in the *Cyphers*, but I don't know for what Manufactory they wanted *Soldiers*, unleſs to raiſe a Rebellion. The Ableſt of Mrs. *Barbara Smith*'s; look for *Army* in the *Cyphers*, and you will find, that is ſignified by *Barbara*: It will be very acceptable to all concern'd, and particularly to Mr. *Atkins*; in the *Cypher* that is *the Pretender.* Compliments to Mr. *Timothy Watſon's Wife*; look in the *Cyphers*, and *Timothy* ſtands for *Hughes*, whoſe Wife is Nurſe to the *Pretender*'s Child. This Letter is directed for *James Fountaine*, Eſq; to be left at *Howel's Coffee-Houſe* in *Great Wild-Street*, and I obſerve, Mrs. *Maſon* ſaid the Priſoner went by the Name of *Fountaine.*—— No. 10. are ſix fictitious Names, and the Key to 'em: Read it.

Cl. of the Cr. Reads No. 10.

Digby——*Dillon.*
Orerry——*Burford.*
Regent——*Steel.*
Tories——*Tanners.*
Wiggs——*Waggs.*
Rogers——*Plunkett.*

Mr. *Att. Gen.* Read the Letter No. 40.

Cl. of the Cr. Reads, ſign'd *N. C.* Dated the 11th of *July*, 1722.

Dear SIR, The 11th of *July*, 1722.

I Receiv'd with all poſſible Satisfaction your moſt affectionate Letter of 8th May *with its incloſ'd, which was preſently delivered to Mr.* St. John, *who took it extream kindly; but could not well* underſtand what relates to Mr. *Burford; he hopes, your Anſwer to what I writ, in the beginning of laſt Month, may ſoon clear that: You will have ſeen, by what I then told you, that the former came ſafe to his Hands, and the Reaſon of your not having had a diſtinct Anſwer to it: He had the Stockins you ſent for him, and returns you many Thanks for them; as alſo for all other Marks of your Affection and Concern for him and his, and will be ready to ſhew his Senſe thereof on all Occaſions. I am in earneſt Expectation of hearing ſoon again from you, and am, with all poſſible Affection and Eſteem,*

Dear SIR,

For *James Fountaine*, Eſq; to be left at *Howell's Coffee-Houſe* in *Great Wild-Street*, LONDON.

Your moſt faithful and

moſt humble Servant,

N. C.

L. C. Juſt.

L. C. Just. Who is that *N. C?*

Mr. *Att. Gen.* My Lord, we do not know, it is directed to *James Fountaine*, Esq; *Mr. St. John* in the *Cypher* signifies the *Pretender.*

Mr. *Soll. Gen.* Mr. *Burford* appears to stand for my Lord *Orrery* in the little *Cypher.*

Mr. *Hungerford.* Look into the Paper, pray what do *Stockins* stand for?

Mr. *Soll. Gen.* Read the Letter No. 41.

Cl. of the Cr. This is dated the 27 *May*, it is sign'd by no Body, nor directed to any Body; the Cover is off: *I receiv'd with a great*, &c.

Dear SIR, 27 *May.*

I Receiv'd with a great deal of Pleasure, the Favour of your most obliging Letter of 22*d* March, *with an inclosed for our Friend, who was very glad to hear from you; and is very sensible of, and takes very kindly, the Care you take of his little Concern there; but says, he doth not sufficiently understand the State you sent, so as to be able to make a particular Answer, till you shall further explain it; there being some Tenants, mention'd by you, whose Names he does not find in the Rental,* as Burford, Steel, Digby, the little Soldier, and Simmons; *the latter, he believes should be* Simmes, *he is of the North, a grey hair'd ancient Man, whom he very well remembers, and has a particular Esteem and Value for, as a very good Tenant, and a very honest Man.*

All Friends here are in perfect good Health, God be thanked, and remember themselves kindly to you, and I am most entirely,

Yours, *&c.*

Mr. *Soll. Gen.* If you look into the *Cypher*, you will find *Rental* stands as the fictitious Name for the *Cypher* itself; *Burford* stands for the Lord *Orrery*, *Steel* for the *Regent*, and *Digby* for General *Dillon.*

Simmons, he believes should be *Simmes*, but *Simmons* in the large *Cypher* is put for Lord *North* and *Grey*, and who is meant, appears pretty plain from the Cant which follows. *He is of the North, a grey hair'd ancient Man, whom he well remembers, and hath a particular Esteem and Value for, as a very good Tenant, and a very honest Man.*

Mr. *Att. Gen.* Look for *Simmons* in the *Cypher.*

Mr. *Hungerford.* I can make one Observation, that Mr. *Harcourt* is very ready at it.

Cl. of the Cr. It is alphabeted, so that it is easy to look for it.

L. C. Just. What Use do you make of these Letters?

Mr. *Soll. Gen.* The Use we make of them is to shew, that Mr. *Layer* who took on him the Sham-Name of *Fountaine*, by which Name some of these Letters are addressed, had a Correspondence with the Friends of the *PRETENDER* at *Rome.* That this Correspondence related to a Conspiracy, which was form'd and carrying on here; and it appears, they took upon them to mention several Persons of Distinction under a kind of Jargon.

Mr. *Att. Gen.* The first Letter, wherein is mentioned the carrying on the *Manufactory*, the procuring good *Workmen*, and particularly, if he could gain some of the ablest of Mrs. *Barbara Smith's*, and that it would be very agreeable to all concern'd, and particularly to Mr. *Atkins*, which is the Name for the *Pretender*; shews, that the Agents of the *Pretender* at *Rome*; had laid Designs to procure Soldiers, and those, if possible, out of his Majesty's Troops; which falls in with the Evidence we have given of the Prisoner's Endeavours to get Soldiers and Serjeants out of the Army.

Mr. Serj. *Chesshyre.* It may not be improper, since we have explain'd it, to lay before you the Lists of several Persons Names that are in the Army.

Pray read No. 7. out of the large Bundle.

Cl of the Cr. Reads a *List* of Officers Names with Marks and Numbers to some of them.

Mr. *Att. Gen.* We did mention before, that there were the Names of several Persons of very great Honour and Loyalty to his Majesty in some of the Lists; but this is to shew, that the Prisoner was consulting how he might get an Account of the Number of the Forces; as, how many Colonels, how many Captains, and how many Soldiers there were in the Guards and other Troops of his Majesty.

Read No. 5. in the large Bundle.

Cl. of the Cr. Reads No. 5. A List of Officers of the Second, or *Coldstream* Regiment of Guards.

Mr. *Att. Gen.* We make the same Use of this to shew, that he was searching and examining to get an Account of the Guards.

L. C. Just. I suppose he is taking a Survey of the Persons that were of the Guards, that he might be capable of making a Judgment.

Mr. *Att. Gen.* Yes, my Lord; and to know their Strength: Look out No. 6. in the large Bundle.

Cl. of the Cr. Reads No. 6. A List of Officers in the first Troop of Horse-Grenadiers, the Names being distinguished by different Letters.

No. 7. out of the small Bundle. A List, *&c.* here are eleven of them put down.

Mr. *Soll. Gen.* Read No. 8. in the large Bundle.

Cl. of the Cr. Reads No. 8. A List, *&c.*

Mr. *Att. Gen.* Your Lordship will observe, that this is a List of some Persons Names, and the Numbers of Horses and Men they were to provide.

L. C. Just. You'll have this to import an Account of what Quota's several Persons were to find.

Mr. *Att. Gen.* The last was read for that Purpose: Read No. 15. in the large Bundle.

Cl. of the Cr. Reads No. 15. Containing divers Names, with Numbers set against some of them.

Mr. Serj. *Pengelly.* Read No. 20, 21, 22, 23 and 24, in the large Bundle.

Cl. of the Cr. Reads No. 20. Containing a List of the Great-Officers of the *Tower.* No. 21. Containing Names of Officers of the Second Troop of Horse-Guards, Second Troop of Horse-Grenadiers, and Fourth Troop of Horse-Guards. No. 22. Containing a List of Names. No. 23. Containing Names of Officers of the First, Second, Third and Fourth Troops of Guards. No. 24. Containing the Names of two Officers of the Horse-Guards.

Mr. *Att. Gen.* Look upon that List, No. 21. whether there are not some private Marks upon it.

Cl. of the Cr. Yes, here is upon one of them a Dott, and on the other Side there is a Dott;

in two or three Places ſome Men mark'd and croſs'd.

Mr. Serj. *Cheſhyre.* Read No. 25.

Cl. of the Cr. Reads No. 25. Containing a Liſt of Officers, five of them marked to be *not bad.*

Mr. *Reeve.* Are the Words *not bad* of the ſame Hand-Writing?

Cl. of the Cr. Yes, it doth appear to me to be ſo.

Mr. Serj. *Pengelly.* Read the Title of No. 22.

Cl. of the Cr. Here are a great many Peoples Names, with Marks upon ſome, and none upon others: Upon one of them is Writ *William Johnſon, to be gain'd.*

Mr. Serj. *Pengelly.* Read No. 27.

Cl. of the Cr. Reads, A Liſt of the Third Regiment of Guards; againſt ſeveral of which Names are Dotts and Marks.

Mr. Serj. *Pengelly.* Read No. 28.

Cl. of the Cr. Reads, A Liſt of the Officers of the *Coldſtream* Regiment of Guards; and a Liſt of the Officers of the *Scotch* Guards.

Mr. *Soll. Gen.* Read No. 35.

Cl. of the Cr. Reads No. 35. A Paper, containing an Account of the Numbers of the Officers and Soldiers in the Firſt, Second, and Third Regiment of Foot Guards.

Mr. Serj. *Pengelly.* My Lord, we beg leave to aſk Mr. *Delafaye* and Mr. *Stanyan* two or three Queſtions, to ſupport the Evidence of Mr. *Lynch* and Mr. *Plunkett*, in relation to ſome particular Facts; whether at the time of the Examination of Mr. *Layer* before the Lords of the Council, any thing was ſaid of Mr. *Layer*'s being at *Rome?*

Mr. *Hungerford.* With humble Submiſſion, Mr. *Layer*'s being at *Rome*, and correſponding with the *Pretender*, (if he did ſo) is made Treaſon by another Act of Parliament, not by this Act of Parliament upon which he is Indicted: Therefore, whether he was himſelf at *Rome*, or correſponded with the *Pretender*, cannot be offered as an Evidence of High-Treaſon upon this Indictment.

Mr. Serj. *Pengelly.* It is only to ſhew the Probability of his receiving thoſe Receipts.

Mr. *Ketelbey.* Since we did not know any thing of thoſe Papers, we could not properly make our Exceptions againſt them, till we heard them read; and now, if they prove any thing, 'tis the holding Correſpondence with the *Pretender*; but that relates to another late Act of Parliament; 'tis another Species of Treaſon; and the Evidence which they would give of his Confeſſion, *Vivâ Voce*; they ſay, it is only to ſupport theſe Papers that are read; Who can make any Objection to a Paper which we did know nothing of? I believe, few in the Court know what the Meaning of theſe Papers are now they are read; for my Part, I know very little of them; we apprehend that inſtead of being allowed to ſupport this Evidence, by proving a foreign Correſpondence between Mr. *Layer* and the *Pretender*, by the Name of King *JAMES*, which is made Treaſon by a particular Act of Parliament; they ought rather to have Indicted him upon that, than endeavour to ſupport their defective Proof by giving Evidence of an Offence, which may be matter of another Enquiry.

Mr. *Att. Gen.* My Lord, we apprehend a Proof, that the Priſoner was at *Rome*, and had Conferences with the *Pretender*, will be very proper to corroborate, and explain the Evidence that hath been given by the Witneſſes, and the *Pretender*'s Notes, and Sir *William Ellis*'s Letters to the Priſoner; and for thoſe Purpoſes we would make Uſe of it.

Mr. *Soll. Gen.* Tho' we apprehend we have made our Caſe extremely ſtrong already, yet this which has been opened may be offered by Way of further Confirmation: Notwithſtanding the Objection which is made, that we are attempting to give Evidence of another Kind of Treaſon not alledged in the Indictment, yet we inſiſt upon it, that it is proper here, as circumſtantial Evidence of the Treaſon which is alledged. We have proved a Conſpiracy entered into between this Gentleman and others, to bring in the *Pretender*, and levy War for that Purpoſe; and alſo, Notes ſign'd *JAMES* R. which he received from Sir *William Ellis*, a Perſon at the *Pretender*'s Court. Now, if we follow this by ſhewing, that the Priſoner was actually at *Rome*, and had Perſonal Conferences with the *Pretender* himſelf; that, ſurely, muſt be admitted to be a material Circumſtance to ſupport the Proof of thoſe other Facts. I beg Leave to ſay, that it has been held, even ſince the Stat. 7° *Will. Tertij*, That Acts of High-Treaſon not laid in the Indictment, may be given in Evidence, if they conduce to the Proof of ſome Overt-Act which is there laid.

Mr. Serj. *Cheſhyre.* We apprehend your Lordſhip will receive Evidence of the ſame Kind of Treaſon in a lower Degree, in order to prove the Overt-Act, whereby he conſulted and conſpired to bring in the *Pretender*, and place him upon the Throne.

As the Priſoner did correſpond with his Miniſters, ſo he had Acceſs to the *Pretender* himſelf; and he did own it. That we apprehend is going a Step higher, ſomething further than already is admitted; and if it is proper Evidence, there is no reaſon why it ſhould be rejected.

Mr. *Reeve.* It is true, we have not Indicted him for a treaſonable Correſpondence with the *Pretender*, therefore they object, we cannot give Evidence of any ſuch Correſpondence upon this Indictment.

My Lord, we humbly apprehend, every thing that is a Circumſtance that will gain Credit to the Witneſſes examined is proper Evidence. It looks indeed improbable, that a Gentleman of the Profeſſion of the Law ſhould enter into this treaſonable Deſign, which is expreſsly ſworn upon him by two Witneſſes, whoſe Credit they deſign to impeach; therefore we humbly offer this as a circumſtantial Evidence. This Gentleman having gone from his Profeſſion, hath been at *Rome*, was kindly receiv'd and entertain'd by the *Pretender*; thereupon he hath entered into an Intercourſe with his Miniſters: And, if we prove this, it is to induce Credit to the Evidence we have given by poſitive Witneſſes. We therefore think it proper, and ſubmit it to your Lordſhip.

L. C. Juſt. They muſt go on, they are not going upon an Evidence of a new Overt-Act of Treaſon; the Overt-Acts are, conſulting, adviſing, and agreeing to raiſe a Rebellion.

Mr. *Hungerford.* I humbly beg your Lordſhip's Pardon.

L. C. Juſt.

L. C. Just. If you will not hear me, you will teach me not to hear you.

Mr. *Hungerford.* My Lord, I hope we have a Right to reply.

Mr. *West.* Upon the first Letter of Sir *William Ellis*'s he congratulates him, as his Friend, on his safe Arrival.

Mr. *Hungerford.* My Lord, I beg your Lordship's Pardon; I am in the Service of my Client, and in endeavouring to do him Service, I am verily persuaded, I shall not offend your Lordship: Really for my part, I cannot satisfy my self, that the Evidence which they tender to the Court is a proper Evidence.

This Gentleman is indicted upon the Statute *de Proditionibus*, 25° *Ed.* 3. The Overt-Acts laid in the Indictment are, his consulting, conspiring, and agreeing to raise a Rebellion, and to levy War against the King, *&c.*

There is an Act of Parliament in the last Year of King *William*, whereby the *Pretender* is attainted, which makes corresponding with the *Pretender*, or any of his Adherents High-Treason; and when any Man commits that particular Treason, he is liable to be taken up and prosecuted for it. Now my Lord, shall they be admitted to give an Evidence of a Treason committed in breach of one Act of Parliament, when they are prosecuting him upon another, they may as well offer Evidence against him for counterfeiting the Great-Seal, or clipping and coining for the Sake of Evidence: We hope this Practice shall not be allowed; if they are so full of Proof (as by their opening they seem'd to be) which by the Rules of Law can reach this Man's Life, which I cannot yet see, let Justice take its Course: But we humbly hope they shall not be permitted to give Evidence of Facts which are intirely foreign to the present Accusation, and can be calculated for nothing but to captivate the Jury, by acquainting them that the Prisoner hath been at *Rome*. But if the King's Counsel will have it effectually publish'd, that the Prisoner hath been at *Rome*, let them consent to have him found not guilty upon this Indictment, and let him then be prosecuted upon the Act, for corresponding with the *Pretender*, and see what will come of it.

Mr. *Ketelbey.* The Act of Parliament that makes this new Treason is the 13 and 14 of King *William*; which not only makes that Treason which was not Treason before, but puts it on a new Method of Trial in any County of *England*, where it is laid. Now they would give in Evidence a Fact, which Mr. Serj. *Chesshyre* says, is Evidence of the same Kind of Treason, tho' in a lower Degree, and ought to be received to prove the Overt-Acts of consulting and conspiring to restore, and bring the *Pretender* to the Throne: As to the Evidence that hath been read we could not have objected to the Papers, because we did not know what they were, nor whether they related to a Foreign or Domestick Correspondence. Now because they are read as being found on a Person to whom he gave them; shall they, to support a Treason, of compassing and imagining the Death of the King; give Evidence of corresponding with the *Pretender*.

My Lord, I don't apprehend the King's Counsel have given us any manner of Answer, and therefore shall not take up any more of your Lordship's Time, by repeating in a Reply, what I offered before by way of Objection: I submit it to your Lordship.

L. C. Just. Sure as this Evidence is offer'd it is very proper; consider, in the Indictment the Overt-Acts are, meeting, consulting, advising, and agreeing to raise a Rebellion. The next is, publishing a Traiterous Libel, in which Rewards are promised to those that would assist in this Rebellion; a third Overt-Act is, the engaging and listing Men for the Service of the *Pretender*; a fourth is, a designing to depose the King; and another is, to set up the *Pretender* on the Throne: Now, consider, if they have not given an Evidence of these Overt-Acts, whether sufficient or not, that must be left to the Jury; if they have given Evidence of these Acts, a Design to set up the *Pretender*, and to depose the King, *&c.* If they are not proper to shew for this Purpose, this Gentleman corresponded with *Rome*, was with the *Pretender*, these Letters sent from Sir *William Ellis* to him: Letters (according to his Desire) purporting Receipts for Sums of Money to be signed by the *Pretender*, as a Foundation to oblige him to make Repayment: After this and these Things have been offer'd, is it not proper to go as far as they can on this Head, and shew how far he hath been engaged with the *Pretender* and his Accomplices? Sure it is proper, as a further Evidence of these Overt-Acts.

Don't trouble your self as to that, no Use shall be made of that, to charge you with the Treason made so by another Act of Parliament, about corresponding with the *Pretender*, for Evidence it is proper here; and it neither can, nor shall be made Use of to any other Purpose.

Mr. *Reeve.* Mr. *Stanyan*, pray go on and give an Account of what he confess'd, when examined before the Lords of the Council about his being at *Rome*.

Mr. *Stanyan.* Mr. *Layer* did acknowledge he had been at *Rome*, and returned from thence in *July* 1721. he said he had had two Conferences with the *Pretender*.

Mr. *Ketelbey.* I think Mr. *Stanyan* said, he had taken Minutes of his Examination; I had rather see the Minutes than trust to his Memory. My Lord, in the Trial of the two *Bailiffs* in this Court, the Substance of what the deceased said was reduced into Writing; and therefore the Parole-Evidence, that was offered to be given was rejected. I submit it to your Lordship, whether the Rule is not the same in greater Cases, and much stronger in this Point before your Lordship. I have not the least Disrespect for Mr. *Stanyan*, and could take his Word for any thing, but my Client's Life; therefore, we hope he shall produce those Notes, which he hath referr'd to once or twice, now he is going to give a further Account of his Examination.

Mr. *Hungerford.* My Lord, I was Counsel in that Case; the Justice of Peace who had taken Mr. *Lutterell*'s Examination did not appear, and that Examination could not be had; there was a Copy of it taken and produced and proved in Court to be a true Copy, but your Lordship would not let that Copy be read, or the subject Matter of it to be given in Evidence, unless the original Examination itself were produced.

L. C. Just. Mr. *Attorney*, you hear how the Matter is, Mr. *Delafaye* and Mr. *Stanyan* give an Account that they were commanded by the Lords of the Council to attend and take Minutes

of Mr. *Layer*'s Examination before them; that they have thoſe Minutes, and have look'd into thoſe Minutes to refreſh their Memories: If they deſire they may be produced, do you oppoſe it? Have you the Minutes here?

Mr. *Stanyan.* Yes, my Lord.

Mr. Serj. *Pengelly.* There may be a great many Things that are not material to the preſent Caſe of Mr. *Layer*; why would they have all theſe Minutes read? It is not for the Sake of the Priſoner at the Bar, but for the Sake of ſome other People, who may be liſtening here.

In the Caſe of *Lutterell*, there was a compleat Examination taken by a Juſtice of the Peace: In this Caſe there is no Examination compleated and drawn up; it is nothing but an oral Confeſſion, and amounts to no more. The Minutes the Witneſſes may take in their Hands, as proper to refreſh their Memories.

Mr. *Att. Gen.* Their deſiring to have theſe Minutes read, is not ſo much for the Sake of their own Client, as for the Sake of other People.

Mr. Serj. *Cheſſhyre.* How the Matter in that Caſe was——

L. C. Juſt. It is enough, I only aſk'd Mr. *Attorney-General*, whether he thought fit to conſent to it; and without his Conſent, we are of Opinion, that they cannot be read.

I aſk'd Mr. *Attorney* the Queſtion, and was not aware of any ill Conſequence.

Mr. *Attorney* ſays, the Minutes refer to the whole Examination, and to a great many other People, and it would be for the Diſſervice of the King, to have theſe Things diſclos'd. Mr. *Attorney* might have refuſed to conſent without giving a Reaſon, but he hath given a good Reaſon, and therefore will not conſent that they be read.

Mr. *Ketelbey.* We do not conſent to wave them, but inſiſt upon their being read.

Mr. *Att. Gen.* We don't aſk your Conſent.

Mr. *Ketelbey.* If you don't ask it, nor give it, we are ſo far even, but I aſſure you, Sir, we are retained only for one Gentleman; the Priſoner at the Bar, and we have as little Reaſon to be ſollicitous for the Innocence of others, as ſome have for their Guilt?

L. C. Juſt. You cannot read the Minutes taken againſt the King, becauſe theſe Matters are not ripe yet, nor to be diſcover'd to the World.

Mr. *Hungerford.* Something drop'd, as if we did inſiſt upon Matter for the Sake of Others; they are miſtaken, we contemn ſuch an Inſinuation. We are of Counſel for this Man, and for this Man ſingly.

L. C. Juſt. You are aſſigned Counſel for him, and unleſs you had, I believe you would not have ventured to have ſaid ſo much.

Mr. *Hungerford.* No indeed.

L. C. Juſt. Go on.

Mr. Serj. *Pengelly.* Mr. *Stanyan*, pleaſe to recollect, whether when Mr. *Layer* was examined before the Lords of the Council, (it is to confirm the Evidence of Mr. *Lynch*) any thing paſs'd about the Declaration.

L. C. Juſt. But before you was intending to aſk him about his going to *Rome*, and having Conference with the *Pretender*.

Mr. Serj. *Pengelly.* My Lord, that he hath ſaid already, therefore I aſk you, what was ſaid by Mr. *Layer*, relating to the Declaration?

Mr. *Stanyan.* The Lords aſk'd Mr. *Layer*, if he had ſeen any Declaration; he ſaid no, he had only the Heads of one which he drew himſelf: The Lords ask'd him where that Declaration was, he ſaid, he believed one *Wilſon* had it.

Mr. Serj. *Pengelly.* Was any Queſtions aſked relating to the Perſons that had ſeen it?

Mr. *Stanyan.* Yes, he ſaid the only Perſons that had ſeen it was, that *Wilſon*, one *William Jeffries, a Nonjuring Parſon*, and one *Lynch*.

Mr. Serj. *Pengelly.* Where did he mention to have ſhew'd it to *Lynch?*

Mr. *Stanyan.* On his Way to my Lord *North* and *Gray*'s, at the *Green Man* at *Epping*.

Mr. Serj. *Pengelly.* Was there any thing more ſaid by *Layer*, relating to that Journey to *Epping*, and what?

Mr. *Stanyan.* He ſaid that he went to my Lord *North* and *Gray*'s, and dined at the *Green Man* as he went, then he carry'd Mr. *Lynch* to my Lord *North* and *Gray*'s, and recommended him to my Lord *North* and *Gray*, as a proper Perſon to be employed. I think it was employed in an Inſurrection, or in any thing elſe, that his Lordſhip ſhould command him.

Mr. *Ketelbey.* If he is not certain, I deſire he may produce his Minutes, as he gives his Evidence *vivâ voce*, to refreſh his Memory.

Mr. *Att. Gen.* We ſubmit to it.

L. C. Juſt. It is always ſo.

Mr. *Stanyan.* He recommended him, as a proper Perſon to be employed in an Inſurrection, and that *Lynch* having told *Layer* before that he would ſeize the Earl of *Cadogan*, that *Layer* did mention him to my Lord *North* and *Gray*, as a proper Perſon for ſuch an Attempt.

Mr. *Ketelbey.* The firſt time you ſaid, in an Inſurrection, as you remembred or thought; how come you now to be more certain on the ſecond Repetition of your Evidence than at the firſt? On the firſt Account you gave you ſay, it was employed in an Inſurrection, as you thought; now upon the ſecond Repetition you give a poſitive Evidence, that this was confeſt by Mr. *Layer*.

Mr. *Stanyan.* I have recollected the Words, and Mr. *Layer* uſed thoſe Words.

Mr. *Ketelbey.* From whence is it that you are now ſo poſitive, and were not ſo at firſt?

Mr. *Stanyan.* I did ſay the Words at firſt.

Mr. *Ketelbey.* But you ſaid it with an Alleviation; I deſire to know, if you are poſitive thoſe were the Words.

Mr. *Stanyan.* I am very poſitive.

Mr. *Ketelbey.* And yet you were not poſitive before.

Mr. *Stanyan.* I did not ſay I was not poſitive.

Mr. *Hungerford.* Did you give your Evidence, that you was certain he ſaid that he had recommended *Lynch*, as a proper Perſon to be concerned in an Inſurrection in General, or only as a proper Perſon to ſeize my Lord *Cadogan*, or both? how did he expreſs himſelf?

Mr. *Stanyan.* I will tell you how the Words were: *Lynch* having told him he would ſeize my Lord *Cadogan*, *Layer* recommends *Lynch* to my *North* and *Gray*, as a proper Perſon for ſuch an Attempt.

Mr. *Hungerford.* Then the Inſurrection was out of the Caſe; he was only recommended to

my

my Lord *North* and *Gray*, as a proper Perſon to ſeize my Lord *Cadogan*.

Mr. *Ketelbey*. I think you have repeated it three times, and different at each Time; now pleaſe to rectify your Memory, and let us have it ſo as it may be underſtood.

I muſt deſire it in this Caſe, my Client is upon his Life, and he ſhould have right, I am ſure he will have it from the Court and the Jury.

We deſire to know whether you give ſuch an Evidence of this Part of his Confeſſion, with reſpect to his recommending Mr. *Lynch* to my Lord *North* and *Gray*, as you will ſtand by?

Mr. *Hungerford*. Mr. *Stanyan*, pray give an Account once for all how that Matter was.

Mr. *Stanyan*. I can give no other Account.

Mr. *Ketelbey*. He hath vary'd every Time; I appeal to Mr. *Attorney*, I appeal to your Lordſhip.

L. C. Juſt. Wherein is the Variation?

Mr. *Ketelbey*. Firſt he acquaints you, that he confeſs'd, that he recommended *Lynch* to my Lord *North* and *Gray*, as a fit Perſon to be employed, he thinks, or believes, it was in an Inſurrection; and then he ſays, he is poſitive that he recommended him to my Lord *North* and *Gray*, as one that was fit to be employed in an Inſurrection, and at laſt he ſays, he was recommended by Mr. *Layer* to my Lord *North* and *Gray*, as the fit Perſon to ſeize my Lord *Cadogan*. I appeal to your Lordſhip's Memory, and his own Oath, whether this was not ſo, and yet he is poſitive of it, he is ſure of it.

L. C. Juſt. Is there any Difference in all this?

Mr. *Ketelbey*. As much as between being certain, and being uncertain.

L. C. Juſt. For what? You talk of the Variation between an Inſurrection and ſeizing my Lord *Cadogan*. The Inſurrection was partly to be made on the ſeizing my Lord *Cadogan*, at the ſame Time, as to facilitate the Inſurrection; both were to go together; if he was a proper Perſon to ſeize my Lord *Cadogan*, he was a proper Perſon to be employed in an Inſurrection.

Mr. *Ketelbey*. He is charging the Priſoner with his Confeſſion, and therefore I ſay, he hath mentioned it with two or three Variations: Firſt, that he was fit to be employed in the Inſurrection, and he explains that by ſeizing my Lord *Cadogan*.

L. C. Juſt. That is Part of the Inſurrection.

Mr. *Ketelbey*. Surely, my Lord, this ſerves to make our Objection ſo much the ſtronger againſt allowing parol Evidence of a Confeſſion, which was put in Writing.

Mr. *Att. Gen*. I can't imagine what they mean; here is a Gentleman, that gives an Account, that the Priſoner confeſſed that he recommended *Lynch* to my Lord *North* and *Gray*, as a proper Perſon to be employed in the Inſurrection, and to ſeize my Lord *Cadogan*; where is the Variation in this?

Mr. *Soll. Gen*. Mr. *Stanyan*, you was giving an Account of Mr. *Layer*'s recommending *Lynch* to my Lord *North* and *Gray*; did Mr. *Layer* declare any thing further relating to that Matter?

Mr. *Stanyan*. He ſaid my Lord *North* and *Gray* received him civilly; he ſupp'd there and lay there that Night, and they din'd there the next Day.

Mr. *Soll. Gen*. Did he give any Account of what paſſed at Dinner?

Mr. *Stanyan*. I don't know whether it was juſt at Dinner, or afterwards: But he ſaid that ſeveral Healths were drunk, which were begun by my Lord *North* and *Gray*; and after Dinner there came in a Man they called a Citizen, they drank the Pretender's Health, his Wife and the young Prince.

Mr. *Soll. Gen*. Did the Priſoner ſay any thing about the Chriſtning of his Child?

Mr. *Stanyan*. That was when he confeſſed before the Lords, that he was at *Rome*, in the Conference he had with the Pretender, he took Occaſion to ſpeak of the Diſcontents of the Nation, which had been occaſioned by the Loſſes ſuſtained in the *South-Sea*. The Pretender aſk'd him if he knew any Perſons of Diſtinction in that Caſe? He ſaid, that he knew a great many, that were well affected to his Intereſt; that he was not acquainted with People of Quality: But that he knew ſeveral of good Eſtates, that were very well affected to his Intereſt. Upon this the Pretender aſk'd him ſeveral Queſtions, ſays he, it muſt be very expenſive to you to come hither to *Rome*, it muſt coſt you 500 *l*. No, ſaith he, not above half ſo much. Then the Pretender praiſed his Zeal, and commended him; after that Mr. *Layer* aſk'd the Pretender to give him ſome Tokens or Credentials, that he might have ſomething from his Majeſty; that wou'd be a Means of his gaining Credit among his Friends here. He ſays the Pretender ſcrupled that: Then Mr. *Layer* propoſed afterwards that the Pretender's Wife ſhould ſtand as Godmother to his Daughter, to Mr. *Layer*'s Daughter; that afterwards Col. *Hay*, to whom he was introduced at the Pretender's Court, brought him Word, that the Pretender's Wife would ſtand as Godmother to his Child: But then the Queſtion was, who ſhould repreſent her? And after ſome time it was propoſed to Mr. *Layer* to find out a fit Perſon to repreſent her. Mr. *Layer* propoſed the Dutcheſs of *Ormond*, which was agreed to; after that the Pretender agreed to ſtand Godfather with his Wife, and then the Point was, who ſhould repreſent him? And Col. *Hay* told him that he muſt take care of that, to find a proper Perſon to repreſent his Majeſty.

Mr. *Soll. Gen*. What Account did he give of what was done in Purſuance of this, when he came into *England*?

Mr. *Stanyan*. When he came into *England*, he ſaid, he applied himſelf to one Mr. *Thompſon*, to ſpeak to my Lord *Orrery* to ſtand to repreſent the Pretender, with the Dutcheſs of *Ormond*: But he ſaid my Lord *Orrery* declined it; and afterwards he got my Lord *North* and *Gray* to ſtand. That Mr. *Thompſon* did Chriſten his Child, my Lord *North* and *Gray* and the Dutcheſs of *Ormond* ſtanding as Proxies for the Pretender and his Wife; my Lord *North* and *Gray* did ſtand to repreſent the Pretender, and the Dutcheſs of *Ormond* to repreſent the Pretender's Wife, knowing they did ſo.

And he was aſk'd by the Lords, who were in company at the Chriſtning? He ſaid, only the Dutcheſs of *Ormond*, my Lord *North* and *Gray*, Mr. *Thompſon* the Miniſter, himſelf, and his Wife, and another Woman, at whoſe Houſe the Chriſtning was performed: But he ſaid, ſhe was not preſent in the Room, tho' ſhe aſſiſted at the Chriſtning.

Mr. *Weſt*. Did he mention any Time when this Chriſtning was?

Mr. *Stanyan.* About the Spring. I can't ſay that Queſtion was aſk'd him by the Lords, and I can't aſcertain the Time.

Mr. *Weſt.* Did he ſay any thing relating to my Lord *North* and *Gray?*

Mr. *Stanyan.* He told them of my Lord *North* and *Gray*'s being at the Head of theſe Deſigns.

Priſoner. What doth he concern himſelf with the Lord *North* and *Gray* for?

Mr. *Weſt.* Pray Sir be quiet.

Mr. *Stanyan.* He ſaid he told my Lord *North* and *Gray* that he had acquainted *Lynch* with his Lordſhip's being at the Head of this Deſign, therefore Mr. *Lynch* had expreſſed a great Deſire to wait upon his Lordſhip.

Mr. *Att. Gen.* Mr. *Delafaye*, pray give an Account what Mr. *Layer* ſaid, when he was examined before the Lords of the Council, relating to his being at *Rome*.

Mr. *Delafaye.* Mr. *Layer* declared to the Lords of the Council, that he had been at *Rome*, that he had had two Conferences with the Pretender, that he had acquainted the Pretender with the Diſaffection of the Nation, with reſpect to the Loſſes that had been ſuſtained by the *South-Sea*. He ſaid, in general, the Nation was well-affected, and that he knew Perſons of Eſtate, not Quality, that were in his Intereſt: Then he propoſed to have Credentials or Tokens of the Pretender's Regard to him, which was not granted him: Then he deſired the Pretender's Spouſe ſhould ſtand Godmother to his Child; the Pretender ſaid he would conſider of it; Col. *Hay* afterwards brought him Word, that ſhe conſented; then there were ſome Conferences who ſhould repreſent her.

Mr. *Att. Gen.* Give the ſame Account, that he gave before the Lords of the Council.

Mr. *Delafaye.* Col. *Hay* brought Word to Mr. *Layer*, that the Pretender's Spouſe conſented to ſtand Godmother to his Child; and it was agreed the Dutcheſs of *Ormond* ſhould repreſent her; he deſired a Credential or Token to the Dutcheſs of *Ormond*. *Hay* told him, without that ſhe would ſtand, only, ſaith he, carry a Meſſage, that the Duke is well, and gone to *Madrid*, that ſhe would do it; and *Layer* deſired to know who ſhould ſtand as Godfather, why the King himſelf, that is, the Pretender; and *Layer* deſired to know who was to repreſent him; he deſired to be excuſed, but *Layer* would find out one upon his Return into *England*, that was proper for that Purpoſe; when he came into *England*, he was at a Loſs for a Perſon to repreſent the Pretender; he went to Mr. *Thompſon* to adviſe with him about it, who went to my Lord *Orrery*, to deſire him to ſtand as Proxy for the Pretender, my Lord *Orrery* declined it, then he went to my Lord *North* and *Gray*, who accepted it; the Child was chriſtned; it was at *Chelſea*, I take it, at a Houſe, where there was a *China* Shop. It was in the Spring, what Day I can't tell. That he ſaid there was his Wife, my Lord *North* and *Gray*, who ſtood for the Pretender, and Dutcheſs of *Ormond*, who ſtood for the Pretender's Wife, the Woman of the Houſe, but ſhe was not within the Room at the Chriſtning.

Mr. *Att. Gen.* Do you remember any thing ſaid by *Layer* about any Declaration, that was drawn?

Mr. *Delafaye.* Mr. *Layer* own'd that he had drawn Heads of a Declaration; and that, when he was going to my Lord *North* and *Gray*'s, he did ſhew it to Mr. *Lynch* at the *Green-Man*, as he was on his Way thither.

Mr. Serj. *Pengelly.* What ſaid he of his recommending Mr. *Lynch* in his Examination?

Mr. *Delafaye.* He ſpoke of his recommending *Lynch* twice; that Mr. *Lynch* having told him he would ſeize my Lord *Cadogan*, he did recommend him to my Lord *North* and *Gray*, as a proper Perſon for that Attempt. The ſecond time that he recommended him, he had propoſed carrying *Lynch* to my Lord *North* and *Gray*'s, he having told him that he was a very honeſt Man, fit to be concerned in an Inſurrection; that *Layer* having told *Lynch* his Lordſhip was to be at the Head of the Deſign, *Lynch* was impatient to wait upon him.

Mr. *Att. Gen.* We ſhall now prove there were Arms at the Priſoner's Houſe when he was ſeized. Mr. *Stanyan*, were you at Mr. *Layer*'s Houſe, when he was ſeized?

Mr. *Stanyan.* Yes.

Mr. *Att. Gen.* Do you know of any Arms there?

Mr. *Stanyan.* Yes.

Mr. *Att. Gen.* Give my Lord and the Jury an Account what Arms?

Mr. *Stanyan.* Juſt after Mr. *Layer* was ſeized I came in, he was juſt got out of his Bed. I obſerved in the Room, where he lay, there were a Pair of Piſtols hung by his Bed-Side, and between them a Horſe-man's Sword, a riding Sword, and a pretty large Sword; on th' other Side of the Bed next the Chimney a little Caſe of Piſtols, and another Sword hung in another Part of the Room. In the Cloſet of the ſame Room we look'd, and I ſaw two Carbines or Guns, and two Muſquetoons or Blunderbluſſes; ſeeing ſo many Arms, I went to handle ſome of them, upon which he ſaid, have a Care, they are loaded, don't meddle with them; upon that I aſk'd him what he had to do with ſo many Arms? He anſwered, you muſt know my Clerk and I are great Shooters, when we are in the Country. In another Room, looking further, we obſerved ſeveral Moulds for the making of Bullets. There was alſo a Cartridge-Box, and a Number of Cartridges ready made up, as near as I can gueſs (I did not count them) there were about forty or fifty of them. There was a Gentleman of the Army, and he ſaid they were ſuch Cartridges as were uſed in the Army.

Mr. *Att. Gen.* Was there any thing relating to theſe Arms confeſſed by Mr. *Layer* before the Lords of the Council?

Mr. *Stanyan.* He did not deny it I believe.

Mr. *Att. Gen.* I would aſk you whether there was any thing ſaid before the Lords relating to theſe Arms.

Mr. *Stanyan.* The Lords did ask Mr. *Layer* what he did with forty or fifty Cartridges ready made up? He ſaid they were made up by *Bowers* the Gunſmith, and that, if there was any Diſturbance in the Nation, he ſhould have Occaſion for them.

Mr. *Att. Gen.* Mr. *Delafaye*, was you by, when he was aſk'd the Queſtion about theſe Arms?

Mr. *Delafaye.* Yes; he was aſk'd what he did with ſo many Cartridges and Arms, and he ſaid they were proper for his Uſe, if there ſhould be any Diſturbance in the Nation.

Col.

Col. *Huſke* ſworn.

Mr. *Att. Gen.* Was you by, when theſe Arms were ſeized in Mr. *Layer*'s Houſe?

Col. *Huſke.* Yes; there were two Caſes of Piſtols, two Fuzees, and ſome other Arms, and a Blunderbuſs, and two or three Swords; there were above 40 Cartridges ready made up in the uſual Manner, as they are made up, when our Soldiers are to charge their Pieces for Expedition in Caſe of Action.

Mr. *Att. Gen.* How many were there?

Col. *Huſke.* About forty.

Mr. *Att. Gen.* Did you ſee any Moulds for Bullets?

Col. *Huſke.* There was a Mould for Muſket-balls.

Priſoner. You ſaid I had two Fuzees, will a Muſket-ball go into a Fuzee?

Col. *Huſke.* I can't tell but it may.

Priſoner. There were 40 Cartridges, which were ready made up, will thoſe Cartridges go into a Fuzee?

Col. *Huſke.* Theſe very Cartridges were only fit for the Army.

Mr. *Ketelbey.* Theſe Cartridges were not fit for the Muſket?

Col. *Huſke.* I did not try them.

Mr. *Ketelbey.* Would they go into a Fuzee?

Col. *Huſke.* I don't know.

Mr. *Ketelbey.* According to my Notions, there is a Difference in Bigneſs between a Fuzee and a Muſket, and a Cartridge fit for a Muſket will not go into a Fuzee.

Col. *Huſke.* A Cartridge, that is fit for a Fuzee, will go into a Muſket.

Mr. *Ketelbey.* I believe that, and ſo it will into a Canon; therefore I aſk, whether a Cartridge, that is fitted to a Muſket, and proper for the Uſe of a Soldier going to Battle, whether that Cartridge will fit a Fuzee?

Col. *Huſke.* The Bore of a Fuzee may be made as large as that of a Muſket.

L. C. Juſt. Thoſe Cartridges, that were there, would they have ſerved for the Fuzee?

Col. *Huſke.* I am ſatisfied that they would ſerve for the Fuzee, and the ſmalleſt Arms there, except the Piſtols.

Mr. *Ketelbey.* You ſay there were two Swords?

Col. *Huſke.* Yes, I ſaw two Swords.

Mr. *Ketelbey.* I believe you never are without two Swords.

Col. *Huſke.* I believe I have a dozen, but they belong to my Company.

Priſoner. Were they Horſe Swords, or Swords fit to walk with?

Col. *Huske.* I can't tell that.

Mr. *Hungerford.* I think you ſay, that thoſe Bullets, made into Cartridges were, by the Size of them, intended for the ſmall Arms.

Col. *Huske.* I do believe they would fit the two Fuzees that I ſaw.

Mr. *Ketelbey.* Did you open any of the Cartridges?

Col. *Huske.* I did, and there was a Ball made up at the End of each Cartridge.

Mr. *Smeybert* ſworn.

Mr. *Soll. Gen.* Do you know the Priſoner at the Bar?

Mr. *Smeybert.* Yes, I do.

Mr. *Soll. Gen.* Recollect whether you have ſeen him at *Rome*?

Mr. *Smeybert.* Yes, I have.

Mr. *Soll. Gen.* When?

Mr. *Smeybert.* About a Year and half ago.

Mr. *Soll. Gen.* For how long Time was he there?

Mr. *Smeybert.* I think about a Week or a Fortnight.

Mr. *Soll. Gen.* Did you or the Priſoner leave *Rome* firſt?

Mr. *Smeybert.* I left *Rome* firſt.

Mrs. *Hay* ſworn.

Mr. Serj. *Cheſhire.* Did you ever ſee the Priſoner?

Mrs. *Hay.* Yes.

Mr. Serj. *Cheſhire.* Where did you ſee him?

Mrs. *Hay.* I ſaw him at *Rome.*

Mr. Serj. *Cheſhire.* When?

Mrs. *Hay.* Laſt Summer was Twelve-month.

Mr. Serj. *Cheſhire.* What Time of the Year was it, as near as you can remember?

Mrs. *Hay.* I can't tell exactly what Time, but it was laſt Summer was Twelve-month.

Mr. Serj. *Cheſhire.* You are ſure you ſaw him there?

Mrs. *Hay.* Yes.

Mr. *Att. Gen.* My Lord, we ſhall now prove the Priſoner's Eſcape out of the Meſſenger's Cuſtody as was open'd before. Call Mr. *Squire.*

Mr. *Squire* ſworn.

Mr. *Att. Gen.* Look upon the Priſoner at the Bar, do you know him?

Mr. *Squire.* Yes, I do know him?

Mr. *Att. Gen.* Do you know any thing of his being taken up? Give an Account when it was that he was taken.

Mr. *Squire.* He was taken the Eighteenth Day of *September* laſt.

Mr. *Att. Gen.* Whoſe Cuſtody was he in after he was taken?

Mr. *Squire.* He was in my Cuſtody?

Mr. *Att. Gen.* What became of him afterwards? Did he continue in your Cuſtody?

Mr. *Squire.* No, he made his Eſcape.

Mr. *Att. Gen.* How long after he had been taken was it that he made his Eſcape?

Mr. *Squire.* It was the next Day he got out of the Window.

Mr. *Att. Gen.* How high was the Room he got out of.

Mr. *Squire.* It was two Story high, he lifted up the Saſh and ſo got out of the Window.

Mr. *Att. Gen.* Did you purſue him?

Mr. *Squire.* Yes.

Mr. *Att. Gen.* What Account can you give of his being taken again?

Mr. *Squire.* He had not been gone long before I found he had made his Eſcape, and underſtanding which way he went, I immediately purſued him, and I took him in a Lane going towards St. *George*'s Fields.

Mr. *Att. Gen.* What did he ſay?

Mr. *Squire.* He ſaid he was very ſorry to ſee me; I aſk'd him how he could offer to go away from me; and he ſaid, every body elſe would have done the ſame in his Condition, and that nobody could blame him for it; and that he believed my Lord *Carteret* would not blame him.

Mr. *Att. Gen.* But why?

Mr. *Squire.* Becauſe he look'd upon himſelf in ſuch a bad Condition, and ſo much Danger, he ſaid, nobody could blame him becauſe he was in that Condition.

Priſoner. What Condition? I deſire to aſk you one Queſtion; Did not I aſk you to ſhew me your Warrant?

Mr. *Squire.* No, you never aſk'd me.

Priſoner. Did not I aſk you at my own Houſe?

Mr. *Squire.* No, you did not.

Priſoner. Did you ſhew me your Warrant?

Mr. *Squire.* You did not aſk me for it.

Priſoner. Did not I tell you the Reaſon that I eſcaped was, becauſe I did not know what Authority you had to detain me?

Mr. *Squire.* No, you did not.

James Peterſon ſworn.

Mr. *Att. Gen.* Mr. *Peterſon*, do you know any thing of the Priſoner's Eſcape?

Peterſon. Mr. *Layer* was in Cuſtody at my Father's Houſe, in Mr. *Squire*'s Houſe, in a Room up two Pair of Stairs backwards.

Mr. *Att. Gen.* Do you know any thing of his getting away?

Peterſon. No, I was abroad then.

John Sweete ſworn.

Mr. *Att. Gen.* Look upon the Priſoner at the Bar; do you remember you ever ſaw him before?

Sweete. Yes, I ſaw him juſt going into St. *George*'s Fields.

Mr. *Att. Gen.* Did any body take him there?

Sweete. I was the firſt that took him.

Mr. *Att. Gen.* What did he ſay to you when you took him?

Sweete. He ſaid, for God's Sake let me go; and ſaid 'twas an Arreſt: Why then, and pleaſe you, my Lord, my Partner came up, and aſk'd him whether it was an Arreſt, and he ſaid it was; and then looking about me, I ſaw another Perſon coming after us, who was the Meſſenger: It ſeems he had broke out of the Meſſenger's Houſe. And then he clapt his Hand into his Pocket, and pull'd out I believe about forty Guineas, and ſaid we ſhould take what we would if we would let him go, but we would not.

Anthony Stephens ſworn.

Mr. *Att. Gen.* What did *Layer* ſay when he was firſt taken?

Stephens. We aſked him, is it for an Arreſt? Yes, ſays he, it is an Arreſt; and when he ſaw Mr. *Squire*'s Son coming after us, he would give us whatever we pleaſed to let him go; and more than that, he ſaid they had no Warrant, and he did not know that they could keep him without a Warrant.

Mr. Serj. *Pengelly.* My Lord, we have gone through our Evidence, and ſhall reſt it here.

Mr. *Hungerford.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel for the Priſoner at the Bar; and after ſo long an Evidence as hath been given in this Cauſe, it will beſt become me to draw the Matter in debate to a ſingle Point, if I can, and thereby to give Eaſe to your Lordſhip, the Jury, and the Counſel on both ſides. My Lord, the Priſoner is indicted upon the Statute of the 25th of *Edward* the Third, commonly called the Statute *De Proditionib'*, the Things made, or rather, declared Treaſon by that Act, are, Firſt, The compaſſing or imagining the Death of the King, or of the Prince of *Wales*. Then the Statute goes on to declare other Things Treaſon which relate only to the Perſons of ſome of the Royal Family; and then it declares likewiſe, That it is Treaſon to levy War againſt the King, *&c.* It is not ſaid, That to Deſign, or Contrive to levy War, but actually to levy War only ſhall be Treaſon.

This is the Text, this is the Law upon which the Gentleman at the Bar muſt be either ſaved or condemned. The Treaſon laid to his Charge is compaſſing and imagining the Death of the King: The Overt-Acts laid to his Charge are, That he did conſult and conſpire to levy War.

That he did publiſh a certain Treaſonable Libel, purporting among other Things, a Promiſe of Reward to his Majeſty's faithful Subjects, to riſe in Arms and levy War againſt the King.

That he conſulted to put the Pretender upon the Throne.

That he liſted Soldiers for him.

And the laſt Overt-Act is, That he conſulted to ſeize and impriſon the King.

My Lord, and you Gentlemen of the Jury, there is no Evidence of any of theſe Overt-Acts attempted to be given in Evidence againſt him in *Eſſex*, ſave only that of Publiſhing a Treaſonable Libel, which the King's Counſel, in their Evidence, would inſinuate to be the Pretender's Declaration. The Evidence of the other Overt-Acts are attempted to be proved in *Middleſex*. And in truth, the greateſt Part of the whole Tranſaction was by the King's own Evidence, proved to be in that County, and I wonder the Indictment was not laid there; but, Gentlemen, the Indictment being laid in *Eſſex*, if an Act of High Treaſon is not proved to have been committed by the Priſoner in that County, he muſt be acquitted.

I might here, my Lord, inſiſt, that an actual levying of War and not deſigning to levy a War, being made Treaſon by the Statute of Treaſons, the publiſhing a Paper which purports at the utmoſt but an Intention only to levy War or raiſe a Rebellion is not Treaſon, and conſequently not a legal Overt-Act within that Statute. This Opinion is warranted by the expreſs Words of the Act of Parliament itſelf, which is a better Authority than all the Commentators upon it; and it is likewiſe the Opinion of [a] my Lord Chief Juſtice *Coke*, and my Lord Chief Juſtice *Hales*; and in Truth, if this be not the true meaning of the Act, one Paragraph, *viz.* That which declares actual levying of War Treaſon is ſuperfluous and redundant; for what is the Uſe of making actual levy of War or a Rebellion a diſtinct Species of Treaſon, when the Intention of doing it, according to ſome modern Doctrines, was High Treaſon within the firſt Clauſe of the Act, *viz.* Imagining the Death of the King. This Opinion likewiſe ſeems to be confirmed by two Acts of Parliament, one in [b] Queen *Elizabeth*'s Time, and one in King *Charles* the Second's, where conſulting or intending to levy a War or raiſe a Rebellion, is made High Treaſon during the Lives of them two reſpective Princes, for which Temporary Proviſion there would be no Reaſon if the Law were ſo before. I know what

[a] *Coke*'s Inſtit. Ch. 1. p. 9, and 10. *Hale*'s Pleas of the Crown, p. 13.
[b] 1 *Eliz.* Ch. 1. 13 *Car.* II. Ch. 1.

hath been ſaid to ſome Part of this Matter, that the levying of War meant in the Statute of 25 of *Edward* the Third, was not meant of ſuch a Rebellion as was levell'd againſt the King's Perſon, Crown, Title, or Government; but of ſuch publick Commotions as diſturbed the Peace of the Kingdom, as the pulling down of Incloſures, which was the Caſe in Queen *Elizabeth*'s Time, or of pulling down Bawdy-Houſes, which was the Caſe in *Charles* the Second's Time: But to ſhew how unnatural a Conſtruction of the Words *Lever le Guerre*, it is to ſay, that it relates only to ſuch riotous Commotions as I have mention'd. Give me leave, my Lord, to make but one Obſervation. The Statute of Treaſons is penned in the *French* of that Age, and the Words of the Statute *Lever le Guerre* againſt the King, I have here within my Reach, in Court, a Book of very great Note and good Authority, it is the Hiſtory of *Froiſſart*, who writes the Hiſtory of *England*, *France*, and *Spain*, from the Year 1326, to the Year 1340, and dedicates his Book to that very King, *viz.* *Edward* the Third, in whoſe Reign the Statute of Treaſons was made, and in this whole Book, *Lever le Guerre* is conſtantly mentioned to denote a publick ſtated War; and in this Senſe, it is likewiſe taken by *Du Freſne* in his *Gloſſary*, Vol. II. pag. 255. ——I only hint this Matter to your Lordſhip, for I well know what Determinations, my Lords, the Judges have of late Years given upon this Objection; but I humbly hope that there will be no Occaſion for an intire Dependence upon this Objection, in this Caſe, for that I hope it will appear both to your Lordſhip, and the Jury, that no ſuch Overt-Act, as is ſaid in the Indictment, that is, publiſhing the Pretender's Declaration at the *Green Man*, is at all proved.

The Evidence given touching that Matter is only by Mr. *Lynch*, and he gives an Account that the Priſoner and he met at *Aldgate*, in order to go to the Houſe of my Lord *North* and *Gray* at or near *Epping*: In the courſe of their Journey thither finding themſelves too late to be at my Lord *North*'s by Dinner; they called in at the *Green Man*, and there got a Beef-Stake: And before it was brought up the Priſoner gave Mr. *Lynch* a Paper, which Mr. *Lynch*, and not the Priſoner, calls the Pretender's Declaration; Mr. *Lynch* reads only one Paragraph in it, whereby, as he ſays, the Soldiers were attempted to be allured from his Majeſty's Service; this is the whole Evidence given touching any Offence committed in the County of *Eſſex*: For as to any treaſonable Diſcourſe between *Aldgate*, and the *Green Man*; they cannot in Juſtice, and without a particular Proof to that Purpoſe, be charged upon the Priſoner to be done in *Eſſex*, a great Part of the Way, *viz.* from *Aldgate* to *Bow-Bridge*, being in *Middleſex*, and not in the County of *Eſſex*.

In the firſt Place therefore, Gentlemen of the Jury, we hope there is no Evidence to convince you that any ſuch Declaration was publiſhed at all; and yet, *Secondly*, If there was a Paper read there, the Paper read was not an Act of High Treaſon. The Time that the Priſoner and Mr. *Lynch* ſtaid at the *Green Man*, ſeems to be very ſhort, their Stay was ſo ſhort that there is no Evidence that their Horſes were put up: The Beef-Stake was beſpoke before they went into a Room. Mr. *Lynch* came down twice out of the Room; he himſelf admits once, beſides his gaping at ſome Perſons in the Yard whom he knew, before the Beef-Stake was brought up; and yet, before the Beef-Stake was brought up, this Declaration is pretended to be publiſhed: For my part, conſidering how little Time there was for ſuch a Tranſaction as this is, I cannot think, there could be any ſuch Thing as that tranſacted at that Time, the Compaſs of Time would hardly allow it; whatever was done, is admitted on all Hands, to be done before the Beef-Stake was brought up, and the other Incidents may very well be ſuppoſed to take up all the Time betwixt the beſpeaking and diſhing up the Beef-Stake, ſo there could be no Time for ſo ſolemn an Act as publiſhing a Declaration to overturn Three Kingdoms. But in the *ſecond* Place, if the Priſoner, which I don't admit, did give Mr. *Lynch* any Paper to read, a Paragraph whereof was to the Purpoſe Mr. *Lynch* relates; yet ſuch Paper cannot be imputed to the Priſoner as an Act of High Treaſon, there was but a few Lines of the Paper read, and the reſt were not read at all, either by Mr. *Lynch*, or the Priſoner; and I never knew that Part of a Deed or Writing was ever allowed to be given in Evidence, without producing or reading the whole. In the Caſe of my Lord *Ruſſel*, where the Declaration for Rebellion was aſſigned as an Act of High Treaſon, the whole Declaration was proved to be read, and not a Part only; and yet even that Evidence was upon the Revolution in the Firſt Year of King *William* and Queen *Mary*, look'd upon ſo imperfect an Evidence of High Treaſon, that for that, and other Reaſons, my Lord *Ruſſel*'s Attainder was revers'd; we have a Copy of the Act of Parliament for the Reverſal here atteſted, and we are ready to produce it if your Lordſhip thinks fit. ——Can it be ſaid that the Priſoner giving Mr. *Lynch* a Paper, of which he reads only a few Lines, and then the Priſoner takes it up again, is a publiſhing of a Treaſonable Paper, or in truth, a publiſhing of any Paper at all? Declarations for Rebellions are commonly publiſhed in publick Places, to captivate Multitudes, and not handed from one Man to another when they are expecting a Beef-Stake; there was no appointed or ſolemn Meeting at the *Green Man*; no Concourſe of People there, neither in truth, by Mr. *Lynch*'s own Evidence can it be taken to be a real Declaration; for he ſays, as I remember, in that Paper it was mentioned that the Lord *Cadogan* was in Cuſtody; that Fact is utterly falſe, his Lordſhip neither was, nor is ſo.

I muſt ſubmit to the Conſideration of my Lords the Judges, and the Jury, of how dangerous a Conſequence, Conſtructions of this Nature may prove to be. Before the Statute of Treaſons, the People of *England* laboured under vaſt Miſchiefs by the great Incertainty there was of what was High Treaſon, and what was not; the Parliament thereupon, to eaſe the People of that Perplexity, in the 25th of *Edward* the Third, paſſed the Law of Treaſons, for which the People then paid a great Sum of Money; and for which that Parliament was called Bleſſed (*Parliamentum beatum*) and now if every Act a Man doth, though perhaps tending to Sedition, ſhall be interpreted to be an Overt-Act of High Treaſon, the Subject will labour under the ſame Inconvenience, and under the ſame Perplexities, as they were before the Statutes of Treaſons; this

this Practice may be ſo far improved, that if a Man delivers a Seditious Ballad to another to be read, that ſhall be interpreted an Overt-Act of High Treaſon, much more if People in their Cups ſhould drink ſuch Healths, as were ſaid to be drunk at my Lord *North* and *Gray*'s Houſe; for no Man can deny but that *Bibere eſt agere*, whatever *Scribere* is: This, my Lord, is all that occurs to me at preſent concerning the Charge of High Treaſon upon the Priſoner within the County of *Eſſex*; and if there be no Charge made out againſt him there, the Evidence given againſt him, of what he did or ſaid elſewhere muſt go for nothing.

Mr. *Ketelbey*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I likewiſe appear here as Counſel for the Priſoner, who having pleaded Not Guilty to this Indictment, I muſt ſuppoſe him ſo 'till he be found otherwiſe; and 'tis my Duty (being aſſigned for him by the Court) to lay the Circumſtances of his Caſe before you in as true and clear a Light as I can, and to offer to your Conſideration what may occur proper for his Defence, and legally conduce to the clearing his Innocence.

The Charge laid to him is of the higheſt Nature that the Laws of *England* know; *Crimen læſæ Majeſtatis*; no leſs than the conſpiring and compaſſing the Death of the King; and as it is an Offence, not capable of any Aggravation, not to be alleviated by any thing that we can offer, we humbly hope your Lordſhip, and the Gentlemen of the Jury, will expect the ſtrongeſt Evidence the Nature of the Caſe admits, ſuch as the Law requires, and is in ſome meaſure proportionable to the Greatneſs of the Offence.

The Act of Parliament upon which the Priſoner ſtands indicted, is the 25th of *Edward* III. It is there ſaid, to make him attainted there muſt be an Overt-Act, and that Overt-Act muſt be fully and clearly proved: *Et de ceo provablement ſoit attaint de Overt Fait.*

My Lord *Coke*, in his Third Inſtitutes, Fol. 12. in his Comment upon that Act, explains the Word *(Provablement)* by ſaying, it muſt be upon direct and manifeſt Proof, not upon conjectural Preſumption, or Inference, or Strains of Wit; It muſt not be *commune Argumentum.*

Since that Time, ſeveral other Statutes have been made in Favour of the Subject, and for regulating Trials in Caſes of High Treaſon: Particularly the late Statute *7mo Gulielmi 3tii*, which enacts, that there muſt be two lawful Witneſſes to the ſame Overt-Act; or one of them to one, and the other of them to another Overt-Act of the ſame Species of Treaſon: And that no Evidence ſhall be admitted or given of any Overt-Act that is not expreſly laid in the Indictment.

I think we need not, at preſent, enter into the whole of the Caſe, or trouble the Court with a long Detail of Circumſtances and many Witneſſes; but rather chuſe to leave that on the Foot Mr. *Hungerford* hath put it for your Lordſhip's Conſideration.

It muſt be admitted to us, that if the Priſoner is not Guilty of an Overt-Act, legally proved to be committed in the County of *Eſſex*, where the Species of Treaſon and all the Overt-Acts in the Indictment are laid; though all the other Facts in *Middleſex*, or at *Rome*, or any where elſe, ſhould be never ſo clearly made out, yet they do fail upon this Indictment, and the Priſoner muſt be acquitted.

What have they to charge him with ſuch an Overt-Act? Nothing, but the ſingle Evidence of *Lynch!* He is the only Perſon that ſpeaks to this Point.—— He ſays, that they ſet out from *Aldgate* in Order to ride to my Lord *North* and *Gray*'s, and alighted at the *Green Man*; that what Diſcourſe paſſed between them there was before Dinner: He owns he went down Stairs twice before Dinner, and ſpent ſome time in looking out of the Window, to ſee ſome Perſons with whom he was acquainted, and when the Dinner (which was ſoon got ready) was brought up, Mr. *Layer*'s Servant came and waited, and no Diſcourſe paſs'd there during that time; he tells you, that Mr. *Layer* pull'd a Paper out of his Pocket, and ſhew'd it to the Witneſs, who read Part of it, and that it contain'd treaſonable Matter, as laid in the Indictment: This is the Subſtance of what *Lynch* ſwears, I took it, as well as I could, in Writing from his Mouth.

Now my Lord, Is this ſufficient to convict this Gentleman of committing an Overt-Act of High-Treaſon in *Eſſex?* A bare pulling a Paper out of his Pocket, and giving it him to read, where ſuch and ſuch a thing is ſet forth, as by him is call'd a treaſonable Declaration!

My Lord, if he had pull'd out of his Pocket the moſt treaſonable Paper that ever was invented, is it any more than publiſhing a Libel? Is that an Overt-Act of Treaſon? I will ſuppoſe it a Copy of the Pretender's Declaration, or an Original, ſuch a one as was burnt by the Sheriffs of *London* two Days ago: If a Man had that, and pull'd it out of his Pocket, and gave it to another to read, is this High-Treaſon? I dare ſay, if any ſuch Perſon falls into Mr. *Attorney*'s Hands, he, that always does his Duty to the Crown as he ought, will go no higher than an Information for publiſhing a Libel; and all this, my Lord, is upon a Suppoſition that the Facts are true which have been ſworn by *Lynch:* But on the other Hand, there are ſo many unaccountable Circumſtances in the Relation, that an Affair of that Conſequence ſhould be tranſacted in ſuch a Place; in ſo ſhort a time; upon ſuch an accidental Bait; when one of the Conſpirators was either gazing at the Window, or running up or down Stairs the greateſt Part of the while, and other Perſons were continually going backwards and forwards into the Room, or within hearing of every Word that paſs'd there, we think it carries with it ſuch an Air of Improbability, that no reaſonable Man can give Credit to it, much leſs, convict a Perſon of ſo great a Crime, upon ſuch Evidence.

But ſuppoſe what paſs'd at the *Green Man* (which I am very far from admitting) ſhou'd be adjudged an Overt-Act of High Treaſon: How is it prov'd? Only by one Witneſs; one ſingle Witneſs to the Fact in this County! The Law requires two Witneſſes to convict a Man of High Treaſon, and that the Jury ſhou'd be return'd out of that County where the Facts are laid; *De Vicineto*; Becauſe the Law ſuppoſes them more connuſant of the Circumſtances of a Caſe which ariſes in their Neighbourhood: But if the Proof of one Over-Act in the County where 'tis laid, by one Witneſs, ſhou'd be ſufficient to let them in to prove other Overt-Acts, in diſtant Countries, or in foreign Kingdoms, theſe fundamental Rules of Law would be totally ſubverted: How is it poſſible for a Man to provide or defend

himſelf

himſelf againſt ſuch an Attack? 'Tis ſpringing a Mine upon him! Sudden and unexpected Ruin!

Mr. *Attorney* won't ſhew any Precedent, where it ever was allowed to be good, that one Witneſs might prove the Overt-Act in the County where it is laid, and that then they might give Evidence of Overt-Acts committed in any other County: If your Lordſhip is of Opinion againſt us in this Particular, then we muſt beg leave to go farther, and obſerve upon the reſt of the Witneſſes they have called; not only to take off their Credit, but to contradict them in a great meaſure.

There hath been a great deal of other Evidence given by them, but we muſt ſubmit it to your Lordſhip, whether it is material his eſcaping from the Meſſenger's Houſe, and his being taken in St. *George*'s Fields; and the Evidence begins to run thin, or elſe, I believe they would not have troubled the Court, to call thoſe Perſons to that which is no ways conducive to the Point now in Judgment; if your Lordſhip is of opinion with us, that this is not an Overt-Act in *Eſſex*, and legally proved, being there is but one Witneſs, and attended with ſuch Circumſtances, then the Matter is at an End; but if your Lordſhip is of another Opinion, then we muſt beg leave to go on, and likewiſe to offer what we have from the Mouth of our Witneſſes.

L. C. Juſt. You muſt go on, you have mix'd your Diſcourſe ſo that no body knows what to make of it; ſometimes tho' the Facts are clear as to the Overt-Act, you have ſaid as much againſt, as for, the Improbability and Nature of the Thing, in Point of Law, as for the other. I don't ſee how we ſhall come at it, unleſs you go thro' the Cauſe.

Mr. *Soll. Gen.* My Lord, in the Obſervations they have hitherto made, they have mix'd Objections as to the Fact, together with ſome Matters of Law, that ſeem to be aimed at, and fixed upon no Point; to which we cannot give any particular Anſwer; therefore we deſire they may go thro' their whole Caſe, before we reply to any Part of it.

Mr. *Hungerford.* Since it is your Lordſhip's Pleaſure that we ſhould now go on, I ſhall proceed to make ſome Obſervations upon the reſt of the Evidence given againſt the Priſoner at the Bar out of the County of *Eſſex*. The Obſervations which I ſhall make will be in the general only, for I cannot deſcend to all the particular Inſtances of the Evidence given, having not taken proper Notes for that Purpoſe; for I depended upon the Inſufficiency of the Evidence given touching any Act of High-Treaſon, being committed in *Eſſex*; and I hoped that from that very Circumſtance the Priſoner would have been acquitted; but however I know the learned Gentleman who is joined with me, hath taken very exact Notes of the whole Evidence, and therefore what I omit, I am aſſured he will abundantly ſupply.

The ſecond Witneſs produced againſt the Priſoner, is Mr. *Plunkett*, whoſe Evidence I think ought to weigh but very little with any Judicature whatſoever; the Priſoner's meeting with this Man was very accidental in *Lincoln's-Inn-Fields*, when they did not know each other, and yet they immediately entered into a Diſcourſe of raiſing a Rebellion, and overturning two Kingdoms, and that great Secret of knowing who was to be the General; tho' Mr. *Lynch*, after long Acquaintance with the Priſoner, could not get it out of him; yet it was communicated to the eminent Witneſs Mr. *Plunkett* at the firſt Interview, with an Addition of mentioning the Names of two very great Men more, the Earl of *Strafford*, and General *Webb*, as well affected to the Undertaking: But that noble Earl's and Great General's Services to their Country are too well known to be blemiſhed by ſuch an Incredible Evidence. After ſome Diſcourſe betwixt the Priſoner and *Plunkett* about the Undertaking, in which there was an Incident of a Diſcourſe of another Nature, whether the *Lutheran* Religion were not preferable to the *Popiſh*; and after (as *Plunkett* ſays) the Priſoner had communicated to him an Intention of invading the Kingdom by ſome Perſons from abroad, the Priſoner, in a very great Fit of Bounty, preſents Mr. *Plunkett* with the Sum of half a Crown. This Relation ſeems to be ſo improbable, and in Truth, is delivered (or rather ſtammered out) in ſo wretched and incoherent a Manner, that I believe that no one that heard it, believes a Word of it.

The Truth is, the Scheme itſelf ſeems rather to be a chimerical Plan of ſome crazy-pated Politicians, than a ſolid Project of any Men of Senſe, or in their Wits. What Undertaking can there be ſo improbable, as that laid down by this Scheme, *viz.* Seizing the General of the Army, ſeizing the *Tower*, ſeizing the *Exchange*, and ſeizing the Bank of *England*; and all this with a Force which do not appear to conſiſt of above three or four Men? And for Money, the Sinews of War, there ſeems to be no great Stock of that; *Plunkett* hath about half a Crown at one Time, and half a Guinea at another; for as to the Guinea *Jeffreys* gave him, it doth not affect the Priſoner. Mr. *Lynch*, indeed, who ſeems to be a Man of greater Weight, upon his frequent repeating himſelf to be very uneaſy, got about ſeven or eight Guineas. I mention theſe Things, Gentlemen of the Jury, to ſhew how improbable this part of the Evidence is of it ſelf, and we hope to make it appear to you to be the more ſo, by the Evidence we ſhall produce to the Reputation of the Witneſſes.

As to the Papers of all Kinds produced as Evidence againſt the Priſoner, we hope he cannot be affected by them, none of them being proved to be of his Hand-Writing; as to the Arms found in the Priſoner's Houſe, they are no more than what Gentlemen uſually have for the Defence of their Family, or their Recreations; and as for his being at *Rome*, it is admitted that that Evidence is not given as a Fact of High-Treaſon; ſo ought not to be conſidered as any Ingredient in the Priſoner's Guilt: As to the Priſoner's endeavouring to eſcape, it is no Evidence of the Priſoner's Guilt; I do not enter into the Conſideration, whether the Cuſtody of a Meſſenger is a legal Priſon, or no; but there is hardly a Man that is under any Confinement at all, but would willingly eſcape into Liberty: Beſides, the Priſoner hath ſuffered already for that Offence, if it be one; he hath been put into Irons, and his attempting to eſcape is the only Reaſon that is aſſigned for it.

There was ſomething ſpoke in the Introduction to this Accuſation which was very remarkable, *viz.* That it was a Deſign, if it had took Effect, that would have engaged the whole Nation in Blood, and would have deſtroyed our civil and

religious Rights: We who are of Counſel for the Priſoner, have as great an Abhorrence of a thing of that Nature as any Men can have: But yet we hope, that Mankind is not to be led away with Shew and Colour, but to be guided by Reaſon and Matters of Fact. Is it poſſible that People could have been raiſed into a Rebellion by a Proclamation which was never publiſhed, but by Mr. *Lynch*'s reading two or three Lines of it? And which, by Mr. *Lynch*'s own Evidence (which I forgot to remark before) was imperfect; for he ſays, that the Priſoner told him, he intended to put it in the Pretender's Name, which it ſeems was not then done; and therefore what was produced, was at the utmoſt an imperfect Piece only——— Or that the Priſoner at the Bar, a Man of a Gentleman-like Family indeed, but of no great Figure or Eſtate in the World, and having no Dependants or numerous Acquaintance, having no Proviſion of Men, Arms, or Ammunition, ſhould, with the Aſſiſtance only of a Bundle of Papers, and of Mr. *Lynch* and *Plunkett*, overturn and enſlave this whole Kingdom. God be thanked, the Proteſtant *Britiſh* Government is not ſo eaſily to be brought to Deſtruction: They might much ſooner (and yet I think that very difficult too) have borrowed 100,000 *l.* of the Bank of *England*, upon the blind Notes which they have produced, ſent by Sir *William Ellis*, than have brought about a Revolution, in this Kingdom, with ſuch materials as they ſeem to be poſſeſſed of.

Theſe things therefore, my Lord, I urge are Circumſtances which render all, or the greateſt Part of the Evidence given, very improbable.

I ſhall cloſe the whole with two Paragraphs of a * Speech made by one of your Lordſhip's Predeceſſors, my Lord Chief Juſtice *Scroggs*, ſitting in the ſame ſacred Seat of Juſtice, where your Lordſhip now ſits; the Words are theſe:

If once our Courts of Juſtice come to be aw'd or ſway'd by vulgar Noiſe, and if Judges and Juries ſhould manage themſelves ſo as would beſt comply with the Humour of the Times, 'tis falſly ſaid that Men are tried for their Lives or Fortunes; they live by Chance, and enjoy what they have as the Wind blows, and with the ſame Certainty.

Let us purſue the Plot a God's Name, and not baulk any thing where there is Danger or Suſpicion upon reaſonable Grounds; but not ſo overdo it, as to ſhew our Zeal, we will pretend to find what is not; nor ſtretch one thing beyond what it will bear, to reach another.

Mr. *Ketelbey*. I muſt beg leave to go on where I left off with *Lynch*'s Evidence.

All *Plunkett* ſaith was in *Middleſex*, but whether he is a credible Witneſs, you will hear by and by. I cannot but take Notice of one thing which is unaccountable in his Evidence, and renders it impoſſible to be true: He gives you an Account of a Letter which he received about ten Weeks ago; he's very poſitive as to the Words of the Letter, I aſked him over and over again to it, he repeats it as ſuch; when we examined him farther, it appears that he could neither write nor read; and how he came to remember ſo perfectly, when he could not write nor read himſelf, is very ſtrange. Why, ſaith he, it was read over to me twice, and we have heard him repeat it three Times; and I appeal to the Jury, if any one of them can take upon him to repeat it again with that Exactneſs the Witneſs pretends to do.

Is it not equally ſtrange, my Lord, that *Jeffreys*, a Man of Letters, the firſt Time he ſaw him, an ignorant common Serjeant in the Army, ſhould immediately fall into a Diſcourſe with him about a Plot, and raiſing a Rebellion, as if he had before been intimate with him? So likewiſe he ſaith of *James Plunkett*, the ſame Day, the firſt Day he came to him, he came to his own Houſe, and there talked to him about this Affair; as if they had nothing elſe to talk of but Rebellion againſt the Government. And I ſubmit it to your Lordſhip and the Jury, whether it is likely or poſſible, that any Man of common Senſe ſhould ſubject himſelf in ſo dangerous an Affair to another that was an utter Stranger to him: But here he gives you an Account of two ſeveral Perſons under the ſame Imprudence, the ſame Infatuation, *James Plunkett*, and the Nonjuring Parſon. Beſides, there is a manifeſt Contradiction in his Evidence; for, at firſt he ſaid, that the Nonjuring Parſon told him his Name was *Jeffreys* the firſt Time he ſaw him; and afterwards being croſs examined, he ſaid, the firſt time he knew his Name to be ſo was upon the Receipt of his Letter, and finding the Name ſo ſubſcrib'd.

The next Witneſſes gave an Account of the ſeizing the Papers, and then Mrs. *Maſon*. We aſked her if thoſe Papers had been ſeen by any body ſince ſhe had them, and whether ſhe had ſhewn them, or any other Papers, to Sir *John Meers*, or any of his Servants? She poſitively denies it, and ſaith they were not.

I don't know whether theſe Papers were ſeen by any body, for we have not one Word of 'em in our Briefs, and the very producing them is a Surprize to us; but we ſhall prove, that this Woman ſhew'd ſome Papers to Sir *John Meers*, or his Man, and that thereupon Notice was given, and the Papers ſoon after ſeized. But whether theſe are they or not, I cannot tell. I obſerved before upon the Evidence of Mr. *Delafaye*, Mr. *Stanyan* and Mr. *Doyley*; and tho' your Lordſhip was of Opinion, that it was ſufficient to have the Paper called the Scheme read, yet we hope 'tis far from being a concluſive Evidence againſt the Priſoner, it not being found in his Cuſtody; and we ſhall produce ſeveral who now are, and for many Years have been well acquainted with his Hand-Writing, who will give your Lordſhip their Thoughts of it. I believe Mr. *Attorney* would not have endeavoured to call Witneſſes that it was ſigned by him, and was his own Hand-Writing, if he had not thought it material; yet we hope that when our Witneſſes are heard, no Credit will be given by the Jury to it, as a Fact to charge the Priſoner. We ſhall give you an Account, if my Inſtructions are true, that *Plunkett*, *Lynch*, and Mrs. *Maſon*, who are the Perſons chiefly concern'd in the Courſe of this Evidence, are of ſo ſcandalous and vile a Character, that no Regard at all is to be had to their Teſtimony. The moſt honeſt Men may miſtake in their Evidence, as Mr. *Stanyan* is pleaſed to ſay; if he made any Miſtakes, I am ſatisfied they proceeded from a Defect of Memory, and no

* Lord Chief Juſtice *Scroggs* his Speech the firſt Day of *Michaelmas Term*, 1679. Printed that Year.

Deſign, and he is certainly excuſable; but as for the other three, *Lynch*, *Plunkett*, and *Maſon*, when you ſhall have heard half what we have againſt them, I dare ſay they will not have the leaſt Credit, tho' they had given a much more probable Evidence than they have done. But ſurely, as it is, their Evidence cannot have ſufficient Weight with you, to prevail againſt the Life, Eſtate, and Family of the Gentleman here before you, and to fix a perpetual Stain upon him and his Poſterity.

Mr. *Hungerford*. My Lord, we ſhall call our Witneſſes, and begin with my Lord *North* and *Gray*.

Mr. *Att. Gen*. We deſire to know what it is you call my Lord *North* and *Gray* to prove.

Mr. *Hungerford*. He is to give an Account of what paſſed at his Houſe, what Mr. *Lynch* ſaid when he was there.

L. C. Juſt. Then you do admit that he was at the *Green Man*, and he went to my Lord *North* and *Gray*'s afterwards.

Mr. *Ketelbey*. There is their Sheet-Anchor.

Mr. *Hungerford*. We admit we were at the *Green Man*, but committed no High-Treaſon there; your Lordſhip hath ſet us right in the Point of timing our Evidence in the Nature of this Tranſaction; it is proper to begin with the Maſter of the *Green Man*.

Mr. *Mackreth*, ſworn.

Mr. *Hungerford*. Mr. *Mackreth*, pray give my Lord and the Jury an Account, whether Mr. *Layer*, or Mr. *Lynch*, were at your Houſe laſt Summer, or how long they were there.

Mr. *Ketelbey*. I think you are Maſter of the *Green Man*.

Mackreth. Yes, Sir, upon the Oath I have taken, I don't know that Mr. *Layer* was ever at my Houſe.

Mr. *Ketelbey*. Do you remember any thing of the *Saturday* the 25th of *Auguſt*?

Mackreth. No, I can't.

Mr. *Ketelbey*. Do you remember whether you were at Home that Day?

Mackreth. I can't tell: If it was on a *Saturday*; on *Saturday* I often attend the Juſtices at *Ilford*.

Mr. *Ketelbey*. Do you know whether you was at Home that Day?

Mackreth. I cannot tell.

Mr. *Ketelbey*. Do you know Mr. *Layer*?

Mackreth. I never ſaw him before in my Life, as I know of.

Mr. *Ketelbey*. Was there never any Enquiry after him at your Houſe?

Mackreth. No: There was the Duke of *Grafton* and my Lord *Hallifax* came to my Houſe ſome time ſince. The Duke of *Grafton* intimated ſomething of this Affair; the Duke of *Grafton* ſaid to me, you are to be hang'd: Hang'd for what, ſaid I. You and your Friend *Layer* are to be hang'd. Said I, I never ſaw him in my Life. They walk'd to and fro in the Hall. What, ſaid they, do you know nothing of this *Layer*? No, I don't, as I hope to be ſav'd, directly nor indirectly.

Mrs. *Mackreth*, ſworn.

Mr. *Hungerford*. Pray do you remember any Travellers at your Houſe upon the 25th of *Auguſt* laſt?

Mr. *Ketelbey*. Do you remember when Mr. *Layer* was at your Houſe?

Mrs. *Mackreth*. I never ſaw the Gentleman in my Life, as I know of.

Mr. *Ketelbey*. Are you conſtantly at Home?

Mrs. *Mackreth*. Yes, I have hardly time to go to Church.

Mr. *Ketelbey*. Did you ever hear any thing of a Declaration read?

Mrs. *Mackreth*. I never heard any thing of it in my Days, my Lord.

Mr. *Hungerford*. Pray this; do you know the Room one Pair of Stairs forward in your Houſe?

Mrs. *Mackreth*. They are all forward, my Lord.

Mr. *Hungerford*. How far is the Bar from the Room?

Mrs. *Mackreth*. My Bar is below Stairs even with the Stair-Caſe.

Mr. *Hungerford*. If any thing is read there aloud, in any of thoſe Rooms one Pair of Stairs, could you have heard it?

Mrs. *Mackreth*. To be ſure, my Lord.

John Paulfreeman, ſworn.

Mr. *Hungerford*. Do you remember any thing of this Gentleman being at your Maſter's Houſe on the 25th of *Auguſt* laſt?

Paulfreeman. I remember nothing at all of it.

Mr. *Hungerford*. You remember nothing of it?

Paulfreeman. No; to my Knowledge I never ſee him before in my Life.

Mr. *Hungerford*. Do you remember any thing of ſome People dining there on a Beef-Stake?

Paulfreeman. No; I don't remember any thing of it.

Mr. *Hungerford*. Do you remember this Gentleman's Face again?

Paulfreeman. No; I don't remember that ever I ſaw him before.

Mr. *Hungerford*. Is my Lord *North* and *Gray* there?

Mr. *Hungerford*. We ſhall examine my Lord *North* and *Gray* only as to ſome Paſſages at his Lordſhip's Houſe, and chiefly as to the Character of this *Lynch*, and what a Character he gave of himſelf; generally, a Man will give a good Character of himſelf, but he did otherwiſe.

Lord *North* and *Gray*, ſworn.

Mr. *Hungerford*. If your Lordſhip pleaſes to give my Lord and the Jury what Account you have of one *Lynch*.

Lord *North* and *Gray*. My Lord, that Gentleman that goes by the Name of *Lynch*, I ſaw twice; he came twice to my Houſe in *Eſſex*: I little thought that my having ſeen him twice at my Houſe, ſhould be the Occaſion of my coming here in ſuch a manner. The Gentleman was wholly a Stranger to me, and I have never ſeen him ſince. As to my ſelf, I cannot ſay I know any thing of him perſonally. The only thing I can ſay, is what he ſaid of himſelf. It is a little hard for a Man of Honour to betray Converſation, what paſs'd over a Bottle of Wine in Diſcourſe; but ſince your Lordſhip requires it, I muſt ſubmit.

The chief of our Diſcourſe was— He was repreſented to me as a Stranger newly come to *England*, and had a Mind to ſee my Houſe and Gardens. He was introduced, and brought there accordingly by Mr. *Layer*, and I receiv'd him civilly. In proceſs of time he told me the Hiſtory of his Life, thus; that he was not a *Spaniſh*, but an *Iriſhman*, and, my Lord, I think, educated in the Camp under an Uncle of his.

He told, that when he was a young Man, he had taken a great many Liberties.

Mr. Serj. *Pengelly*. My Lord, we humbly apprehend, this Evidence is not proper to be given: If they have any particular Queſtions to aſk of my Lord, let the Counſel propoſe them, or aſk my Lord *North* and *Gray* to the Character of Mr. *Lynch* in general: But thus to give an Account (by way of Repetition of a Diſcourſe between Lord *North* and *Gray* and Mr. *Lynch*) where he was born, and where he was bred up, and to give a Hiſtory of particular Facts, is what they ought not to do.

Lord *North* and *Gray*. I am glad to be interrupted by that worthy Gentleman. I only deſire to know to what Points you would be pleas'd to aſk me.

L. C. Juſt. Mr. *Hungerford*, you know what the Rule of Practice and Evidence is, when objections are made to the Credit and Reputation of the Witneſs; you can't charge him with particular Offences: For if that were to be allow'd, it would be impoſſible for a Man to defend himſelf. You are not to examine to the particular Facts to charge the Reputation of any Witneſs; but only in general you are to aſk what his Character and Reputation is.

Mr. *Hungerford*. My Lord *North* and *Gray* is an entire Stranger to him; but he was only going to tell you what Account *Lynch* gave of himſelf.

L. C. Juſt. That is very well. Conſider, if that is not the ſame as if you were to charge him with particular Facts. You ſay, he himſelf, when he was with that noble Lord at his Houſe gave a Character of himſelf much to his Diſadvantage. It is impoſſible for him in ſuch a Caſe to give an Anſwer to it; therefore by the Rule of Evidence you cannot do it.

Mr. *Ketelbey*. If that noble Lord was going to give any Character of him which he heard from other Perſons it might alter the Caſe. But ſurely when the Character he gives of him is grounded upon what he ſaid of himſelf, is not that much ſtronger than the Hearſay of others, the Talk of Strangers? The Character he had of this Perſon is from himſelf; therefore we hope he ſhall give it in Evidence.

Mr. *Hungerford*. If they won't let this noble Lord enter into a Relation of what Character this *Lynch* gave of himſelf, we cannot help it.

L. C. Juſt. You know, if there be any Objections to him, to his general Character, he can anſwer them: But if Objections are grounded on particular Charges of his being a baſe, an infamous and an ill Man, not having any Notice of this, it is impoſſible for him to defend himſelf.

If you will aſk my Lord *North* and *Gray* what general Character he gave of himſelf, you may.

Mr. *Hungerford*. If my Brief be true, the whole ten Commandments broken by him.

L. C. Juſt. Very well; and ſo you charge him with the Breach of the ten Commandments, and he muſt let it go for Fact, becauſe he cannot have an Opportunity of defending himſelf.

Mr. *Ketelbey*. What Character in general did he give of himſelf to your Lordſhip?

Lord *North* and *Gray*. I don't know how to anſwer it, as to his giving a general Character of himſelf. Thus much I muſt ſay, I ſaw him twice. The firſt time he was brought down by the Gentleman at the Bar; the ſecond time he came, he was ill receiv'd; and I order'd it ſhould be told him, that in caſe he deſign'd to ſtay there, that I had no Room or any Lodging for him. As to particular things, I don't care to ſpeak of them. I ſhould be very ſorry to ſay it when it was ſaid in my Company, and under my Roof.

Mr. *Hungerford*. We will not preſs it any farther.

Lord *North* and *Gray*. I muſt beg your Lordſhip's leave, if the Gentlemen have no further to ſay to me, and your Lordſhip have no further Commands, that I may return to my Priſon.

Mr. *Hungerford*. I hope they will make way for my Lord *North* and *Gray* thro' the Crowd: And, if your Lordſhip pleaſes, we will go on with our Evidence.

George Talbot, ſworn,

Mr. *Hungerford*. Pray give my Lord and the Jury an Account of what you know of Mr. *Lynch*.—— Mr. *Stephen Lynch*, what Character hath he?

Talbot. Why Sir, the Character I know of him is this, that he is a Man that hath been ſo extravagant, that he hath brought himſelf to Neceſſity by it; kept very infamous Company.

Mr. *Hungerford*. What Character hath he? Hath he the Character of an honeſt Man?

Talbot. He hath a very indifferent Sort of a Character.

Mr. *Hungerford*. Hath he got a good or a bad Character?

Talbot. The Character I can hear of him is a very bad Character.

Mr. *Ketelbey*. We don't aſk you as to the Particulars of his Life and Converſation, but only the General Character he hath, and the Opinion the World hath of him; whether he hath the Character of an honeſt Man, and is a Perſon fit to be believ'd?

Talbot. The Character I have had of him, is, That he is not to be believ'd.

Mr. *Att. Gen*. How long have you known him?

Talbot. I have not ſeen him theſe ſix Years.

Mr. *Att. Gen*. What is your Employment?

Talbot. I am not able to follow any thing now.

Mr. *Att. Gen*. He ſays he hath not ſeen him theſe ſix Years. How long ago was your Acquaintance with him?

Talbot. I met him at the *Canaries*, when I was coming from thence, which is about ſix Years ago; I know nothing of him ſince, but what I have heard of him.

Mr. *Att. Gen*. Have you ever had any Dealings with him?

Talbot. I never had much Dealings with him, what I have had have been very little to my Advantage.

Mr. *Ketelbey*. If Mr. *Attorney* deſires the Particulars——

Mr. *Hungerford*. We conform our ſelves to your Lordſhip's Rule, to aſk only to the General Character of the Man. But if Mr. *Attorney* will enter into Particulars, we will join Iſſue with him, and go into that Method too.

Mr. *Att. Gen*. I aſk'd him how long he had known him, he ſays he had not ſeen him theſe ſix Years.

Mr. *Ketelbey*. Have you had a Character of him?

Talbot. The worſt I could ever hear of any Perſon; I know nothing of my ſelf, but what I have heard from others.

Mr. *Winchman*,

Mr. *Winchman* ſworn.

Mr. *Hungerford.* Pray give my Lord and the Jury an Account of what you know of this *Stephen Lynch?*

Winchman. I knew this Gentleman fourteen Years ago, in the Iſland of the *Canaries*, there he kept an *Iriſh* Gentleman Company, one *Wilſon*; he was then well-belov'd by every Body: The Gentleman took him into his Company, and afterwards he grew extravagant, and the Gentleman turn'd him out of his Company.

Mr. *Hungerford.* Is he accounted an honeſt Man or a Knave?

Winchman. I will not truſt him for any Thing.

Mr. *Hungerford.* You ſay you won't truſt him for any Thing?

Winchman. No.

Mr. *Hungerford.* The wiſer you.

Mr. *Ketelbey.* Is he a Man to be credited, can you believe what he ſays?

Winchman. I think I would not believe him.

Mr. *Ketelbey.* You are right.

James Darcy ſworn.

Mr. *Ketelbey.* How long have you known Mr. *Stephen Lynch?*

Darcy. About a Twelve-month.

Mr. *Ketelbey.* I don't aſk you as to his particular Life and Converſation, but in general what is his Character, is he a Man to be believed or credited?

Darcy. I don't take it that he is.

Mr. *Att. Gen.* Where did you know him?

Darcy. I firſt knew him laſt Winter in *London?*

Mr. *Hungerford.* Is Mr. *George Fitzgerald* there? My Lord, here is a Complaint made that the Witneſſes can't be let in.

L. C. Juſt. They muſt be let in.

Mr. *Soll. Gen.* Who made the Complaint?

Mr. *Hungerford.* A Gentleman here in Court?

Mr. *Soll. Gen.* It is the Buſineſs of your Sollicitors to take care that way be made for your Witneſſes.

Mr. *Hungerford.* It is not the Buſineſs of your Witneſſes to ſtop the Paſſage.

Mr. *Soll. Gen.* They don't ſtop the Paſſage.

Mr. *Hungerford.* No; what is your buſy Colonel there [pointing to Col. *Huske*] a doing?

Mr. Serj. *Cheſhire.* We muſt ſtay here half an Hour for every Witneſs.

Mr. *Fitzgerald* did not appear, then Mr. *John Blake* was ſworn.

Mr. *Hungerford.* Mr. *Blake*, do you know *Stephen Lynch?*

Blake. Yes, Sir.

Mr. *Hungerford.* Pray give my Lord and the Jury an Account of him whether he is a Perſon to be believ'd or not.

Blake. I heard a very ill Character of him about ſix Years ago. I have heard that he married two Wives.

Mr. *Hungerford.* Is he to be believed or no?

Blake. I know nothing but by hearſay, I believe he is not to be believ'd, becauſe I have heard ſuch a baſe Character of him.

Collins ſworn.

Mr. *Hungerford.* Will you give my Lord and the Jury an Account of what you know of *Stephen Lynch?*

Collins. Sir I never exchanged a Word with him.

Mr. *Hungerford.* What Character hath he?

Collins. A very infamous Character. I know him by Eye-ſight only, I have ſeen him upon the Exchange of *London.*

Priſoner. Is he a Perſon to be credited or not?

Collins. No, I believe not.

Mr. *French* ſworn.

Mr. *Hungerford.* Do you know *Stephen Lynch?*

French. I know him by Eye-ſight.

Mr. *Hungerford.* What Character hath he, is he a Perſon to be believ'd upon his Oath?

French. I don't think he is.

Mr. *Hungerford.* How long have you known him?

French. Six or eight Months.

Mr. *Kelley* and Mr. *Blake* ſworn.

Mr. *Ketelbey.* Mr. *Kelley* how long have you known *Stephen Lynch?*

Kelley. I believe I have known him ſince the beginning or middle of *April* laſt.

Mr. *Ketelbey.* What is his Character, is it an honourable Character?

Kelley. I never heard any give him a Character that was not very vile.

Mr. *Ketelbey.* Mr. *Blake*, how long have you known *Stephen Lynch?*

Blake. Sir, I never had any Acquaintance with him, but I have heard he hath a vile Character.

Mr. *Hungerford.* Have you had any Diſcourſe about this Trial, have you heard any thing ſaid by *Lynch* himſelf, about the Matter that is now in Judgment before this Court?

Blake. There was one Mr. *French*, a particular Acquaintance with *Lynch*; I met Mr. *French*, hearing he was of the ſame Inn with me, (I belong to the Middle Temple) and he told me he wanted Money.

Mr. *Soll. Gen.* You know what he told you is not Evidence.

Blake. Saith he, there is one Mr. *Lynch* owes me a good deal of Money, and I want to go and ſee him, and I have no mind to go there by myſelf. Next Day I conſented to go along with him, as thinking there could be no Danger in that: When we came to him, I ſuſpect, ſays Mr. *Lynch*, that you come for ſome Money that I owe you. Upon that he deſir'd him to ſit down, and told the Gentleman he was ſorry he had diſappointed him. Then he begun to talk of my Lord *North* and *Gray*, and my Lord *Orrery*, and Mr. *Layer* I believe I ſhall hang him; but as to my Lord *North* and *Gray*, and my Lord *Orrery*, I know nothing of them: I know nothing more of Mr. *Layer*, but what I had from him himſelf. Some Words paſs'd between him and me, and talking of my Lord *Townſhend*, he ſaid my Lord *Townſhend* was of a moroſe Temper, but my Lord *Carteret* was of a better Temper.

Mr. *Ketelbey.* Speak to the Purpoſe; I deſire to know what you can ſay of Mr. *Lynch*'s Character?

Blake. I don't know any thing of *Lynch*, but that he is of an infamous Character.

Mr. *Ketelbey.* What did he ſay of Mr. *Layer?*

Blake. He ſaid he would hang him.

Mr. *Ketelbey.* Did he ſay any thing about the vileneſs of the Plot or why or how far he thought it his Duty to diſcover ſuch Villany?

Blake. No, I don't know of any ſuch thing. I heard him ſay, my Circumſtances are very poor;

poor; and the Motive that induced him to do this, was to ſave the Lives of a thouſand People.

Mr. *Hungerford.* Did he ſpeak any thing of getting Money?

Blake. No, I can't ſay any ſuch thing.

L. C. Juſt. That is not a fair Queſtion.

Blake. I can inform your Lordſhip more: Saith he, I was forced to do this; but if I had got off from this Affair; I would fight any dozen People in *London* to come off from it.

Mr. *Soll. Gen.* Where do you live, Sir? Do you live in the Middle Temple?

Blake. No; I live at Mrs. *Ireland*'s in *Portugal* Street.

Mr. *Hungerford.* In the Converſation you had with *Lynch*, was there talk of any Money he was to have?

Mr. *Soll. Gen.* You aſk'd him that Queſtion before, and was told it was not a fair Queſtion.

Mr *Hungerford.* I think I did not. Mr. *Darcy*, what do you know more of Mr. *Lynch?*

Darcy. Sir, I went to ſee Mr. *Lynch* on Account of ſome Money which I lent him, and when he was taken up in *Manchester*-Court I went to ſee him; there he received me civilly, I took him aſide and aſk'd him for my Money. I told him ſo freely, and aſked him how he got Money and ſeveral fine Clothes which he had; he told me a Lady us'd to come twice or thrice a Week to viſit him, and this Lady was the Miſtreſs or Daughter of one of the Chief Miniſters of *England*; he ſaid this Woman———

L. C. Juſt. You muſt not put him in this way.

Mr. *Ketelbey.* Mr *Blake*, have you given an Account of the Character of this *Lynch?* I only aſk you the general Character.

Blake. I have told you already.

Priſoner. I have two or three more to the ſame Purpoſe.

Terry ſworn.

Priſoner. How long have you known *Lynch?*

Terry. Seven Years.

Priſoner. Hath he the Character of an honeſt Man?

Terry. He hath the Character of being a looſe young Fellow; that is all I know of him.

Priſoner. Is his Character good or bad?

Terry. His Character is looſe.

Mr. *Hamilton* ſworn.

Priſoner. Do you know this *Stephen Lynch?*

Hamilton. Yes.

Priſoner. What Character is he of; is he to be believed?

Hamilton. No, I believe not; I was cautious of keeping him Company; I believe him to be of a vile infamous Character, that will do or ſwear any thing.

Mr. *Hungerford.* We leave the Character of this *Lynch* here, with the Weight of the Blemiſhes charg'd upon him by our Witneſſes, to the Conſideration of the Jury.

There is another of the Witneſſes, Mr. *Plunkett*, to whoſe Character we ſhall likewiſe examine. We ſhall call a Witneſs or two to that matter, and then we ſhall cloſe.

Mr. *Thomas Brown* ſworn.

Mr. *Ketelbey.* Do you know *Plunkett?*

Brown. Yes, I have known him theſe ten Years.

Mr. *Ketelbey.* What is his general Character?

Brown. He hath but an indifferent Character.

Mr. *Ketelbey.* Is he a Man to be believ'd?

Brown. No, my Lord, I don't believe he is.

Mr. *Keating* ſworn.

Mr. *Ketelbey.* Have you known Mr. *Plunkett*, and how long?

Keating. I never had any knowledge of him before the beginning of *July* laſt.

Mr. *Ketelbey.* What Character and Reputation hath he? Hath he a good or an ill Character?

Keating. I will tell you: About the Beginning of *July* laſt a Man that owed me ſome Money on a Note of his Hand———

Mr. *Soll. Gen.* My Lord, we muſt oppoſe the going into Particulars; they know they are confined to examine as to his general Chracter only.

Mr. *Hungerford.* But if the Gentleman will follow ſome of your Examples, and introduce himſelf by Prefaces, we can't help it.

L. C. Juſt. To a general Queſtion you muſt give a general Anſwer.

Keating. The Knowledge I have had of him, I never knew any thing tolerable in his favour; I never heard a good Character of him.

Mr. *Ketelbey.* Did you ever hear a bad one?

Keating. Yes, a very bad one, that he was a drunken idle Fellow, always kept company with other Women.

Mr. *Ketelbey.* And from the Character you have had of him, do you think there is any credit to be given to him?

Keating. No, I don't think there is.

Mr. *Hungerford.* My Lord, here we produce a Man of Quality, Sir *Daniel O Carroll.*

Sir *Daniel O Carroll* ſworn.

Mr. *Hungerford.* Do you know *Plunkett?*

Sir *Daniel.* Yes, Sir, I do.

Mr. *Hungerford.* Pray what is his general Character?

Sir *Daniel.* I can give no good one of him; for it is a mighty bad Character he hath; he caus'd his Colonel to be brought to Town to be examin'd———

Mr. *Ketelbey.* I only aſk you in general; don't enter into the Particulars: I only aſk in general, from the Character he hath in the World, do you look upon him as a competent Witneſs to be believ'd againſt another Man?

Sir *Daniel.* I would not take his Evidence to hang a Dog.

Mr. *Hungerford.* And here he attempts to hang a Proteſtant!

Mr. *Thomas Spelman* ſworn.

Mr. *Ketelbey.* Do you know this *Plunkett*, and how long have you known him?

Spelman. I have known him ſeven or eight Years.

Mr. *Ketelbey.* What is his general Character in his Life and Converſation?

Spelman. I never knew any ill done by him.

Mr. *Ketelbey.* What is his Character?

Spelman. I can't give any Character of a Man I don't know. All I know of him, is about a Diſpute between him and Sir *Daniel Carol* about a Horſe, and his deſiring the Lawyer to ſue Sir *Daniel.*

Mr. *Hungerford.* Did he not ſay ſomething before that?

Spelman. He ſaid, the Lawyer he employ'd would do him Juſtice.

Mr. *Att. Gen.* You ſay you don't know any ill Character of him.

Spelman. No, I don't.

Edward Barnwell ſworn.

Mr. *Hungerford.* Do you know this *Plunkett*, what is his Character?

Barnwell. Pray let me tell you, I have been examin'd twice upon this Account. The firſt time that I brought *Plunkett* to be acquainted with Mr. *Layer*, Mr. *Layer*'s Man brought me word and ſaid, Mr. *Layer* had his Goods ſeiz'd wrongfully; upon that I ſent *Plunkett* to the *Savoy*, to have two Soldiers from thence; and I ſaid, go to Mr. *Layer*'s Houſe, there are ſome Bailiffs that have wrongfully ſeiz'd his Goods, you muſt go and turn them out. He did go with the Soldiers, and turn'd the Bailiffs out of the Houſe; upon which Mr. *Layer* gave him half a Crown: After this Mr. *Plunkett* had no Friend but me; and he came and preſs'd me, and deſir'd me to apply to Sir *Daniel Carol*, for ſome Money he ſaid he owed him for a Horſe. I told him I thought it was wrong to preſs Sir *Daniel* upon that Account.

Then about eight Months ago he came to me, and ſaid he had met Mr. *Layer* in *Lincoln's-Inn-Fields*, and that Mr. *Layer* did not know him; I told him, ſays he, I am one of thoſe that ſerv'd him at ſuch a time, and that he had given me half a Crown, and that then Mr. *Layer* remember'd him. This is all I know; I'm ſworn, and will tell the Truth.

Mr. *Hungerford.* Is he a Man as may be believ'd, even upon his Oath, or not?

Barnwell. I muſt tell you, that I found him in ſo many Miſtakes about his own Wife, that, by God, I would not take his Word for a Halfpeny.

Mr. *Hungerford.* This contradicts what Mr. *Plunkett* ſays paſs'd between him and Mr. *Layer* in *Lincoln's-Inn-Fields*, with reſpect to the giving him Half a Crown, it ſeems to be for former Service.

L. C. Juſt. How doth it? I'm to learn again. *Plunkett* ſwore, that he came with him under a Gate-way, and there, after he had talk'd with him, he gave him Half a Crown. This Gentleman owns he gave it to him for the Service he had done at ſome diſtance of Time before.

Mr. *Hungerford.* Go on, but don't ſwear by God any more.

Barnwell. I am a Soldier, a Man of Honour, of eighty Years of Age, and would not do an ill thing for the World.

Gentlemen, as I have been ſent for by the Miniſtry, and examin'd in the Council, it hath been ſaid, Mr. *Plunkett* hath made me write a Letter to his own Captain; and theſe Men were obliged to give in Bail, and he would pay for the Charges.

Mr. *Ketelbey.* What did Mr. *Plunkett* ſay to you, in relation to what paſs'd between you and Mr. *Layer*?

Barnwell. He told me Mr. *Layer* gave him Half a Crown, in kindneſs for the Service he had formerly done him, in turning the Officers out of his Houſe.

Mr. *Matthew Phylips* ſworn.

Priſoner. Do you know *Plunkett*?

Phylips. Yes.

Priſoner. What Character hath he?

Phylips. I think, by what I have known by him, he is not to be believed.

Priſoner. Is that his general Character?

Phylips. It is, that every body gives him that knows him.

Alexander Phylips ſworn.

Mr. *Ketelbey.* Do you know *Plunkett*?

Al. Phylips. Yes.

Mr. *Ketelbey.* How long have you known him?

Al. Phylips. I have known him about eleven Weeks.

Mr. *Ketelbey.* What Character hath he?

L. C. Juſt. I never heard the like; when you give the Character of a Man, you give that Character by Men that have not known him above eleven or twelve Weeks.

Mr. *Hungerford.* Have you ever had any Dealings with him?

Phylips. No, not I, but my Uncle hath.

L. C. Juſt. Moſt of your Witneſſes have known him but a little time, ſeven Weeks, eight Weeks, eleven Weeks, *&c.* It would almoſt make a Man ſuſpect, that ſome People have been ſet up on purpoſe to give an ill Character of theſe People on this Occaſion. To talk of ſeven or eight Weeks Acquaintance?

Mr. *Hungerford.* That Man is crowded in I don't know how, but Sir *Daniel Carol* is tumbled about and cannot get out; Sir *Daniel* is a Gentleman of Merit, and as ſuch hath been diſtinguiſh'd by the Government, and ought to be treated a little better.

Patrick Mahone ſworn.

Mr. *Ketelbey.* What Character hath Mr. *Plunkett*?

Mahone. I have known Mr. *Plunkett* ſeveral Years, and that he was an idle broken Man, and a great Liar, and not to be believ'd.

Mr. *Hungerford.* He would lye before and behind, I think you ſay?

Mahone. Yes, he did.

Mr. *Ketelbey.* Do you think he is to be credited, if he comes to give Teſtimony againſt a Perſon?

Mahone. Upon my Word I think he is not, by what he told me; becauſe I have found him to lye backwards and forwards.

Mrs. *Child ſworn.*

Mr. *Ketelbey.* Mrs. *Child*, pray have you had any Diſcourſe lately with Mr. *Plunkett* the Serjeant?

Mrs. *Child.* I never had any Diſcourſe with him but that Day my Husband was confin'd, when I run to look for Mr. *Plunkett*'s Wife, and *Plunkett*'s Wife was not at home, but was gone to ſee her Husband at the Meſſenger's; I went thither; Mr. *Plunkett* hearing I was at the Door, he deſir'd that I ſhould come in. Saith he, Mrs. *Child*, how comes it that your Huſband doth not come to ſee me? You know, ſays I, upon what Account my Husband abſents himſelf. Why, he is not taken up yet? Yes, ſays I, he is, and confin'd upon your Account. He takes me by the Hand, he takes me into the Coal-Hole, and take notice what I ſay to you, and get to your Husband and tell him quickly. And he told me, that he took my Husband to a Lawyer that was going to pay off the 18 *l.* that Sir *Daniel Carol* owed him, and the Lawyer would not ſee him, and ſo they came away together.

Mr. *Att.*

Mr. *Att. Gen.* She ſpeaks much to the Purpoſe: For ſhe confirms what Mr. *Plunkett* ſwore.

Mr. *Ketelbey.* What did *Plunket* ſay?

Mrs. *Child.* He ſaid, he was going to get a Settlement for Life?

Mr. *Ketelbey.* What was he to get a Settlement for?

Mrs. *Child.* For what he ſaid of Mr. *Layer*; a Story he had told me of my Husband.

L. C. Juſt. You have call'd a great many Witneſſes to the Diſreputation of *Lynch* and *Plunkett*, to ſay they have generally ill Characters, and are vile infamous Fellows, and not to be believ'd; and there is the Subſtance of all your Evidence if you ſtay here till to morrow morning.

Alice Dunn ſworn.

Mr. *Ketelbey.* Do you know what Character *Plunkett* hath?

Alice Dunn. His Character I had from himſelf, that he liv'd with another Man's Wife.

Mr. *Ketelbey.* Hath he a good or bad Character?

Alice Dunn. He hath a bad Character.

Mr. *Ketelbey.* Is he to be believ'd?

Alice Dunn. No, he is not to be believ'd.

John Richmond ſworn.

Mr. *Ketelbey.* Here, *Richmond*, have you ſeen *Plunkett* lately?

Richmond. No.

Mr. *Ketelbey.* How long is it ago ſince you ſaw him?

Richmond. About three Weeks ago and more.

Mr. *Ketelbey.* What Diſcourſe had you with *Plunkett* at that time when you ſaw him?

Richmond. *Plunkett* aſk'd me if I was a Servant of Mr. *Layer*'s? I ſaid, I was; and in diſcourſe I aſk'd him if he had ever receiv'd any Money of Mr. *Layer* for the uſe of the Pretender? He kneeled down upon his Knees, and ſtruck himſelf upon his Breaſt, and ſaid, he never had receiv'd any Money of Mr. *Layer* for the Uſe of the Pretender in his Life-time.

Mr. *Ketelbey.* How long is this? Is it three Weeks?

Richmond. I believe 'tis about ſix Weeks ago.

Mr. *Ketelbey.* Who was preſent beſides you?

Richmond. There was no body elſe in the Room.

L. C. Juſt. I would be glad to know, that he never receiv'd any Money for the Uſe of the Pretender, What do you mean by that?

Richmond. He kneeled down upon his Knees, and ſaid he wiſh'd he might be damn'd if ever he received any Money for the uſe of the Pretender.

Mr. *Hungerford.* Your Lordſhip may remember *Plunkett* ſwore, that *Layer* gave him Half a Crown at one time, and other Money at ſeveral other times; and now he ſolemnly ſwears upon his bended Knees that he never received any Money for the Uſe of the Pretender, that is, upon his Account.

L. C. Juſt. When you are drawing Conſequences from the Expreſſions, conſider what thoſe Expreſſions are: He ſolemnly proteſted that he never received any Money for the Uſe of the Pretender. It doth not appear that he did; nor did he ſay that he did. Well, go on.

Mr. *Ketelbey.* My Lord, we will leave it here as to *Plunkett:* We will beg leave to call ſome Witneſſes as to Mrs. *Maſon*'s Character.

Mr. *Clayton* ſworn.

Mr. *Ketelbey.* Do you know Mrs. *Maſon*, or Mrs. *Buda*, or Mrs. *Herbert*, or what do you call her?

Mrs. *Clayton.* I know her by all thoſe Names: *Buda* is the Name ſhe always uſed to go by; ſhe hath gone by the Name of *Maſon*, and *Bevan*, and *Herbert*.

Mr. *Ketelbey.* What is her Character and Reputation?

Mrs. *Clayton.* Very indifferent.

Mr. *Ketelbey.* Is it bad or good?

Mrs. *Clayton.* Very bad.

Mr. *Ketelbey.* Have you had any talk with her at any time about Sir *John Meers* and his Man *Thomas?*

Mrs. *Clayton.* I have heard her ſay that——

Mr. *Soll. Gen.* They are aſking what the Witneſs hath heard Mrs. *Maſon* ſay at any time about Sir *John Meers* or his Man, which being to a particular Fact, ſurely is not a proper Queſtion.

Mr. *Hungerford.* What have you heard her ſay about any Papers?

Mrs. *Clayton.* I ſee her have a printed Book; I us'd to go often where Mrs. *Maſon* lodged; and going one Day there, I ſaw a Gentleman ſitting which was Mr. *Layer:* He had ſent a Porter for Mrs. *Maſon.* When ſhe came, ſays he, the Parliament Man I was ſpeaking of is not provided of the 300*l.* I have a good mind to lend it him.

Mr. *Hungerford.* Pray how does Mrs. *Maſon* get her living?

Mrs. *Clayton.* By deluding young Women, and carrying them about for Money.

Mr. *Hungerford.* That is to ſay a Bawd; is it not?

Mrs. *Clayton.* Yes.

Mr. *Ketelbey.* Did you hear of any Rewards ſhe was to have by coming here?

Mrs. *Clayton.* She ſaid ſhe was to be paid, or elſe ſhe wou'd not do it.

L. C. Juſt. What do you mean? You have been ſo often admoniſh'd by the Court; but it ſignifies nothing. You are charging Mrs. *Maſon* with being a Bawd, when you ought only to enquire as to her general Character.

Mr. *Ketelbey.* I aſk'd you generally the Queſtion, whether ſhe had a good or a bad Character?

Mrs. *Clayton.* I did anſwer that Queſtion.

L. C. Juſt. At this rate the moſt innocent Perſons may be branded as the moſt infamous Villains; and it is impoſſible for them to defend themſelves.

Mrs. *Peirce* ſworn.

Mr. *Hungerford.* What do you know of this Mrs. *Maſon?*

Mrs. *Peirce.* I know I lodg'd in the Houſe where ſhe did lodge.

Mr. *Hungerford.* What Character hath ſhe? a good one or a bad one?

Mrs. *Peirce.* A very indifferent one.

Priſoner. Is ſhe to be believed or credited?

Mrs. *Peirce.* No, ſhe is not to be credited.

Mr. *Hungerford.* Had ſhe a good Reputation or an infamous one?

Mrs. *Peirce.* She hath a bad Reputation.

Mr. Serj. *Pengelly.* You have ſeen Mr. *Layer* there?

Mrs. *Peirce.* Yes.

Mrs. *Wilkinſon* ſworn.

Mr. *Ketelbey.* Do you know this Mrs. *Maſon?*

Mrs. *Wilkinſon.* I don't know Mrs. *Maſon*; but I know Mrs. *Bevan.*

Mr. *Ketelbey.* What Character hath ſhe?

Mrs. *Wilkinſon.* I know her to be a vile Woman, and doth not care what ſhe ſays, or what ſhe doth.

Mr. *Ketelbey.* Is that her general Character?

Mrs. *Wilkinſon.* Always ſince I have known her.

Mr. *Ketelbey.* How long is that?

Mrs. *Wilkinſon.* About two Years.

Mr. *Dyer* ſworn.

Mr. *Ketelbey.* Mr. *Dyer*, do you know Mrs. *Maſon?*

Dyer. I know one *Bevan.*

Mr. *Ketelbey.* How long have you known her?

Dyer. She liv'd with me thirteen or fourteen Years ago.

Mr. *Ketelbey.* What was her Character then?

Dyer. She robb'd my Shop, and I ſent her to *Bridewell.*

Mr. *Ketelbey.* What is her Character and Reputation now?

L. C. Juſt. I deſire you to forbear this irregular Practice.

Mr. *Hungerford.* Is this Woman to be credited or not?

Dyer. I know nothing of that.

Mrs. *Baſkett* ſworn.

Priſoner. Had you any Diſcourſe with Mrs. *Maſon?*

Mrs. *Baſkett.* No, Sir, I don't know her.

Priſoner. Had you any Diſcourſe with her?

Mrs. *Baſkett.* I don't know her.

Priſoner. Nor Mrs. *Buda?*

Mrs. *Baſkett.* No, I don't know her.

Priſoner. Nor Mrs. *Bevan?*

Mrs. *Baſkett.* I don't know her at all.

Priſoner. Do you know Mr. *Lynch?* Have you ſeen him lately?

Mrs. *Baſkett.* I ſaw him laſt Night.

Priſoner. Did you hear him ſay what Reward he was to have for ſwearing againſt me?

L. C. Juſt. That muſt not be.

Priſoner. Did you not hear him ſay he was to have 500 *l.* for ſwearing againſt me?

L. C. Juſt. We have a Compaſſion for you, and therefore bear this from you, which we would not from any body elſe.

Mr. *Soll. Gen.* My Lord, this is not to be endured. The Priſoner turns about to the Jury, and tells them that *Lynch* ſaid he was to have 500 *l.* a Year.

Mr. *Hungerford.* I believe the Gentleman that ſat next to him did not hear him.

Mr. *Wearg.* My Lord, I did hear him ſay to the Jury that *Lynch* ſaid he was to have 500 *l.* a Year.

L. C. Juſt. I muſt tell you, if you did but conſider of what little Conſequence it would be to you, you would not do it. When you thought fit to make him your Confident, carry him to the *Green Man* with you, and to my Lord *North* and *Gray's*; and there he was entertain'd courteouſly by him; and do you come now to brand him with being an ill Man?

Priſoner. *Lynch* ſays himſelf that he did not know me till *June* laſt; and how could I have ſo much Friendſhip for him on ſo ſhort an Acquaintance?

L. C. Juſt. Then for this Woman, if you would do ſervice to your ſelf, prove the Packets are not under your Seal, and that you did not deliver them to her with your own Hand; prove ſomething of that, and theſe Proofs will be of more ſervice to you than ten thouſand of theſe Witneſſes.

Priſoner. My Lord, if I was admitted to prove, I can make it appear it is all a Sham and a Forgery.

Mr. *Hungerford.* It was never proved to be his Seal.

L. C. Juſt. You are miſtaken. The Woman ſwore it was his Seal, and the Officers ſwore they were under the Seals when they ſeized them; and it is proved now to be his Seal, for the Seal is viſible.

Priſoner. How do they prove it to be my Seal? My Lord, it is not my Seal. I deſire Major *Barnwell* may be aſk'd as to this Woman's Character.

Maj. *Barnwell.* I know her. She is a vile Woman: She had like to have cheated me of 1500 *l.*

Priſoner. You are only aſk'd as to her Character in general. Is ſhe a Woman to be credited, or not?

Maj. *Barnwell.* No, ſhe is not.

Mr. *Ketelbey.* I hope you are ſatisfied with this general Anſwer.

Mr. *Hungerford.* They won't let us go into Particulars; that the Courſe of Practice won't allow.

Mr. *Ketelbey.* It is impoſſible for us to direct the Anſwers to the Queſtions.

Mr. *Lebatt* ſworn.

Priſoner. Mr. *Lebatt*, pray give my Lord and the Jury a general Account of this Mrs. *Buda*, or Mrs. *Maſon*, whether ſhe ought to be credited or not, or gain Credit.

Lebatt. No. She would take any Body's Life away for the value of a Farthing.

Mr. *Hungerford.* Now, my Lord, we will cloſe our Evidence as to the Character of theſe Witneſſes againſt the Priſoner at the Bar. We hope we have proved their Characters to be ſo infamous, as no Jury upon Earth will believe them. Here is this to be obſerved——

Priſoner. I beg pardon; here is a mighty talk of my Arms. I am ſo fortunate as to have a Perſon here that will give you an Account of them, and how they came to be brought thither.

Mr. *Bowers* ſworn.

Mr. *Ketelbey.* What Trade are you of?

Bowers. A Gunſmith.

Mr. *Ketelbey.* Did you make any Fuzees?

Priſoner. No; pray let me aſk him. Pray give my Lord and the Jury an Account of a Blunderbuſs, a Fuzee, a Carbine, and Piſtols; what

what you know of them. Did not you owe me ſix Pound on a Note under your Hand?

Bowers. My Lord, about five or ſix Months ago, Mr. *Layer* had a Law Suit for me: I ſold him a Pair of Piſtols, and a little after I ſold him another Pair. Mr. *Layer* had them for a Debt. He had in his Houſe two Guns. I promiſed Mr. *Bennet* a Gun when the Cauſe was over, inſtead of Money. I gave him one of thoſe Guns: There is another Gun, and a Muſket which Mr. *Layer* had of me.

Mr. *Layer* had a Note of mine for ſix Pound, which I owed him. I importun'd him to take a Carbine for a Man to ride with, and a Blunderbuſs for his Houſe, in order to ſet off this Debt; and I brought him them when he was going into the Country. I brought him ſome Powder, and I brought him three Dozen and a half of Cartridges.

Priſoner. Did I order you to bring them, or did you bring them of your own Head?

Bowers. You bid me bring a Dozen and a half, or two Dozen; and I brought three Dozen and a half: The Reaſon was, that I might ſhorten my own Debt.

Mr. *Raynham*, ſworn.

Priſoner. Pray will you give my Lord and the Jury an Account of the Piece of Arms I had of you, and for what Reaſon?

Raynham. I went with him to one Mr. *Prichard's* in *Friday-Street*, there was a Muſket in his Compting-Houſe; he ſaid he would diſpoſe of it: Mr. *Layer* aſk'd him his Price; he ſaid he would have fifty Shillings for it. Mr. *Layer* ſaid that was too much; ſays he, you ſhall have a trial of it, and if your Siſter carries her Cauſe againſt Mr. *Watſon*, you ſhall give me fifty Shillings for it.

Priſoner. Did he put it on me, or did I deſire it?

Raynham. You aſk'd him what it was worth, and whether he would diſpoſe of it?

Priſoner. Did not he ſay ſeveral times that he wanted to diſpoſe of it, and deſired me to take it on thoſe Terms?

Raynham. Yes. He ſaid on that Condition that your Siſter got her Cauſe you ſhould have it, and gave him fifty Shillings for it.

Mr. *Samuel Steward*, ſworn.

Priſoner. Mr. *Steward*, only give my Lord and the Jury an Account whether or no I was not intruſted with things of great Value, and what Occaſion I might have for a few Arms; whether you don't know of Money put out on Mortgages?

Steward. Yes, to the Value of thirty or forty thouſand Pounds within theſe two Years.

Priſoner. Don't you think it reaſonable as to theſe Arms, that I ſhould have them in my Houſe to guard my Houſe?

Steward. I thought it very reaſonable.

Mr. *Hungerford.* My Lord, we have done with examining of Witneſſes, to the Credit of the Witneſſes produced againſt the Priſoner; and leave that Matter to the Conſideration of the Jury.

Mr. *Ketelbey.* Pray Mr. *Steward*, do you look upon that Paper they call a Scheme, with a *French* Motto upon it. Before you look upon that Paper, I aſk you if you are acquainted with the Hand-Writing of Mr. *Layer?*

Steward. Yes very well.

Mr. *Ketelbey.* How long have you been acquainted with his Hand-Writing?

Steward. Two Years and an half.

Mr. *Ketelbey.* Have you at any time ſeen him write?

Steward. Yes, a thouſand times.

Mr. *Ketelbey.* Do you believe that to be his Hand?

Steward. I do not believe it to be his Hand.

Priſoner. Is it like the Character I write?

Steward. Not at all. You write a ſhorter Character; this is a long one.

Mr. *Bennet*, ſworn.

Mr. *Ketelbey.* Have you been acquainted with the Hand-Writing of Mr. *Layer?*

Bennet. I have been very well acquainted with the Hand-Writing of Mr. *Layer*.

Mr. *Ketelbey.* You have ſeen him write?

Bennet. Very often, a thouſand and a thouſand times.

Mr. *Ketelbey.* Look upon that Paper. See if you believe that to be his Hand-Writing?

Bennet. No, my Lord, I do not believe that to be his Hand-Writing. I never ſaw him write a Hand like it in my Life. I don't think it to be his own Hand-Writing at all; I never ſaw him write ſuch a Hand as this.

Mr. *Att. Gen.* Shew him that Paper: [*which was a Paper ſeized among the Priſoner's Papers in the great Bundle.*] Look on that Paper, and give my Lord and the Jury an Account if you know whoſe Hand-Writing it is.

Bennet. I believe 'tis my own Hand-Writing.

Mr. *Att. Gen.* By whoſe Direction did you write it?

Bennet. By Mr. *Layer*'s Direction.

Mr. *Att. Gen.* For what Purpoſe was it writ?

Bennet. I can't remember.

Mr. *Att. Gen.* Did you write this for Mr. *Layer?*

Bennet. I believe I did; but I can't tell what particular Reaſon I writ it for.

Mr. *Att. Gen.* Now, my Lord, here is one of the Papers that were found in the Bundle, in which the Liſts were found, prov'd to be writ by Mr. *Layer*'s Clerk by his Direction.

Mr. Serj. *Cheſhire.* He is poſitive as to its not being his Maſter's Hand-Writing; yet as to his own, he owns it.

Cl. of the Cr. It is a Liſt of Names.

Mr. *Ketelbey.* Before you read it, what did he ſay?

Mr. *Att. Gen.* My Lord, he ſaid it was his Hand.

Cl. of the Cr. It is part of a Jury between *Layer* and one *Watſon*.

Mr. *Att. Gen.* This was found amongſt his Papers that were ſealed up. It was taken in that Bundle where the Liſts were.

Mr. *Ketelbey.* We ſubmit it to your Lordſhip and the Jury. We apprehend we have prov'd this Scheme not to belong to Mr. *Layer*; We have called two Witneſſes that have known him many Years, and have ſeen him write a great

great many times; and that they verily believe it not to be his Hand-Writing. We don't know how it is possible to leave it on a better Foot. Therefore, my Lord, we shall leave it to your Lordship's Direction, and the Consideration of the Jury.

Mr. *Hungerford.* My Lord, all that I would now observe is, that this Gentleman is indicted for High-Treason. The main of the Charge against him is, that he was concerned in designing to raise an Insurrection. How that appears to be prov'd, I have spoke to already; but this must be allow'd, that whatsoever Desolation and ill Consequences might now have ensu'd, there hath been no Blood shed, no Armies rais'd, or Invasions attempted: And I think upon such an Evidence that comes not up to the Charge in the Indictment, the Blood of this Gentleman ought not to be reach'd: At least we humbly hope it shall not.

Prisoner. My Lord, as to *Lynch*, it appears our going down into *Essex* was merely accidental: When we came to the *Green Man*, we did not stay there three Quarters of an Hour; and he says he went down twice in the time. All this mighty Business, this publishing a Declaration, talking of an Insurrection, which is the Treason, and laid as an Overt-Act in *Essex*; all this was done before Dinner by his own owning. It was not three Quarters of an Hour from the Time we went in, till the Time we came out. We went on to my Lord *North* and *Gray*'s; and when he was there, he is ask'd, if there was any Discourse there about any such Design? He says there was nothing said of it there. Is it possible when such a Design was on foot, he and I alone should go together to the *Green Man*, and thoroughly recapitulate the Affair; which when we came to my Lord *North* and *Gray*'s nothing should be said of it?

When we come to *Plunkett*, he saith that he became acquainted with me first of all, by reason of some Goods that were seiz'd in a House in *Queen-Street*; that he never saw me till five Years after this in *Lincoln's-Inn-Fields*. *Plunkett* did not at first know me: We looking upon one another, then he renew'd his Acquaintance with me, and told me of the former Service he had done me; and thereupon I gave him half a Crown, which he said was given him by me to list Men into the Pretender's Service. He confess'd, as I proved by Major *Barnewell*, that I gave it him for former Service. As to the thirteen Shillings, he was ask'd whether he did not come to borrow such a Sum of Money of me; he said he did; it was in order to release Major *Barnewell* out of the *Marshalsea*. Being ask'd whether he was not acquainted with Sir *Daniel Carroll*, and whether there was not some Difference about a Horse in *Spain* between them, he said there was, and that he came to advise with me whether he could recover the Money of Sir *Daniel Carroll*. Is it not natural that the Guinea he talks of might be another Man's Money, that was told him by one *Jeffreys* was sent to him by me: He talks to him as to that Guinea, when he comes to be ask'd whether it was not purely out of Kindness and Charity that I did lend him that Guinea, he doth not deny it, and now would insinuate that it was given him to list Men for the Pretender. From the Improbability of the thing, from his own owning, no Person could believe him. I believe there are ninety nine out of a hundred that cannot believe one Word that either *Lynch* or *Plunkett* swore.

Then the next Matter they talk of, they produce a Scheme: How hard and difficult was it to give any Evidence that so it should be read; and I humbly apprehend it did not strictly amount to legal Evidence. Mr. *Doyley* he said he knew my Hand fourteen or fifteen Years ago, and that he hath received Letters from me about five Years ago, and hath compared this Scheme with those Letters; and therefore he believes it to be my Hand. When he comes to be ask'd whether he hath those Letters here with which he compared this Scheme? No, I have them not here: Yet chiefly his Belief was that it was my Hand-Writing, by comparing these Letters and this Scheme together. This amounts to nothing more, when it comes strictly to be consider'd, than only a Similitude of Hands, and surely similitude of Hands, with submission, is not proof in criminal Cases: And when it amounts to no more, it ought not to be receiv'd.

Here is, say they, a Circumstance that what *Lynch* and *Plunkett* swore must be true, because here was a Scheme for an Insurrection. In this very Scheme or Paper, as I took notice of, not one Man is mentioned by Name in it; only Soldiers to be had here, the *Tower* to be seiz'd, the *Bank* and the *Exchange* to be seiz'd, and the World to be turn'd upside down; but by whom? There is no Time mentioned, there is no Date to it. This thing if it be such a Scheme, if it had been written by me, which I absolutely deny that it was writ by me, it doth not appear but that it was written several Years ago. When they come to ask those Gentlemen the Under-Secretaries, if this be so remarkable that they lay the whole stress upon this Paper, whether I acknowledg'd it to be mine, they cou'd not say I own'd it to be mine. One of the Lords lays his Finger on a Paper, and saith, Don't you say this about Arms? Which I deny to be so. How comes it that none of those Lords directly offer'd the Paper to me, and asked me, Is this your Hand-Writing? There was my Lord Chancellor, my Lord *Harcourt*, and several other Lords present, that very likely would have ask'd that Question; but either they did not think it material, or they had not the Paper there, or they did not think it of that Consequence, or they knew I would deny it.

When we come to call Witnesses to this Woman, this vile, this infamous Woman, I cou'd shew you she hath been privy to Forgeries. If it was not to take up your Lordship's time, I cou'd shew that this is a Contrivance between a Gentleman and her; I am very loth to name him, to carry on such a Paper as this to get Money of the Government.

Here have been five or six Witnesses, whose Credit stands unimpeach'd, who tell you her Word is not to be taken for a Groat. Another says, he would not hang a Dog on her Evidence. This Scheme must come from her: She says, she had two Bundles of Papers that were deliver'd by me to her seal'd up; and she says this Scheme was amongst them; and she can the better swear it, because she hath set her Mark

upon it. One of the Meſſengers doth not know whether ſhe was in the Room or no. If this Woman is not to be believed, then all the other Evidence relating to this Paper falls to the Ground. It is a Maxim in Reaſon as well as Law; take away the Foundation, and the Work muſt fall.

Gentlemen of the Jury, I would have you to take Notice of this Evidence, and not go away with a miſtaken Notion, becauſe here is a vaſt deal of Talk about the Pretender, going to *Rome*, liſting of Soldiers for the Pretender's Service, *&c.* Your Lordſhip will tell them all that is nothing, unleſs they believe an Overt-Act to be done in *Eſſex*: That is the true State of the Caſe with humble Submiſſion. Therefore I hope ſuch Evidence as this Evidence of *Lynch* and *Plunkett* (but only to confine it to that of Mr. *Lynch*) hath prov'd nothing at all againſt me; and if what he hath ſworn doth not affect me, then all the other ſtands for nothing; that's the true State of the Caſe. I would not have the Jury think a Man is to be hunted out of his Life by fine Speeches, far-fetch'd Innuendoes, and the like. You will conſider the Character of this Man, that he is not to be believ'd. I'll leave it to you, and I hope God Almighty will direct you: I aſk you no more than Juſtice. If a Man's Life is to be taken away by ſuch ſcandalous Evidence as hath appear'd againſt me, there is an End of all your Liberties, your Wives may be taken from you, your Children made Slaves, and all that is valuable to you, your Lives and Eſtates will be but very precarious.

Mr. *Soll. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, you have heard a very long Evidence, and it is my Part, as exactly and faithfully as I can, to ſum up to you the Subſtance of it, and to reply to the Objections which have been made on the Behalf of the Priſoner; as well to ſuch Objections as have been made by the Priſoner himſelf, and by his Counſel for him, as to thoſe which ariſe from the Evidence that has come out of the Mouths of his Witneſſes: And after I have done this, I doubt not but it will appear to your Satisfaction that the Evidence which has been given for the King ſtands unanſwer'd, and is a ſtrong Proof of High-Treaſon againſt the Priſoner at the Bar.

Gentlemen, the Treaſon with which the Priſoner ſtands charged is compaſſing and imagining the Death of the King. This high Crime conſiſts in the Imagination of the Heart; but it muſt be proved and made out againſt the Offender by Acts which he hath done. The Overt-Acts of this Treaſon alledg'd to be done by the Priſoner, are, in the firſt place, conſulting and conſpiring to levy War againſt his Majeſty: In the next place, publiſhing a treaſonable Declaration, containing Exhortations, Encouragements, and Promiſes of Rewards, to ſtir up the King's Subjects to take Arms, and riſe in Rebellion againſt his Majeſty; conſulting and conſpiring to exalt the Pretender to the Crown of this Realm, and put him in poſſeſſion of the Government by armed Force, and Troops to be levied for that Purpoſe; the actual liliſting and retaining of Men to ſerve in this Rebellion; and, finally, a Conſpiracy to ſeize and impriſon the ſacred Perſon of the King himſelf.

Gentlemen, the heinous Nature and deſtructive Tendency of theſe Facts were fully explain'd to you in the Opening of the Cauſe. If they had met with Succeſs, the Event could undoubtedly have been no leſs than the entire Subverſion of our preſent happy Eſtabliſhment; and, in conſequence of that, the loſs of every thing that is dear and valuable to us. For this Reaſon it was rightly admitted by one of the Counſel for the Priſoner, that the Crime, if proved, is incapable of Aggravation; and being ſo, altho' it is impoſſible to ſay too much concerning it, yet to ſay a great deal to you muſt be unneceſſary, becauſe it is equally impoſſible for the Hearts of *Engliſhmen* and Proteſtants to ſuggeſt too little to themſelves on ſo important, ſo moving an Occaſion.

The Evidence which has been given conſiſts of ſeveral parts and different Kinds, every one of which conduces to ſupport and corroborate the other, and taken together they make up the fulleſt and moſt convincing Teſtimony that can be expected in any Caſe. In the firſt Place, living Witneſſes were produced to you who were privy to the treaſonable Acts and Conſultations; in the next place, ſeveral Papers have been read to you, ſome of them written with the Priſoner's own Hand, but all of them belonging to him; and laſt of all, you have the Confeſſion of the Priſoner himſelf prov'd by two Witneſſes.

The firſt Witneſs was Mr. *Stephen Lynch*, who gives you an Account in what Manner he was firſt introduc'd to the Priſoner at the Bar. He tells you he came into *England* about *April* laſt, and had ſeveral Meetings with one Dr. *Murphey*, who was his old Acquaintance. At theſe Meetings they had a Diſcourſe relating to the Pretender, and an Attempt to be made for a general Riſing in his Favour; and Dr. *Murphey* having thus diſclos'd the Secret, told *Lynch* that if he would be of the Party, he would recommend him to a Gentleman who had a conſiderable ſhare in the Management of the Affair. *Lynch* took time to deliberate upon it, and in two or three Days after told *Murphey* he was reſolved to be of the Party.

Afterwards, in *June* laſt, Dr. *Murphey* carries *Lynch* to the Priſoner's Houſe, who propos'd to them to go to the *Griffin-Tavern* in *Holborne*. Thither they went, and the Priſoner ſoon came to 'em; and you have heard in what Manner *Murphey* preſented *Lynch* to the Priſoner, as being the Gentleman he had before ſpoke to him of, and what Propoſals were made at that Meeting by the Priſoner to *Lynch*. That there was to be an Inſurrection in the Kingdom in favour of the Pretender, in which they ſhou'd be ſupported by a great many of the Army and the Guards, as well as by ſeveral of the Nobility and Gentry; and that he wanted a fit Perſon to take one of the firſt Steps in it by ſeizing the Perſon of ſome General, or other great Man.

It may be proper here to take Notice of an Objection which was made to this, which is the very beginning of our Evidence: That *Lynch* being an abſolute Stranger to the Priſoner, it is very extraordinary that the Priſoner ſhould make a Propoſal of ſo dangerous a Nature to him at firſt Sight. But this is plainly accounted for

by the Witneſs, who tells you he was intimately acquainted with Dr. *Murphey*, and *Murphey* was very intimate with and introduced him to the Priſoner, as a Friend who might be confided in. Agreeably to this you obſerve that the firſt thing the Priſoner accoſted *Lynch* with, was that he had had ſuch ſtrong Recommendations of *Lynch*, that he was fully ſatisfy'd in him.

This Witneſs goes on to give you an Account that in a Day or two after, in Purſuance of the Directions he had receiv'd from the Priſoner, he went to the ſame Tavern, and ſent for the Priſoner. They had ſome further Converſation about a Riſing, and the Inclination which appear'd in the Nation for a Revolution. And now it was that the Priſoner inform'd *Lynch* that there was a great Man at the Head of this Affair, who neither wanted Wit, Courage, or Reſolution, and would at a proper time give *Lynch* Orders to effect ſomething conſiderable. At this Meeting the Priſoner particularly engaged *Lynch* to ſeize the Earl of *Cadogan*. The Reaſon of this Attempt the Witneſs gives you, that it was in order *to diſcourage the King's Party, and animate the Pretender's*. And, Gentlemen, the meaning of this is plain and obvious; for if an Inſurrection was begun, what could be more likely to create a Confuſion in the Army, and diſpoſe the Soldiers to revolt, which appears to have been a main Part of this Deſign, than the ſeizing of their General?

There were ſeveral other Meetings both before and after the Priſoner's going into the Country, where the Witneſs told you he had ſtaid ſixteen or ſeventeen Days. At thoſe Meetings they diſcours'd concerning the Conſpiracy; and at one of them it is remarkable the Priſoner told *Lynch*, that if they once made a Beginning here, they ſhou'd want no Aſſiſtance from abroad. And at laſt *Lynch* tells you, that he being under Neceſſities, expreſſing great Uneaſineſs at the Delay of the Project, and, as I remember, talking of going beyond Sea, the Priſoner actually advanc'd to him a Sum of Money, no leſs than eight or ten Guineas at different Times, in order to engage him to ſtay in *England*, and to aſſiſt in the intended *Deſign of a Revolution*. This is one Proof of the Overt-Act laid in the Indictment of liſting Men.

As they had conſider'd how to diſpoſe of the General, ſo it appears they did not neglect the Army; for *Lynch* acquaints you, that upon Diſcourſe about that, he ask'd what Encouragement they had from the Army; upon which the Priſoner anſwer'd, that they had great Encouragement from thence, and ſeveral Serjeants and common Soldiers had given them Reaſon to believe they wou'd join them. *Lynch* being aſk'd as to the Time when this Deſign was to be put in Execution, he told you there was no certain Time fix'd, but the Priſoner inform'd him it was to be at the breaking up of the Camp; and at the ſame time gave a Reaſon for it, which is by no Means to be paſs'd over, *That they could not have ſo good Opportunities to talk with the Soldiers* (that is, to ſeduce them from their Duty and Allegiance) *whilſt they were encamped, as in their Quarters*. Purſuant to theſe Conſultations, Mr. *Layer* afterwards told him 'twould be neceſſary to take a proper time to view my Lord *Cadogan*'s Houſe. The Pretence for going thither was that *Layer* had a Particular of an Eſtate which was to be ſold to lay before his Lordſhip. He tells you that in Fact they went to the Houſe, ſurvey'd it, talk'd of the Feaſibleneſs of the Attempt, and at that time they alſo diſcours'd of ſeizing the *Tower*; and the Priſoner told the Witneſs that the *Tower* would be immediately ſurrender'd to the Party on the Day the Plot ſhould be put in Execution; for a certain Officer would take upon him to mount the Guard there that Day, who wou'd facilitate the Delivery of it to them. And the People of the *Mint* were at the ſame time to have Arms put into their Hands.

This is a very remarkable Paſſage, and falls in with the Scheme which was afterwards produced to you in the Priſoner's Hand-Writing.

The next Meeting where any thing paſs'd worth repeating to you, was at the *Queen's-Head-Tavern* in *Great Queen's-Street*; and when the Witneſs came to the Priſoner there, he found one *Wilſon* in Company with him, and another Man, who ſeem'd by his Cloaths to be a Serjeant of the Guards. The Uſe to be made of that Fact is, that it is a Circumſtance which falls in with the written Scheme; for you obſerv'd that one *George Wilſon* is there mention'd as the Perſon who was to manage the Serjeants, and receive Orders from the principal Officer.

At this Meeting *Lynch* tells you they talk'd over the Buſineſs, and drank good Succeſs to the Enterprize. When they parted, he complain'd to the Priſoner of the long Delay. Upon which Mr. *Layer* told him there was a Nobleman at the Head of the Deſign, who had full Power and Authority from the Pretender (whom he called King) who would loſe no fit Opportunity to put it in Execution. He did not name this Nobleman, but told *Lynch* that he ſhould be preſented to him in due time, and alſo receive Orders from him to ſeize my Lord *Cadogan*.

Gentlemen, it will be very material for you to fix this Circumſtance in your Memories, and to connect it with the Evidence which comes afterwards, and what was done in conſequence of this Meeting.

For after *Layer* had thus declared that there was a Nobleman at the Head of the Conſpiracy, and *Lynch* ſhould be preſented to him in due Time, then it follows that upon the twenty fourth of *Auguſt*, the Day the Biſhop of *Rocheſter* was committed to the *Tower*, which appears by the Evidence to be the Time of their next Meeting, Mr. *Layer* propoſed to *Lynch* to ride out to take the Air, which was agreed upon for the next Day.

In that Journey the Priſoner perſuaded *Lynch* to carry Arms, becauſe as he then declared *he had that about him which he wou'd not loſe for all the World*. Upon the Road *Layer* told *Lynch* they were to go to my Lord *North* and *Gray*'s, and when they were got pretty near the *Green Man* at *Layton Stone* in *Eſſex*, it was thought to be too late to go on to dine at Lord *North* and *Gray*'s; and therefore the Priſoner propoſed to ſtop at the *Green Man* to take a Dinner.

At this Place the Overt-Acts of High Treaſon committed in *Eſſex*, which we were ſo much call'd upon to make out, do ariſe. During their ſtay here the Witneſs gives you an Account that they diſcourſed

courſed of the whole Project of the Inſurrection, the Means of effecting it, the Uneaſineſs that was in the Nation, and in General all the ſeveral matters they had conſulted of before; and after they had done this he tells you Mr. *Layer* the Priſoner propoſed to him that deteſtable and ſhocking Deſign of ſeizing the ſacred Perſon of the King, which he ſometimes call'd *ſending a ſtrong Guard to take care of*——at other times *to ſecure*, the King's Perſon.

He tells you farther, that Mr. *Layer* pull'd out of his Pocket a Manuſcript Paper, and deliver'd it to the Witneſs in part folded down, and he read that Part of it which was left open. That this Paper contain'd a Declaration, with a Recital, that my Lord *Cadogan* was then actually in their Cuſtody: That there were in it Invitations to the People to Riſe in Arms and repair to their Party: Encouragements to the Soldiers to Revolt, with an Offer of *Three Guineas* to every Horſeman and Serjeant, *Two Guineas* to every Corporal, and *One Guinea* to every Common Soldier, to be paid immediately on their joining the Party; and a Promiſe of further Rewards. *Lynch* acquaints you that the Priſoner talk'd of this Declaration being of his own Compoſing, and that from the Diſcourſe which paſs'd between them, and the Appearance of the Paper, he apprehended it to be of the Priſoner's Hand-Writing.

My Lord, after this Declaration had been thus produced, the Priſoner took it back again, put it into his Pocket, and kept it; and therefore the Paper itſelf being in his Cuſtody, we were properly admitted to prove the Contents of it by Parol Evidence; and I apprehend if we had no further Proof of theſe Overt-Acts which were done in *Eſſex*, this alone is fully ſufficient to maintain the Indictment to be regularly and properly found in that County.

From the *Green Man* they went on to *Epping*, to my Lord *North* and *Gray*'s, with whom it is admitted the Witneſs was not at all acquainted, and conſequently could not of himſelf have any particular Reaſon for going thither, but it appears to have been upon the Motion of the Priſoner. When they came to the Lord *North* and *Gray*'s Houſe, *Lynch* tells you that the Priſoner introduced him to his Lordſhip; and this brings back to one's Memory, and makes it impoſſible not to recollect what the Priſoner had told *Lynch* at their laſt Meeting, in time next preceding this Journey, that there was a great Man at the Head of this Deſign, to whom he ſhould be preſented in due time.

Gentlemen, after this *Lynch* went a ſecond time to my Lord *North* and *Gray*'s at *Epping*, and there he found the Priſoner at the Bar; indeed he does not own to you that any thing paſs'd between them relating to this Conſpiracy in the Preſence of my Lord *North*; but at that Place *Lynch*, in Converſation with Mr. *Layer*, expreſs'd an Uneaſineſs that the Affair was delay'd, but *Layer* bid him be eaſy, for it might be done ſooner than he expected.

Gentlemen, this is the Subſtance of the Evidence of what paſs'd in *Eſſex*. But the Witneſs tells you he had afterwards ſeveral Converſations with Mr. *Layer*, and when he expreſs'd his Concernment at the Delay of putting the Deſign in Execution, *Layer* told him he was ſo bent upon the Succeſs of it, that rather than it ſhould fail, he would be a ſecond *Maſſinello:* This was repreſented as a ridiculous Expreſſion by one of the Council for the Priſoner: But we have all heard what Confuſions were rais'd by that profligate Fellow in the Kingdom of *Naples*; and it is plain, that was the Example the Priſoner referr'd to by this Expreſſion.

Mr. *Lynch* was croſs-examin'd by the Counſel for the Priſoner, with as much liberty as they thought fit to uſe; but I did not obſerve that his Evidence was at all weaken'd, I think I may ſay, it was rather confirm'd by it, ſince it was upon their own Queſtions he gave his Reaſons how *Layer* came to deal ſo openly and unguardedly with him at firſt ſight. And thoſe Reaſons were ſtrong, for it is not improbable, if *Murphey* and *Layer* were engag'd in a Treaſonable Deſign, that one of them ſhould have confidence in a third Perſon on ſo ſtrong a Recommendation from the other.

The next Witneſs is *Matthew Plunkett*, and I apprehend, notwithſtanding every thing that hath been ſaid againſt his Teſtimony, that it is rather ſtrengthened, as to the Facts ſworn by him, than weakened by the Evidence for the Priſoner. He tells you, his firſt acquaintance with Mr. *Layer* was about five Years ſince, and had its Riſe upon this Occaſion: The Goods in the Houſe where the Priſoner then lodg'd, being taken in Execution, (whether his own Goods or not, is not at all material) one Major *Barnwell*, who has been examined for the Priſoner, was employed to procure Perſons to reſcue thoſe Goods; *Barnwell* applied to this Witneſs, who got two Grenadiers, that were let in at a private Door by Mr. *Layer*'s Clerk. They did their Work, drove out the Officers, and reſcued the Goods; and for this Service Mr. *Layer* rewards them with a Crown and ſome Brandy. Since that, it appears he has been employed on other Meſſages between Major *Barnwell* and the Priſoner; and in what manner *Plunkett* is ſupported in theſe Circumſtances, and by Conſequence in the reſt of his Teſtimony, by Major *Barnwell* himſelf, who has been produced to diſcredit him, I ſhall obſerve when I come to conſider the Evidence for the Priſoner.

But the Witneſs having given you this Account of the Introduction to the Correſpondence, tells you, that in *July* laſt, *James Plunkett* came to him from the Priſoner, enquir'd privately what Acquaintance he had amongſt the Soldiers, and deſir'd him to meet the Priſoner at the *Italian* Coffee-houſe in *Ruſſel-Court*; but he did not meet him there, not having Money nor Inclination to go to a Coffee-houſe. He gives you an Account, that on the *Sunday* following, returning from St. *Andrew*'s Church, as he was going over *Lincoln's-Inn-Fields*, Mr. *Layer* met him. *Plunkett* had forgotten *Layer*'s Face, but *Layer* remembred him, and aſk'd him if he knew him; to which *Plunkett* anſwering that he did not, the Priſoner told him his Name, which made him recollect. *Layer* then enquir'd if *James Plunkett* had not been with the Witneſs, to deſire him to come to the *Italian* Coffee-Houſe, a few Nights before; and having made himſelf known by theſe Circumſtances, took *Plunkett* into a private Place. There they had a long Converſation, in which *Layer* began with declaring how well aſſur'd he

was

was of *Plunkett*'s good Affections to the *Pretender*, and ſaid, he wanted ſome old Soldiers, ſuch as *Plunkett* was, that would head and diſcipline a Mob, for they had other Men enough. *Plunkett* ſaid he did know ſeveral old Soldiers, but he heſitated a little about the *Pretender*'s being a *Papiſt*. The Priſoner to take off the Force of that Scruple, anſwered, *We had as good have a* Papiſt *for our King as a* Lutheran, *I don't know what Difference there is between them* (that is) between a *Popiſh* King and a *Proteſtant* one.—— An important Difference! Which I wiſh with all my Soul, were not too much forgotten, or perhaps, too little valued, by many amongſt us, who are not ſo frank in declaring as the Priſoner.

Mr. *Layer* proceeded to excite the Witneſs to join in his Treaſon, by a falſe Repreſentation of the State of the Nation, and particularly of the Injuſtice, as he call'd it, which was done to old Soldiers who had ſerved abroad; a Topic moſt likely to captivate an old Serjeant. After this Preface, he inform'd the Witneſs there was to be an Inſurrection, and *Plunkett* aſking who was the Promoter of the Deſign, told him it was my Lord *North* and *Gray*, whom he commended as a fine General; and then he went through a Sort of Liſt of ſeveral other Perſons of Conſideration. The Witneſs having declared that he knew ſeveral Soldiers, ſaid, he could procure five and twenty, whereupon Mr. *Layer* deſired he would make a Liſt of their Names, and the Places of their Lodgings, that they might be in Readineſs upon Call; and at parting, gave him half a Crown.

After they had thus talk'd of the Conſpiracy, there followed a very obſervable Paſſage; for the Priſoner declared that the Deſign had been put in Execution ſome time ago, if ſome Perſon had not diſcovered it to the *French* Ambaſſador, who writ of it to the Regent, and ſo it was notified to the King. However, even this Apprehenſion of a Diſcovery did not terrify them, for the Project was to go on. The late Duke of *Ormond* was to come in a ſingle Ship, and General *Dillon* in another, and they were to bring others with them; which you take notice falls in with the Evidence of *Lynch*, that *Layer* declared to him that they ſhould not want Encouragement or Aſſiſtance from abroad, when once they had made a Beginning here.

The next Intercourſe between the Priſoner and *Plunkett* was not perſonal, but by the means of one *Jeffreys*, a Nonjuring Clergyman.

Gentlemen, you obſerved that the Priſoner told *Plunkett* at parting, that he would ſend a Meſſenger to him with Money; and afterwards, at his own Houſe, on the Morning he went out of Town for *Norfolk*, that he had left a Guinea with a Nonjuring Clergyman to give him to do Service with;—— And, ſays *Layer*, whilſt I am abroad, you may be ſure I ſhall not be idle. Accordingly Mr. *Jeffreys* came within a few Days after, and appears to be that Clergyman, for he ſaid he came from Mr. *Layer*. He tells you, they diſcourſed on the old Subject, and *Jeffreys* deſired he would get Men in readineſs, and ſaid he had ſeveral other Places to go to on the ſame Errand. *Jeffreys* gave the Witneſs no Money at that time, but came a ſecond time, and gave him only half a Guinea, which he ſaid *Layer* had ſent him for his Encouragement. Beſides this, he tells you *Layer* gave him a Crown at the *Caſtle-Tavern* in *Drury-Lane*, expreſsly to encourage him to liſt Men for the *Pretender*. Upon the Priſoner's Return to Town, a Letter was ſent by *Jeffreys* to the Witneſs, to deſire him to go to the Priſoner's Houſe; and when he came there, the Priſoner gave him a Guinea with his own Hand. There were ſeveral other Converſations, ſeveral things ſaid to keep *Plunkett* firm to the Deſign, and many groundleſs and malicious Slanders caſt by the Priſoner upon his Majeſty's Government; and in all thoſe Converſations *Plunkett* tells you, the Priſoner always ſtil'd the *Pretender* King. 'Twould be tedious particularly to repeat all theſe things to you; but there is one thing I can't help obſerving before I go off from this Part of our Evidence, I mean, that *Plunkett* told you more than once, that he was to procure five and twenty old Soldiers for the Service. Now that happens to be exactly the Number, which is aſſign'd to each of the eight Serjeants in the Priſoner's own Scheme, which was produc'd to you, and is a ſtrong Circumſtance in ſupport of this Witneſs's Teſtimony.

Gentlemen, I have gone through the Evidence of theſe Witneſſes, and I beg leave to ſay they are, within the Meaning and Intention of the Law, two Witneſſes to prove the High-Treaſon charg'd upon the Priſoner; and it happens in this Caſe, that they make out all the particular Overt-Acts alledg'd in the Indictment. Both *Lynch* and *Plunkett* prove repeated Conſultations to levy War, to bring in the *Pretender*, and the actual liking of Men; and *Lynch* alone proves the publiſhing the treaſonable Declaration, and that Part of the Deſign, which no Body can hear without the utmoſt Indignation, the ſeizing his Majeſty's Perſon. From henceforth I apprehend I may take it, that the Charge is proved; though in Truth we have gone a great deal farther in order to put the Teſtimony of theſe Witneſſes beyond all doubt, to deliver them from all poſſible Objections, and to demonſtrate to you the Nature and Extenſiveneſs of this black Conſpiracy.

The next Head of Evidence, is that of the Papers; and notwithſtanding the *little* Cavils which have been urged againſt them, thoſe Papers are fully proved to be the Priſoner's, and by him deliver'd to Mrs. *Maſon*. It ſtands thus; Mrs. *Maſon* ſwears, That the Priſoner deliver'd theſe Papers to her in two Pacquets, as things of great Conſequence, ſeal'd up with his own Seal, which Seal is now remaining, and appears on the Covers. That ſhe lock'd them up ſafe in her Trunk till they were ſeiz'd by the Meſſengers, and out of that Trunk the Meſſengers took them. That ſhe ſet her Mark upon each particular Paper, which appears to be the ſame Mark which by way of Experiment they would have her to make in Court; and ſhe ſwears, that theſe are the very ſame Papers which the Priſoner deliver'd to her with his own Hands. The two Meſſengers give you an Account, That they ſeized theſe Papers at Mrs. *Maſon*'s Lodgings, on the twenty ninth Day of *September* laſt; that they took the two Pacquets out of the Trunk, the ſame Seal being then upon the Covers,

and that Mrs. *Maſon* was by, and mark'd them in their Preſence; that they likewiſe put their Marks upon, and never deliver'd them out of their Cuſtody till they had ſo done. Indeed, *Turner* ſays he left them in the Hands of his Fellow-Meſſenger, *Spear*, during the little time he went for Mr. *Stanyan*, but *Spear* ſwears they received no Manner of Alteration during that Space, and, upon the whole, they ſwear them to be the ſame Papers which they took out of the Trunk.

Upon this Evidence, we apprehend we were intitled to have read the Papers, without giving any farther Account of them.

I did mention to your Lordſhip the Caſe of my Lord *Preſton*, which was not ſo ſtrong; for he lying together with *Aſhton* in the Hold of the Ship, upon the Ballaſt, a Bundle of Papers lay between them; *Aſhton* took them up and put them in his Boſom, and there they were ſeiz'd; but being found together with my Lord *Preſton*, thoſe Papers, though the very Overt-Acts of the Treaſon laid in the Indictment, were read againſt him upon that Proof only. Indeed, after they had been read, the King's Counſel, in order to give a farther Strength to one or two particular Papers, entered into a Proof of their being my Lord *Preſton*'s own Hand-Writing.

The firſt Paper we call'd for was the Scheme, a regular Plan of this Conſpiracy; and, Gentlemen, in order to prevent any Pretence of Hardſhip, before we read it, we call'd a Witneſs to prove this Scheme to be the Priſoner's Hand-Writing: It was Mr. *Doyley*, who ſwears he verily believes it to be his Hand. He gives you the Reaſons of his Belief: That the Priſoner liv'd with him as a Clerk two or three Years, not whilſt he was a Boy, but after he had ſerv'd ſome Time with another Maſter, had been us'd to Buſineſs, and gain'd a ſettl'd Hand; and during that Time he frequently ſaw him write. To ſupport this farther, he tells you, that he had tranſacted Buſineſs for Mr. *Layer*, as his Agent, until about four or five Years ago, and had received ſeveral Letters from him, which he was ſure were his, becauſe he (Mr. *Doyley*) had done the Buſineſs requir'd to be done by thoſe Letters, and Mr. *Layer* had paid him for it; that he had compar'd his Paper call'd *The Scheme*, with thoſe Letters; that the Character of the Letters agreed with what the Priſoner wrote when he was Clerk to him; and the Character of the Scheme with that of the Letters.

But, Gentlemen, this Scheme is an Evidence ſo conſiderable in it ſelf, and of that general Conſequence to this whole Cauſe, that we went farther yet, and, not out of any Neceſſity, but in order to give you abundant Satisfaction, we proved it to be written by the Priſoner from his own Confeſſion. Mr. *Stanyan* told you, That the Priſoner upon his Examination before the Lords of the Committee of Council, where he was preſent, and took Notes, confeſs'd this Scheme to be of his Hand-Writing. The Counſel for the Priſoner objected, This Queſtion was not directly aſk'd him (*Is this your Hand?*) and conſequently he did not ſay, *It is my Hand.* 'Tis true, that does not appear; can there be no other Evidence of a Confeſſion, but ſuch direct Queſtions and Anſwers. Upon the Examination, the Priſoner was aſk'd whether he knew of any Arms lodg'd in *Weſtminſter?* He told the Lords he knew of no Arms being lodg'd. Thereupon this Paper was ſhew'd him, and he was aſk'd, *How came you to write in this Scheme of your own Hand-Writing, that there were Arms lodg'd?* To this he made Anſwer it was a Miſtake, I ſhould have writ Arms that ſhould be lodg'd. Can any thing be more plain than this? It was ſo evident that the Paper was written by him, that it was taken for granted, and call'd his Hand-Writing in the very Terms of the Queſtion; probably he had confeſs'd it before the Clerks were call'd in. If it had not been his Hand, would not the natural Anſwer have been, why do you aſk me about what is written in that Paper? I know nothing of it, it is not my Hand-Writing; but inſtead of that he admits it without the leaſt Difficulty, and takes upon him to tell the Lords what he intended to have written.

The Gentlemen on the other Side, endeavour'd to avoid the Force of this Evidence, by this ingenious Turn—— *I ſhould have written Arms that ſhould be lodg'd* (that is) *If I had writ it, I ſhould have written Arms that ſhould be lodg'd.* But I deſire to be inform'd, if he did not write it, how came he to know any thing about it? How could he take upon him to ſay it was a Miſtake? Whoſe Miſtake? He admits it to be his own. So that this Obſervation comes to nothing, and this Scheme, after all their Objections, ſtands confeſs'd, as well as prov'd, to be Mr. *Layer*'s Hand-Writing.

Upon the Foundation of all this Proof, which I beg leave to obſerve does ſupport all the other Papers found in the two Pacquets, the Scheme was read, and when it was read, it required your ſtricteſt Attention; for in that Paper appears a regular Deſign, form'd for the total Deſtruction of this Government, to be executed in the City of *London*, the Capital of the Kingdom. This, if there was no more, ſhews a juſt Foundation for what was lately declared to us in a ſolemn Manner, That if this Conſpiracy had not been happily detected, we ſhould before now have ſeen that City involv'd in Blood and Confuſion, ſuch appears to be the plain Intent of it. The moſt profligate of the People were to have Arms put into their Hands, in order to ſubdue and pillage the better Sort.

In the firſt Place, the *Tower* was to be ſeiz'd, and a certain Officer expected to be upon the Guard that Day, who ſhould be their Friend, and let in the Party who were to make themſelves of that Garriſon. The *Royal-Exchange*, being in the Heart of the City, was to be the Head-Quarters of the General; and another Party was to plunder the *Bank*. So that to give us a Taſte of the Views of theſe Conſpirators, Spoil and Rapine were not, in the Execution of their Deſign, to have been accidental, proceeding from the Fury of Action, the common Excuſe for ſuch Outrages, but a premeditated avowed Part of the Meaſures concerted before-hand.

The Artillery was next to have been ſeiz'd, and a Stratagem is contrived to effect it: And

And to crown all, his Majeſty himſelf was to be made their Priſoner: Horrid Reſolution! Colour'd indeed with the Name of Securing his Royal Perſon from the Inſults of the Mob; but how thin a Pretence this is, I need not ſpend Time to explain to you, ſince the Writer of the Scheme himſelf has called it but a Pretence.

The Scheme goes on, and the Conſpirators being ſenſible how much our future Hopes, as well as our preſent Happineſs, depend on the Proteſtant Succeſſion in his Majeſty's Family, the next Step to be taken, is to get his Royal Highneſs the Prince into their Power——— A Prince at *Richmond*, deſcribed under a Cant Name, but the meaning of it is plain. When all this appears, how can the Counſel for the Priſoner object, that there is not ſufficient Foundation to accuſe their Client directly of compaſſing the Death of the King? Could this have ended in any thing elſe? Or can any one dream, that either of thoſe precious Lives, I have now mentioned, could have been preſerved in the Hands of ſuch Miſcreants?

Gentlemen, having obſerved thus much, in ſhort, upon the Nature of the Scheme, it will be proper to take notice to you, that as this Paper, thus fully proved, is of it ſelf a ſtrong Evidence, ſo it greatly corroborates and ſupports the Teſtimony of the two Witneſſes, as to every one of the Overt-Acts charged in the Indictment, and tallies with it throughout.

This is true, as to the general Deſign, but appears moſt remarkably in ſome of the particular Facts. The Project laid down in the Scheme for ſeizing the *Tower* is exactly the ſame with what *Lynch* told you the Priſoner communicated to him whilſt they were viewing my Lord *Cadogan*'s Houſe: *That the Officer who ſhould be upon Duty there that Day might be their Friend, and favour the Deſign.* In like Manner, the Circumſtance of eight Serjeants being to have in Readineſs twenty five Men a-piece, falls in with what *Plunkett* the Serjeant ſwore, that he was to procure that Number of old Soldiers to engage in the Enterprize.

But there is one Obſervation ariſing from a Circumſtance of time, which is extremely ſtrong, in Confirmation of the Teſtimony of the Witneſſes, and ſhews manifeſtly, that the Account they give, muſt ariſe only from their Knowledge of the Truth of the Fact, and could not poſſibly be fram'd and modell'd to anſwer theſe Papers; it is this, that Mr. *Layer*, who was taken up on the Information of *Lynch* and *Plunkett*, was actually in the Cuſtody of a Meſſenger, and made his Eſcape on the 19th Day of *September laſt*; but theſe Papers, which thus fall in with and ſupport the Facts they ſwear, were not ſeiz'd, as the two Meſſengers acquaint you, till the 29th of that Month; which is near ten Days after.

Gentlemen, one would have thought there had been no Occaſion to go any farther———

My Lord, I deſire that the Priſoner may not talk to the Jury, whilſt I am obſerving upon the Evidence.

L. C. Juſt. Sir, you muſt not do it.

Priſoner. My Lord, I did not ſpeak to the Jury.

Mr. *Hungerford* offers to ſpeak.

L. C. Juſt. I tell you, Mr. *Hungerford*, it is not right; Mr. *Layer* hath made his Obſervations to the Jury, and made his Nods, and ſometimes I have ſeen his Lips move.

Priſoner. You can't tell what I ſaid.

Mr. *Soll. Gen.* I ſaw you turn about to the Jury, and ſaw your Lips move at the ſame time.

My Lord, I deſire he may ſtand up, and look towards the Court, which is his proper Poſture.

Gentlemen, I was ſaying, that after this Scheme had been produced, one would have thought the King's Counſel might ſafely have reſted it here. Can any Body doubt of this Treaſon, and of the Priſoner's Part in it, when he himſelf hath thought fit to record the Conſpiracy with his own Hand. However, we did not leave it here: But in order to give you entire Satisfaction how deeply this Gentleman was engaged, what a large Share he had taken upon him, and how dangerous and extenſive this Conſpiracy was, we read ſeveral other Papers. They conſiſt of Liſts of the Names of ſeveral Perſons, many of them Officers of the Guards, and of the Army; ſome of them general Liſts, others particular: For what Purpoſe theſe muſt have been made up or procured, by a Perſon engaged in ſuch a Deſign, is extremely plain.

My Lord, it hath been ſaid with great Juſtice, That this is not to be ſo underſtood, as to bring any Imputation on the Gentlemen named in theſe Liſts. I dare ſay, that by far the greater Number, if not all of them, are Perſons of the utmoſt Fidelity to his Majeſty, and Zeal for his Service. But Men engaged in ſuch Deſigns, who are plotting to overturn a Government, muſt weigh and calculate the Strength of that Government, as well as their own. They muſt know who is to be relied upon, on one Side as well as the other, and conſider who are fit to be applied to, and who not; therefore they muſt take an Account of Perſons, concerning whom they have no Hopes, as well as thoſe of whom they have Hopes. Thus it was in my Lord *Preſton*'s Caſe; he had got Liſts of Ships, and of the King's Officers and Troops; The meaning of it was well underſtood upon his Trial; the Court underſtood it, and the Jury underſtood it, that he had procured them, in order to the better Information of himſelf and his Accomplices in the Conduct of that Plot.

Gentlemen, in the next Place, ſeveral Letters were read to you, which were alſo found amongſt the Papers depoſited by the Priſoner with Mrs. *Maſon*. You will remember on this Occaſion, what Mrs. *Maſon* ſwore, that the Priſoner hath ſome time gone by the Name of *Fountaine*, and gave Directions to her, that if any Letters came directed to Mr. *Fountaine*, ſhe ſhould take them in, and deliver them to him. She tells you, a Letter did come directed to Mr. *Fountaine*; that ſhe delivered it to the Priſoner, who opened it, read it, and kept it as a Letter for him; which was an expreſs owning of that Name, and ſeveral of the Letters now produced are directed by the Name of *Fountaine*.

There

There was found together with the Letters, a Cypher, that is, a Liſt of feigned Names for Perſons and Things, which has been in Part read; and in this Cypher the Cant Expreſſions made uſe of in the Letters are contained, and the Perſons and Things ſignified by them decypher'd in plain Words. Sir *William Ellis* (a Follower of the *Pretender*, with whom it appears the Priſoner had ſettled a Correſpondence) is there deſcribed by the Name of *Euſtace*, and the firſt Letter that was read, is ſubſcribed with that Name and directed to *James Fountaine*, Eſq; In that Letter Sir *William Ellis* tells him *he is entirely of his Opinion as to the Method of carrying on the Manufactory, and the procuring of good Workmen is the firſt Step to be made.* *Manufactory* wanted ſome Explanation, but it is fully cleared up by the Word——— *Workmen*, which follows. For look into the Cypher, and *Workmen* ſtands for *Soldiers*; ſo that the *Manufactory* muſt be ſuch as it was fit for *Soldiers* to work in. He goes on and adviſes him particularly *to get ſome of the ableſt of Mrs.* Barbara Smith's. *Barbara* in the Cypher means the *Army*; ſo the Advice amounts to this, That in order to raiſe a Rebellion, he ſhould ſeduce ſome of the ableſt Soldiers of the King's Army. A Counſel, which is now made very plain the Priſoner has endeavour'd punctually to follow. To encourage him in this, he tells him, *that it will be very agreeable to all concerned——— particularly to Mr.* Atkins. Now according to the Priſoner's own Explanation in this Cypher, *Atkins* is one of the feigned Names for the *Pretender*.

The next Letter is dated the 11th of *July* laſt, ſubſcribed *N. C.* and acknowledges the Receipt of a Letter dated the 8th of *May*, with another Letter incloſed, which the Writer ſays *was preſently deliver'd to Mr.* St. John, *who took it extreme kindly:* Look into the Cypher, and it appears, that Mr. *St. John* is one of the fictitious Names for the *Pretender*; ſo that this Letter ſhews, that the Perſon to whom it was written, correſponded immediately with the *Pretender* himſelf. But it ſeems Mr. *St. John did not well underſtand what related to Mr.* Burford, *which* the Letter-Writer *hopes may be ſoon cleared by an Anſwer.* What this was which wanted Explanation, is in the Dark; but ſo much we know, that in the Priſoner's Cypher, *Burford* ſtands for the Earl of *Orrery*.

There is another Letter dated the 27th of *May*, in which the Writer tells Mr. *Layer*, that *their Friend had his Letter of the 22d of* March, *and took very kindly the Care he had taken of his little Concerns.* Who is meant by that Friend, whoſe Concerns were the Priſoner's Care, does not certainly appear; but it is very natural to think, it is the ſame Perſon before called *Atkins* and *St. John*. However, it ſeems their Friend was again at a Loſs about certain Names ——*Burford*, ——*Steel*, ——*Digby*, ———*the little Soldier*, and *Simons*, which were not in his *Rental*.

The Word *Rental* in Mr. *Layer*'s Cypher, is the Cant Term for a *Cypher*; and in that likewiſe are to be found the other Words, which his Friend did not then underſtand; particularly *Simons*, which is put there for the Lord *North* and *Gray*. But if that did not appear by the Cypher, yet the Deſcription which follows, would be enough to convice every Man in his private Judgment who was meant by it—— *He is of the North, a Grey haired ancient Man*, Cant Expreſſions plainly, which take in both the Titles of that Noble Lord. The Letter-writer adds, that *their Friend* (the ſame whoſe Concerns were taken care of) *very well remembers this Perſon, and hath a very particular Eſteem and Value for him, and that he is* (in their Phraſe) *a very good Tenant, and a very honeſt Man.*

Gentlemen, Some other Papers were read to you of a more extraordinary Nature than even theſe Letters; I mean the Notes ſigned *James R.* with the *Pretender*'s own Hand. Theſe are not only one Evidence of the Plot, but a Part of the means by which it was to be effected; for they appear to be Receipts framed with Blanks, to be filled up with Sums of Money as Occaſion offered, with a Promiſe of Repayment with Intereſt. Theſe were ſome of the Ways and Means for raiſing Supplies out of the Pockets of ſuch People, as ſhould be found weak and ſilly, as well as wicked enough, to advance Money on ſuch a Shadow of a Security, for ſo flagitious a Purpoſe. But they aſk us who proves the Subſcription to be the Pretender's Hand? I Anſwer, It is certain that is not material; but if it were, we have it ſufficiently from the Priſoner himſelf. The Account he hath thought fit to give of them, you have heard from Mr. *Delafaye*; that he had written to his Correſpondent Sir *William Ellis*, that if Sir *William* could ſend him over ſome Blank Receipts under the King's own Hand (ſo he called the *Pretender*) he believed they might be made uſe of for the carrying on his Cauſe: That his Intention was to have tried his Friends, and to have raiſed Money on theſe Receipts. This ſhews the Priſoner received them as being ſigned with the Pretender's own Hand; and ſhews likewiſe the Uſe intended to be made of them; and it appears he had the Confidence to juſtify himſelf in this Practice, by the like Method having been taken by King *Charles* the Second, juſt before his Reſtoration.

My Lord, this is the Subſtance of our Proof as to the Papers and the Obſervations which have occurred to me upon them; and I will preſume to ſay, with great Submiſſion to your Lordſhip's better Judgment and Obſervation, that upon this Evidence, taken together with the Teſtimony of the two Witneſſes, we might ſafely have truſted our Cauſe to your Lordſhip's Direction, and the Conſciences of the Jury. But we went farther ſtill, not becauſe we wanted it to convict the Priſoner, for we had already done ſufficient for that Purpoſe, but in order to give abundant Satisfaction, not only to the Gentlemen of the Jury, but to the whole World, of the Reality of this Conſpiracy in general, as well as of this Man's Part in it; that they may ſee and be convinced of the juſt Grounds there were for this Proſecution, and for the Treatment the Priſoner has met with. For this Reaſon it was, we called Mr. *Stanyan*, and Mr. *Delafaye* to give an Account of his Confeſſion, upon his Examination before the Lords of the Committee of Council; and I apprehend, we were properly and agreeably to the Rules of Law, let into that Evidence. We have had the Judgment of the Court upon that Point, therefore I won't

won't trouble your Lordſhip with any Authorities for it, but rely upon that as the beſt Authority.

Gentlemen, the Relation Mr. *Delafaye* and Mr. *Stanyan* gave, was, that the Priſoner declared to the Lords of the Council, that he had been at *Rome* in the Year 1721, and ſtay'd there ſome Time, and had ſeveral Conferences with the Pretender in Perſon: That in one of thoſe Conferences, he aſked for ſome Token or Credential, in order to give him a Credit with the Party when he returned to *England*; that it was not at firſt granted, but afterwards he put his Requeſt into this Shape, that the Pretender's Wife (the Queen he called her) would be pleaſed to ſtand Godmother to the Priſoner's Child. Some time was taken to conſider of this Propoſition, and then Word was brought by Colonel *Hay* to the Priſoner, that ſhe would ſtand Godmother to the Child; and it was agreed, that the late Dutcheſs of *Ormond* ſhould repreſent her. Afterwards the Pretender conſented to be the Godfather, but *Layer* was to procure ſome Perſon to be his Proxy.

What was then agreed upon, was follow'd by the Fact. When the Priſoner return'd Home, and the Child was to be Chriſten'd, he applied to my Lord *Orrery* to repreſent the Pretender, and to the late Dutcheſs of *Ormond*, to repreſent the Princeſs *Sobieſki*. The latter complied, but my Lord *Orrery* declined the Service; and thereupon the Priſoner made Application to my Lord *North* and *Gray*, who was pleaſed to accept it. The Child was chriſten'd at *Chelſea*, and my Lord *North* and *Gray* ſtood as Proxy for the Pretender, and the late Dutcheſs of *Ormond* for the Princeſs *Sobieſki*; and the Priſoner ſaid, they both were privy that they repreſented thoſe Perſons.

The Priſoner's Confeſſion likewiſe verifies every material Circumſtance of *Lynch*'s Evidence, as to what paſſed in the County of *Eſſex*. That he was at the *Green Man* with one *Lynch*, and there ſhew'd him the Heads of a Declaration which he had drawn: That they went from thence to my Lord *North* and *Gray*'s, and there the Priſoner preſented the Witneſs to his Lordſhip as a very honeſt Man, and a Perſon fit to be employed in ſeizing my Lord *Cadogan*; and afterwards he ſaid, as a Perſon fit to be employ'd in an Inſurrection. That the Priſoner and *Lynch* lay at my Lord's Houſe that Night, dined with him at his own Table the next Day; and that the Healths of the Pretender, his Wife, and Child, were drank by them after Dinner, and the ſame Healths were drank, and (if I underſtood it right) begun by that noble Lord himſelf.

There was a farther Circumſtance ſworn by Mr. *Stanyan*, in which he is confirmed by Colonel *Huſke*, that at the Time Mr. *Layer* was apprehended a conſiderable Quantity of Arms, and about fifty Cartridges, made up with Ball, and fitted for the Uſe of Soldiers, were found in his Houſe: And the Priſoner being aſk'd, upon his Examination, what he did with them? He ſaid, they were for his Uſe, in caſe there ſhould happen any Diſturbance in the Nation.

The Priſoner enter'd into an Examination of the Gunſmith, how he came by theſe Arms; but that is not at all material: In his Houſe they were found, and he has confeſſed they were intended for his Uſe in Caſe of a Diſturbance in the Nation. What Diſturbance was there likely to happen, but from himſelf and his Accomplices?

Gentlemen, The Priſoner's Eſcape out of the Meſſenger's Cuſtody, is another ſtrong Circumſtance. In order to fly from Juſtice, he ventured to get out of a Window two Stories high, and had the Fortune to meet with a Sculler, which carried him croſs the Water into *Southwark*. When the Witneſs firſt endeavour'd to ſtop him, it appears he was in the utmoſt Concern; begg'd of him for God's Sake to let him go, pretending it was an Arreſt; and then he pull'd out of his Pocket a great many Guineas, and bid the Witneſs take what he pleaſed, ſo he would but let him go: But the Meſſenger purſued him pretty cloſe, and he was retaken.

Gentlemen, this is a very material piece of Evidence to ſhew the Guilt of the Priſoner. The Law of *England* ſuppoſeth Guilt from Flight, and though it was ſaid, that any Man in Mr. *Layer*'s Condition would have done the ſame thing, if he could; that can be true only in this Senſe, that any Man in his Condition, as to the Conſciouſneſs of his own Guilt, would have done it; but an innocent Perſon would never have brought that Imputation upon himſelf, by endeavouring to eſcape.

This is the Subſtance of the whole Evidence which has been given for the King againſt the Priſoner at the Bar, as well as I can recollect it; and, Gentlemen, I perſuade my ſelf, when you have conſider'd it ſeriouſly, you will be ſatisfied that it makes good every Part of the Indictment. But be that never ſo ſtrong, the Priſoner ought to be heard againſt it, and have a full Opportunity of making his Defence: For if he hath a good Defence, either in point of Law or Fact, to take off the Force of this Evidence, God forbid that he ſhould ſuffer by it.

The Priſoner enter'd upon his Defence, and his Counſel were pleaſed to ſet out with making ſome Obſervations upon the Caſe, as we had left it.

My Lord, they firſt made an Objection in Point of Law, that the Treaſon, for which the Priſoner is indicted, is compaſſing the Death of the King, and one of the Overt-Acts laid is only a Conſultation to levy War, which they inſiſt is not an Overt-Act of that Species of Treaſon, nor indeed any Treaſon at all, becauſe the Words of the Statute, 25 *Ed.* III. import a War actually levy'd; and for the Senſe of thoſe Words, which no body ever doubted of, ſome ancient *French* Writers were quoted.

My Lord, I apprehend this Objection, if it be one, is rather to the Indictment than to the Evidence, of which they know they may properly take Advantage in Arreſt of Judgment. But with great Submiſſion to your Lordſhip, there is no Weight in it either way. One can't help being a little ſurprized to hear it mention'd, after that Point has been eſtabliſh'd by ſo many Reſolutions, which at the ſame time they tell us they are aware of; and in the very laſt Caſe of High-Treaſon, which was in this Court, I mean that of *Ker*, *Dorrell*, and *Gordon*, it was ſolemnly determn'd by the unanimous Opinion of all the Judges, that a Conſultation to levy War, in order to deſtroy or depoſe the King, is an Overt-

Act of High-Treaſon, in compaſſing his Death. This was the receiv'd Doctrine before the Revolution, and it has been adhered to ever ſince; and tho' the Act of Reverſal of my Lord *Ruſſel*'s Attainder has been mention'd, yet if that were looked into, I dare ſay, no Declaration will be found in it, contrary to this Determination. But they go farther and object, that here is no Overt-Act at all proved to be done in the County of *Eſſex*; and if ſo, then whatſoever Proof there may be of Facts done in *Middleſex*, that will go for nothing, and the Priſoner muſt be acquitted upon this Indictment. And, my Lord, ſo far I agree with them, that unleſs we have proved one Overt-Act at leaſt to be done in *Eſſex*, we cannot maintain this Indictment.

In ſupport of this Objection they would have it, that the only Tranſaction in *Eſſex*, is what paſſed at the *Green Man*, and the Whole of that is reduced ſingly to the Publiſhing the Declaration; and that, ſay they, is not legally proved, and if well proved, yet it is no Overt-Act of Treaſon. As to the Proof, they object that the Paper itſelf is not produced, and Parole Evidence of the Contents of a Writing is not to be admitted.

But, my Lord, I have given this an Anſwer already, by obſerving that the Priſoner took back the Paper, and kept it; ſo that the Writing itſelf being proved to be in the Cuſtody of the Party, we were entitled within the ordinary Rule, to give Parole Evidence of the Contents. But, my Lord, this Declaration was a Part of the treaſonable Conſultation then had; and ſure I am, it would be the fineſt Invention to ſecure certain Impunity to Plotters that ever was thought of, if, inſtead of diſcourſing, the Conſultation ſhall be carry'd on by Papers handed from one to another, and no body can be convicted, becauſe the Paper is not to be found. As to that Part of their Objection, that it is no Overt-Act of Treaſon, one of the Gentlemen thought fit to treat it in a ludicrous Manner. 'Twas only *reading a Piece of Paper, ſuppoſe they had ſung a Ballad.* That Gentleman will pardon me, if I ſay, thoſe Expreſſions did not become this Occaſion. An Accuſation of High-Treaſon, which highly concerns the King and his Government, is an Affair of a ſerious Nature; and if he does but reflect upon the Contents of that Declaration, which the Witneſs related, he cannot think it a Matter to be ſported with.

Mr. *Ketelbey* was pleaſed to ſay, that this could be no Overt-Act of Treaſon, becauſe it was but publiſhing a Libel. But ſurely, that is very extraordinary. Publiſhing of a Paper may amount to one Crime or another, according to the Subject-Matter of that Paper; and can it be a Queſtion at this Time of Day, whether the publiſhing a Declaration or a Book containing Arguments, or offering Rewards directly to ſtir up the King's Subjects to riſe in Rebellion againſt him, be High-Treaſon? The treaſonable Intent in this Caſe cannot be doubted, and 'tis as certain that the Publication is an Act; what is there then wanting to make it Treaſon? But, my Lord, this has alſo been adjudged, and therefore I won't argue it.

My Lord, I have ſaid thus much about the Declaration for the ſake of following the Gentlemen, who are Counſel for the Priſoner, in their Arguments; but after all, their Foundation, which is a Suppoſition that there are no other Overt-Acts proved in *Eſſex*, beſides this of the Declaration, entirely fails them; for your Lordſhip will inform the Jury, that *Lynch* depoſed that whilſt they ſtaid at the *Green Man* they did more than *talk a little Politicks*, they conſulted about the Project of an Inſurrection, and the Priſoner there actually propoſed to him (beſides what was contained in the Paper) the Deſign of ſeizing the King's Perſon, which are two other Overt-Acts laid in the Indictment.

Upon this, another Objection was raiſed by Mr. *Ketelbey*, which, if it holds, will go to the Whole; and that is, that we have but one Witneſs, *Lynch* alone, to the Facts in *Eſſex*; and this Indictment muſt fail, unleſs there are two Witneſſes to ſome or other of the Overt-Acts in the County where the Indictment is laid.

But, my Lord, that is not now to be diſputed. The Law is clearly ſettled, that on an Indictment for High-Treaſon, in compaſſing the King's Death, if ſeveral Overt-Acts are laid, and ſome of thoſe Overt-Acts are proved by one Witneſs to be done in the County where the Party is indicted, and others of them are proved by another Witneſs to have been committed in a different County, that Evidence is ſufficient to maintain the Indictment; they are two Witneſſes of the ſame Species of Treaſon within the Meaning of the Law. So it was expreſly reſolved by all the Judges of the *King's-Bench*, in the Caſe of Sir *Henry Vane*, which is reported in *Kelyng* 15, and that has been ſince followed by a Current of Authorities; the Caſe of the five Jeſuites, the Opinion of the Judges delivered to the Lords, upon the Trial of my Lord *Stafford*, 32 *Car.* II. and other Caſes.

My Lord, as this is eſtabliſh'd by Authorities, ſo the Reaſon and Neceſſity of the Thing is ſtrong, becauſe otherwiſe treaſonable Conſultations might eaſily be carry'd on in ſuch a manner, that no body could be convicted of them. It would be but to lay the Scene upon the Confines of ſeveral Counties, and take Care not to conſult with any two Perſons in the ſame County; then there could not be two Witneſſes, and all would be ſafe.

I have done with their Objections in Point of Law, and ſhall now endeavour to give ſome Anſwer to their Obſervations upon the Fact. And, Gentlemen, I think the Whole of thoſe Obſervations may be reduced to one Head, which is, that it is highly improbable, that what the Witneſſes have ſworn ſhould be true. But upon that, before I give particular Anſwers to what they have offered, I beg leave to ſay in general, that though in a doubtful Caſe, where there is any Balancing in the Proof, the Improbability of the Thing is a Conſideration of great Weight, yet where there is plain and poſitive Evidence on one Side, not weaken'd by any Counter-Evidence on the other Side, the Objection of Improbability can be of little Force.

But to conſider this Improbability. They ſay 'tis very ſtrange, that Mr. *Layer* ſhould be engaged

gaged in ſo dangerous an Undertaking, with ſuch Perſons as have ſworn themſelves to be his Accomplices. To this, I ſay, 'tis always ſtrange, that Men ſhould venture to truſt one another with ſuch dangerous Secrets; but certain it is, they often do; and as to the Witneſſes in this Caſe, they are proved by the Priſoner's own Evidence, to be Perſons with whom he thought fit to hold a Correſpondence. How this great Confidence was at laſt created between them, has been accounted for by the Witneſſes themſelves, in a very natural and probable Way, of which I have already taken Notice.

Mr. *Ketelbey* inſiſted much upon the Improbability of *Plunkett*'s Evidence, in thoſe Parts of it which concern *James Plunkett* and *Jeffreys* the Nonjuring-Parſon. That it is not credible, that thoſe two Men, whom *Plunkett* admits to be abſolute Strangers to him, ſhould at firſt Sight open themſelves with ſo great Freedom, to a Fellow of his Degree on a ſubject of Treaſon. But that will receive this Anſwer. *James Plunkett* and *Jeffreys* were, as appears clearly from the Circumſtances, in the Confidence of *Layer*. *Layer* had a Confidence in *Matthew Plunkett* the Witneſs, on the Recommendation of Major *Barnwell*, and by means of *Layer*, both *James Plunkett* and *Jeffreys* might be induced to truſt him. And thus the Chain of the Correſpondence is made compleat.

Another Objection was made to *Plunkett*, that he had been guilty of a flat Contradiction in his Evidence. That he firſt ſwore, *Jeffreys* told him his Name upon his firſt Coming to him, and afterwards that he did not know his Name till he received the Letter from him about the Priſoner's being come to Town. But that Obſervation was grounded upon a Miſtake; for what *Plunkett* ſaid, was, that *Jeffreys* did tell him his Surname at firſt, but that he did not know his Chriſtian Name till he receiv'd the Letter, which is very conſiſtent.

But the Counſel for the Priſoner were well aware, that their Obſervations upon the Witneſſes could be of little Effect, if the Paper called the Scheme found Credit; and therefore in the next Place they attack'd that as being incredible; they repreſent it as *ridiculous and fooliſh*——— *The Scheme of a Madman, which could never have taken Place.*

Gentlemen, as to this Obſervation, the Scheme is indeed ſuch an one, as I hope in God could never take Place any where, but in the Heads of thoſe that framed it. But with great Submiſſion, that is no Objection to the Credibility of it, provided it be proved. For the Conſideration is not, how it now appears to you or to me, who look upon it in a different Light, and on contrary Principles from theirs; but the proper Conſideration is, what the Conſpirators themſelves, with regard to the Views and Principles they went upon, might think of it. And, Gentlemen, in that Light examine it, go through the ſeveral Articles of it, compare them together, and you will find them conſiſtent and coincident; all the Parts anſwering to one another. Every Quarter of the Town is provided for Diſpoſitions made of certain Numbers of Men, and Care taken to preſerve the Communication between them by Watch-Words agreed upon for that Purpoſe. Theſe Things make it plain, that it was fully conſidered by thoſe who drew it, and framed not at random, but upon Computation of a Force, of which they thought themſelves aſſured. And what, tho' it ſhould be admitted to be extravagant, and not likely to ſucceed? If that ſhould be given way to, as a certain Objection againſt a Plot's finding Credit after it is detected, I am afraid it would be a ſure Method to make ſuch Plots ſucceed, or at leaſt to ſecure the Authors of them from Puniſhment. Do but intermix ſome abſurd extravagant Parts in the Plan of the Conſpiracy, and then according to this Reaſoning it is below Notice, and muſt be ſuffered to go on, or if a Stop be put to its Progreſs, yet it is incredible, and no body muſt be believed to be guilty of it.

But, Gentlemen, whatever Difficulties may be raiſed againſt particular Parts of the written Scheme, yet upon the Grounds and Suppoſitions which the Priſoner and his Accomplices proceeded on, their general Deſign might appear very feaſible to themſelves. For it is plain they had a Dependence, however ill-founded, upon Diſcontents raiſed in the Minds of the People, and on corrupting great Numbers of the Army, which would have diminiſhed the Strength of the Government, and added to their own; and after they had made a Beginning here, it is proved that they expected Aſſiſtance from Abroad.

The next Thing to be conſidered, is the Teſtimony of the Priſoner's Witneſſes: And, Gentlemen, you obſerve that they have ſcarce called any Witneſs to contradict the Facts contained in our Evidence, for the People of the Houſe at the *Green Man* ſay nothing to the Purpoſe; but all their Evidence is applied to the Character and Credit of the Witneſſes produced for the King.

As to that, I muſt obſerve to you, that it is not to be expected that Conſpiracies and traiterous Machinations of this Kind ſhould be proved by Perſons of the beſt Characters. 'Tis neceſſary from the Nature of the Thing, that they ſhould be proved by thoſe who have been privy to them, and ſuch Perſons cannot poſſibly be of Characters abſolutely unblemiſhed. Therefore, to ſay that ſuch Witneſſes are not to be believed, is in effect to ſay that no Evidence of a Plot is ever to be believed, which ſurely is an Argument that proves too much.

The firſt Witneſs they called on this Head, was my Lord *North* and *Gray*. I am heartily ſorry to ſee his Lordſhip here in his preſent Condition upon this Occaſion; the rather, becauſe it obliges me to obſerve, that here are Circumſtances proved, which affect him; I will carry it no farther, but ſome Circumſtances are proved in this Cauſe which do affect him. But what is his Evidence? His Lordſhip was called to impeach the Character of *Lynch*; and however he may impeach his Character, I am ſure he ſupports his Credit as to the Facts ſworn by him. The Account his Lordſhip gave, was, that the Priſoner brought *Lynch* to his Houſe at *Epping*, introduced *Lynch* to him, that he was never acquainted with him before; but upon Mr. *Layer*'s Introduction, received him civilly; and that *Lynch* came thither a ſecond Time.

Now, theſe are the very Facts *Lynch* ſwore to, and conſequently ſo far my Lord ſupports him. But then, as to his Character, his Lordſhip is pleaſed to ſay, that the firſt Time *Lynch* was there, he gave him a Hiſtory of his Life; and in that gave ſo vile an Account of himſelf, that when he came a ſecond Time, his Lordſhip would not give him a Lodging in his Houſe. This, I think, was the whole of my Lord's Teſtimony; and I can't help remarking upon it, that his Lordſhip gives no Account at all of any Buſineſs, which either the Priſoner or *Lynch* had with him, nor of any particular Occaſion upon which the former introduced the latter to him. That was a Matter within his Lordſhip's own Knowledge.

There is another Thing which is a little ſurprizing; and that is, that Mr. *Lynch* being an abſolute Stranger, as is confeſſed, to this noble Lord, having the Honour to be introduced by a Friend to a Perſon of his great Quality, ſhould have ſo little Regard to his Friend, or to the Opinion that Noble Lord was to conceive of him, as at the firſt Interview to take ſo odd a Way of being recommended, and give a moſt vile, infamous Character of himſelf. This is ſomewhat out of the ordinary Courſe; but you are told, that ſo it was.

As to the other Witneſſes to *Lynch*'s Credit, notwithſtanding their Number, I apprehend their Evidence, when duly conſidered, will have little Weight. They were moſt of them going to enter into particular Facts; but the Court agreeably to the conſtant Courſe of Evidence over-ruled them in it; and that you, Gentlemen of the Jury, may be ſatisfied no Hardſhip was done by this to the Priſoner, I will mention the Reaſon of it. The Reaſon why particular Facts are not to be given in Evidence to impeach the Character of a Witneſs, is, that if it were permitted, it would be impoſſible for that Witneſs, having no Notice of what will be ſworn againſt him, to come prepared to give an Anſwer to it; and thus the Characters of Witneſſes might be vilified, without having any Opportunity of being vindicated.

As to the Witneſſes themſelves, ſome of them ſay, they know no Ill of *Lynch*; many of them have known him but a little while; ſome of them give an Account of Declarations made ſince this Proſecution began, and how fairly they were drawn from him don't appear; and for ſome others of them, I ſubmit it to the View and Conſideration of the Jury, from their Habit, and the Appearance they made, whether they ought not themſelves to have bro ght Witneſſes to ſupport their own Credit.

One appears plainly to be miſtaken, and that is, *Darcy*; he was aſk'd how long he had known *Lynch?* and, I think, he ſaid he knew him in *London* laſt Winter; now it appears that *Lynch* came into *England* but in *April* laſt.

Gentlemen, in the next place they called Witneſſes to *Plunkett*'s Credit, and there the ſame thing befell them as in the Caſe of *Lynch*; for Major *Barnwell* their firſt Witneſs on that Head, though he is willing enough to give him an ill Character, yet he confirms ſeveral of the Facts which the other ſwore, and gives exactly the ſame Account of the Reſcuing the Goods, and the Circumſtances of *Plunkett*'s becoming acquainted with *Layer*, which he gave.

Mrs. *Child* likewiſe ſupports *Plunkett* as to the Circumſtance of his carrying her Huſband to the Priſoner's Houſe, and the Priſoner's refuſing to ſee him.

As to Mrs. *Maſon*, they have taken a great deal of Pains to prove her a very ill Woman. What ſhe is, or what thoſe Perſons are, whom they have called to her Credit, we can't tell; but ſo much appears even from their own Witneſſes, that ſhe is one with whom Mr. *Layer* thought fit to converſe, and therefore 'tis not improbable that ſhe might be intruſted by him; and it is from ſuch only as he thought fit to converſe with and intruſt, that we can have any Diſcovery. The Priſoner has, indeed brought two or three Women, who talk very faſt, and ſeem very angry with her; and one of them tells the Jury in a Scolding Way, that *ſhe don't care what ſhe ſays or does*; another, that *ſhe would take away any Man's Life for the Value of a Farthing*; and ſuch Kind of vehement Expreſſions. It is ſufficient to ſay to this, that People who talk thus looſely and paſſionately upon their Oaths, rather bring a Suſpicion upon their own Credit, than upon the Credit of thoſe againſt whom they ſwear.

But, Gentlemen, if they had brought a much ſtronger Evidence againſt the Characters of the King's Witneſſes than they have done, what would it have availed them? Does this Caſe depend upon the Characters of theſe three Witneſſes? It cannot be pretended that it does. Let their Characters be what they will, their Credit in this Cauſe is undeniably ſupported; ſupported as to ſeveral material Facts, by the Evidence for the Priſoner, but moſt ſtrongly by the Papers; againſt which, I apprehend nothing has been ſaid to take off their Force. If thoſe Papers are not genuine, how ſhould the Notes ſigned with the Pretender's Hand, which the Priſoner received from Sir *William Ellis*, come to be amongſt them? How ſhould this Scheme, proved to be of Mr. *Layer*'s own Hand-Writing, have been there? The Priſoner, I muſt own, did call one Witneſs, *Bennet*, who was his Clerk, and is now his Sollicitor, to ſwear he believed the Scheme not to be the Priſoner's Hand. But it happen'd with *Bennet*, as it did with ſeveral others of their Witneſſes, that though he is willing to carry his Belief as far as he can, that this is not his Maſter's Hand; yet he is forced to acknowledge another Matter, which ſtill verifies the Papers contained in theſe Pacquets to be his Maſter's Papers: For being aſk'd of whoſe Hand-Writing one of them was, he ſwears it was written by himſelf for the Priſoner, and by his Direction. This comes out of the Mouth of his own Witneſs, and confirms Mrs. *Maſon*'s Teſtimony, that theſe Papers came from Mr. *Layer*.

But over and above all this, you have the Priſoner's own Confeſſion, proved by two Gentlemen whoſe Credit is beyond all Diſpute; and certainly the Priſoner muſt be allow'd to be a good Witneſs againſt himſelf.

However, we ſhall not leave the Credit of our Witneſſes ſingly upon theſe Obſervations, though I think we might ſafely do it; but ſhall endeavour to take off any ill Impreſſions their Evidence

dence may have left upon you, and vindicate their Characters; and that, not by ſuch Witneſſes as ſome of thoſe produced for the Priſoner were, who, I obſerv'd before, might ſtand in need of Witneſſes to ſupport their own Credit, but by Perſons of undoubted Reputation, who will ſatisfy you that their General Character is ſuch, that they very well deſerve to be believed by you.

I have now done with repeating and obſerving upon the Evidence on both Sides; and I beg leave to inſiſt upon it, that we have fully made good what was open'd to you in the Beginning of this Cauſe, that in general there has been a horrid Conſpiracy carried on, in order to overthrow our happy Conſtitution, and to deprive us of all the Bleſſings we enjoy and promiſe ourſelves, under this Eſtabliſhment, in his Majeſty and his Proteſtant Royal Family. The Part the Priſoner hath acted in this fully appears to you, and it appears to be a very conſiderable one.

It has been ſaid, indeed, that he is but an inconſiderable Man, of no Rank or Fortune fit to ſuſtain ſuch an Undertaking. That Obſervation may be true; but ſince it's plain he did undertake it, that, join'd with the other Circumſtances proved in this Cauſe, ſerves only to demonſtrate, that he was ſet on work, and ſupported, by Perſons of greater Abilities for ſuch an Enterprize. And, Gentlemen, this is the moſt affecting Conſideration of all. —— But I would not, even in this Cauſe of your King and of your Country, ſay any thing to excite your Paſſions; I chooſe rather to appeal to your Judgments; and to thoſe I ſubmit the Strength and Conſequence of the Evidence you have heard.

My Lord, I beg Pardon for having taken up ſo much of your Time; I have but one Thing to add, and that is, humbly to beg of your Lordſhip, for the Sake of the King, for the Sake of Myſelf, and for the Sake of the Priſoner at the Bar, that if I, through Miſtake or Inadvertency, have omitted or miſrepeated any thing, or laid a greater Weight upon any Part of the Evidence, than it will properly bear, your Lordſhip will be pleaſed to take Notice of it, and ſet it right, that this whole Caſe may come before the Jury in its true and juſt Light.

Mr. Serj. *Cheſhire.* It is ſo late, that it will be inexcuſable in me to trouble your Lordſhip with any thing by way of Reply, eſpecially ſince Mr. Sollicitor General hath done it ſo fully. We ſhall only beg leave to call a few Witneſſes to the Credit of the King's Witneſſes.

Mr. *Ketelbey.* I ſhall not take up much of your Lordſhip's Time, eſpecially ſince your Lordſhip and the Court have been entertained ſo well and ſo long by Mr. Sollicitor General, at leaſt two Hours, as I have obſerved by my Watch; but 'twas impoſſible for me to think him tedious, though ſo late at Night, and eſpecially ſince his Concluſion is exactly agreeable to the Concluſion of a late celebrated Sollicitor General on a like Occaſion.

Mr. *Att. Gen.* We muſt beg leave to call ſome Witneſſes we have, who will ſupport the Credit of Mr. *Lynch* and *Matthew Plunkett.*

Mr. *Vernon* ſworn.

Mr. Serj. *Cheſhire.* Do you know Mr. *Lynch?*

Vernon. Yes.

Mr. Serj. *Cheſhire.* What Account do you give of him?

Vernon. I keep a Tavern at the *Swan* and *Rummer* in *Finch-Lane*, this Gentleman hath frequented my Houſe theſe four Months every Day, till he was in Cuſtody; he hath been a very good Cuſtomer, and paid me honeſtly.

Mr. Serj. *Cheſhire.* Do you know the Priſoner at the Bar? Have you ſeen Mr. *Lynch* and him in Company together at your Houſe?

Vernon. Yes; I have ſeen them twice in Company together at my Houſe.

Mr. *Ketelbey.* How long hath he been your Cuſtomer?

Vernon. From the Beginning, about four Months.

Mr. *Ketelbey.* About four Months; Did he ſpend his Money plentifully and freely?

Vernon. Yes; ſome Part of it I have had ſince he hath been in Cuſtody.

Mr. *Ketelbey.* How much was he in your Debt before he was in Cuſtody?

Vernon. Ten or eleven Shillings.

Mr. *Ketelbey.* How long had he been in Cuſtody before he paid you?

Vernon. Not long.

Mr. *Hungerford.* He had the Firſt-Fruits of his being in Cuſtody; he had ſome Money, and ſo he paid you your Reekoning.

Mr. Serj. *Pengelly.* We take it, that Mr. *Vernon* proves, that *Layer* and *Lynch* were converſant together.

Capt. *Malthus* ſworn.

Mr. Serj. *Cheſhire.* Do you know *Stephen Lynch?*

Malthus. Yes.

Mr. Serj. *Cheſhire.* How long have you known him?

Malthus. About nine Years. I knew him firſt, when he was a Merchant at the *Canaries.* I traded with him ſeveral times, ſeveral times I was conſign'd to him, and I have ſeen him at Home.

Mr. Serj. *Cheſhire.* What Account can you give of his Behaviour?

Malthus. He always behav'd himſelf very well, I think.

Mr. *Att. Gen.* Do you think he would ſwear falſly to take away a Man's Life?

Malthus. No, I don't think he would.

Mr. *Ketelbey.* How long is it ſince you have been acquainted with him?

Malthus. Nine or ten Years.

Mr. *Ketelbey.* How long is it ſince your laſt Acquaintance?

Malthus. About four Months.

Mr. *Ketelbey.* What Diſtance of Time did there uſe to be between your ſeeing of him?

Malthus. Two or three Years, every time I came home.

Mr. *Ketelbey.* Doth he owe you any Money?

Malthus. No.

Mr. *Ketelbey.* Would you truſt him with Money?

Malthus.

Malthus. He never aſkt me.

Mr. *Ketelbey.* Your Witneſs we may aſk as to Particulars, Did you know his Aunt there, at that Time?

Malthus. No.

Mr. *Ketelbey.* Did you know any thing of his Behaviour?

Malthus. I never knew an ill Character of him in my Life.

Capt. *Arnold* ſworn.

Mr. Serj. *Cheſhire.* Do you know *Stephen Lynch?*

Arnold. Yes.

Mr. Serj. *Cheſhire.* How long have you known him?

Arnold. 'Tis fourteen Years ago.

Mr. Serj. *Cheſhire.* You have been acquainted with him ſince. What Account do you give of his Character? Do you think he would forſwear himſelf?

Arnold. No.

Mr. Serj. *Cheſhire.* Do you take him to be a Man of Credit?

Arnold. I never had any Dealings with him.

Mr. Serj. *Cheſhire.* Would you have truſted him with five hundred Pounds?

Mr. *Ketelbey.* Would you truſt him with five Shillings?

Arnold. Five Shillings is a ſmall Sum.

Col. *Manning* ſworn.

Mr. Serj. *Cheſhire.* Do you know *Matthew Plunkett?*

Col. *Manning.* Yes.

Mr. Serj. *Cheſhire.* How long have you known him?

Col. *Manning.* Upwards of ten Years.

Mr. Serj. *Cheſhire.* What Credit hath he? Do you take him to be an honeſt Man?

Col. *Manning.* He behav'd himſelf well, and like an honeſt Man.

Mr. Serj. *Cheſhire.* Do you think he would forſwear himſelf?

Col. *Manning.* No, I believe not.

Priſoner. Have you and I had any Diſcourſe about this very *Plunkett?* And did not you tell me he was a Scoundrel?

Col. *Manning.* No, I did not.

Mr. *Hungerford.* Did not you give him a bad Character to Mr. *Layer?*

Col. *Manning.* No, I did not.

Priſoner. Do you mean thus, that he behaved himſelf very well, as a Soldier? What is that as to his Character in general?

Col. *Manning.* I know no ill Character of him while he was with me.

Mr. *Ketelbey.* Did you never hear any thing in relation to Sir *Daniel Carroll*, that he made a wrong Demand upon him?

L. C. Juſt. If he made an unjuſt Demand, will he therefore be perjur'd?

Mr. *Ketelbey.* What have you heard about that Affair between Mr. *Plunkett* and Sir *Daniel Carroll?*

Col. *Manning.* I have heard Mr. *Layer* ſay—

Mr. *Ketelbey.* Did you never hear any Body elſe ſpeak of him? I aſk you about making this Demand upon Sir *Daniel Carroll*, what you know of it?

L. C. Juſt. I never heard any thing like it.

Mr. *Ketelbey.* My Lord, we apprehend we may croſs examine, as to Particulars, a Perſon whom the other Side produces as a Witneſs to Character.

Priſoner. Did not you afterwards, in Diſcourſe with Mr. *White*, mention it again with relation to this of Sir *Daniel Carroll?*

Col. *Manning.* I deny it.

Priſoner. Did you deſire me not to examine you?

Col. *Manning.* No, I told you I had nothing to ſay in relation to *Plunkett*'s Character.

Mr. *Hungerford.* Let him alone, I would not aſk him any more Queſtions.

Col. *Manning.* Why, let him alone?

Mr. *Hungerford.* I would not have him examine you any further.

Col. *Manning.* You are very civil.

Mr. *Hungerford.* So I am, to give you no further Trouble.

Major *Hamel* ſworn.

Mr. Serj. *Cheſhire.* Do you know *Matthew Plunkett?*

Maj. *Hamel.* I have known him theſe ſeventeen Years.

Mr. Serj. *Cheſhire.* What Character hath he?

Maj. *Hamel.* He was then a Drummer in the Regiment, and always did his Duty well; I never heard him complained of; he always had a good Character; he went from *Ireland* to *Spain.*

Mr. *Hungerford.* You ſpeak to his military Conduct.

Maj. *Hamel.* I know of no other.

Mr. Serj. *Cheſhire.* You ſay he always had a good Character.

Maj. *Hamel.* Yes, he always had.

Captain *Crosby* ſworn.

Mr. Serj. *Cheſhire.* Do you know Serjeant *Plunkett?*

Cap. *Crosby.* Yes.

Mr. Serj. *Cheſhire.* How long have you known him?

Cap. *Crosby.* Three Years.

Mr. Serj. *Cheſhire.* What Character had he for that Time?

Cap. *Crosby.* Whilſt I knew him, he bore a good Character.

Mr. Serj. *Cheſhire.* Did you hear any Ill of him?

Cap. *Crosby.* Not during the Time that I knew him.

Mr. *Ketelbey.* Where was the Regiment at that Time?

Cap. *Crosby.* It was in Town, about half a Year ago.

Mr. *Ketelbey.* Were you not of the ſame Regiment?

Cap. *Crosby.* We were.

Mr. Serj. *Cheſhire.* We won't give your Lordſhip any further Trouble.

Mr. *Ketelbey.* And we apprehend we have no Occaſion to give your Lordſhip any further Trouble, by way of Reply.

Mr. *Att. Gen.* My Lord, as to my Lord *North* and *Gray*, we can prove he attempted to get away, and was endeavouring to go to *France*,

and was taken in the *Iſle of Wight*; and that when the Priſoner was ſeized, he ſent a Meſſenger to give my Lord *North* notice of it. This laſt was confeſſed on his Examination, and we can prove it.

Mr. *Ketelbey*. I muſt ſubmit it to your Lordſhip, whether his Examination can be admitted as Teſtimony, ſo as to affect a third Perſon.

L. C. Juſt. It is not worth diſputing.

Gentlemen of the Jury, This is an Indictment againſt Mr. *Layer*, the Priſoner at the Bar, for High-Treaſon. The Treaſon with which he ſtands charged, is the compaſſing and imagining the Death of the King: The Overt-Acts that are laid in this Indictment, as Evidence of this Treaſon, are ſeveral; firſt of all, that he did meet and conſult, adviſe and agree, to levy War againſt the King; the ſecond is, that he did publiſh a ſeditious and traiterous Writing, exciting and encouraging the People to an Inſurrection, and offering Rewards for that Purpoſe; the third is, that he did engage in a Deſign to ſet the Pretender on the Throne; the fourth, that he liſted Soldiers againſt the King; and the laſt, that he did conſult and agree, to take, ſeize and impriſon the King: Theſe are the ſeveral Overt-Acts that are laid in the Indictment of the Treaſon, that is, the compaſſing and imagining the Death of the King. Gentlemen, I muſt tell you, before I go on to lay before you, and obſerve on the Evidence, what the Law is; and I muſt tell you, that the Law is undoubtedly ſo, if a Man is charged with Treaſon, in compaſſing and imagining the Death of the King, there muſt be an Overt-Act of that Treaſon proved in the County where he is indicted; and in the next Place, if there be ſuch Overt-Act in that County, he may be charged with any Overt-Act of the ſame Species of Treaſon in any other County whatſoever. This hath been frequently reſolved and agreed, and was hardly ever made a Queſtion. I obſerved in the Hands of one of the Counſel, and he took notice of it, that he had the Trial of Sir *William Perkins*; he could not but obſerve there laid down by my Lord Chief Juſtice *Holt*, if Evidence be given of Treaſon in one County where the Indictment is laid, he may be charged with any Overt-Acts of the ſame Species of Treaſon in any other County whatſoever. The Law being ſo, I will, in the beſt manner I can, ſet out the Matters that have been given in Evidence, on this long Evidence, in the cleareſt Light that I can ſtate the Examination, the Objections that have been made, and the Obſervations that are proper to be made upon it.

To maintain this Indictment, the King's Counſel have produced ſeveral Witneſſes. The firſt Witneſs is Mr. *Lynch*; the ſecond Witneſs is Mr. *Plunkett*; all the other Evidence hath been offered to confirm the Evidence given by theſe two Witneſſes. As to Mr. *Lynch*, he tells you how he came to the Acquaintance of Mr. *Layer*; that he was an intimate Acquaintance of Dr. *Murphey*, and Dr. *Murphey* recommended him to Mr. *Layer*; being ſo recommended, he had ſeveral Meetings with Mr. *Layer* in *Middleſex*, at the *Griffin-Tavern*, and in *Holborn*, at the *Caſtle-Tavern*, and I think, at *Southampton-Buildings*.

He tells you, at theſe ſeveral Meetings it was declared, that there was to be a Riſing, and it was thought neceſſary, to make this Riſing the more effectual, that my Lord *Cadogan*, the Commander in chief of the King's Forces ſhould be ſeiz'd.

Mr. *Layer* ſaid to Mr. *Lynch*, he was looked upon as a Perſon proper for the Undertaking, and he declared that he was willing, and ſaid, if that was the Opinion of thoſe concerned in the Affair, he would undertake to do it: After this, they went to my Lord *Cadogan*'s Houſe, to view the Houſe, and the ſeveral Avenues about the Houſe; and after they had taken this View, *Lynch* declares his Opinion, that it was feaſible, and he would undertake to do it.

After he had given you an Account of what happened at the ſeveral Meetings in *Middleſex*, then he comes to what was done in the County of *Eſſex*: He tells you Mr. *Layer* came to him, and aſked him whether he would ride out with him to take the Air; he agreed to it; they both went out of Town together; he ſaid, that as they were going along, Mr. *Layer* told him his Intention was to go to my Lord *North* and *Gray*'s; he ſays, they went forward with that Intention, but before they came to the *Green-Man* at *Layton-Stone*, they thought it would be too late before they got to my Lord *North* and *Gray*'s for Dinner, therefore they thought proper to halt at the *Green-Man*, and take a Refreſhment there. He tells you, they did ſtop there at the *Green-Man*, and at that Time Mr. *Layer* did repeat the Diſcourſe of the Riſing that was intended to be; he ſaid, my Lord *Townſhend*, and my Lord *Carteret* and Mr. *Walpole* were to be ſeiz'd, a Party were to be ſent to ſeize the King; and that a Scheme was laid for ſeizing my Lord *Cadogan*, and that it was propoſed as a proper time to put this in Execution at the Breaking up of the Camp. He ſaid, when that was mentioned, at firſt he made ſome little doubt, whether that was a proper Opportunity; with that Mr. *Layer* told him, pray conſider with your ſelf, if you do not think this practicable, will you propoſe ſomething elſe, and we will alter our Scheme?

He ſaith, at this ſame Time Mr. *Layer* pulled out of his Pocket a Declaration, purporting an Exhortation and Excitation for People to riſe, and take up Arms againſt the King, and Rewards offered for that Purpoſe.

Afterwards they went to my Lord *North* and *Gray*'s, and that Mr. *Layer* introduced him to his Lordſhip, as his Friend; that they were civilly and kindly receiv'd, ſupped there, lay there that Night, and dined there the Day after. This is the Evidence given with Relation to what was done in the County of *Eſſex*; and if this Relation be true, no doubt there is a good Overt-Act proved upon him in the County of *Eſſex*, and conſequently the Indictment is well laid in *Eſſex*, and then the Evidence in the County of *Middleſex* will be a proper Evidence againſt the Priſoner. But as to this Evidence of Mr. *Lynch*, they ſay for the Priſoner, Mr. *Lynch* is not to be believed, that he is a vile profligate Wretch, and no Credit is to be given to him, though upon his Oath; and it muſt be admitted the Evidence that hath been given for that Purpoſe, by a great Number of Witneſſes, will be proper for your Conſideration: But you will

will conſider, in a Caſe of this Nature, if you are to expect Witneſſes without Exception, it is impoſſible to have any Evidence to convict a Man of High-Treaſon; no body will engage in ſuch an Affair, that is of a nice Credit and Reputation, and therefore it is not to be expected; for if it be, it is and will be impoſſible to convict any Perſon of Treaſon.

But then you will conſider, although Credit is not entirely to be given to a Man of ill Repute, yet if he is ſupported in his Evidence that he gives, by other Evidences, you will conſider whether that will not remove all ſort of Objections as to his Character.

As to the Overt-Act of publiſhing the Declaration, that is ſupported beyond Contradiction; for it appears in his Examination before the Lords of the Council, when he is aſked, whether he ever ſaw the Declaration? He ſays, he never ſaw any but one, and that was drawn by himſelf.

Priſoner. My Lord, what Mr. *Stanyan* ſays, I believe, he did not ſay that I confeſs'd that it was drawn by me.

L. C. Juſt. You muſt not interrupt me while I am directing the Jury. You have behaved your ſelf intemperately hitherto, but you muſt not interrupt me, I can't bear it. The Subſtance of what Mr. *Stanyan* ſaid is, that when it was demanded of you, whether you had ſeen the Declaration, you ſaid, you had ſeen none but a rough Draught that was drawn by your ſelf.

Priſoner. I beg your Lordſhip's Pardon, Mr. *Stanyan* is here in Court.

L. C. Juſt. Is he in Court? Let him be aſked the Queſtion again.

Mr. *Stanyan.* My Lord, I believe I did ſay, that Mr. *Layer* did confeſs, that it was the Heads of a Declaration which he had drawn himſelf.

L. C. Juſt. Now, Sir, after this, I expect not to be interrupted by you any more.

This being the Matter, he doth at the ſame time confeſs, that That was the Declaration which he had ſhewn to Mr. *Lynch* at the *Green Man*, on the Way as they were going to my Lord *North* and *Gray*'s. So that part of this Evidence is ſupported by Mr. *Layer*'s own Confeſſion. As to the other Part, that he did conſult and agree to levy War, conſider, that he confeſſed before the Council, that he did go to the *Green Man*, and there ſhewed the Declaration to Mr. *Lynch*; whether that doth not give Credit to what the other ſaith, That he went to the *Green Man*, and that there they talked of the Inſurrection, and the levying of War; and then went to my Lord *North* and *Gray*'s, with this, that he recommended Mr. *Lynch* to my Lord *North* and *Gray*, as a fit Perſon to ſeize my Lord *Cadogan*, and to be concerned in the Inſurrection.

Gentlemen, This is not the only Matter by which he is ſupported in this Evidence, that the Priſoner deſigned an Inſurrection, and to levy War againſt the King; but he confeſſed before the Council, that he went to *Rome*, had two ſeveral Conferences with the *Pretender*, and was very kindly received by him: He ſaid he aſked the *Pretender*, if he would give him any Credentials that might recommend him to his Friends in *England*; that was objected to, and not complied with; but then he aſked a particular Favour, that the *Pretender*'s Spouſe would ſtand Godmother to his Child; that is granted; and the *Pretender* himſelf is willing to ſtand Godfather.

Afterwards, when he returns into *England*, he conſidered of proper Proxies to repreſent the *Pretender* and his Spouſe; and aſking my Lord *Orrery*, he refuſed him; then he aſked my Lord *North* and *Gray*, who conſented: My Lord *North* and *Gray* ſtood as Proxy for the *Pretender*, and the Dutcheſs of *Ormond* as Proxy for the *Pretender*'s Wife.

He tells you, at this Time when he was at *Rome*, he had told Sir *William Ellis*, it would be of great Service if he could have a Fund of Credit to raiſe Money with. How muſt that be? Why, ſaith he, let me have blank Receipts ſigned by the *Pretender* himſelf; and accordingly he had.

This, he tells you, is what happened at that time. Now the Evidence given by Mr. *Lynch*, being of an Inſurrection in Favour, and for the Service of the *Pretender*, when Mr. *Layer* owns he had two Conferences with the *Pretender*, and was received ſo kindly by him, and had ſuch particular Marks of his Favour; conſider whether this doth not ſupport the Evidence which is given by Mr. *Lynch*.

The next Evidence is Mr. *Plunkett*; he tells you how he came recommended to Mr. *Layer* by one Major *Barnwell*, on this Occaſion. He tells you, Mr. *Layer*'s Goods were in Execution, and he was employed by Major *Barnwell* to reſcue them; accordingly he went and fetched a couple of Soldiers, got into the Houſe, drove out the Officers, and reſcued the Goods. By this it appears, that Mr. *Plunkett* was a bold daring Man, fit to be employed on ſuch an Occaſion; and they aſſign that as a Reaſon, which anſwers the Objection made. Saith Mr. *Layer*, how came it to paſs, that when I had never ſeen this Man, that I of a ſudden ſhould have ſuch a Confidence as to truſt him in an Affair of this Nature? In Anſwer to that, it is ſaid, he had done him a ſingular Service before, he had done a bold Act, he had got ſome Grenadiers and reſcued his Goods when they were taken in Execution; and likewiſe *James Plunkett* had given a Character of him, that he looked upon him as an honeſt Man, and therefore recommended him to Mr. *Layer*.

Then he tells you, that Mr. *Layer* ſaid they wanted a Man to ſerve on this Occaſion; that *James Plunkett* talked of Officers, but we don't want Officers ſo much as we do brave Serjeants, old Soldiers, ſuch as will be ready and qualified to ſupport the Mob, and to diſcipline and head them; theſe are the Men we want, can you get ſuch as theſe? Such as you are, that will be able to diſcipline the Mob and put them in Order. I told him (ſays the Witneſs *Plunkett*) I would do my Endeavours, and accordingly I adviſed him; that I had procured twenty five ready for the Service; he deſired to have Liſts of their Names, and the Places of their Abode, that ſo he might know where to ſend to them upon Occaſion.

Now the Objection to this Evidence being only, how comes it to paſs that a Man ſhould be truſted with ſuch a Secret, and this on the firſt Sight or Acquaintance? Why, faith he, I had been employed before, and had ſhewn my ſelf faithful on another Occaſion, and did ſerve him

in reſcuing his Goods, when they were ſeized upon in Execution, and *James Plunkett* recommended me. This is the Evidence of *Matthew Plunkett*, and if *Plunkett* ſwears true, if he was deſired by Mr. *Layer* to procure and liſt Men for the Service of the *Pretender*, and he ſays and declares he did do it, then, if this Evidence is to be credited, the Priſoner at the Bar is guilty of the Treaſon wherewith he ſtands charged: But ſtill they rely upon it, and hope you will not give Credit to the Witneſſes. You hear what hath been anſwered by the Counſel for the King, and I obſerve to you now, that though here was ſuch a Charge againſt the Witneſſes, the King's Counſel have produced ſeveral Perſons that had good Aſpects, and ſeemed to be Men of Reputation, who ſay, they know them, and believe them to be Men of Reputation.

Then, Gentlemen, the next thing inſiſted on is, that the Evidence given by *Lynch* and *Plunkett* is ſupported by the Papers that were ſeized in Mrs. *Maſon*'s Cuſtody. Conſider how that Matter ſtands; Mrs. *Maſon* tells you, that Mr. *Layer* brought two Pacquets of Papers ſealed up to her, and told her, they were Love-Letters; ſhe ſays, ſhe was deſired to keep them by the Priſoner; and accordingly ſhe did keep them for him; and you have it afterwards from the Witneſſes, who have been produced, and againſt whoſe Credit there is no Exception, that having a Warrant againſt Mrs. *Cook* and Mrs. *Maſon*, they came to Mrs. *Cook*'s Houſe to ſearch for Papers, and in Mrs. *Maſon*'s Room there was a Trunk which was lock'd; they order'd it to be opened, which Mrs. *Maſon* did, and they took out of the Trunk two Bundles of Papers ſealed up as you have heard; they tell you the Bundles of Papers were opened, that they ſet their Marks upon each Paper; and one of them did not immediately ſet his Mark, but afterwards 'tis proved that he kept them from the Time they were delivered to him till the other came back again, and then upon his Return he delivered them back again to him; then he ſet his Mark upon them, both ſet their Marks upon them, and therefore they can ſwear that they are the ſame Papers that were taken out of Mrs. *Maſon*'s Trunk: Then, if Mrs. *Maſon* ſwears true, they are the Papers of Mr. *Layer*, which were delivered to her by him; and ſo tracing it from Hand to Hand, theſe are the ſame Papers that were found in Mrs. *Maſon*'s Cuſtody. Mrs. *Maſon* ſwears the ſame, and ſhe alſo ſet her Mark upon them.

But, ſaith Mr. *Layer*, there is no Credit to be given to Mrs. *Maſon*, ſhe is an ill Woman, an infamous Woman, therefore her Evidence is not to be regarded.

Gentlemen, conſider how this Matter ſtands; in one of theſe Pacquets of Papers were found the *Pretender*'s Receipts, which Mr. *Layer* before the Council ſaid, he had deſired Sir *William Ellis* to procure for him from the *Pretender*, and which he had accordingly procured, and that he had received them; and theſe Receipts being in the Pacquet found upon Mrs. *Maſon*, how came they there, if they had not been delivered to her by Mr. *Layer?* Therefore theſe Receipts being in this Pacquet, plainly demonſtrate that theſe Papers are the Papers of Mr. *Layer*, and were by him delivered to Mrs. *Maſon:* And if they were his Papers, theſe Papers, and what is contained in them, will be a ſtrong Evidence againſt Mr. *Layer*. Notwithſtanding all this, ſays Mr. *Layer*, theſe were never my Papers; it is Forgery or Perjury. Whether or no you will believe theſe Papers to be Mr. *Layer*'s, when it appears thoſe Receipts were found amongſt them; beſides that, here is a Paper amongſt them, that the Witneſs that is produced by Mr. *Layer*, one that was his Clerk, ſwears that it is his own Hand-Writing; how came that there, if this be not the Bundle and Pacquet of Mr. *Layer?* And on this they turn the Strength of their Caſe.

If this be ſo, conſider, firſt here is a Scheme; whoſe Hand-Writing it is, here hath been Variety of Evidence as to that. It is inſiſted on by the King's Counſel, that the Scheme is of Mr. *Layer*'s Hand-Writing; and if ſo, this is a ſtronger Evidence againſt Mr. *Layer*, than if the Papers had been only found in his Cuſtody. How ſtands that? Here is one that was Mr. *Layer*'s Maſter formerly, who ſaith, he verily believes this to be the Hand-Writing of Mr. *Layer*; if that be ſo, then all is well, and it ought to be read, not only as a Paper that was in his Poſſeſſion, but as a Paper that was writ by him: But they diſpute, and ſay, 'tis not his Hand-Writing; they aſk this Witneſs how long it is ſince the Priſoner lived with him as his Clerk? about fourteen or fifteen Years ago, ſays the Witneſs: A Man's Hand, ſay they, may be changed in that Time: But, ſaith the Witneſs, I verily believe it to be his Hand-Writing, for I have within theſe five Years received ſeveral Letters from him about Buſineſs, there being a Correſpondence between him and me, I being his Agent in Town, and theſe Letters are of the ſame Character he uſed fourteen or fifteen Years ago, therefore I believe it to be his Hand-Writing.

But, ſay the Counſel for the King, we won't only prove this by theſe Gentlemen, but the Priſoner himſelf hath confeſt it. Well, how ſtands that: He confeſt, when he was aſkt at the Council-Table, what he knew of Arms that were provided; he ſaid, he knew of none. To which when it was ſaid, how came you to mention it in this Scheme of your own Hand-Writing, there you take Notice of Arms that were provided? Doth Mr. *Layer* diſown it? No, ſaith he, 'tis a Miſtake, I ſhould have writ, which *ſhould be* provided.

Gentlemen, take this together, conſider with your ſelves what the Import of it is. He ſaith, when he is aſked about theſe Arms, I ſhould have writ, which *ſhould be* provided. Whether this doth not amount to a Confeſſion of this Matter, muſt be left to your Conſideration, as a confirming Evidence of what the other Witneſſes ſwear. But, ſaith Mr. *Layer*, let me call a Witneſs to prove that it is not my Hand-Writing: He calls a Gentleman, and he ſays it is not his Hand-Writing; he calls his Clerk, and his Clerk ſaith it is not his Maſter's Hand. Here are two Witneſſes: Then there is an additional Witneſs on the other Side, and that is, his own Confeſſion. Whether it amounts to a Confeſſion muſt be left to your Conſideration; but if this Scheme be not of his own Hand-Writing, it was a Scheme which he had in his Cuſtody, and that alone had been a conſiderable Evidence againſt him. How came he by this Scheme? What had he to do with it?

The Scheme hath been read to you, which tells you the ſeveral Methods to be proceeded in. In the firſt Place, the Tower is to be ſeized, an Officer is to mount the Guard that would be in their Intereſt, and at nine a-Clock at Night they are to ſeize the Tower: Then they are to go to the Bank, and ſet a Guard there, after they have taken out Money from thence: After this he tells you of ſeveral other Guards that are to be ſet in other Places, and then a Party is to be ſent to ſeize the King; then he tells you, another Party is to be ſent over the Water to ſeize his Royal Highneſs the Prince; he calls him by a Cant Name, but 'tis plain he is meant.

If this be all his own Hand-Writing, it is a ſtrong Evidence that he was in this Conſpiracy; but if he had only a Scheme of this Nature in his Cuſtody, that will be an Evidence againſt him, tho' he did not write it.

Now whether every Body is not ſatisfied that theſe Bundles were his, when in theſe Bundles theſe Receipts ſigned by the *Pretender* himſelf, and the Paper that was of his Clerk's own Hand-Writing, were found; it goes a great Way to confirm the Evidence of Mrs. *Maſon*, who ſwears the Bundles to be his Papers.

Theſe are matters of Evidence, and muſt be left to your Conſideration.

Then they go on and examine the treaſonable Papers, the Notes, the Liſts, *&c.*

To raiſe an Inſurrection Money would be wanting; ſaith Mr. *Layer*, I told Sir *William Ellis* this. Upon that there are Receipts ſigned by the *Pretender*, by which the Priſoner ſaid they might take up Money on that Occaſion. Sir *William Ellis* agrees with me, ſaith Mr. *Layer*, and accordingly ſends me Receipts, and I had them, and they were found in this Bundle of Papers; and how came they there, if they were not Mr. *Layer*'s Papers?

Conſider the other Papers; the Deſign being for an Inſurrection, they are to engage the Guards in their Service; you ſee that ſeveral Papers are found in theſe Bundles that contain an Account of the Number of Men that were in ſuch a Troop of Guards, the Number in ſuch a Troop of Grenadiers, and tells you what the Numbers were; what was the meaning of all this? How came this Gentleman to be ſo ſollicitous in examining into the Number of Guards and Officers, but only to get a true State of this Matter, that he might know who were the Perſons that were moſt likely to be corrupted, and what a Number of Enemies he might meet with on this Occaſion?

Theſe are very ſtrong Circumſtances againſt Mr. *Layer*, unleſs Mr. *Layer* can give any Account why he kept theſe Papers ſo carefully.

To go a little back, as to the Buſineſs of Mr. *Lynch*; it appears he did not know Mr. *Lynch* before this Affair was ſet on Foot; he rode out with him, goes to the *Green Man* with him, there they talked over this Affair, there he publiſhes that traiterous Declaration, and afterwards preſented *Lynch* to my Lord *North* and *Gray*. How came they ſo intimately acquainted unleſs on this Occaſion?

Then, Gentlemen, they go on and tell you, when this Gentleman was committed into the Cuſtody of a Meſſenger he made his Eſcape, and this we look upon as an Evidence of Guilt, not a concluſive Evidence; a Man may eſcape tho' he is innocent, yet 'tis an Evidence that is material to be left to the Jury, and is proper for their Conſideration; he is purſued and retaken; when he is retaken he is under great Conſternation; he begs for the Lord's Sake they would let him go, and ſaid it was an Arreſt; he took out of his Pocket a great Number of Guineas, and ſaid they ſhould have what Number they pleaſed, if they would let him go; this is a material Circumſtance, and doth ſhew that this Gentleman was more than ordinary concerned in this Affair.

You will lay theſe Things together, and conſider how far they ſatisfy you, that this Gentleman is guilty of the Treaſon.

Then they give you an Account how he did confeſs before the Lords of the Council every thing that hath been ſworn by the Witneſſes: That he went to the *Green Man* in your County, and there conſulted and agreed to carry on this Affair; that he did take out and read the Declaration; this is a ſtrong Evidence, eſpecially if compared with what he confeſſed, that he had Two Conferences with the *Pretender* at *Rome*, was kindly received by him, and had particular Marks of his Favour; He is deſired to ſtand Godfather, and his Wife to ſtand Godmother to his Child; and accordingly they ſtood; he deſires my Lord *North* and *Gray* to ſtand as Proxy for the *Pretender*, and the Dutcheſs of *Ormond* to be Proxy for the *Pretender*'s Spouſe; and they were Proxies at the Chriſtening of his Child. Theſe are the Circumſtances that have been laid before you on Behalf of the King againſt the Priſoner at the Bar. But 'tis ſaid on the Behalf of the Priſoner, that he ſtands at the Bar upon his Life and Death, which will depend upon your Verdict.

I think you ought to conſider of that, and that I hope will induce you to conſider and weigh well the Evidence, and not to find the Priſoner Guilty, unleſs you are ſatisfied he is ſo.

It is true, here is the Life of a Man in the Caſe, but then you muſt conſider likewiſe the Miſery and Deſolation, the Blood and Confuſion, that muſt have happened if this had taken Effect, and put one againſt the other; and I believe that Conſideration, which is on the Behalf of the King, will be much the ſtrongeſt.

Theſe things are proper to be conſidered, in Order to prepare you to be careful in examining and weighing the Evidence well; but in giving your Verdict I hope you will lay them all aſide; you will conſider the Weight of the Evidence on either Side, and the Credit of the two Witneſſes, and how far they are ſupported by a Writing under his own Hand, a Confeſſion at the Council-Table; conſider how far that will ſupport their Evidence, tho' not Men of the cleareſt Reputation.

A Cypher hath been taken Notice of, by which were explained ſeveral Names that ſuch and ſuch Perſons and Things were to be called by; there was the Name of *Atkins*, which was to ſignify the *Pretender*; there was another Name for the *Pretender*, and that was *St. John*; and conformable to theſe Names they have read ſeveral Letters, by which it appears that a treaſonable Correſpondence was carried on by Mr.

Layer. This is the Circumſtance of the Evidence that hath been laid before you. Conſider this Evidence, and the Objections that have been made to it, and how far thoſe Objections have been anſwered.

Diſcharge the Part of Honeſt Men, conſider and weigh well the Evidence.

Upon the whole Matter, if you do believe that there was an Overt-Act of Treaſon in the County of *Eſſex*, and that it was proved by Mr. *Lynch*, and confirmed by the Confeſſion of Mr. *Layer*; and if there be any Overt-Act in another County, as his liſting or employing any to liſt or engage Men in the Service of the *Pretender*, then you will find the Priſoner guilty.

If you are not ſatisfied theſe Things are true, then you'll acquit him.

The Jury withdrew for about half an Hour, to conſider of their Verdict, and when they returned into Court, were called over by the Clerk of the Crown and anſwered to their Names.

Cl. of the Cr. Gentlemen of the Jury, are you agreed on your Verdict?

Jury. Yes.

Cl. of the Cr. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of the Cr. *Chriſtopher Layer*, hold up your Hand. (Which he did.)

You of the Jury look upon the Priſoner.

How ſay you? Is *Chriſtopher Layer* guilty of the High-Treaſon whereof he ſtands indicted, or not guilty;

Jury. Guilty.

Cl. of the Cr. What Goods and Chattels, Lands and Tenements had he at the time of the ſaid High-Treaſon committed, or at any time ſince, to your Knowledge?

Jury. None.

Cl. of the Cr. Hearken to your Verdict as the Court has recorded it. You ſay that *Chriſtopher Layer* is guilty of the High-Treaſon whereof he ſtands indicted; and you ſay he had no Goods nor Chattels, Lands nor Tenements at the time of the ſaid High-Treaſon committed, or at any time ſince, to your Knowledge, and ſo you ſay all.

Mr. *Att. Gen.* We pray a Rule may be made to bring up the Priſoner to receive Sentence.

Mr. *Juſt. Eyre*. He muſt have four Days to move in Arreſt of Judgment. Let there be a Rule to bring him again upon *Thurſday* next.

Then the Priſoner was remanded back to the *Tower*.

Die Martis 27 *die* Novembris, 1722.

Chriſtopher Layer, *Eſq*; *was brought to the Bar of the Court of* King's Bench, *in order to receive Sentence.*

Mr. *Att. Gen.* MY Lord, the Priſoner at the Bar ſtands convicted of High-Treaſon; I pray your Lordſhip's Judgment againſt him for the King.

Cl. of the Cr. *Chriſtopher Layer*, hold up thy Hand, (which he did) Thou haſt been indicted for High-Treaſon, for compaſſing and imagining the Death of the King, and thereupon been arraigned; and thereunto haſt pleaded not Guilty, and for thy Trial put thy ſelf upon God and thy Country, which Country hath found thee Guilty; what canſt thou now ſay for thy ſelf why the Court ſhould not give Judgment of Death againſt thee according to Law?

Mr. *Hungerford*. Is it your Lordſhip's Pleaſure to give any Directions touching the Matter of the Priſoner's being in Irons? I hope your Lordſhip will order them to be taken off, at leaſt during his Attendance here.

L. C. Juſt. I don't know, there is none of the Caſes that have been, which go further than during the Time of his Trial; his Trial is over, if he hath any thing to offer to the Court, and thinks he may not be able to do it ſo well while he is under theſe Irons, I would recommend it to Mr. Attorney, not to make a Precedent of it, that his Irons may be taken off.

Priſoner. Yes my Lord, I have a great deal to ſay, which I ſhall offer in Arreſt of Judgment.

Mr. *Hungerford*. He hath complain'd ſince he hath been here, that he is in great Pain, in the Poſition he ſtands with his Irons.

L. C. Juſt. Come, Brother *Pengelly*, have you any thing to object againſt his Irons being taken off, or do you conſent to it?

Mr. Serj. *Pengelly*. My Lord, we don't oppoſe it.

Then the Irons were taken off.

Mr. Serj. *Pengelly*. My Lord, the Priſoner at the Bar, Mr. *Layer*, after a long and a fair Trial, hath been found guilty of High-Treaſon; and on Behalf of the King, we pray the Judgment of the Court againſt the Priſoner.

Mr. *Hungerford*. By your Lordſhip's Indulgence, I am Counſel for the Priſoner at the Bar, I have, and I hope ſhall continue to do him what Service I can: The Priſoner's Life is at Stake, and I hope, I ſhall not be ſuppoſed to be troubleſome, if I deſire a Record to be read, which hath not been yet read in Court; it is the *Venire*, and that being part of the Record we think we are proper to have it read.

Mr. Serj. *Pengelly*. We apprehend it is ſuch a Requeſt as has never been made: If they have any Objections to any Part of the Proceedings, or any Exceptions to take, they are at Liberty to take them, and to ſtate their Objections, that the Court, if neceſſary, may refer to the Record to ſee whether they are juſt or no; but to come and deſire the Proceſs to be laid before the Court for the Information of the Priſoner and his Counſel, it never hath been done: They are entitled now to offer any Thing, if they can, in Arreſt of Judgment.

Mr. *Att. Gen.* If what they deſire ſhould be granted, it would be a Precedent which might be of very ill Conſequence, and I apprehend what they deſire, is directly contrary to Law; there are no Authorities that the Priſoner ſhould either have Copies of the Proceſs, or that the Proceſs ſhould be read to him, only to enable him to find a Fault. I believe no Inſtance can be given whatſoever, that it was ever allowed in a Caſe of this Nature, if it be done now, it will be a Precedent for the future.

The Act of Parliament went as far as was thought proper. Copies of the Indictment and Copies of the Names of the Jury, are directed to be delivered to the Priſoner; but as to any

of the Proceſs, the Act gives no Direction, and therefore as what they deſire is neither founded on Law, nor Precedent, we hope it ſhall not be granted.

Mr. *Soll. Gen.* My Lord, Mr. *Hungerford* has been pleaſed, in the Courſe of this Caſe, frequently to put us in mind, as he does now, that what he has inſiſted on, was in favour of Life. That is a moving Argument, but it proves nothing, ſave that the Priſoner ought to have all the Indulgence which the Law and the ſettled Forms of Proceeding do allow; but I apprehend it is a Reaſon for no more. What is aſked, is of more Conſequence than appears in this particular Caſe; and whatſoever your Lordſhip doth now, will be made a Precedent for the future.

My Lord, before the Act of Parliament, which allows the Priſoner to have a Copy of his Indictment, and of the Pannel of the Jury, it is moſt certain, he was not entitled to have ſuch Copies. Before that Law was made, he was informed of nothing but by having the Indictment read to him in Court upon his Arraignment, and that not barely to give him an Opportunity of taking Exceptions to it, but from the Neceſſity of the thing, becauſe it was the Charge to which he was to anſwer. Then comes the Act of Parliament, the 7th Year of King *William*, and allows the Priſoner a Copy of his Indictment, and of the Pannel of his Jury. But the Legiſlature, when they had theſe Matters under their Conſideration, and ſeem to have intended to give at leaſt all the Indulgence, conſiſtent with Reaſon, to Priſoners in Caſes of High-Treaſon, even at that time they went no further, and did not think fit to direct that to be done, which is now deſired on the behalf of this Gentleman. Therefore this Motion of Mr. *Hungerford*'s muſt be underſtood to be made at Common Law; but I muſt beg leave to rely upon it, until ſome Precedent is produced on the other Side, that there is no Inſtance whatſoever, either before or ſince the Act of Parliament, wherein any Record of the Proceedings hath been read to the Priſoner beſides the Indictment. This is a Conſideration merely of Practice and Regularity; and in a Point of that kind, where there is no Precedent, I hope your Lordſhip will not make one.

Mr. Serj. *Cheſhire.* My Lord, the Carriage and Behaviour of the King's Council towards the Priſoner, hath been ſo fair and candid, that it deſerves Thanks from him, rather than Complaint; and I believe this Temper will hold on to the laſt: But my Lord, we have no Authority to give up the Right of the Crown, or to fix that on the Crown to grant, which the Priſoner hath no Right to demand.

My Lord, it muſt be admitted, that this is a Demand made at Common Law, and if it be a Demand of Right, I don't know but it may go to every thing in an equal Degree; that he hath the ſame Right to demand a ſight of the Commiſſion; *Certiorari*, &c. I don't know but he hath the ſame Right to enquire into every Step that is upon Record in this Caſe. The Officers concerned, I dare ſay, have done their Duty. There is nothing of Law, but what comes in upon the Statute of King *William*; that he hath had the Benefit of to the full extent of it; he hath had a Copy of the Pannel of the Jury; he hath had a Copy of the Indictment, and in ſuch time as was proper for him to make due uſe of it; and this they aſk now, we apprehend is only to lengthen out time, and to introduce that which may be greatly inconvenient. We have very little Reaſon of apprehending that it can be of any Profit to him; but for Example ſake, and as he hath no Right to it, we cannot come into a Conſent to it.

Therefore we ſubmit it to your Lordſhip's Conſideration, from the Inconvenience that may enſue from the Precedent, whether the Priſoner hath any Right to make this Demand.

Mr. *Hungerford.* I acknowledge that before the 7th of King *William*, the Priſoner was not entitled to have a Copy of his Indictment, and therefore I ſo far concur with the Gentlemen of the other Side, that we are not intitled to a Copy of the Record of the *Venire Facias*. But what I humbly pray now, is, what I apprehend we were entitled to before the Act of Parliament for regulating Trials in Caſes of High-Treaſon. The Inſtances are ſeveral, where in the Courſe of a Trial for High-Treaſon, before that Act which gave the Priſoner ſeveral new Advantages, the Priſoner hath deſired his Indictment to be read, and the Court never denied it; to have any other Part of the Record to be read, ſeems to be as reaſonable as the Indictment. The Objection had been ſtronger, if we had deſired for the Priſoner at the Bar, the Copy of the *Venire*; there we ſhould have been juſtly told that we had been entitled to nothing but what the Act of Parliament had directed, *viz.* the Copy of the Indictment. We pray a Copy of nothing, but only pray that a ſmall Part of the Record that makes up the whole Record of this Gentleman's Conviction, may be read. And this, with Submiſſion, we hope we are entitled to have for the ſame Reaſon as the Indictment was read before the Act. Coll. *Sidney* deſired, that his Indictment ſhould be read, and it was ſo. And can any Reaſon be aſſigned, why the *Venire*, which is but a Part of the Record, ſhould not be read as well as the Indictment? no one Part of the Record of Conviction is more ſacred than the other; and why therefore ſhould not one Part be read as well as the other?

Mr. Serj. *Pengelly.* Can you ſhew any Caſe where the Indictment was read, upon the Prayer of the Priſoner, after Conviction, and before ſome Exception taken?

L. C. Juſt. We would be far from refuſing any Indulgence to the Priſoner that by Law we are warranted to grant him; what you aſk now, you muſt own is without any Precedent whatſoever. You know, that before the Act of Parliament you were not entitled to, nor could demand a Copy of the Indictment: It is very true what you ſay before the Act of Parliament; when it hath been deſired by the Priſoner the Indictment hath been read, and that Method of proceeding having been allowed, gave him a Right to demand it; but you cannot produce any one Inſtance that ever he demanded this that now you offer; that ever he demanded the *Venire* ſhould be produced and read to him.

Conſider how ſtrict the Law was in Caſes of High-Treaſon; ſee the Act of Rights: The Courſe of the Court is the Law; this which you now deſire was never ſo much as aſk'd for, nor did this Court ever grant it; and if ſo, how can

the Court be warranted to grant that which was never granted, nor was ever desired to be granted? The Reason of it is, that every Body was satisfy'd by Law it could not be granted.

You have instanced in Cases of great Persons, Colonel *Sidney*, Lord *Russel*, and others that have been attainted of High-Treason, who could not want Advice to desire any thing that was proper, or that they had a Right to demand. Neither they nor any of the greatest Quality that have had the Misfortune of being try'd for an Offence of this Nature, ever demanded it; which is an Admission that they were not entitled to it; and if the Course of the Court be so, we must not establish a new Course; we can't see what the Consequences may be.

Mr. *Just. Eyre.* The Case of reading the Indictment to a Prisoner is certainly very different, and can be no Authority to warrant the reading of the *Venire*; for the Indictment is the Charge to which the Prisoner is obliged to plead, and he must know his Charge before he can give it an Answer: Besides, the Merit and Justice of the Case depend entirely upon the Indictment, which must be read, in order to understand the true State of the Question, and to see the Fact to which the Witnesses are to be examin'd. 'Tis therefore absolutely necessary, that the Indictment should be read; but none of these Reasons will serve for reading the *Venire*, which is only to summon the Jury, and bring them to the Bar; and therefore as it was never done, nor ever asked before, I can by no means think it fit for us to allow it now.

Mr. *Just. Powys.* I think it is a perfect Novelty what you demand, and not only so, but in its Consequences very dangerous: For, properly speaking, the common Usage to move in Arrest of Judgment, hath been out of the Indictment; but to run back to those things, which if you had a Right to demand, it had been proper to have done it before; and since you have many times known that nothing but the Indictment hath been read, since the Judges were never mov'd, nor any thing of this kind done, and nothing in the World hath been demanded like it; if it should be granted at this time, when Men are to receive Judgment, and Exceptions are to be taken to the Indictment, if they should run back to all the Proceedings, it would be a thing of strange Consequence. But besides that, it is a thing you have no Example for, it hath been never done; and it hath been observed, that nothing but the Copy of the Indictment hath been read before this Act of Parliament of King *William*. Now there are two things given by this Act of Parliament of King *William*; the Prisoner is to have the Copy of his Indictment five Days, the Copy of the Pannel of the Jury two Days before his Trial, and these were proposed as Advantages which the Common Law did not admit: Shall we come to unravel all the Matters preceding? it would be a Matter of strange Consequence, and what we can't do or warrant by Law: If you have any thing to move out of the Indictment, we are ready to hear it.

Mr. *Just. Fortescue Aland.* This is perfectly new, or else in Favour of Life I should be ready to grant it: The true Reason of having the Indictment read is, that the Prisoner may know what his Charge is, in order to make his Defence at his Trial; but that Reason holds not in this Case, which is after Conviction, and what is ask'd now is not relative to his Charge, but concerns the Acts of the Court only. The Court will assist in Matters of Law, when they appear, but will never assist the Prisoner with Facts, in order to make Points of Law; and therefore it has been denied the Prisoner to take Minutes even of the Indictment, and for the same Reason Counsel has ever been denied, in all capital Cases, before the late Act of Parliament, unless a disputable Point of Law did arise and appear.

You move this Matter as a Motion purely at Common Law; and as such it will extend to all Indictments of Murder, and other capital Cases, which may be of very evil Consequence. It would be very strange to have all the Proceedings upon Indictments read to the Prisoner; and there is as much Reason to call for all as for the *Venire facias*: I take it clearly there never was a Case, where the Acts and Proceedings of the Court have been called for to be read to the Prisoner, and for no other Purpose but to make an Error: It is a thing that is entirely new, the Consequences may be very fatal, and therefore I think it is an unreasonable Motion, and ought not to be granted.

Mr. *Hungerford.* I assure your Lordship I did not do it out of an Affectation of Novelty, neither shall I persist in urging it further, since the Court hath given their Opinion; but I thought the Reason of the thing, in reading the Indictment, before the Act of Parliament was with me; but since it is your Lordship's Opinion that it is otherwise, I desire your Lordship to give me leave to go on.

Prisoner. I beg leave to say but a short Word in respect to this Objection that hath been made by Mr. *Hungerford.* If I take the thing right, it is, that the *Venire* may be read, to see if it is properly issued, and I hope thus far it shall be granted, to shew a Reason why this *Venire* is returned on one Day, and the Jury appear on another; and if it doth appear that there is an Error in the Proceedings on the Foot of the *Venire*, I humbly hope I shall have the Benefit of it. The Objection, I take it, must be this; the *Venire*, I take it, is returnable the 19th of the Month of *November*, I was not try'd till the 21st; therefore, what I humbly offer is, whether or no, after the Return of the Writ, this is a good convening of the Jury together to try me on a Writ, when there was no such Writ in being, more especially when the Proceedings against me are by Original, where the Returns in this Court are the same as in the Common Pleas; so I shall leave it to my Counsel to say the rest, and humbly hope, that I shall have leave to look into the *Venire*, and if it come out so, I hope it is erroneous, and that Judgment shall be arrested.

Mr. *Hungerford.* The Gentleman hath given Utterance to some of my Thoughts; and not by comparing of Notes, for I have not seen his Face, nor heard from him since I saw him here at the Bar at his Trial.

That which occurs to me on this Occasion, but I can but guess at some Part of the Fact, is, I take it, that the *Venire* bears Teste the last Day of *October*, and is returned the 19th of *November*; there are stated Return Days of the Law, and,

and, my Lord, if a Man appears in a Court of Juſtice one Day, and he is not by the Courſe of proceeding indulged with a further Day of appearing, there is a Diſcontinuance of the Proceſs, and the Man is out of Court. The different Days the Law takes notice of for this Purpoſe are, the Eſſoign Day, the Day of Exceptions, the Day of Appearance, the *quarto die poſt*; I take the *quarto die poſt* to be an Indulgence which a Court of Juſtice gives to a Suitor to appear at a further Day, when he ought to have appeared at a former Day; and this is the Practice in real Actions in the Court of Common Pleas. As to the Exception Day, the Uſe of that is, that a Man that is ſummon'd may object to the Summons, as not being a fit and regular Summons to draw him in Contempt.

But, my Lord, in Caſes of Juries, who are not Suitors in Court, I take the Law and the Practice to be, that they are oblig'd to attend upon the Proceſs of the Court: I take it, they muſt do Duty on the Return of the *Venire*, which, in this Caſe, is on *Monday* the 19th of *November*, and did not appear till *Wedneſday* the 21ſt; ſo that if they were to appear on *Monday* the 19th of *November*, and did not appear then, there muſt appear ſome Act of the Court, by which they are indulg'd to a further Day: And I put it upon Mr. *Harcourt* to ſhew, whether there is any Indulgence of the Court entered upon Record for the continuing of the Jury till *Wedneſday* following; and if there is not, there is then a Diſcontinuance of their being in this Court, and conſequently the Proceedings are irregular, and the Trial a Miſ-trial: I ſhall quote ſome Authorities which juſtify this Obſervation; when a Man by a Proceſs of Court appears on the Day of the Return of that Proceſs, unleſs there be a Continuance of that Proceſs, that *ulterior dies datus eſt* to the Party, or a ſubſequent Proceſs iſſues that Day, the Law deems that Chaſm in the Proceedings to be a Diſcontinuance, and that the Party is out of Court. It was ſo reſolved in *Yelverton*, 204; and 2d *Coke*, 284. It is the Caſe of *Bradley* and *Banks*; and reported in both Books, but moſt fully in *Yelverton*. There is an Authority which weighs with me ſomething more, and ſeems to be a Caſe in Point; it is the Caſe of *Peplow* and *Rowley*, 2d of *Croke*, 357. and there the Caſe is on a Writ of Error brought upon Proceedings in the Court of *Shrewsbury*, where the Uſage was, to hold Plea in ſome real Actions, and there was an Entry that the Parties did not appear on a preceding Day, but made Default: And the Entry was *habuit diem per default'* given to the Party by the Court, *ſecundum conſuetudinem villæ prædictæ*. This came before this Court by a Writ of Error, and it was adjudg'd, that both the Entry and the Cuſtom were naught. The Reaſon aſſign'd why the Entry was ſo, is, for that the Party having made Default, was out of Court, and the Court could upon that Proceſs give him no new Day to appear. And the Reaſon why the Cuſtom itſelf is naught, is, for that there can be no Cuſtom to help that (which the Book calls) a Diſcontinuance at Common Law; for if the Man be out of Court, he can't be brought in there again by the ſame Writ.

My Lord, if that be the Caſe then, that the Jury were to appear on the 19th, and there is no Entry to continue them till *Wedneſday* the 21ſt; then by the Authority of theſe Caſes they had no Call nor Right to appear, but were out of Court, the Trial was no legal Trial, and conſequently no Trial at all.

I am told, that the Practice of all Trials at Bar is, that the Jury do appear here on the Return of the *Venire*, and immediately proceed to do Buſineſs; why ſhould it not be ſo too in a criminal Caſe, as this is? I think the Reaſon in both Caſes is the ſame: I humbly hope therefore, my Lord, that if the Fact be as I have repreſented, that there is no Entry to continue over the Attendance of the Jury from *Monday* to *Wedneſday*, there is a Blemiſh in this Proceeding; and you can't proceed to Judgment againſt the Priſoner at the Bar.

Mr. *Ketelbey*. If your Lordſhip will favour me——

L. C. Juſt. You ſhall be fully heard; but becauſe Mr. *Hungerford* hath appeal'd to Mr. *Harcourt*, I ſhall aſk Mr. *Harcourt* this Queſtion about the Matter of the *Venire*.

Mr. *Harcourt*. I ſhall be very tender in this Matter, where the Life of the Priſoner is at Stake, as Mr. *Hungerford* has obſerv'd, and will not ſay any thing but what I am ſure is the Courſe of the Court. If a *Venire* be returnable the firſt general Return of the Term, the Appearance-Day of the Jury is the *quarto die poſt*, which is the firſt Day of the Term. If the Court be not pleaſed to try the Priſoner then, they may adjourn the Jury over to any Day before the next Return in the Term; but no Entry is ever made on Record of ſuch Adjournment, and the Proceedings are always enter'd on Record to be at the Return of the Writ. In all other Returns in the Term, there is the ſame Courſe obſerv'd: The Jury is never oblig'd to appear before the *quarto die poſt*; nor can the Priſoner be try'd ſooner. What makes this clear is, to conſider the Proceedings on *Diſtringas*, where the Priſoner is not try'd on the *Venire:* In ſuch Caſes, the *Diſtringas* is never teſted on the Return-Day, but the *quarto die poſt*; which, if what is inſiſted on by the Priſoner's Counſel is Law, would make a Diſcontinuance, and that has always been held otherwiſe; for till there has been a Default of the Jury's appearing on the *Venire*, no *Diſtringas* can iſſue, and no Default can be objected to the Jury for not appearing till the *quarto die poſt*; nor are they amerciable ſooner for not appearing. This Matter was ſettled, on great Deliberation, by my Lord Chief Juſtice *Holt*; and I am confident, has been ever ſince ſo practis'd.

Mr. *Ketelbey*. My Lord, it was my Misfortune not to get into Court ſooner; ſo that I did not hear the firſt Application Mr. *Hungerford* made to your Lordſhip on Behalf of the Priſoner, nor ſhall I preſume to break in upon what your Lordſhip has already determin'd; but whether or not we are entitl'd to ſee the *Venire*, or hear that Part of the Record read. I hope we ſhall be able to make out, that there has been a Miſ-trial in this Caſe. The *Venire*, it is agreed on all Hands, was returnable *octabis Martini*, which was *Monday* the 19th of *November*. That the Priſoner was not tried till the 21ſt, is moſt certain. The general Return was *octabis Martini*, and he was not tried till two Days after; and notwithſtanding what Mr. *Harcourt* hath ſaid, I muſt beg Leave humbly to inſiſt, that there hath been

a Miſ-trial, and Judgment ought to be arreſted; and for that I have as ſtrong an Authority as any that can be cited in this Court, 'tis the Trial of *Rookwood*; and for the greater certainty, I have brought the Book along with me, and have it in my Hand; where it is agreed, by the Court, and all the King's Counſel, that the Trial muſt be on the Day of the Return of the *Venire*, or elſe that it would be Error: And my Lord Chief Juſtice *Holt* declared, the Iſſue could not be tried after the Day of the Return: This Matter came before the Court upon an Exception taken by Sir *Bartholomew Shower*.

Mr. *Juſt. Eyre.* That was on a Commiſſion of *Oyer* and *Terminer*, which was quite different; there is no *quarto die poſt* there, no Day of Appearance, but the Day of the Return of the Writ.

L. C. Juſt. It muſt be ſo, becauſe there is no ſuch thing as a *quarto die poſt* in Commiſſions of *Oyer* and *Terminer*.

Mr. *Ketelbey.* I ſubmit it to your Lordſhip, whether there is any *quarto die poſt* in a *Venire?*

L. C. Juſt. It is always ſo.

Mr. *Juſt. Eyre.* You know we had the Conſideration of this when we appointed the Trial.

Mr. *Ketelbey.* I beg leave to offer one Word, that in caſe of a *Venire*, there is no *quarto die poſt*, becauſe there is no *Eſſoign*, no Exception-Day for the Jury. The Authority in firſt *Roll's Abridgment*, 822. *Placit.* 4 & 6. is expreſs, that in a *Venire facias* or a *Scire facias*, there is no *Eſſoign*: And where there is no *Eſſoign*, there can be no Day of Exception, becauſe the Exception depends on the *Eſſoign*-Day, and conſequently the Day of the Return, and of the Appearance muſt be the ſame. The Caſe of Eſſoign, Exception, Return, and Appearance-Days, concerns only original Writs, and the Plaintiffs and Defendants therein; there if the Defendant appears the *quarto die poſt*, his Appearance ſhall be accepted as good, and no further Proceſs made againſt him. But who ever heard that a Jury were Eſſoigned? There are ſeveral other Authorities for this. *Dalton*, 415. *2d Inſtit.* 125 & 33 *H.* VI. 5. *b.* that no *Eſſoign* lies upon a *Venire facias*; and the *Eſſoign* was quaſhed.

L. C. Juſt. This you now offer will ſet aſide all the Proceedings either on the Plea Side, or the Crown Side.

Mr. *Ketelbey.* There is a Caſe reported in the Year-Book, *Michs.* 33 *Henry* VI. *fol.* 35, 36. and abridged in *Brook*, Title *Niſi prius*, *Pl.* 32. It was diſputed by the Judges of the Bench, and at firſt there was a Difference of Opinion among them; but at laſt it was unanimouſly reſolved, That the *Niſi prius* was not well taken. I will ſtate the Caſe as it appears in the Year-Book and the Abridgment. There was a Writ of *Niſi prius* made with a certain Return, and the Juſtices tried the Iſſue upon a Day *meſne* during the Interval between the *quarto die poſt*, and the Return of the Writ. This was objected to, and ſaid to be a Miſ-trial; and afterwards the Judges agreed in their Opinion, that it was a Miſ-trial, becauſe it was not upon the Return-Day of the Writ of *Niſi prius*; and if not upon that Day, the Trial ought not to have been at all. And I don't apprehend any Difference between that Caſe and this, but only that was at *Niſi prius*, and this a Trial in Bank. There is no Continuance lies on a *Venire facias*; and if ſo, I ſhall ſubmit it, whether there is any Day of Appearance.

Mr. *Juſt. Eyre.* Sure there is a Day of Appearance on the *Venire facias*; the Proceedings in this Caſe are like thoſe upon an Original. The ſame Day which is the Day of Appearance for the Party upon an Original, is the Day of Appearance for the Jury upon a *Venire*.

Mr. *Ketelbey.* I believe it will be hard for Mr. *Harcourt* to ſhew where there is any *Eſſoign* on a *Venire facias*.

L. C. Juſt. We have heard already what Mr. *Harcourt* hath ſaid. I deſire Mr. *Simmonds* may inform you how it is on the Civil Side.

Mr. *Simmonds.* Our Proceſs where the Suit is commenced by Bill, is return'd on a Day certain in Court; that doth not reſpect this Caſe.

L. C. Juſt. How is it when it is by Original?

Mr. *Simmonds.* Where it is by Original, it is always returnable as the Proceſs is in the *Common Pleas*; and the Day of the Appearance of the Jury, I take to be the *quarto die poſt*.

Mr. *Harcourt.* If this was to be a Diſcontinuance, what will become of all the Records where the Proceedings are at general Returns, and which are tried on the *Diſtringas*, which always bears *teſte* the *quarto die poſt* after the Return of the *Venire?* Every one of theſe Records, which are many every Term, would be diſcontinued.

L. C. Juſt. You can't but be ſenſible that there is nothing in this Exception.

Mr. Serj. *Pengelly.* There is no Foundation for it in Practice.

L. C. Juſt. You need not labour it.

Mr. Serj. *Pengelly.* The Sheriff, or the Jury, are not amerciable, tho' they did not appear on the Day of the Return, if the Jury do appear upon the *quarto die poſt*; that ſhews it——

Mr. *Att. Gen.* If this Objection prevails, it will overturn all the ſettled Courſe of Trials at Bar.

Priſoner. One thing I would humbly offer to your Lordſhip. I have not had my Books by me, but only what occurs to my Memory, I cannot be ſo exact as I ought to be. This Overt-Act in *Eſſex* of Treaſon found by the Jury to be ſo, I humbly apprehend, and I offer it to your Lordſhip's Judgment, in Law is no Overt-Act at all. All the Reaſon I ſhall humbly offer to your Lordſhip, that tho' it hath been ſaid, that there was a conſulting and agreeing in order to levy War, yet it doth not appear that War to be levyed was ſuch a War as in the Law is adjudged to be Treaſon. My Lord, this differs from the levying War it ſelf. An Intention and Conſultation, or a Conſpiracy barely to levy War, unleſs War be levy'd, it is no Treaſon. If it be a Conſultation to levy War againſt the King's Perſon, to impriſon the King, to dethrone and murder him, it ever hath been adjudg'd to be Treaſon. If it be only a Conſulting to levy War, as if to agree to break open Meeting-Houſes, to throw down Houſes, was the ſame as doing of it. There muſt be a War that is levy'd, or elſe it is no Treaſon. Not only that, but I beg leave to ſay one Word more. In my Caſe, all the Evidence given in reſpect of this Overt-Act in *Eſſex*, there is no Foundation for it; and if there is no Overt-Act in *Eſſex*, no Overt-Act elſewhere can affect me. It ſtands on the Evidence only of Mr. *Lynch:* He talks of a Declaration. Who read it? The only two things are a Diſcourſe between us, and a Declaration

which

which I gave him to read. If that, as I humbly ſubmit it, be an Act of Treaſon, it is carrying the matter further than it hath been in thoſe few Caſes I beg leave to mention that juſt occur to my Memory. If I ſtate them wrong, I ſhall be ſorry. The Caſe of *College*, the *Oxford* Joyner. It was aſked the Court, Do you take my Words diſtinct from my Actions? No, ſays the Court, we do not do ſo. You declared you would go down to *Oxford*, and aſſaſſinate the King's Perſon. In order to that, you went down with Piſtols before you. That at that time was declared to be an Overt-Act; the going down to *Oxford* in that manner; and the Court ſeemed to rely upon it, as the Overt-Act of the Treaſon, and not the talking here, or conſpiring that he would aſſaſſinate the King, but the going down in a hoſtile manner. So likewiſe in the Caſe of my Lord *Preſton*; there the Queſtion was, whether thoſe Letters that were found with him in the Ship; whether that was an Overt-Act of Treaſon. The Judges ſeem'd to be of Opinion, that the taking thoſe Letters with him as he was going to *France*, and there to conſult the ſtirring up an Inſurrection here, and to invite the *French* King to invade us, was an Overt-Act of Treaſon. But there is a ſtronger Caſe, the Caſe of my Lord *Ruſſel*. He was indicted, as I am, for compaſſing and imagining the Death of the King. The Overt-Act laid in the Indictment to manifeſt that Intention, was, that he, with the reſt of the Conſpirators, conſulted to ſeize upon the King's Guards: In purſuance to that Diſcourſe and Conſpiracy which they had had, it appeared Sir *Thomas Armſtrong* was ſent to take a View of the Guards in order to carry on the Deſign. Notwithſtanding there was a purſuing of their Deſign of ſeizing the King's Guards, in ſending Sir *Tho. Armſtrong* to view them, yet the Caſe was thought ſo very hard in reſpect to my Lord *Ruſſell*, that his Attainder was reverſed by an Act of Parliament. Therefore I only argue, with great Submiſſion, that in my Caſe, where nothing is done but accidentally calling in at the *Green Man*, ſtaying a little while there, and, as hath been ſworn, here was nothing but a mere Diſcourſe, and then I gave him a Declaration to read. If I did ſo, it was only Words. As to the ſecond, it was nothing but publiſhing a Libel. And ſhall this be a Foundation to deprive me of my Life and Eſtate, to the utter Ruin of myſelf and Family? It is an unprecedented thing, hath it ever been? Therefore I hope your Lordſhip, before you give any Judgment in this matter, will take it into your Conſideration, whether any thing done in *Eſſex* doth amount to an Overt-Act of Treaſon.

Mr. *Hungerford*. My Lord, I humbly hope, as it is my Duty to do what Service I can to my Client, and as it is in Caſe of Life, that I ſhall have your Lordſhip's Indulgence for a few Words. My Lord, he hath juſtly obſerved——

Mr. Serj. *Pengelly*. My Lord, I would not interrupt Mr. *Layer*, becauſe it may be ſuppoſed he is not ſo well acquainted with the Method of Proceeding. But I hope I may take the Liberty to interrupt his Counſel, who know by very great Experience the Method of Proceedings, that they are not now to inſiſt on the Nature of the Evidence, whether the Evidence that hath been given is ſufficient to maintain the Indictment; that is not the Buſineſs of this Day. If they have any thing to offer, any Objections to make in arreſt of Judgment, that is the Buſineſs of the Day: But to arraign the Proceedings upon the Trial, as it is ſaid that the Evidence given did not amount to a Conſultation, or to prove any Overt-Act of the Treaſon alledg'd I don't apprehend it to be proper at this Time: I did not interrupt the Priſoner himſelf; but I hope his Counſel, who know the Method of Proceeding better, in Caſes of High-Treaſon, ſhall not be permitted to go on in that manner.

Mr. *Att. Gen.* The Gentlemen that are Counſel for the Priſoner know very well, that the Evidence given on the Trial is not now before your Lordſhip; the ſingle Queſtion that can now be made is, whether the Indictment is good, and the Facts charged and found by the Jury, are well laid, and do amount to ſufficient Overt-Acts of the High-Treaſon, of which the Priſoner ſtands indicted. Mr. *Layer* hath been giving an Account of the Witneſſes, and making Obſervations on the things which they ſwore; he was borne with: But the Gentlemen that are his Counſel, ſeem to be opening in the ſame Manner, but as to them, we muſt inſiſt upon it, that they ſhould be confin'd to what is proper, and apply themſelves to move in Arreſt of Judgment, if they can find any thing upon the Face of the Record of which they can take Advantage. But I think they are not entitled to go on with Obſervations upon the Evidence, in the Manner they were beginning.

Mr. *Hungerford*. I aſſure your Lordſhip I did not deſign it, I did not intend to recapitulate any part of the Evidence, or to obſerve upon it. And therefore there was no Occaſion for the Caution. I thank your Lordſhip for the Indulgence you give me, and I will conform my ſelf to the Rules the *King's Counſel preſcribe*, to obſerve upon nothing but the Record.

My Lord, the Indictment is in this Manner; the Species of the Treaſon laid to the Charge of the Priſoner, is the compaſſing and imagining the Death of the King. The firſt Overt-Act of that Treaſon, is, that he did meet, conſult, conſpire and agree to raiſe a Rebellion, and a *Guerram* in the Kingdom, which is no Overt-Act of compaſſing and imagining the Death of the King.

I know how the Authorities have been; but in the Caſe of Life, your Lordſhip will give me leave to obſerve, that by the Statute of 25 *Edw.* III. compaſſing and imagining the Death of the King——

L. C. Juſt. Mr. *Hungerford*, we would hear you in any thing that is proper, but conſider, if you are not offering a matter in Arreſt of Judgment that hath been determined againſt you a hundred times. Hath it not been conſtantly allowed as an Overt-Act of Treaſon, in compaſſing and imagining the Death of the King, if the Parties did meet, conſult, and agree to levy War? Hath it not been conſtantly agreed, and doth it not ſtand allowed to be ſo? Now to perſuade us at this Time to overthrow thoſe Reſolutions taken by our Predeceſſors, is ſuch a thing as is not right. Do you think we will give a Judgment contrary to what our learned Predeceſſors have given in Caſes of the greateſt Moment? If I thought it was of any Effect, I ſhould not grutch ſpending time to hear you, but you muſt agree, it hath been over-ruled a hundred times.

Mr. *Just. Eyre.* It hath been settled a great many times, particularly in the Case of *Dorrel*, *Gordon*, and *Kerr*, in which it was argued over and over again, and the Court was of Opinion that the consulting and agreeing to levy War, was an Overt-Act of Treason in compassing and imagining the Death of the King, and gave Judgment accordingly.

Mr. *Just. Fortescue Aland.* Mr. *Kettelbey* was Counsel for the Prisoners in that Case, which was in this Court in the 1st Year of this King, when this Objection was made; and very well knows, that the Court, upon that Occasion, said, that they ought not to have suffered this matter to be made a Question, for that it was arraigning the Judgments of very many learned Judges.

Mr. *Just. Powys.* No one thing relating to Treason is more settled; and in that Case as hath been mentioned, it was agreed, and it was the Judgment of all the Judges that tried that Cause.

Mr. *Hungerford.* My Lord, I humbly hope ——

Mr. *Just. Eyre.* It must not be admitted, we must not suffer so plain a Point to be disputed; it is not only mispending of time, but shaking what has been established by every Trial in which any thing of this kind has been mentioned, from the Case of the Regicides to this Day.

Mr. *Just. Powys.* In the Cases of the Regicides, these Matters are printed in *Keyling*.

Ld. Ch. Just. And in all the Trials ever since, there is scarce one Case hath happened, where the Case hath been for compassing and imagining the Death of the King, but that it hath been laid for an Overt-Act, that the Party charged. did consult and agree to levy War to bring his wicked Intentions to Effect.

Mr. *Hungerford.* There is no Doubt, but that the Regicides were the worst and most notorious Criminals that were ever brought before a Court of Justice; and yet there is one Circumstance of those Trials, quoted in the very Book which Mr. Justice *Powys* mentions, which was never practised before, and I am sure never was since; that is, the Judges who were to try the Criminals, and the King's Counsel who were to prosecute them, met and consulted together to form and fix the Accusation.

But if it is your Lordship's Pleasure, I shall speak no further to that Matter.

Ld. Ch. Just. You have the Opinion of the Court, and I dare say it is your own Opinion; and as the Resolutions are so positive, it is not for us to make Indictments at this Day.

Mr. *Hungerford.* I shall not press it any further. There is another thing arises upon another Overt-Act laid in the Indictment, that is, *Publicavit quoddam Scriptum*, &c. I apprehend the Substance of *the quoddam Scriptum* ought to be mentioned in the Indictment.

Ld. Ch. Just. It is mentioned in Effect, that it was to excite People to a Rebellion and an Insurrection.

Mr. *Hungerford.* Your Lordship will observe that the criminal Words in the *Scriptum*, are not mentioned in the Indictment; and by the Rule given by all the Judges of *England* in Dr. *Sacheverell*'s Case, in all Accusations, whether by Information or Indictment, the Words supposed to be criminal ought to be inserted; and since that is not done in this Case, the Overt-Act is not well laid, and the Judgment ought to be arrested.

Ld. Ch. Just. You know, Mr. *Hungerford*, if but one Overt-Act is well laid and prov'd, it is sufficient.

I don't know, I was sorry you forc'd me to remember what I would willingly have forgot. I remember, on that Occasion, you was pleased to compare it to a Ballad, which is an Expression that ought not to be us'd. Is that a Thing, when a Prisoner is on Trial for his Life, and a Matter of an Insurrection is intended against the King, to be treated in so ludicrous a manner? It is laid as an Overt-Act of Treason, and what is an Overt-Act of Treason, if a Man's publishing a traiterous Libel, and exciting Persons to a Rebellion and Insurrection against the King is not? This is undoubtedly so: And when we are upon this Consideration, to compare it to a Ballad, and say he might as well publish a Ballad, and lay it as an Overt-Act of Treason in the Indictment; it is an Expression that ought not to be us'd, and I was very sorry you did use it.

Mr. *Hungerford.* I am sure I did not say he might as well publish a Ballad, and make it Treason; I have a greater Duty, and a more tender Regard to his sacred Majesty, and the Quiet of his Kingdom and People, than to express myself so. What I then obsery'd, as near as I can recollect, was, that there were but few Minutes to transact the Business at the *Green Man*; that what was done, could not amount to the publishing of a Declaration, when there was nothing done but a Man's reading to himself: I knew the whole Accusation did turn upon that Transaction at the *Green Man*; and in Service to my Client, I thought it my Business to make it appear as inconsiderable as I could; and if in this I have offended your Lordship, or the Court, I am heartily sorry for it, and beg their Pardon.

Mr. *Ketelbey.* If your Lordship please to favour me with a few Words.

I shall be very tender of offering to your Lordship any thing on this Indictment, which hath been over-ruled in any of the Cases where I have been before concerned; whether conspiring to levy War, unless War be actually levy'd is an Overt-Act of High-Treason, was mentioned on the Trial of *Dorrel*, *Gordon*, and *Kerr*, and I then took that among other Exceptions in Arrest of Judgment, which were not allowed; but the Statute of 13 *Eliz. cap.* 1. was at that time mentioned; and I have some other Matters to offer on that Head, if it is now open to me.

Ld. Ch. Just. Consider a little how you treat the Court; the Objection hath been solemnly taken in this Court, argued and adjudged by this Court, and now you come to arraign that Judgment that was then given.

Mr. *Ketelbey.* I shall go off from that, and say no more upon it, since your Lordship is of Opinion that it is a Point settled. But, my Lord, I must beg Leave to take notice of what Mr. Attorney has observed relating to the five Overt-Acts laid in the Indictment, and submit it to your Lordship; for I don't know that it was ever determined otherwise, but that if one of the Overt-Acts appears to be bad, Judgment must be arrested.

Ld. Ch. Just. Alas! quite the contrary: I believe you will find in *Rookwood*'s Trial, which you have in your Hand, there it is said, if one Overt-Act held, the Indictment is good.

Mr. *Ketelbey*. If I am not miſtaken, in Sir *John Friend*'s Caſe it was not ſo: We can't take upon us to ſay that all the Overt-Acts are wrong. Is it not like an Action in a Civil Caſe, where there are ſeveral Counts in the Declaration? If there be one wrong, that will ſtay Judgment for the whole.

Ld. Ch. Juſ. Becauſe it is an entire Declaration; and the Jury, inſtead of giving Damages on one Count, may have given it on the Count they ought not.

Mr. *Juſ. Eyre*. But if one Count be ſufficient, the Plaintiff ſhall certainly have Judgment upon Demurrer.

Mr. *Ketelbey*. What I had to offer was, that if one Overt-Act is bad, the Indictment is bad; but if it be otherways, and if there be any one Overt-Act well laid, that that ſhall make the Indictment good; and your Lordſhip will maintain that Indictment: I have nothing elſe to offer.

Mr. *Att. Gen.* Say what you have a Mind to ſay.

Mr. *Ketelbey*. I did not know but I was right in what I was going to ſay; and I think it a Point too material to be eaſily given up.

Ld. Ch. Juſ. You allow one of the Overt-Acts is well laid; conſider if there is no Overt-Act but that one; muſt there not be Judgment againſt the Priſoner? Suppoſe one Overt-Act that is not good, muſt that take off the Force of that which is good?

Mr. *Ketelbey*. I ſubmit it, whether this is a Parallel Caſe in a Declaration for Work and Labour done, if there be but one Count, and that well laid, the Plaintiff ſhall recover: But if in a ſecond Count, he comes and ſays in Court, that he had done ſuch Work and Labour; that the Defendant promiſed to pay him ſuch a Sum, if either theſe Counts are naught, it may be mov'd in Arreſt of Judgment.

Mr. *Juſ. Eyre*. If the Damages are taken generally, otherwiſe not.

Mr. *Serj. Pengelly*. You find in *Rookwood*'s Caſe, it is there held, if the Jury found him guilty of any one Overt-Act, that it would maintain the Indictment: But what is your Objection?

Ld. Ch. Juſ. We will hear any thing that you think material to offer.

Mr. *Ketelbey*. I would not have offer'd it, if I did not think it material; and for my part, I cannot find any ſuch thing in *Rookwood*'s Trial, or any where elſe, (I beg Pardon if I have overlook'd it) that one good Overt-Act ſhould maintain the whole Indictment; I admit three or four of them to be good, as they are laid in this Indictment; the only Objection I have, is, to the Uncertainty of that which relates to the publiſhing of a malicious, ſcandalous, ſeditious, and traiterous Writing, *continen' & purportan' exhortation' incitament' & præmiorum promiſſion' ad ſuadendum & excitand' ſubditos Domini Regis ad arma & guerram contra Dominum Regem*, &c. My Lord, the Rule that my Lord Chief Juſtice *Coke* lays down in his firſt *Inſtitutes*, *f.* 303. *a.* is, That in Indictments, a Certainty to a common Intent is not ſufficient, no more than in Counts, Replications, or other Pleadings of the Plaintiff. Now whether this, as it is laid, hath the Certainty which that Rule requires, your Lordſhip will determine. In all capital Caſes, eſpecially in High-Treaſon, the Indictments muſt be drawn with the utmoſt Accuracy and Certainty. The Words here are, that he *publicavit quoddam malitioſum, ſeditioſum, & proditorium ſcriptum*: And then ſets forth only the Subſtance of the Libel in general. Is there not the ſame Reaſon that the Words ſhould have been ſet forth in this Indictment, as in an Indictment for a Libel, that ſo the Court might judge, upon the Face of the Indictment, whether they did import Excitement and Exhortation, *levare Guerram*. I muſt own, in two or three late Caſes, the Words have not been ſet forth.

Ld. Ch. Juſ. Remember *Francia*'s Caſe.

Mr. *Ketelbey*. I am going to mention *Francia*'s, and hope I ſhall be able to account for that, as well as the others: In *Francia*'s Caſe the Indictment was, that he wrote ſeveral Letters, notifying his Intention to levy War, and requiring Aid from Abroad, without particularizing the Words of thoſe Letters, or the Subſtance of them. The Queſtion was not upon an Arreſt of Judgment; but it came on in the Courſe of the Trial, whether ſuch Evidence ſhould be allow'd. It was inſiſted upon, that there was a Letter mention'd, and the Subſtance of that Letter ought to have been ſet forth in the Indictment; or elſe the Letter itſelf ought not to be read, much leſs a Copy of it enter'd in the Priſoner's Copy-book, as Evidence againſt him: And I muſt beg Leave to rely on the ſolemn Reſolution of all your Lordſhips in Dr. *Sacheverell*'s Caſe, that the very Words ſhould be expreſly ſet forth in all Indictments whatſoever. In *Francia*'s Caſe, there was no Motion in Arreſt of Judgment; for there was no Verdict againſt him: Therefore, whether that Precedent will ſtand in our Way, ſo as to ſtop us in our preſent Objection, your Lordſhip will determine: And in the Caſe of Colonel *Sidney*, the very Words are ſet forth, the Title of the Book, and the Part charg'd to be Treaſon. In *Keylinge* 22. in *Twine*'s Caſe, he was indicted for compaſſing the Death of the King; and his Overt-Act was, the publiſhing a Book call'd, *A Treatiſe of the Execution of Juſtice*; and the Title of that Book, and the very treaſonable Part objected againſt the Priſoner were ſet forth at large. In *Coleman*'s Indictment, two Letters were mention'd, which were declar'd to be his Hand: There was no Counſel, nor Motion made in Arreſt of Judgment. I don't remember any Caſe where they are laid ſo general, as in this Indictment, except *Francia*'s and *Coleman*'s. I ſhall only beg Leave to add, that where there is a Libel, a Book, or Letters, charg'd as the Overt-Act of that which is ſuppos'd to be Treaſon, and upon which the Offence is grounded, they ought to be ſo far ſet forth, that a Perſon may have an Opportunity to clear himſelf of the Accuſation: I don't know any Precedent to the contrary, but that of *Francia*'s Caſe, where there was not any Opportunity of debating it, he being acquitted on his Trial; and the Caſe of *Coleman*, which was before any Counſel was allow'd.

Trial 64.

Ld. Ch. Juſ. The Objection was taken then in *Francia*'s Caſe as properly, as if it had been taken in Arreſt of Judgment; for the Act of Parliament ſays, that no evidence ſhall be admitted or given of any Overt-Act, that is not expreſly laid in the Indictment, againſt any Perſon or Perſons whatſoever. You took the Objection, and ſaid, that this Overt-Act of Treaſon is not expreſly laid in the Indictment; and therefore it ought not to be given in Evidence: You know, that that was over-rul'd

over-rul'd at the time of making the Objection, and that the Opinion of the Court was againſt you. As to what you ſay, that the Words muſt be ſet forth, it is perfectly wrong; a Man may ſet forth the Subſtance of the Words, without ſhewing the Words themſelves: That is the Way that is proper to be taken, and when it is otherwiſe, it is not ſo as it ought to be done.

Mr. *Juſ. Eyre.* It was indeed the Opinion of the Judges who were preſent at Dr. *Sacheverel's* Trial, that the particular Words ſuppoſed to be criminal ought to be expreſly ſpecified in every Indictment or Information for any Miſdemeanour by writing or ſpeaking; and ſince it is urg'd as an Authority to conclude our Judgments, I can't forbear ſaying, that it was a great Surprize to *Weſtminſter-Hall*, and particularly to thoſe who attended this Court, to hear that any ſuch Opinion had been given; for it had never been laid down in any of our Books as the Rule of Law or Practice, that the particular Words ſuppoſed to be criminal, ought to be ſpecified in the Indictment or Information; and we had learn'd from my Lord Chief Juſtice *Holt*, that a Libel might be deſcribed either by the Senſe and Subſtance, or by the particular Words, and that an Indictment or Information in either of theſe Forms would be good. If you look into the Books of Entries you will find ſeveral Inſtances where Slanders and Perjuries are charged in *Latin*, as falſe and ſcandalous Aſſertions, and not in the Words as ſpoken. And in *Staley's* * Caſe who was indicted for treaſonable Words upon the Stat. 13 *Car.* II. it was charged in the Indictment, that he ſpeaking of the King, had traitorouſly declared, *quod ipſe prædictus* Staley *ipſum Dominum Regem interficeret*; and the Fact was, that *Staley* in Converſation had ſpoke words to this effect in *French*, which were proved by two Witneſſes; and this Evidence was thought ſufficient to convict him of High-Treaſon; and yet the particular Words ſuppoſed and adjudged to be criminal, were not ſpecified in the Indictment; and there was an Information for Perjury †, in which all the great Counſel of *England* were concerned on one Side or other, which was tried at Bar in my Lord Chief Juſtice *Holt's* Time, and the Offence was charged in the ſame Manner; for the Subſtance of what the Defendant had ſworn was ſet forth in *Latin*, and the Evidence which he gave in *Engliſh* being proved to be falſe, he was convicted of the Perjury without any Objection; and yet the particular *Engliſh* Words in which he gave his Evidence were not expreſly ſpecified in the Information; and I don't find that the ſpecifying of the particular Words was ever ſaid or ſuggeſted to be neceſſary, till this ſudden Opinion was given; and therefore as I never thought it right, I can't hear it urg'd as an Authority, without offering my Reaſons to the contrary, and acknowledging that I have been long in a great Miſtake, if there be any one Reſolution in the Books to ſupport it.

Trial 181.

Mr. *Juſt. Powys.* In the Caſe of *Francia* it was inſiſted on in order to ſtop the Trial; the main of the Objection was, that they ought not to produce Evidence of the Letters, becauſe thoſe Letters were not expreſly ſet forth in the Indictment, and that very Objection was made in order to ſtop the Trial. What was ſaid there in Caſes of Libels is intended when ſet forth *in hæc verba*, and not in *Latin*, the more common Way: But it is another thing where it is an Overt-Act of the Imagination of a Man's Heart in Treaſon, it is ſufficient to ſet forth the Subſtance of them; therefore it was ſo fully ſettled in *Francia's* Caſe, that I thought it would be never mentioned again; the Point was argued, the Objections were made and over-rul'd, and it was the very Point on which the Trial proceeded.

Mr. *At. Gen.* In my Lord *Preſton's* Caſe there were ſeveral Notes, Memorandums and Writings, that were the very Overt-Acts of the Treaſon, yet they were not particularly ſet forth in the Indictment.

Mr. *Serj. Pengelly.* There it was alledg'd, that the Lord *Preſton* prepared and compoſed ſeveral Writings, ſeveral traiterous Notes and Memorandums, for the giving Inſtruction and Information for the *French* King how to invade *England*. I deſire to put Mr. *Ketelbey* this Caſe: Suppoſe any one had proclaimed the Pretender at *Charing-Croſs*, or elſewhere, and had read his Declaration, exciting the People to revolt and to come in to him, and promiſing them Rewards; and then the Declaration had been carried off, or ſo diſpoſed of that it could not be recovered and produced in Evidence; I would be glad to know, whether that Perſon might not be indicted for Treaſon, without ſetting forth the particular Words which he read out of ſuch Declaration; or whether he ſhould eſcape Puniſhment for want of being able to ſet out the particular Words?

Mr. *Ketelbey.* The reading of the Paper in that Caſe would be ſufficient.

Ld. Ch. Juſ. Have you done, or have you any thing further to offer for the Priſoner?

Cl. of the Cr. Chriſtopher Layer, hold up your Hand. You have been Indicted of High-Treaſon, *&c.*

Priſ. I have nothing more to ſay now, becauſe my Counſel have given it up. But after your Lordſhip hath paſſed Sentence upon me, I hope and deſire, for the Sake of other People more than myſelf, thoſe that I have had very great Dealings and Correſpondence with, particularly my Lord *Londonderry*, and ſeveral others, that I would do Juſtice to; that your Lordſhip would give me a reaſonable Time to make up their Accounts; and when that is done, I hope your Lordſhip will give me ſtill a further Time to make up that great Account which I have in another Place; When this is done, if his Majeſty doth not think fit graciouſly to continue me in this World, I will dare to die like a Gentleman and a Chriſtian, not doubting but that I ſhall meet with a double Portion of Mercy and Juſtice in the next World, tho 'tis denied me in this.

Ld. Ch. Juſ. Chriſtopher Layer, You have been Indicted, and after a long Examination and fair Trial, have been convicted of High-Treaſon, in compaſſing and imagining the Death of the King.

You have had all the Indulgence and Advantage that the Law would allow you. You have had Counſel aſſigned you of your own chuſing, to adviſe you preparatory to your Trial, and to aſſiſt you in Making your Defenſe at your Trial.

* Mich. 30 Car. II. B. R. *Trial* 74.

† Dom. Rex. v. Griepe. Trin. 8 Will.

Theſe Counſel have been permitted to ſay whatever they thought proper for your Service; and I heartily wiſh that I could ſay that they had not exceeded, that they had not taken a greater Liberty than they ought to have done: But however that was, the Court thought fit to permit it in them, that they might not be diſcouraged in offering any thing that was proper for your Defenſe; we did not cenſure it then, on this Conſideration.

The Jury that have found you guilty, are ſuch, as may be juſtly ſaid, you yourſelf approved of; for, tho the Law gives you a Liberty of challenging five and thirty, you challenged but four and thirty; ſo you allowed the reſt to be an indifferent Jury, to paſs between the King and you as to your Life and Death.

The Evidence on which you have been convicted, is the cleareſt and plaineſt that ever I heard: Your perſonal Conferences with the Pretender at *Rome*; your conſtant Correſpondence with him and his Agents afterwards; the Scheme you had formed for the Executing this Treaſon; your Confeſſion of the greateſt part of it before the Lords of the Council; and at laſt your Flight when in the hands of Juſtice, out of a Window two pair of Stairs, and the Endeavours you uſed when retaken to corrupt and prevail with thoſe that took you, by Rewards, to let you go off; theſe are Matters ſo very clear and plain, and did concur ſo exactly with the Evidence of the Witneſſes, that it did not reſt on their Credit; the only Queſtion was, whether the Jury did believe what you yourſelf had declared on your Examination before the Lords of the Council, and by the Scheme that was found in your Cuſtody.

This being the Nature of the Evidence, I muſt, according to what is uſual, put you in mind of the horrid Wickedneſs you have been found guilty of.

The firſt Matter projected to be done, was to ſeize the Tower of *London*, to ſet a Guard at the *Exchange* and other Places; to ſeize the Bank, and take from thence what Money you had occaſion for; by which the whole City of *London*, and in conſequence the whole Nation, would inevitably have been involved in Blood and Confuſion: This was to have been the firſt Fruits of this projected Scheme.

The next Step to be taken by this execrable Scheme, was to ſeize the ſacred Perſon of the King: a King, who during the whole Courſe of his Reign hath been the moſt religious Obſerver of our Laws, the moſt careful Preſerver and Protector of all our Civil and Religious Rights, and the moſt merciful Prince that ever ſat on the Throne of theſe Kingdoms; yet this, this moſt excellent Prince, was to be ſeized and made a Sacrifice to Popery and arbitrary Power.

The next Step to be taken, was to ſeize the Prince; and when that was done, no body can doubt but the young Prince and Princeſſes muſt and ſhould have followed the Fate of their Father: So that the Project muſt and would have ended in the Deſtruction of all the Royal Family on this Side the Water; and when that was done, 'twas thought 'twould be an eaſy Matter to ſet the Pretender on the Throne.

This being done, the King and the Royal Family deſtroy'd, and the Pretender advanced to the Throne, what the Conſequence of that muſt and would have been, is obvious to every body; it muſt have ended in the entire Deſtruction and Diſſolution of our moſt happy Eſtabliſhment and Conſtitution; the happieſt, I think, that ever any People enjoyed: it muſt have ended in the Deſtruction of our Laws, our Liberties, our Religion, and the Church of *England* as by Law eſtabliſhed; and we muſt have become from the moſt happy, the moſt miſerable People on Earth.

Theſe horrid and execrable Deſigns are ſo very heinous in themſelves, that they hardly will admit of any Circumſtance of Aggravation: But I muſt ſay, I can't avoid ſaying, that there are Circumſtances with reſpect to you, that make them more heinous, if poſſible. You were bred up to the Law, and you muſt be ſuppoſed to know the Excellency of our happy Conſtitution and Government, and the Laws which you profeſſed; which makes your Crime much the greater.

Another Matter, which is a great Aggravation of your Offence, is, that you were, or at leaſt profeſſed yourſelf, a Proteſtant, and a Member of the Church of *England*, whilſt you engaged yourſelf in Meaſures which muſt inevitably have deſtroyed that Church which you profeſs yourſelf a Member of.

Theſe are the Treaſons which you are convicted of; and being ſo, the Law adjudges you not fit to live; and the Judgment of the Law is, and it is conſidered by the Court, that

You, Chriſtopher Layer, *be led to the Place from whence you came, and from thence you are to be drawn to the Place of Execution, and there you are to be hanged by the Neck, but not till you are dead, but you are to be cut down alive, and your Bowels to be taken out, and burnt before your Face; your Head is to be ſever'd from your Body, and your Body to be divided into four Quarters; and that your Head and Quarters be diſpoſed of where His Majeſty ſhall think fit.*

Then the Priſoner was carried back to the Tower of *London*; but on *Wedneſday November* 28. the Attorney and Sollicitor General moved for a Rule for his Execution, and that the Court would appoint a Time and Place for that Purpoſe; and ſaid, that the chief Deſign of executing ſuch Criminals was to be an Example to others not to offend in the like Manner, and to deter them from committing Treaſon, and therefore they moved that the Execution might be in *Middleſex*, tho the Fact was done in *Eſſex*, and ſaid, that there were many Precedents for executing Criminals in ſuch Places as this Court ſhould think proper.

Thereupon the Court asked the Clerk of the Crown if he knew any ſuch Precedents, who replied, that one *Fitzpatrick* *, who was an Aſſociate with the Lord *Audley*, was executed in *Middleſex* for a Fact committed in *Wiltſhire*, and two other late Precedents of the ſame Nature.

So a Rule was made to the Lieutenant of the *Tower*, to deliver the Priſoner to the Sheriffs of *London* and *Middleſex*; and another Rule to the ſaid Sheriffs to execute him on *Monday December* the 12th, at *Tyburn*.

* *See* Trials *Vol.* 1. *N°.* 32. *p.* 374.

Then

Then the King's Counſel moved the Court to alter the Rule made the Day before, for Mr. *Morgan*, the Clergyman, to attend the Priſoner, for that he was taken into Cuſtody upon Suſpicion of Treaſon; and had given Bond to appear in Court this Day.

The Court anſwered, That any Clergyman ſhould be admitted to the Priſoner, who was a Perſon of known Honeſty, Integrity, and Learning, but not ſuch who might harden him in his Iniquity in his laſt Moments; ſo two more Clergymen were joined in the Rule, and the other two ſtruck out.

Afterwards, and on that very Day before he was to be executed, he had a Reprieve, and there being ſome Opinions, that he could not be executed by Virtue of any Warrant ſigned by the King; but that a new Rule muſt be made in the Court of *King's-Bench* for his Execution, he was accordingly brought to the Bar in *Hilary-Term* following, and a Rule was made for his Execution on the 27th of *March*; but before that Time he procured another Reprieve, and afterwards another Rule was made to execute him on the 17th Day of *May* following, which was done accordingly. He made a ſhort Speech to the Aſſiſtants, wherein he avow'd the Principles for which he ſuffer'd, recommending the Intereſt of the Pretender; and deliver'd a Paper to the Under-Sheriff, and alſo another to a Friend of his. His Head was afterwards carried to *Newgate*, and was the next Day, fixt upon *Temple-Bar*; but his Quarters were deliver'd to his Friends; who took care to get them decently interr'd. The Paper abovemention'd was incloſed in a Cover, ſuperſcribed,

To Mr. Walter Price, *Under-Sheriff, at his Houſe in* Caſtle-Yard, *in* Holbourn; And was as followeth, *viz.*

Mr. SHERIFF,

I Having previouſly reſolved to imploy all the Time allow'd me at the Place of Execution, in Devotion, and making my Peace with GOD, thro' the All-Sufficient Merits and Mediation of my Gracious Saviour, I have, inſtead of any Speech I could make to the Spectators, on this Unfortunate Occaſion, committed my laſt Thoughts of all Worldly Affairs to Writing *, while I had ſome Intervals of Time for ſo doing; and have ſent two Authentick Duplicates thereof, with my Hand ſubſcribed to the Bottom of each Sheet, to two truſty Friends, to teſtify thereby to the World, in due Time, and as Occaſion offers, the *True Principles* of both my *Religion* and *Loyalty*, as well as the *unparallell'd Hardſhips* and *Injuſtice* I have lately met with; for which I pray God forgive the Authors thereof.

And to the End, that none of my Friends, who had Acceſs to me ſince I was ſentenced to die, may be liable to come into any Trouble upon the Score of publiſhing my ſaid Writings, I ſent the Draughts thereof ſeal'd up, together with Draughts of two ſeveral Letters directed to certain Perſons in the *Adminiſtration*, to One of my Friends abovemention'd, deſiring him to copy them all over fair, and return them to me: And then I ſubſcrib'd them, and return'd them to my Friends, without letting the Bearers, Firſt or Laſt, know any thing of the Contents.

So, taking Leave of this vain World, God in Mercy, Receive my Soul! *Amen.*

* *This Writing never appear'd in publick.*

Chriſtop. Layer.

CXCI. *Proceedings in Parliament againſt* John Plunket, George Kelly *alias* Johnſon, *and Dr.* Francis Atterbury, *Biſhop of* Rocheſter, *upon Bills of Pains and Penalties, for a* Treaſonable Conſpiracy, May 1723. 9 Geo. I.

THE abovenamed Perſons having been taken into Cuſtody by Order of the Government, for a treaſonable Conſpiracy, it was thought proper to lay the Letters, Papers, and Examinations relating thereto, before the Parliament; whereupon the Houſe of Commons appointed a Committee, *Jan.* 15. conſiſting of the following Perſons:

The Right Honourable *Spencer Compton* Eſq; Speaker.
Robert Walpole Eſq; Chancellor of the Exchequer.
Sir *Joſeph Jekyll*, Maſter of the Rolls.
Paul Methuen Eſq; Comptroller of his Majeſty's Houſhold.
William Pulteney Eſq;
John Smith Eſq;
Richard Hampden Eſq;
Lieutenant General *Wills.*
Sir *Robert Sutton.*

The Committee choſe *William Pulteney* Eſq; their Chairman, and made their Report to the Houſe, *March* 1. which was as follows.

THE Committee appointed to examine *Chriſtopher Layer* and others, in relation to the Conſpiracy mentioned in His Majeſty's Speech, to be carrying on againſt his Perſon and Government, having peruſed the ſeveral Papers and Examinations referred to them, and having gone through the Examination of thoſe Perſons, have agreed on the following Report.

In ſuch various and ſo long Examinations, and in ſo extenſive an Inquiry, your Committee are in hopes that they need not be ſtrictly ty'd to the Method and Order in which they were appointed, but may for the Eaſe of the Houſe range the ſeveral Matters occurring to them, as near as they can, in the Order of Time in which they were tranſacted, or as they beſt ſerve by their mutual Connexion to illuſtrate each other, without adding any Obſervations of their own, but ſuch as naturally ariſe from comparing the ſeveral Papers and Examinations together, and ſuch as are neceſſary to help the Houſe, the more eaſily to perceive the Contradictions and Inconſiſtencies of the Confeſſions made by the Priſoners, as well as the Confirmations and Coincidence of the Facts inquir'd into.

The Committee obſerve in general, that a Deſign has long been carrying on by Perſons of Figure and Diſtinction at home, in Conjunction with Traitors abroad, for placing the Pretender on the Throne of theſe Kingdoms. That various Methods have been attempted, and various Times fixed for putting this Deſign in execution. That the firſt Intention was to have procured a regular Body of foreign Forces to invade theſe Kingdoms at the Time of the late Elections; but that the Conſpirators being diſappointed in this Expectation, next reſolved to make an Attempt at the Time that it was generally believed His Majeſty intended to go to *Hannover*, by the Help of ſuch Officers and Soldiers as could paſs into *England* unobſerved from abroad, under the Command of the late Duke of *Ormond*, who was to have landed in the River with a great quantity of Arms, provided in *Spain* for that purpoſe; at which Time the *Tower* was likewiſe to have been ſeized, and the City of *London* to have been made a Place of Arms: But this Deſign being alſo diſappointed, by the Diſcoveries made in *England*, and his Majeſty's putting off his Journey; by the Incampment of his Forces at home, as well as the ſending for thoſe from *Ireland*; and by the readineſs of his Majeſty's good Allies the *States-General* to aſſiſt him in caſe of need; by the Orders given in *Spain*, that the late Duke of *Ormond* ſhould not be ſuffer'd to embark, and the like Orders iſſu'd in *France*, that he ſhould not be ſuffer'd to paſs through that Kingdom; the Conſpirators found themſelves under a Neceſſity of deferring their Enterprize till the breaking up of the Camp: during which Interval, they were labouring by their Agents and Emiſſaries to corrupt and ſeduce the Officers and Soldiers of His Majeſty's Army, and depended ſo much on this Defection, as to entertain hopes of placing the Pretender on the Throne, though they ſhould obtain no Aſſiſtance from abroad, which nevertheleſs they ſtill continu'd to ſollicit for.

The Truth and Reality of theſe wicked Deſigns, your Committee are of Opinion will appear confirmed to the Houſe by concurrent and unqueſtionable Advices from almoſt all Parts of *Europe*, ſent by Perſons who appear to have had no Communication with each other; which Advices have again been verify'd and ſupported by ſeveral Diſcoveries made at home, by the Informations and Confeſſions of ſome of the Perſons concerned, as well as by a long and regular Series of Correſpondence, which the Conſpirators have furniſhed the Government with againſt themſelves, and the ſeveral Branches of which appear to the Committee connected with one another, and all concurring in one continued Deſign of ſubverting our preſent happy Eſtabliſhment, and involving theſe Kingdoms in Blood and Confuſion.

The ſeveral Examinations, Letters, and other Papers, are all contained in an [1] Appendix to this Report; and as they are all ſeverally numbred, ſo the ſeveral Paragraphs which are quoted from them have References to thoſe Numbers, that they may the eaſier be turned to upon occaſion, and be ſupported by the Authorities from whence they are taken.

That the firſt Deſign was to have been executed during the Elections, and to have been ſupported by foreign Forces, is collected from the following Circumſtances.

Philip Neynoe Clerk (who was drowned in attempting to make his Eſcape from the Meſſengers) declared upon his [2] Examination before ſome of the Lords of the Council, 'That he had been 'imployed by *George Kelly*, and one *Watſon*, 'whom he took to be the late Earl Mariſhal, and 'who was in *England* laſt Spring, to draw up 'three ſeveral Memorials to the Regent of *France*, 'to ſollicit him to ſend Forces to the Aſſiſtance 'of the Conſpirators. That the laſt of theſe Memorials was drawn up in *December* 1721, and 'contained a Demand of Five thouſand Men, to 'be ſent over by the Regent to invade theſe 'Kingdoms.'

This is confirmed by unqueſtionable [3] Advices from *France*, the 19th of *April* laſt, in which it is expreſly affirmed, 'That repeated Application 'had been made to the Regent for ſome time 'paſt, to furniſh only a Body of Three thouſand 'Men, by the help of which the Conſpirators 'made no doubt but to be able to place the Pre'tender on the Throne.'

Layer at his [4] Examination before a Committee of Lords of the Council, confeſs'd, 'That being 'in Diſcourſe with Lord *Orrery*, ſoon after his 'firſt acquaintance with him, (which was before 'the Incampment) Lord *Orrery* ſaid, Nothing 'could relieve the Nation, but a Reſtoration; 'and that he would be glad if he could contri'bute to bring it about: That it muſt be done by 'foreign Forces, and could be done no other 'way. That he often aſk'd Lord *Orrery* what 'Methods they had taken to procure them? 'That Lord *Orrery* ſaid, they had Friends abroad '*that had made Application to the Regent for Aſſiſ'tance to bring about a Revolution*; but he does 'not know whom his Lordſhip meant; General '*Dillon* might be his Correſpondent, for ought he 'knew: That Lord *Orrery* likewiſe told him, the 'Regent might be brought to wink at any thing, 'but was ſo perfidious that he was not to be 'truſted; and that the *French* had made a Tool 'of the Pretender.'

Layer repeated the ſame in part at two other [5] Examinations before his Trial, and has ſince confirmed to your Committee, upon his [6] Examination at the Tower, 'That Lord *Orrery* declar'ed himſelf conſtantly of Opinion, that nothing 'could be done to any purpoſe in the Pretender's 'favour, without foreign Forces.'

About the latter end of *April*, a [7] Letter was intercepted here, coming from *Spain*, incloſing the [8] Copy of one from *O*—— to *L*——, which will be ſhewn in the Sequel of this Report, to have been from the late Duke of *Ormond*; in which *Ormond* ſays, 'Pray tell Mrs. *Chaumont*, that 'ſince the Parliament is dead and gone, I think 'it is a good Time to make an Effort, when the 'Elector is gone to *Hannover*.' It will appear from the Sequel of this Report, that by Mrs. *Chaumont* is probably meant the Pretender.

On the 23d of *April* another [9] Letter was intercepted, ſign'd 1387, and directed to Mr. *Jackſon*, which your Committee have good Reaſon to believe was from the Biſhop of *Rocheſter* to the Pretender, as will be ſhewn in the following Part of this Report. In this Letter he ſays, 'Notwith'ſtanding *this Opportunity* is elapſed, I agree with 'you another may offer before the End of the 'Year, though not perhaps every way ſo favour'able.' This Letter was writ on the 20th of *April*, when moſt of the Elections were over, and conſequently that Opportunity was elapſed.

That an Inſurrection was thought of at the Time of the Elections, is farther confirmed from the following Particulars; *Layer* [10] confeſs'd before the Lords, 'That *Green* the Gunſmith being in com'pany with Lord *North* after Dinner, and talking 'of Five thouſand Arms, and Seven thouſand 'Arms that were ready, ſaid, *When the* Weſt'minſter *Mob were up, if they had had Arms!* 'Upon which Lord *North* interrupted him, and 'ſaid, Don't talk, you are a Citizen, you know 'there are no Arms; but that the Man inſiſted 'there were Five thouſand Arms ready in the 'City.

Neynoe [11] declar'd 'that *Tho. Carte*, Clerk, 'made two Expeditions in the Spring (during the 'Elections) one into *Cornwall*, and another into 'the Counties of *Warwick*, *Nottingham*, *Derby* 'and *Stafford*; and that upon *Neynoe*'s blaming 'the riotous Conduct at the *Coventry* Election, '*Carte* replied, Hang the Election, you never 'ſaw Fellows of ſuch Mettle, ſo well trained, ſo 'fit for buſineſs.'

Among Mr. *Dennys Kelly*'s Papers was ſeized an exact [12] Liſt of the Quarters of all his Majeſty's Forces in *Great Britain*, about the Time that they were drawn out of moſt of the great Towns and Boroughs, on account of the Elections.

From all theſe Circumſtances the Committee ſee reaſon to conclude, that the firſt Deſign was to have been executed with the Aſſiſtance of foreign Forces, at the Time of the Elections; that the Pretender, the late Duke of *Ormond*, Lord *Orrery*, and the Biſhop of *Rocheſter* were of this Opinion; that Memorials were drawn up here, to be preſented to the Regent for this Purpoſe; and that thoſe Memorials were actually preſented, or at at leaſt Application made to the Regent in conſequence of them, by Directions from Perſons in *England*; and that ſuch Diſpoſitions had been made for this Enterpriſe at that time, as broke out into Riots at ſome of the Elections: which muſt be allowed to have been no unfavourable Juncture for ſuch an Attempt, conſidering the Diſcontents occaſioned by the late *South-Sea* Scheme, which the Conſpirators have all along flatter'd themſelves they ſhould be able to improve into a Spirit of Rebellion; and the Liberties uſually taken at ſuch a Seaſon, when all the Freeholders of *England* are neceſſarily and legally aſſembled together, and when the whole Nation is too apt to be in a ferment, even in the quieteſt Times.

This Deſign failing, on account (as 'tis reaſonable to believe) of the Conſpirators not being able

[1] The Appendix conſiſts of twelve Sections, marked A. AA. B. BB, C. D. E. F. G. H. I. K. [2] E. 10. [3] A. 2. [4] B. 11. [5] B. 8. 10. [6] B. 38. [7] AA. 4. [8] AA. 5. [9] D. 12. [10] B. 11. [11] E. 10. [12] F. 9.

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to obtain the Forces they sollicited from abroad, and of their being themselves divided in Opinion as to the Time and Manner of Execution, their next Endeavour was to attempt an Insurrection at the Time when they supposed His Majesty would be going to *Hannover*.

Of the Reality of this Design your Committee have found such evident and concurrent Testimonies, that they think stronger could not reasonably be expected, in an Affair where it was so much the Interest of the Conspirators to act with the utmost Caution and Secrecy.

It has already been observed, that the late Duke of *Ormond* [13] thought the Time of the King's going for *Germany* a favourable Opportunity for making an Effort, and that the Person who signs 1378, [14] says, 'Notwithstanding this 'Opportunity is elapsed, I agree with you an- 'other may offer before the End of the Year, 'tho not perhaps every way so favourable.'

Layer confess'd to the Lords at [15] two several Examinations previous to his Trial, and has since [16] confirmed to your Committee, 'That he made 'Application to Lord *Orrery* to stand Godfather 'to his Child for the Pretender, intending that 'this Mark of Kindness from the Pretender 'should serve as a Credential to Lord *Orrery* to 'induce him to converse freely with him, in re- 'lation to the Pretender's Affairs: that their Ac- 'quaintance having begun in this manner, [17] 'Lord *Orrery* sent to him to inquire into the 'Pretender's Character and Qualifications, and 'asked him several times whether he had any Re- 'commendation from the Pretender to any Per- 'son; that upon his answering No, his Lord- 'ship told him, that he seem'd to be an honest 'Man, and People of his Integrity should be 'always welcome to him, whether they had any 'Credentials or no; that he, *Layer*, then gave 'his Lordship an Account of what had passed 'between the Pretender and him during his Stay 'at *Rome*, and asked his Lordship what Hopes 'there were? To which his Lordship answered, 'that there were Hopes, for all the Nation were 'generally for the Pretender, except such as 'had Places, or Money due to them from the 'Government. That Lord *Orrery* farther told 'him, that Lord *North*, Sir *Harry Goring*, Lord 'Strafford and others were going to do a rash 'Thing in favour of the Pretender, which he, 'Lord *Orrery*, was sorry for, because it would 'prove abortive, and hinder its succeeding an- 'other Time: That *Layer* asked him, who was 'to have the Command, and Lord *Orrery* told 'him, he believ'd Lord *North and Grey* was to 'have the Command, and that the said Lord had 'a Commission from the Pretender; that the 'Lord *Orrery* called this Design rash, because 'not duly concerted, nor supported by foreign 'Forces, without which, he said, he thought 'they must be more than Madmen to hope to 'do any thing to effect, for the Pretender's Ser- 'vice. That he, *Layer*, the next time he saw 'Lord *North and Grey*, which was before the 'Encampment of the Troops, acquainted him 'with what Lord *Orrery* had said about the 'Rashness of the Design; that Lord *North and* 'Grey replied, Lord *Orrery* was a timorous Fel- 'low, and was always making Difficulties, and 'Schemes out of his own Brain; that he knew 'nothing, nor should know; but that it was his, 'Lord *North*'s, Opinion, the Pretender might be 'restored by the People of *England*, without the 'Assistance of any foreign Force. That he, '*Layer*, talked to Lord *North and Grey* of his 'Lordship's being General; but Lord *North* 'said, he was not popular enough, that the Duke 'of *Ormond* would be fit for it, and if they had 'him here, his Lordship believed most of the 'Soldiers would join him: That he, *Layer*, con- 'tinuing to press Lord *North and Grey* on this 'head, by telling him that he was fitter for a 'General, and was popular, the said Lord an- 'swered No, the Duke of *Ormond* was the Man, 'he was the Soldiers Darling. That he, *Layer*, 'often talked of this Affair to the Lord *North*, 'being induced so to do, by the Impatience he 'observed in him, and in Lord *Orrery*, that 'something should be done.'

Matthew Plunket, Serjeant of Invalids, has [18] deposed upon Oath, 'that *Layer* told him (in 'July last) that the late Duke of *Ormond* would 'come in a single Ship with some Officers, and 'that it had been done long ago, if the *French* 'Ambassador had not been told of it, who told 'it again to the King.'

[1] It appears to your Committee from several Depositions on Oath, as well as from Informations and written Intelligence, that in consequence of this Design of bringing over the late Duke of *Ormond*, Captain *Charles Halstead*, a *Lancashire* Man (who was concerned in the Insurrection intended at *Oxford* in the Year 1715) set sail from the River for *Bilboa*, about the 12th Day of *March* 17$\frac{1}{2}$, on board the Ship *Phineas* of *Bristol*, *William Arnold* Master, with a Provision of Arms and Power on board, which one of the Sailors on his [2] Examination declared, 'He apprehends to 'have been greater than was necessary for an or- 'dinary trading Voyage. [3] That the said Ship 'was hired at one Hundred Pounds Freight *per* 'Month, two Hundred being paid in Advance '(as *Halstead* himself owned) and had no Goods 'nor any Passenger on board, except the said '*Halstead*, who went by the Name of *Nowell*, 'and was known to the Master and Sailors by 'that Name only, during the Voyage to *Spain*. '[4] That the said Ship was clear'd at the Custom- 'house in Ballast for *Lisbon*; but that when they 'came into the Bay of *Biscay*, the Master, who 'had Orders to follow *Nowell*'s Directions, [5] gave 'private Instructions to the Pilot to steer to '*Bilboa*; that they arrived there on the 25th of '*March*, *O. S.* and that *Halstead* went on Shore, 'and lay that Night at Mr. *Brown*'s an *Irish* 'Merchant, and the next Day went forward to- 'wards *Madrid*, being furnished with Horses by 'the said *Brown*, on which Journey he was absent 'about a Fortnight; that during his Absence, a '[6] Report was current all over the Town of '*Bilboa*, and particularly among the Convents, 'that the said Ship was come to fetch over the 'Duke of *Ormond*.' And *Thomas Carter*, one of the Sailors of the said Ship, who was employ'd by *Halstead* to wait on him as a Servant, has [7] deposed upon Oath, 'That three Days after 'the said *Nowell*'s Return, the Deponent heard 'him propose to the above-named Captain *Ar- 'nold*, to carry the late Duke of *Ormond* and 'Four other Passengers to *England*; which the

[13] AA. 5. [14] D. 12. [15] B. 10. 11. [16] B. 38. [17] B. 11. [18] B. 6. [1] AA. [2] AA. 15. [3] AA. 13. [4] AA. 11. [5] AA. 9. [6] AA. 9. [7] AA. 14.

'ſaid Captain *Arnold* refuſing to do, the ſaid '*Nowell* inſiſted, ſaying, the Ship was his ſo long 'as he paid the Hire of her, and the Wages and 'Victualling, and they had high Words upon it. '*Carter* farther depoſed, that *Halſtead* received a 'Letter directed to Colonel *Nowell Butler*, which 'was the Name the ſaid *Nowell* went by, when 'he was in *Spain*. That, when the Ship was re-'leaſed, they plied off and on about four Hours 'off St. *Andero*, expecting ſome Body to come 'off in a Boat; but no body coming, and Night 'drawing on, they made the beſt of their way 'to *England*, and arrived in the *Downs* the be-'ginning of *July* laſt.' *Alliſon*, who came over to *England* a Paſſenger in the ſaid Ship, has [8] depoſed upon Oath, 'that he left *Madrid* on the '4th of *June*, *N. S.* and that ſome time before 'he came away, the late Duke of *Ormond*, who 'had reſided a conſiderable time at *Madrid*, had 'ſent away his Horſes and Equipage from thence, 'and put his Servants on Board-wages, and that 'it was reported he was to go to *Ventoſilla*. That 'he, *Alliſon*, upon his coming to *Bilboa*, found 'the Ship *Phineas* bound for *England*, but ſtopt; 'that he agreed to take his Paſſage on board her, 'and going to the Corregidor of *Bilboa* for a Paſs, 'he found there Mr. *Brown* a Merchant, and one 'who went by the Name of *Nowell*; that *Brown* 'asking the Corregidor why the Ship was ſtopt, 'he ſaid, it was not the Ship, but *Nowell*'s Per-'ſon, that was detained, by Orders from *Madrid*; 'that he, *Alliſon*, heard a Report at *Bilboa*, 'that the late Duke of *Ormond* was on the Coaſt 'in Diſguiſe, and that *Nowell* had been at *Madrid*, 'and come back again in Fifteen Days; the 'Expedition of which Journey, and the Ship's 'coming in Ballaſt, had raiſed a Suſpicion in '*Bilboa*, that *Nowell* came over to the late Duke 'of *Ormond*, on account of the Conſpiracy. The 'Sailors [9] obſerved, that during *Nowell*'s Stay at '*Bilboa*, Brigadier *Campbell* (a Perſon concerned 'in the *Preſton* Rebellion) was frequently on 'board with him, but did not care to own his 'Name.' The ſame Particulars are confirmed by [10] Letters from Sir *Anthony Weſcomb*, who was ſent to *Spain* to gain Intelligence, with ſeveral other [11] Circumſtances relating to Ships, Arms and Recruits, provided for the Pretender's Service in *Spain*.

During theſe Tranſactions, [12] Colonel *Stanhope*, his Majeſty's Ambaſſador at *Madrid*, who does not appear to have known any thing of this Ship's being come to *Bilboa*, having receiv'd Intelligence from other Hands, that the Duke of *Ormond* was preparing to ſet out for *England* with ſome *Iriſh* Officers, in order to put himſelf at the Head of the Rebels, obtain'd Orders from the Court of *Madrid*, to hinder the late Duke of *Ormond*'s Embarkation, as will appear more fully in the remaining part of this Report.

In conſequence of theſe Orders, the King of *Spain*'s Officers [13] came on board the Ship, and laid an Embargo upon her for about a Fortnight, till *Halſtead* finding himſelf diſappointed of his Deſign, agreed that Part of a Cargo of Wool and Iron ſhould be put on board the ſaid Ship by *Brown* and *Slinger*; and then returned to [14] *England* with one *Maxwell*, whom the Sailors underſtood to be a Relation of the late Lord *Marr*'s, and two other Paſſengers, and arriv'd in the River about the 7th or 8th of *July*.

About the Beginning of *May* a [15] Letter was intercepted here, coming from *Spain*, directed to Monſ. *Dumville Procureur*, and encloſed under Cover to one *Wilmore* at Mr. *Stokoe*'s Bookſeller near *Charing-Croſs*. Who is meant by the Name of *Dumville*, the Committee have not been able to diſcover.

In this Letter was enclos'd the [16] Copy of a Letter, which the Committee have Reaſon to believe was from the late Duke of *Ormond* to ſome Perſon abroad, the initial Letter of whoſe Name is diſcovered by the Decypherers to be *L.*

The Letter to *Dumville*, as well as the Copy of the late Duke of *Ormond*'s Letter, was writ partly in Cypher; and among the Words out of Cypher ſeveral fictitious Names were made uſe of, which the Committee obſerve is the Caſe alſo in ſeveral others of the intercepted Letters referr'd to them.

It was reaſonable to expect, that in managing Correſpondences of ſo hazardous a Nature, all ſort of Art and Induſtry ſhould be uſed, and all the Help of Cyphers and Jargon called in, to diſguiſe the real Deſigns, and to conceal the true Names of the Perſons concerned, in order to their avoiding the Danger of legal Conviction: but your Committee likewiſe obſerve, that ſeveral of theſe Diſguiſes are ſo groſs and obvious, that they only ſerve to betray themſelves; others of them are explained by the Skill of different Decypherers, agreeing in the ſame Explication; which Explication is again confirmed by Facts unknown to thoſe Perſons at the time of the Decyphering. Others are explained by Cyphers and Liſts of fictitious Names, ſeized on the Conſpirators themſelves, as well as by comparing the ſeveral Parts of their Correſpondence together; and others again by direct Informations upon Oath. And, as the Degrees of Evidence, in a Search of this Nature, muſt be various, the Committee have taken all the Care they can, to diſtinguiſh what appears to them fully proved, from what is ſupported by ſtrong and probable Conjectures only.

In this [17] Letter to *Dumville*, dated the 27th of *April* 1722, *(N. S.)* mention is made of its being publickly known in *Spain*, by Letters from *Bilboa* and other Parts, 'that a Ship came to '*Bilboa*, with an Expreſs to *Ormond*, in order to 'bring *Ormond* to *England*; that the ſaid Ex-'preſs went to the Place where *Ormond* was; 'that this had made ſo much Noiſe, that it 'was neceſſary to ſend to *England* with all poſ-'ſible Diſpatch, that a Ship's coming *with Bal-'laſt only* gave Occaſion to thoſe Reports, and 'that in order to ſtifle them it was neceſſary to 'put in the Ship Goods for *England*; that this 'would be a conſiderable Expence to *Tom*, who 'hopes that Friends will conſider it, and ſend 'him if poſſible a greater Supply than the five 'Thouſand Pounds that he wrote for in his of the '6th and 20th of *April*; that the Bills muſt be 'ſent directly to *B*——, and may be bought at 'the *Exchange* of *London*.'

The Committee are of Opinion, that by *B.* is meant *Brown* the *Iriſh* Merchant at *Bilboa*, becauſe the [18] Cargo was put on Board by the ſaid

[8] AA. 16. [9] AA. 8. 9. 11. [10] A. 38.
[11] AA. 8. 9. 11. 16. [12] AA. 9. [13] AA. 4.
[14] A. 34—40. 43. A. 26. 27. 28. [15] A. 15.
[16] AA. 5. [17] AA. 4. [18] AA. 11.

Brown

Brown and *Slinger*; and it appears by subsequent [19] Letters that this *Brown* had twelve Thousand Arms in his Custody, for the Service of the late Duke of *Ormond*. It is also proved [20] by the Sailors, that *Halstead* was frequently in Company with this *Brown* and his Nephews, and lay sometimes at his House.

Who is meant by *Tom* in the said Letter, the Committee will not take upon them to determine; but they believe it will appear probable to the House, from the Connexion and other Circumstances, that it must mean the late Duke of *Ormond*.

The Person that writes this [21] Letter to *Dumville*, adds, 'That since Mrs. *Chaumont* cannot 'meet *Ormond* at any Place on the Road, it is 'absolutely necessary that *Ormond* should have as 'good a Preparation of Arms as can be had 'there, and in order to make it, he will want 'more Money from Friends.'

The same Person says, that he had that Day received a Letter, importing, 'That *M*—— 'could get more Arms if he had more Money.' The Committee are of Opinion, that by *M*—— is meant *Morgan*, who is mentioned in several [22] Letters from *Spain*, as Intendant of the Pretender's Ships at *Cadiz*, and active in procuring Officers and Arms; which Letters are confirmed by the Seizure of the Ship *Revolution* at *Genoa*, of which it appears by Captain *Scot*'s [23] Letter from *Genoa*, that *Morgan* had the chief Care, going by the Name of *Walton*; which is again confirmed by a [24] Letter from Sir *Anthony Wescomb* at *Bilboa*.

The Person that [25] writes to *Dumville*, farther adds, 'That *Ormond* hopes *Onslow* and *Hawley* 'will send a Part of the Money they have raised 'directly to *Ormond*; for *Ormond*, upon the Hopes 'of it, has sent Credit to *M*——; he desires '*Dumville* to mind this, and not to lose a Mo-'ment.'

Who are meant by *Onslow* and *Hawley*, the Committee cannot determine; but they are inclined to believe, that they are the same Persons, who in another [26] Letter, enclosed to *Wilmore* soon after, and writ in the same Cypher, are found by the Decypherers to have the initial Letters of their Names *G*—— and *N*——; in which Conjecture they are the more confirmed, by a [27] Cypher seized on *John Plunket*, in which the real Names beginning with *G.* are constantly designed by fictitious ones beginning with *H.* the Letter immediately following in the Alphabet, and the real Names of the Letter *N.* by others beginning with *O.*

In the [28] Letter to *Dumville* above-mentioned, was enclosed the [29] Copy of a Letter from the late Duke of *Ormond* to *L.* which was sent to *Dumville* as being in part an Answer to one received from him; who is meant by *L*, the Committee cannot determine.

In this Letter, the late Duke of *Ormond* mentions his having received an Account from *D*—— (General *Dillon* probably) that he had procured ten Thousand Arms, and advises the joyning Stocks with *D*——, since they cannot have too many Arms; and says he can only depend on two Thousand Arms from *M*—— (*Morgan* probably) but that he could have had more Arms, if he had had more Money.

The Committee observe, That this Account of ten Thousand Arms procured by *D*——, and of Two thousand by *M*——, agrees exactly with an [1] Account sent soon after from Mr. *Stanhope* at *Madrid*, and [2] confirmed by Sir *Anthony Wescomb*, that Twelve thousand Arms were lodged in the Hands of *Brown* at *Bilboa*, for the Pretender's Service; and that *Morgan* was ordered to the Bay of *Biscay*, in order to transport the said Arms to *England*.

The Committee take Notice likewise, that the very same Number of Arms is mentioned in a [3] Letter, writ, as they have good Reason to believe, by *George Kelly*, to General *Dillon*'s Secretary; and the Arms are there spoken of, as provided by *Mansfield*'s Relations, which Name *George Kelly* [4] explained to *Neynoe* to mean the late Duke of *Ormond*.

The Circumstance of *Kelly*'s mentioning these Arms to *Dillon*'s Secretary, makes it probable that by *D.* in *Ormond*'s Letter, is meant the said *Dillon*, who, as your Committee are informed, is an *Irish Roman* Catholick, and quitted *Ireland* on the Capitulation of *Limerick*, and is at present a Lieutenant-General in the *French* Service, and has the Command of one of the *Irish* Regiments in *France*; and he appears to your Committee, from several Parts of the intercepted Correspondence, to have the chief Management of the Pretender's Affairs, and to be the principal Agent and Director of carrying on this Conspiracy.

Ormond in his [5] Letter to *L*—— afterwards says, 'That since the Parliament is dead and 'gone, he thinks it will be a good Time to 'make an Effort when the Elector is gone to '*Hannover*; and adds, I hope you have agreed 'with *D*—— the Time of going for *England*, and 'when that is fixed between Mrs. *Chaumont* and '*D*——, you will let *Ormond* know the Place 'of landing in *England*. I desire an Express 'may be sent to me, with particular Accounts 'of what is agreed on.' This, the Committee take Notice, agrees with Mr. *Stanhope*'s [6] Intelligence, that *Ormond* was going for *England*, and likewise with [7] Intelligence sent from *Rome*, that the Pretender was to embark, as soon as two Officers, Relations of the late Duke of *Ormond*, should arrive at *Porto Longone*; which Circumstance makes it not improbable, that by Mrs. *Chaumont* may be meant the Pretender.

In the same [8] Letter to *L*——, *Ormond* says, 'I have ordered *H*——'s Ship, that I depended 'on, to return to *England*; it was not proper to 'make use of it, for Reasons not necessary to 'trouble you with. There was no Message sent 'by him, because of the Uncertainty of the 'Time of his getting to *England*.'

This Passage, the Committee are of Opinion, evidently relates to *Halstead*'s Ship. Upon mentioning his sending back this Ship, he immediately adds, 'I have ordered *M*——'s Ship to 'come to *A*——;' which agrees exactly with Mr. *Stanhope*'s [9] Account, that *Morgan*'s Ships were ordered to the Bay of *Biscay*, to transport to *England* the Arms above-mentioned, together

[19] A. 15. 35. [20] AA. 9. 14. [21] AA. 4. [22] A. 26. 34. 36. 40. [23] A. 44. [24] A. 40. [25] AA. 4. [26] AA 6. [27] C. 51. [28] AA. 4. [29] AA. 4. [1] A. 15. [2] A. 35. [3] F. 35. [4] E. 10. [5] AA. 5. [6] A. 15. [7] A. 23. [8] AA. 5. [9] A. 15.

with

with *Ormond*, and what Officers could be got; and it appears by ſubſequent [9] Letters from Sir *Anthony Wolcomb* at *Bilboa*, that the ſaid Ships, under the Command of *Morgan*, did put in at *Santo Andero*, which the Committee underſtand to be the Place meant by *A*——, to which *Ormond* ſays he had ordered *M*——'s Ship to come. The ſaid Ships having put in at *Andero*, and ſtaid there fifteen Days, is again confirmed by a [10] Letter from *Genoa*, writ by Captain *Gardiner*, who commanded the Ship *Revolution* lately taken.

Soon after this Letter to *Dumville*, [11] another was intercepted here coming from *Spain*, directed *A Monſieur Dodſworth*, not ſigned, encloſed under Cover to *Wilmore* as the former, and writ in the ſame Cypher; the moſt material Paragraph of which is thus explained by the Decypherers.

'I muſt again entreat you to uſe your utmoſt 'Endeavours, to get the five Thouſand Pounds 'from Friends returned to *O*—— directly; the 'Hopes given by *G*—— to expect a great Sum, 'and by *N*——, that he had raiſed twenty Thou'ſand Pounds, induced *O*—— to ſupply *M*——, 'and to make other neceſſary Proviſions. If 'that Money be not returned, it will fall heavy 'upon *O*——, and he will be diſabled from an'ſwering the Expectation of Friends, therefore 'ought to be your firſt and greateſt Concern. 'All other Actions are Trifles in Compariſon of 'it; for the Hopes of Succeſs depend princi'pally on *O*——. I mentioned this in former 'Letters, and Friends are deſired to return 'more than five Thouſand Pounds, if poſſible. 'If they do, more Arms and Ammunition, and 'Officers can be had here; and the End of rai'ſing Money by Friends, is, to procure Arms, 'Ammunition and Officers.'

To whom theſe Letters were writ does not appear; but the Committee obſerve that they are writ in the ſame Cypher with three [1] Letters, which they have Grounds to believe were from the Biſhop of *Rocheſter*. They obſerve likewiſe that the ſame Cypher is ſometimes made uſe of by [2] *George Kelly*.

Mr. *Stokoe* the Bookſeller being examined about *Wilmore*, under whoſe Cover theſe Letters to *Dumville* and *Dodſworth* came encloſed, could give no other [3] Account of him, but that he was one who once writ a Letter in his Shop, and deſired him by a Letter, dated *Epſom* the firſt of *March*, 1722, to take in ſuch *French* Letters as ſhould come directed to him; and by another Letter, dated *Harwich* the 14th of *May*, deſired him to take in no more; that he *Stokoe*, did receive two Letters from abroad ſo directed, which were fetched away, and paid for by Perſons to him unknown.

That the late Duke of *Ormond* was expected to head an Inſurrection in *England*, is farther confirmed by the following Particulars.

Neynoe upon his Examination before a Committee of Lords of the Council, [4] declared, 'That the firſt Deſign in the Spring was to have 'been executed in *London*, by ſeizing the *Tower*, 'and that the late Duke of *Ormond* was then to 'have landed in the River; but upon Diſcovery 'of the Plot, and the King's not going beyond 'Sea, it was put off for ſome Time; that the 'Biſhop of *Rocheſter*, Lord *Orrery*, Lord *North*, 'and Sir *Harry Goring*, were the principal Lead'ers and Directors of the whole Deſign; and 'that *Watſon* (whom he took to be the late Earl 'Mariſhal) had told him, Lord *North* and *Grey* 'was thought of for the Command.'

On the 29th of *April*, *O. S.* [5] Intelligence came from *France*, 'That the Week before the late 'Duke of *Ormond* had made Application to the 'Regent by a Perſon of great Diſtinction, for 'Leave to paſs through *France*, under a Pretence 'of going into *Italy*, but that the Regent had 'abſolutely refuſed him, and at the ſame Time 'had diſpatch'd the neceſſary Orders to the Fron'tiers of *Spain*, to hinder him from paſſing either 'openly or in Diſguiſe.'

On the 2d of *May*, *O. S.* Sir *Luke Schaub* ſent [6] Advice, 'That one *Leſley* had been looking 'out for Lodgings at *Paris* for the late Duke of [7] *Ormond*; and [7] on the 9th, that Alderman '*Barber* carried with him Bills of Exchange for 'fifty Thouſand Pounds Sterling for the Pre'tender; and that the ſame Sum was ſent to '*Ormond* by another Hand, to enable him to 'make the neceſſary Preparations in *Spain* and '*Italy*.' The Committee obſerve, that this agrees, as to the Diviſion of the Money, with a Paſſage in another [8] Letter from *Dillon*'s Secretary to *George Kelly*, dated the ſecond of *May* (*N. S.*) which will be farther explained in its proper Place.

On the 23d of *May*, *O. S.* Sir *Luke Schaub* ſent [9] Advice, 'That the late Duke of *Ormond* was to 'ſet out from *Madrid* about the 20th of that 'Month, with his Family, without its being 'known whither he was going; that it was be'liev'd he would give out that he was going to 'ſettle at a certain Diſtance from *Madrid*, from 'whence he might ſteal away afterwards unob'ſerved.'

On the 28th of *May*, *O. S.* Mr. *Stanhope* [10] writes Word from *Madrid*, 'That having had Intelli'gence to be rely'd on, that the late Duke of 'Ormond intended ſpeedily to paſs into *England*, 'with a great Number of *Iriſh* Officers at that 'time in the Service of his Catholick Majeſty, in 'order to put himſelf at the Head of the Rebels 'there, and for that purpoſe was to ſet out from 'Madrid the next Day, under Pretence of going 'for the reſt of the Summer to *Ventoſilla*, a 'Houſe of the Duke of *Medina Celi*, half-way 'between *Madrid* and *Bilboa*, but in reality to 'be thereby readier to paſs to that Port, and 'with leſs Suſpicion to embark from thence for '*England*, whenever Matters ſhould be ripe for 'his ſo doing; he made Application to his Ca'tholick Majeſty by the Marquiſs *de Grimaldo*, 'for Orders to be ſent to all the Ports of *Spain*, 'to prevent the ſaid late Duke's embarking with 'the Officers above-mentioned, and received a 'Letter from the Marquiſs *de Grimaldo*, (a [11] 'Copy of which is annexed to this Report) ac'quainting him, that the King of *Spain* had di'rected ſuch Orders to be iſſued, and was ready 'on all Occaſions, more particularly on this, 'which regarded the Quiet and Tranquillity of 'his *Britannick* Majeſty's Kingdoms, to contri'bute all in his Power towards his Majeſty's Sa'tisfaction.'

[9] A 36. [10] A. 45. [11] AA. 6. [1] D. 10. 11. 12. [2] E. 35. [3] AA. 1. [4] E 10.
[5] A. 4 [6] A. 5. [7] A. 4. [8] E. 30. [9] A. 11. [10] A. 15. [11] A. 17.

Andrew Pancier, formerly Captain Lieutenant of Lord *Cobham*'s Dragoons, has [1] depoſed upon Oath, 'That being grown intimately acquainted 'with *Skeene* (now in Cuſtody) a Perſon related 'to *Marr*, and engaged in the Rebellions of *Preſ-* 'ton and *Glenſheild*, *Skeene* began to acquaint him, 'about *June* laſt, that there was a Deſign carry- 'ing on in *England* for placing the Pretender on 'the Throne, of which he at different times told 'him the following Particulars: That ſix or eight 'Battalions of *Iriſh* Foot, double Officer'd, were 'to have come over from *Spain*, which were 'quarter'd upon the Coaſt of *Galicia* for that pur- 'poſe; that the nine *Spaniſh* Men of War which 'have joined the *Dutch*, and four more to have 'been fitted out at *Barcelona*, and three at *Ali-* 'cant, (as he beſt remembered) being in all ſix- 'teen *Spaniſh* Men of War, were to have been 'imployed in this Service. That theſe Troops 'were to have landed either in *Cornwal*, or near 'Briſtol: That there were Forty thouſand Stand 'of Arms in *Great Britain*, part in *Scotland*, other 'part in *London*, other part in *Briſtol*, and other 'part in *Cornwal*. That there were Seven or 'eight hundred Men, with Officers among them, 'in *London*, ſubſiſted, and in readineſs for ſuch an 'Occaſion. That a Sum of Two hundred thou- 'ſand Pounds had been raiſed by Contribution 'for carrying on this Deſign, and put into the 'Management of the Biſhop of *Rocheſter*, who 'with the Lord *North* and *Grey* were the leading 'Men among them; and that Lord *Strafford* 'and Lord *Kinoule* knew the Thing. That the 'Managers of this Affair in *Spain*, were the late 'Duke of *Ormond* and the late Earl Mariſhal; 'and thoſe in *France* the late Lord *Marr*, and 'Lieutenant General *Dillon*. That the Court of 'Spain was in their Intereſt, but as to the Re- 'gent and Cardinal *Du Bois*, they could not tell 'what to make of them: That this Deſign was 'to have been executed ſome time ago, but was 'then diſappointed by the Regent: That the late 'Duke of *Ormond*, and the late Earl Mariſhal, 'were to have come with the Troops before men- 'tioned from *Spain*, and the Pretender about the 'ſame time was to have left *Rome* privately, and 'to have lain conceal'd ſomewhere near, from 'whence he would have come over when there 'had been a fair Proſpect of Succeſs. That as to 'any Oppoſition they could expect, we had but 'Fourteen thouſand Men in all, of which Three 'thouſand were neceſſary to guard *London*, Three 'thouſand more for *Scotland*, and Two thouſand 'for the Gariſons; ſo that the Remainder would ne- 'ver dare to attack thoſe who came from *Spain*: 'and in the Confuſion, their (meaning the Preten- 'der's) Friends would have been able to have got 'together, and made a Head. That in the Conduct 'of this Affair there paſſed little in writing, and on- 'ly the four Lords before mentioned, *viz.* the Biſhop 'of *Rocheſter* and Lord *North* and *Grey* principally, 'and Lord *Strafford* and Lord *Kinoule*, were con- 'cerned in the Management of it here. That the 'Buſineſs was to have been done before the *Dutch* 'Troops could come to our Aſſiſtance.'

The Committee have laid theſe ſeveral Particulars together, though of different Dates, that the Houſe may ſee at one view, the Reaſon there is to believe, that the late Duke of *Ormond* was to have landed in *England* with Officers and Arms, about the Time that it was generally ſuppoſed his Majeſty intended to go to *Hannover*. The reaſon of *Ormond*'s not coming, is ſufficiently explained by the Orders iſſued at *Madrid* and in *France*, by the King's not going abroad, and by the Diſcoveries, and Diſpoſition of the Forces made in *England*. And notice is taken, in [2] Letters to one of his Majeſty's Secretaries of State from *Rome*, that a Perſon of great Diſtinction at that Place, had declared it as his Opinion, that the grand Project formed in the Conclave for placing the Pretender on the Throne of *Britain*, was going to be put in execution; but that the ſame Perſon afterwards aſſigned four Reaſons for its having miſcarried; which were, the Want of Money, the ſuſpected Faith of the Regent, the Want of Skill in thoſe who were to conduct it, and the Puſillanimity of the Pretender, who to avoid hazarding his own Perſon, propoſed to ſend his Child: which laſt Particular is again mentioned in another [3] Letter from *Rome*.

The Committee now return to ſhew what other Evidences they have before them, of a Deſign laid for beginning an Inſurrection in *London*, at the Time when it was ſuppoſed the King intended to go to *Hannover*.

About the latter end of *April*, his Majeſty received [4] Intelligence from abroad, upon which he can intirely depend, 'That a Deſign was laid for 'bringing in the Pretender, which was thought 'to be ſo well concerted, and conducted by Per- 'ſons of ſuch Experience, that if the Secret was 'but kept, as was propos'd, the Succeſs was look- 'ed upon as infallible; and that it was to be put 'in Execution about the end of *April*, or begin- 'ning of *May*.' The original Letter containing this Intelligence, has been communicated to your Committee, and an [5] Extract of it is annexed to this Report.

On the 29th of *April*, the ſame [6] Intelligence was repeated, with theſe farther Particulars, 'That 'the Conſpirators did no longer think it neceſſary 'to inſiſt on foreign Aſſiſtance, flattering them- 'ſelves that great part of the King's own Forces 'would declare in their favour. That they now 'contented themſelves with deſiring the Regent 'ſhould obſerve a Neutrality between his Majeſty 'and the Pretender; and that Lord *Lanſdowne* 'was to preſent, or cauſe to be preſented, a Me- 'morial to the Regent to this effect, that Day or 'the next. That the Deſign was probably to be 'executed in *London*; that the beginning of *May* 'was the Time fixed on; and that the Pretender 'was ſpeedily to ſet out for *England*.

Your Committee do not find that the abovementioned Memorial was preſented to the Regent; but in [7] Letters from *Plunket* to *Dillon* they find the ſame repeated in theſe Words; 'If the Re- 'gent ſtands neuter, we will ſoon bring the *Law-* 'Suit to bear:' Which *Layer* [8] explained to be the Pretender's Cauſe.

On the 24th of *April O. S.* Mr. *Davenant*, His Majeſty's Miniſter in *Italy*, ſent an Expreſs from *Rome*, with [9] Advice, 'that the Pretender's Ad- 'herents were making Preparations in *Cadiz*, and 'other Ports of *Spain*, for an Attempt on *Eng-* 'land; that the Pretender was ſpeedily to embark 'at *Portolongone*, and was retired from *Rome* for

[1] D. 1. [2] A. 8. 23. [3] A. 22. [4] A. 2. [5] A. 1. 2. [6] A. 4. [7] C. 59. 61.
[8] B. 38. [9] A. 3.

'that Purpoſe:' And [1] it appears, that the ſame Advice was ſoon after confirmed to his Majeſty, by a foreign Miniſter reſiding in *England*, who received the Intelligence from a Perſon of great Diſtinction abroad, and communicated it to his Majeſty.

On the 9th of *May*, Mr. *Craufurd*, His Majeſty's Reſident at *Paris*, [2] writes word, 'that the 'Jacobites in *France* expected ſoon an Inſurrection 'in *England*, which was to be begun by the 'Heads of their Party here ſoon after His Ma'jeſty's ſetting out for *Hannover*, and was to be 'ſupported by *Iriſh* Officers and Soldiers, who 'lay ready at *Cadiz*, beſides ſuch as ſhould be 'able to paſs over into *England* from *France* by 'ſtealth:' and in his [3] Letter of the 26th of *May O.S.* he adds, 'that the Grounds of this Ex'pectation were, Aſſurances given from *England*, 'that the Conſpirators would immediately make 'themſelves Maſters of the Tower, and City of 'London.'

This Intelligence agrees with a [4] Paper delivered to the Secretaries of State in *July* laſt, by one of the Lords of his Majeſty's Council, who, as they have [5] certified, aſſured them that a Perſon, whom he had good reaſon to believe to be deeply concerned in the Conſpiracy, came to him in the Month of *July*, and brought him a Paper, which he affirmed he had copied by ſtealth out of the Scrutore of a noble Lord, whom he refuſed to name; and that the ſaid Perſon writ out a fair Copy of the Paper in his preſence, which contains Minutes of Reſolutions taken at a Conſultation, and is in the following Words.

'*R.* That the Arms be dug up immediately, 'and diſperſed in ſmall Parcels. Begin in *South'wark*, *Whitechapel*, *Wapping*, *Holborn* and *Smith'field*. March into City. Poſſeſs the Gates. 'Againſt the Horſe, Barricades in the narrow 'Streets, eſpecially at both Ends of *Fleet-bridge*, '*Shoe-lane*, *Fetter-lane* and *Chancery-lane*. Poſſeſs 'St. *Clement*'s Churchyard by a Party from *Hol'born*. A ſtrong Barricade in the narrow Part of 'that Street. Line the two firſt Stories. Bricks, 'Stones, *&c.* may be uſeful in the upper Rooms, 'and may be thrown by Women and others un'fit to bear Arms. Lighters with Ammunition 'under Coals, lie at *Blackfryars*, and *Milford-lane*. 'No Dependance or Aſſiſtance from *Weſtminſter* 'and thoſe Parts, except ſome few by Water, the 'Communication being cut off. Meſſage to the 'Lord Mayor by three Lords. Proclamation 'made to oblige all who ſhall not come in, to 'bring in their Muſkets, and Militia Arms. De'claration ready printed, to be diſperſed among 'the People. Twenty three Officers of the 'Guards to be depended on: a great many 'others well affected, eſpecially the common 'Centinels. Day reſolv'd on *April* the 30th. '*R.* That forty determin'd Perſons be immedi'ately pitch'd upon, armed with Swords and 'Piſtols, to execute all Orders; and that for the 'Subſiſtence of the ſaid forty Gentlemen, Money 'be advanced out of *the Fund*, at the Rate of ſe'ven Shillings *per Diem* for Man and Horſe. 'Commander in Chief Lord *N.* Time ſeven in 'the Morning.'

Dis: *C. W. M.*

The Committee make no doubt but the Houſe will readily obſerve, that this Scheme, drawn up in *April*, and delivered as aforeſaid to one of the Lords of the Council in *July* laſt, has a near Affinity with [6] that of *Layer*, and appears to be the Groundwork of it, tho *Layer* [7] denies his having ever ſeen any ſuch Paper of Reſolutions, or having received any Inſtructions relating to his Scheme, except from *Wilſon* a Surgeon, *Murphey* a Phyſician, and *White* a Serjeant.

The Committee likewiſe obſerve from this and *Layer*'s Scheme, as well as from a [8] Letter of *Sample*'s (of which notice will be taken in its Place) that the involving the City of *London* in Blood and Confuſion, appears to have been univerſally underſtood and agreed on among all the Conſpirators, as the firſt Step to be taken, and the Foundation of their future Hopes.

By another [9] Paper delivered in *July* laſt by the ſame Perſon, it appears, that when the Stroke was ſtruck in *London*, there were to be Inſurrections in ſeveral Counties of *England*; and that the Numbers of Gentlemen and private Men, to be depended on both in *London* and the Country, were computed and ſet down: and the Committee obſerve, that the extending the Inſurrection to the Country, after *London* was ſeized, makes likewiſe a Part of [10] *Layer*'s Scheme, and [11] *Sample*'s Letter.

The Committee farther take notice that in theſe Schemes, as well as in [12] *Pancier*'s Depoſition, mention is made of great quantities of Arms conceal'd for the Uſe of the Conſpirators; and *Layer* having confeſs'd at his [13] Examination before the Lords, that he ſuppoſed there were Arms provided, and that *Green* the Gunſmith being in company with Lord *North*, had mentioned Five thouſand Arms, and Seven thouſand Arms, and inſiſted, in contradiction to Lord *North* who bid him hold his Tongue, that there were Five thouſand Arms ready in the City; the Committee examined him particularly on this Head, but could draw nothing more from him, than [14] that *Green* had told Captain *Bonyn* at Lord *North*'s, that he could help him to Five or Seven thouſand Arms at an Hour's warning. And tho your Committee is fully ſatisfied that no Care has been wanting elſewhere to diſcover theſe Arms, and to defeat the Conſpiracy in ſo eſſential a Circumſtance; yet they cannot but think it a melancholy Conſideration, that through the determined Obſtinacy of the Conſpirators, theſe Endeavours have hitherto proved unſucceſsful.

The Committee obſerve farther, that in the [15] Paper of Reſolutions, Mention is made of a Fund of Money provided, and of a great Number of determined Perſons ſubſiſted in *London* for the Purpoſes of the Conſpiracy, for the Execution of which a Day was likewiſe fixed on and appointed, and the Commander in chief known. All which ſeveral Particulars correſpond exactly with the [16] Intelligence received at the ſame Time from abroad, with [17] *Pancier*'s Depoſition, with what *Layer* [18] own'd Lord *Orrery* had told him, that he believed Lord *North* and *Grey* had a Commiſſion for commanding in chief; and with what *Neynoe* [19] was told by *Watſon*, that Lord *North* and *Grey* was thought of for the Command; as likewiſe with what [20] was told *Matthew Plunket* by *Layer*

[1] A. 3. [2] A. 7. [3] A. 14. [4] BB. 2. [5] BB. 1. [6] B. X. 1. [7] B. 38. [8] G. 9. [9] BB. 4. [10] B. X. 1. [11] G. 9. [12] D. 1. [13] B. 11. [14] B. 38. [15] BB. 2. [16] A. 2. 3, *&c.* [17] D. 1. [18] B. 11. [19] E. 9. [20] B. 6.

and *John Plunket*, that Lord *North* and *Grey* and others were ready to head an Inſurrection.

Your Committee having thus laid before you the general Evidence, which convinces them that a Deſign was formed by Perſons of Diſtinction, to invade theſe Kingdoms with a foreign Force; that being diſappointed in this Expectation, they ſtill perſiſted to make an Attempt, with ſuch Officers and Soldiers as could be procured privately from abroad; that the late Duke of *Ormond* was to have landed for this Purpoſe, and to have been followed by the Pretender; that Arms and Money were provided, and Men ſubſiſted for this Service; that the Inſurrection was to have been begun in *London*, and thence to have been extended over the whole Kingdom: They will now proceed more particularly to explain the ſeveral Parts, which the Leaders and inferior Agents appear to have taken in conducting this Deſign, as far as the ſame can be collected from the intercepted Correſpondence, and other Papers referred to them, and from the Examinations of the Perſons concerned; by which it will farther appear to the Houſe, that the Deſign was conſtantly proſecuted in all Parts, without any other Relaxation or Intermiſſion, than what the Neceſſity of their Affairs, and the Diſcoveries made, obliged them to, in order to lay their Meaſures deeper, and to make the Succeſs of them more certain: and that the Enterprize, which was firſt calculated for the Spring, was to have been afterwards put in Execution at the breaking up of the Camp, with the Help of Officers and Soldiers from abroad, if they could be obtained; if not, on the Strength of ſuch as they hoped to be able to corrupt and ſeduce, among his Majeſty's own Forces.

The Leaders, in order (as 'tis natural to believe) to ſave themſelves from the Danger of legal Conviction, choſe to manage their Correſpondences by the Intervention of Perſons of a meaner Rank and Figure, and of deſperate Fortunes; who, they hoped, might eſcape the Obſervation of the Government, being no otherwiſe conſiderable, than as the Truſt repoſed in them made them ſo.

The Committee think proper to take notice, that of theſe inferior Agents, *Layer* appears to have been principally intruſted by Lord *North* and *Grey* and Lord *Orrery*; and that *Plunket*, who travelled with *Layer* to *Rome*, and whoſe treaſonable Practices and Correſpondences are cloſely connected with thoſe of *Layer*, writes of himſelf as tranſacting part of his Treaſons with Lord *Orrery*'s Clerk, and ſends frequent Accounts to the Pretender's Agents abroad, of Matters relating to the ſaid Lord.

George Kelly, a Nonjuring Clergyman at preſent (tho in the late Queen's Time, the Committee is informed, he took the Oaths to the Government, and likewiſe the Abjuration) appears to have been the Perſon principally entruſted by the Biſhop of *Rocheſter*, and to have been imployed in writing for him, and conveying Letters to him, until the time that he, *Kelly*, was firſt taken into Cuſtody; after which it appears to the Committee, that *Thomas Carte*, another Nonjuring Clergyman, was entruſted and imployed by the Biſhop in the ſame manner. And the Committee obſerve, that *George Kelly*'s Correſpondence has a cloſe Connexion with that of *Dennis Kelly*; and likewiſe that he appears to have been privy to *Plunket*'s and *Neynoe*'s Tranſactions.

The Perſon imployed by the Duke of *Norfolk*, in conveying Letters between him and *George Jernegan*, an Agent of the Pretender's in *Flanders*, they find to be Mrs. *Spelman*, alias *Tallop*, who has likewiſe owned her conveying Letters in the ſame manner between Mr. *Harvey* of *Comb*, and one *Moor* of *Brownlooe-ſtreet*, and the ſaid *Jernegan*. The Committee obſerve, that *John Sample* acted under the Direction of Mr. *Sempill* (commonly called Lord *Sempill*) and his Son at *Paris*, and that he wrote Letters to the late Duke of *Ormond* and the Pretender; but whom he tranſacted Matters with in *England*, your Committee do not find, by his Examination, he would declare.

The Committee farther obſerve, that this treaſonable Correſpondence extended itſelf into *Scotland*; that *William Ereskine* remitted Money to *France* for the Service of the Pretender's Friends, and had a Letter under the late Lord *Marr*'s Hand found upon him, when he was taken into Cuſtody. That Mr. *Cockran*, now in Cuſtody, and others of that Country yet unknown, were concerned in the ſame treaſonable Correſpondence, carried on under the ſame fictitious Names and Expreſſions, that are made uſe of by ſeveral of the Correſpondents in *England*; and that the ſame Cant was likewiſe made uſe of, for the ſame Purpoſes, by Perſons in *Ireland*. That all theſe ſeveral Negotiations and Correſpondences concurred in one common Deſign, of ſtirring up an Inſurrection in theſe Kingdoms, and placing the Pretender on the Throne.

The Committee have thought it proper to lay before the Houſe ſuch Particulars as occur to them relating to each of theſe Negotiations, and to begin with thoſe of *Layer* and *Plunket*, as being cloſely connected with one another, and ſet on foot earlier than it yet appears the others were; and as being likewiſe what the Houſe thought fit firſt to refer to the Examination of the Committee: and by comparing the Subſtance of the Papers, and Examinations of theſe two Perſons together, the Houſe will be enabled, at one view, to form a true Judgment of the Sincerity of their Confeſſions.

Before the Committee examin'd Mr. *Layer*, they acquainted him that the ſeveral Queſtions they intended to propound to him were reduced into Writing, and that to avoid all Miſtakes, his Anſwers ſhould be ſo likewiſe, and before they were reported to the Houſe he ſhould have the Peruſal of them. Accordingly he did review his firſt Confeſſion to the Committee, and made ſeveral Additions and Alterations, which will be taken notice of in their proper Places.

Mr. *Layer* has own'd partly to a Committee of Lords of the Council before his Trial, and partly to your Committee (as will appear by reference had to his [r] ſeveral Examinations, annex'd to this Report) 'That being bred up under an Uncle 'who was a Nonjuror in *Norfolk*, he early im-'bib'd thoſe Principles; that having a private Af-'fair to tranſact at *Venice*, this and a natural In-'clination and Curioſity, which he had always had 'to ſee the Pretender, carried him on to *Rome*; 'that he ſet out from *England* on the firſt of *April* '1721, in company with *John Plunket*, now in

[r] B. 8, 9, 10, 11, 38.

'Cuſtody, who went ſometimes by the Name of '*Rogers*, whoſe Expenſes he bore on account of 'his being uſeful to him, as ſpeaking ſeveral Lan-'guages. That he believes from the time of his 'firſt acquainting *Plunket* with his intended Journey '(which was ſome Months before their ſetting out) 'the ſaid *Plunket*, in order to magnify his Servi-'ces to the Pretender and his Adherents, might 'write to General *Dillon*, and others of them, that 'he was going to *Rome* with a Friend, and that 'his and his Friend's Journey would be of great 'conſequence to the Pretender's Affairs.' But this Particular he did not own till the Review of his Examination, when he found the Committee were appriſed that notice had been ſent to *Rome* of his Journey; for he inſiſted at firſt that his Journey to *Rome* was purely accidental, and not concerted with the Pretender or any of his Agents.

He farther owned, 'That in their Way to *Italy*, 'they paſſed through *Antwerp*, and that *Plunket* 'there received a Letter from General *Dillon*, 'which he ſhewed to *Layer*, directing them whom 'to apply to on their Arrival at *Rome*, to intro-'duce them to the Pretender.' And on his reviewing his Examination, when he found your Committee were in poſſeſſion of that Letter, he owned, 'That *Francis Kennedy* was the Perſon 'they were directed by *Dillon* to apply to.' A Letter [1] to that effect being found among *Plunket*'s Papers, ſigned *Dixwell*, and the ſame being ſhewn by your Committee to *Layer*, he declared, 'That 'to the beſt of his Memory and Belief, it was the 'very Letter which was ſhewn to him by *Plunket* 'at *Antwerp*, and affirmed by *Plunket* to be from 'General *Dillon*: that he, *Layer*, believes *Dillon* 'goes by the Names both of *Dixwell* and *Digby*; 'and that by the Name of *Joſeph*, in the ſaid Let-'ter, is to be underſtood the Pretender.

'That he and *Plunket* arrived at *Rome* the lat-'ter end of *May* 1721; and that after he had 'been a Day at *Rome*, he ſent to *Francis Kennedy*, 'Secretary to the Pretender, to let him know he 'ſhould be glad to ſee him, and to renew acquain-'tance with him.'

Being aſked when and where he firſt became acquainted with *Francis Kennedy*, he ſaid, 'That '*Kennedy* has a Brother, Secretary to the late 'Duke of *Ormond*, with which Brother he had 'ſome acquaintance; and he thinks he has former-'ly been in *Francis Kennedy*'s Company at *Lon-'don* along with the other Brother; but as to 'this Particular he cannot be poſitive.' This is what he ſaid relating to *Kennedy* at his firſt Examination; and your Committee obſerved by his Behaviour, that he was under Difficulties how to account for his applying to *Kennedy*, not having owned at that time he had any Directions ſo to do, and being willing to have your Committee believe, that his Journey was not known of at *Rome*: but after *Plunket*'s Examination, being uncertain what *Plunket* might have confeſs'd, he thought it proper to be more open upon this Head, though contradicting in ſome meaſure his own former Confeſſion. He farther ſaid, 'That upon his ſend-'ing to *Francis Kennedy*, as above, the ſaid *Ken-'nedy* came to his Lodgings, which at the ſame time 'he ſaid he was ſurprized at, it being in the face 'of all the *Engliſh* Gentlemen; but that *Kennedy* 'told him, he needed not be uneaſy at his coming 'to his Lodgings openly, ſince he frequented the 'Company of all the *Engliſh* Gentlemen that came 'to *Rome*, without diſtinction. That at the firſt 'Viſit he deſired *Kennedy* to introduce him to the 'Pretender, which he promiſed to do. That '*Kennedy* came to him again the next Night, and 'promiſed to introduce him to the Pretender pri-'vately in an Evening, ſo that no body ſhould 'be able to prove his having been there.'

And when he reviewed his Examination, being aſked by your Committee, whether he knew of any Letter to *Plunket*, on their firſt coming to *Rome*? and being aſked it in ſuch a manner as let him underſtand that they knew from whom it came, and by whom it was writ; then, and not till then, he owned, 'That he believed *Kennedy* 'delivered to *Plunket* a Letter under the Preten-'der's own Hand, when *Kennedy* and *Plunket* were 'alone together; for the next Morning, as he, '*Layer*, was in Bed, in a Room next adjoining to 'that where *Plunket* lodged, *Plunket* came to his 'Bedſide, and told him with ſeeming ſatisfaction, 'that he had got a Letter under the King's '(meaning the Pretender's) own Hand; but that '*Kennedy* never ſaid one word of this Letter to 'him, *Layer*. That *Plunket* ſhewed him, *Layer*, 'the ſaid Letter, the whole of which he believes 'to have been writ in the ſame Hand in which 'the blank Receipts taken amongſt his Papers at 'Mrs. *Maſon*'s are ſigned, which he believes to 'be the Pretender's own Hand. That the Sub-'ſtance of the Letter was, that the Bearer, *Fran-'cis Kennedy*, would introduce *Plunket* to the Pre-'tender. He ſaid he could not be poſitive, whe-'ther it was ſaid in that Letter, that *Kennedy* 'would introduce *Plunket* only, or whether he 'himſelf was mentioned likewiſe to be introduced 'by *Kennedy*. That *Plunket* told him he ſaw the 'Pretender the Night before *Layer* was introdu-'ced to him.'

This Original Letter has ſince been delivered to your Committee, with the [2] Depoſitions relating to it; by which it appears, that *Plunket* delivered it with other Papers to one *Mary Fagban* about *Michaelmas* laſt, which was near the Time of *Layer*'s being taken up; it is dated *Thurſday* Morn. ſigned *James* R. and directed to Mr. *Plunket*, and is in the following Words:

'This is only to direct you not to mention any 'thing of Buſineſs to any body till I have ſeen 'you. I have not much leiſure to-night, expect-'ing Viſits; but however I ſhall be glad to ſee 'you alone, and agree with you the moſt private 'Way and Manner for your *Companion* and me 'to meet. The Bearer *Fr. Kennedy* will bring 'you very privately to my Houſe to-night about 'eight a-Clock.

James R.

For Mr. Plunket.

Your Committee obſerve from this Letter, as well as from other Papers before them, what a degree of Truſt and Confidence *Plunket* was admitted to, (notwithſtanding he would endeavour by his preſent Appearance to make it ſeem incredible) and perceive likewiſe by this Letter, that his and *Layer*'s Journey to *Rome* had been repreſented to the Pretender as an Affair of ſome Importance.

[1] B. 24. [2] C. 70. 71.

Layer

Layer farther said, 'That *Kennedy*, in his second 'Visit, appointed him to meet him and Colonel '*Haye* in the Square before the Pretender's House 'at Ten the next Night; that he met them there, 'and that they conducted him up a Pair of Back-'Stairs to the Pretender.'

Before the Committee proceed to give an Account of the Conversation which Mr. *Layer* says he had with the Pretender, they think it proper to observe, that among *Plunket*'s Papers were found two foul Draughts of Letters, which are sworn to be *Plunket*'s Hand-writing, which give some light to the Occasion of his and *Layer*'s Journey to *Rome*. The first is without Date or Direction, but appears evidently by the Matter to have been writ to the same Person, and about the same Time as the second, which is dated the 22d of *March*, 1721. (about ten Days before his and *Layer*'s setting out) and directed *To Mr. Jackson*, which Name is found in a [1] Cypher taken among *Plunket*'s Papers, and sworn likewise to be his Hand-writing, to denote the Pretender.

In the [2] first of these foul Draughts are these Words: 'There is one that sets out from *Norfolk* 'in a few Days to let you know they' (that is the *Tanners*, which he [3] explained to *Layer* to mean the Tories) 'will stand by you on occasion: he 'only stays for me, and offers to bear my Expen-'ses, so that I shall wait on you, and have the 'Satisfaction to tell you by word of Mouth what 'will be acceptable. He carries *The List* with 'him, no doubt on't you may have many such 'now.'

In the [4] Letter to *Jackson* of the 22d of *March* are these Words: 'The Gentleman I mentioned 'to you formerly, is come out of the Country, 'with Instructions to wait on you, and tender 'you their Service. He offers to bear my Ex-'penses.'

From these Passages compared with the [5] Letter received by *Plunket* from *Dillon* at *Antwerp*, in which *Dillon* says, 'I have sent *Joseph* Advice of 'your Journey, in which I wish you and your 'Companion, tho unknown, all Happiness:' and then directs him to apply to *Kennedy* at *Joseph*'s House for Introduction; and compared likewise with the Pretender's [6] Letter to *Plunket*, in which he directs him not to mention any thing of *Business* to any body, till he had seen him alone, in order to agree with him the most private Way and Manner for meeting his Companion. It appears to your Committee to be most evident, that *Layer* did not undertake so long and expensive a Journey on uncertain Prospects of private Business, or out of mere Curiosity, but that his Journey was concerted with the Pretender's Friends at home, and notified to the Pretender and his Agents abroad; and that he carried over with him Tenders of Service to the Pretender from Persons in *England*, as likewise a *List* of Names, which was of such Importance, and so well understood and expected at *Rome*, as to be mentioned by *Plunket* in one of his Letters to the Pretender, without any other Description than barely that of *The List*.

The Committee thought this Observation the more necessary to be premised, because *Layer* did of himself own to them his giving to the Pretender a List of Names, and the Pretender's asking him at a second Interview, what he had to say in relation to *his List*; but yet endeavoured to explain that Affair in such a manner, as your Committee apprehend to be no ways consistent with *Plunket*'s foul Draughts abovementioned; nor with the Expectations that seem to have been raised in the Pretender and his Agents, from *Layer*'s and *Plunket*'s Journey.

Layer told your Committee, 'That on his be-'ing introduced to the Pretender by *Kennedy* and '*Haye*, as abovementioned, the Pretender ask'd 'him the Occasion of his coming, and whether he 'had any Credentials from People in *England*? 'that he answered, Nothing but Curiosity and a 'Desire of paying my Duty to your Majesty has 'brought me hither. That the Pretender asked 'him, what Lords he was acquainted with? To 'which he answered, None but such as he was 'concerned with in the way of his Profession. 'That the Pretender again expressed himself sur-'prised at his having no Credentials nor Recom-'mendations from any Person in *England*; and 'said, This Journey must have been very expen-'sive to you, I believe it cannot cost you less 'than Five hundred Pounds. To which he an-'swered, That a private Affair, which brought 'him to *Venice*, would have defrayed the Expense, 'if it had succeeded; but that being disappointed 'in that, his Inclination drew him on to *Rome*, to 'pay his Duty to the Pretender, which he had 'long had in his Thought, so took this opportu-'nity of doing it. That one *Plunket*, who was 'now in *Rome* with him, had often told him that 'he need not fear being introduced, or to that ef-'fect. That the Pretender said, He believed *that* '*Plunket* was a very honest Man, and as proper a 'Person as *Layer* could have had for a Compa-'nion.'

The Committee observe, that what is here said concerning the Pretender's good Opinion of *Plunket*, and *Plunket*'s having given Assurances to *Layer* of his being introduced, was not mentioned by *Layer*, till after *Plunket* had been examined.

Layer farther said, that the Pretender again repeated his Surprise at his having no Recommendation from any Person in *England*; but said, I am informed by *Francis Kennedy*, who knows you, that you have a good Character, and for that Reason you are welcome without any Credentials. Yet your Committee observe, that Dr. *Blackerby Fairfax* (an intimate Acquaintance of *Layer*'s) has [7] deposed upon Oath, 'That *Layer*, since his re-'turn from *Rome*, told him, that while he was in 'private Audience with the Pretender, a *Scotch* 'Colonel broke in upon them, upon which the 'Pretender took him into another Room; and 'that he, *Layer*, did there deliver his *Credentials* 'to the Pretender.'

Layer told the Committee, 'That the Preten-'der, after the Discourse abovementioned, asked 'him what County he was of, and what Gentle-'men he knew: That he answer'd he was of *Nor-'folk*, and knew all the Tory Gentlemen of that 'Country. That the Pretender asked him if he 'could recollect their Names, and put them 'down in Writing: To which he answer'd, He 'could easily do that, having brought with him 'Memorandums of their Names. That accord-'ingly he drew up a fair List of the Tory Gen-'tlemen of *Norfolk*, and gave the said List to the 'Pretender at a second Interview, thinking it 'would be agreeable to him. That the Pretender

[1] C. 51. [2] B. 23. [3] B. 38. [4] C. 41. [5] B. 24. [6] C. 69. [7] B. 36.

'then asked him, whether he would ſee the 'Queen (meaning his Spouſe) and promiſed ſhe 'ſhould admit him to kiſs her Hand.

'That about three Weeks or a Month after, 'Francis Kennedy and Colonel *Haye* appointed 'him to meet them at the ſame Place and Time 'as before, and introduced him to the Pretender 'and his Spouſe. That the Pretender then called 'him to him, and asked him, Whether he had 'any Thing to ſay in relation to his Liſt? that he 'anſwered, He forgot ſomething which he had to 'communicate to his Majeſty; that the Preten-'der ſaid, His Wife would go out of the Room 'preſently, and ſoon after ſpoke to her in *Italian*, 'to withdraw, as he believes. That the Preten-'der then asked him, What he had to ſay? to 'which he replied, I have nothing ſo material to 'offer as ought to have procured me this great 'Honour and Indulgence; but if there be any 'Service on Earth I can do, I am moſt ready; 'That the Pretender ſaid, What can you do? have 'you any Acquaintance? To which he replied, 'that all the Perſons mentioned in his Liſt were 'entirely devoted to the Pretender's Intereſt, and 'all the Gentlemen in *England* the ſame, except 'thoſe in Places of Profit and Truſt, and that all 'Parties were united in his Intereſt. That the 'Pretender then asked him, what the Gentlemen 'were whoſe Names were on his Liſt? to which 'he anſwer'd, they were all Tories, and that he 'had not put down any of the *Roman* Catholicks 'of *Norfolk*, of whom there were ſeveral, Men 'of Eſtates. That the Pretender ſaid, he belie-'ved the People of *England* were generally well 'inclined to his Cauſe, and pretty well convinced 'of their Error; and then ſpoke of the Diſcon-'tents occaſion'd by the *South-Sea* Scheme.'

The Committee obſerve, that in the Cypher, which *Layer* received from Sir *William Ellis*, the Names of ſeveral *Norfolk* Gentlemen are inſerted, who, they think it probable, made a Part of the Liſt delivered by *Layer* to the Pretender; but at the ſame time they think it a Juſtice due to thoſe Gentlemen, to obſerve, that *Layer* has owned to the Committee, that, in order to magnify the Number of the Pretender's Friends, he did in ſeveral of the Liſts found among his Papers, inſert the Names of Perſons, as well affected to the Pretender's Service, without having the leaſt Authority from them for ſo doing: and his falſe Aſſertion to the Pretender, that all the Gentlemen in *England*, except thoſe in Places of Profit and Truſt, were entirely devoted to his Intereſt, ſhews, that he made no Diſtinction between the Innocent and the Guilty.

He next acquainted the Committee, 'That 'after the Diſcourſe before-mentioned with the 'Pretender in relation to the Liſt, the Pretender 'commended his Zeal, and told him, he might 'depend on any Service he could do him. That 'he, *Layer*, then deſired ſome Token, by which 'he might obtain Credit among the Pretender's 'Friends of the Nobility in *England*, and ob-'tained that of the Pretender and his Spouſe's 'anſwering for his Child;' which the Committee avoid repeating, the Account he gave them, a-greeing with that printed in his Trial. He ſaid, 'That upon his deſiring a Letter to the Dutcheſs 'of *Ormond*, for her repreſenting the Pretender's 'Spouſe, Colonel *Haye* told him, no Letter 'could be ſent by him, but that care would be 'taken the Dutcheſs ſhould ſtand. That he like-wiſe gave him a Meſſage to the Dutcheſs, to 'this effect, that *the Duke of* Ormond *was well, 'and gone to* Madrid, by which; he told him, ſhe 'would underſtand the Buſineſs he came about.

'That he returned to *England* about the End 'of *Auguſt* or Beginning of *September* 1721, and 'waited on the Dutcheſs with his Requeſt, add-'ing, that he hoped ſhe was not altogether a 'Stranger to that Affair; to which ſhe returned 'him no particular Anſwer, but promiſed to ſtand 'Godmother, as he deſir'd.

'That he then made Application to Lord *Or-'rery* to ſtand with her, by *Thompſon*, whom he 'took to be her Chaplain, and by *Swortfegger*, 'Lord *Orrery*'s Secretary, who underſtood that 'Lord *Orrery* was deſired to repreſent the Pre-'tender. That the ſaid Lord ſent to the Dutcheſs 'to know whether ſhe ſtood, who anſwered that 'ſhe did; yet Lord *Orrery* refuſed; but upon 'farther Acquaintance, and hearing that Lord 'North *and* Grey had conſented to ſtand, he ſent 'for *Layer*, and made Excuſes to him for this 'Refuſal. That he made uſe of this Credential 'to Lord *Orrery*, to induce him to converſe free-'ly with him in relation to the Pretender's Af-'fairs, having heard that the ſaid Lord was in the 'Pretender's Intereſt.

'That upon his being refuſed by Lord *Orrery*, 'he made his Application to Lord *North* and 'Grey, as mention'd in his Trial, who ſtood; 'knowing, as he believes, that he ſtood for the 'Pretender. That this Tranſaction was the Begin-'ning of his Intimacy with Lord *North* and *Grey*.

'That the firſt Converſation he had with Lord 'North, relating to the Pretender's Affairs, was 'ſoon after the Chriſtening; that he then asked 'Lord *North*, whether nothing could be under-'taken in the Pretender's Favour, his Lordſhip 'being a military Man. That his Lordſhip re-'plied, he believed the Pretender had Friends 'enow, if they did but underſtand one another; 'that the Army in general, and moſt of the 'Half-pay Officers were well inclined to the Pre-'tender.

'That in *July* laſt he, *Layer*, going down to 'Norfolk on the Circuit, called on Lord *North* at 'Epping, and again at his Return; that he then 'asked the ſaid Lord again, whether nothing 'could be done in favour of the Pretender? 'That Lord *North* ſaid, How can any thing be 'done, while ſo great a Body of Forces is en-'camped under the very Walls of *London*, be-'ſides the Encampments in other Parts of the 'Kingdom? That *Layer* told him, he found 'moſt of the Gentlemen in *Norfolk* that were 'Tories before, Jacobites now; that Lord *North* 'and Grey ſaid, it was the ſame in other Coun-'ties, but that nothing could be done till the 'Camp ſhould break up. That upon *Layer*'s 'preſſing him to know whether any Scheme was 'formed, Lord *North* ſaid, What does your 'Friend Lord *Orrery* think of things? that he 'anſwered, Lord *Orrery* was of Opinion, no-'thing could be done without a Foreign Force; 'that Lord *North* and *Grey* reply'd, I cannot be 'of his Opinion, I believe the People of *Eng-'land* may do it of themſelves.

'That *Layer* viſiting him during the Vacation, 'and ſtaying two or three Days at his Houſe, 'continued to preſs him about forming a Scheme; 'that Lord *North* reply'd, We Soldiers do not 'trouble ourſelves much about Schemes, *Be you*

'*quiet*

'*quiet something will be done.*' And at his [1] Examination before the Lords, he owned, 'Lord '*North and Grey* said, If there be a Rising, you 'shall not want Men, or Money, or Arms.'

Layer farther gave your Committee an Account of his becoming acquainted with *Lynch*, and of his carrying him to Lord *North* and *Grey*, upon *Lynch*'s telling him that he had something to propose to the Lord, that might be of great Service to the Pretender's Cause. But in giving an Account of what passed between *Lynch* and him at the *Green-man*, your Committee observed, that *Layer* took great Pains to shew, that he did not communicate any Papers to *Lynch till after Dinner*, and that he then only shewed him Memorandums, transcribed out of the Prince of *Orange*'s Declaration, tho *Lynch* has [2] deposed upon Oath, that mention was made in that Paper of Lord *Cadogan*'s being seized, and remaining in the Custody of the Conspirators.

He owned to your Committee his having carried *Lynch* to Lord *Cadogan*'s, but said, 'He 'went thither only in relation to the Purchase of 'Estate; that while they were waiting there in 'a Room next the Garden, *Lynch* viewed the 'Garden and House, and said, I can easily seize 'you this General: but he deny'd their having 'had any previous Discourse to this Purpose, and 'said the Proposal arose from *Lynch*, and that 'he, *Layer*, was mad enough to make it part of 'his Scheme.'

He said, 'That when *Lynch* and he came to 'Lord *North* and *Grey*'s, his Lordship asked him 'who *Lynch* was; that he said, he was an honest 'Gentleman, recommended by a particular 'Friend. That his Lordship said, I wonder you 'would bring him, you know I am not easy nor 'free before Strangers. That however, Lord '*North* and *Grey* entertained *Lynch* civilly, and 'after Supper inquired of him, whether he was 'in the Army, to which *Lynch* answered, that 'he was bred up to Merchandize, but had been 'with the Pretender in *Scotland*, and had the 'Command of a Ship under the King of *Spain* 'in the Descent on *Scotland*, and enlarged much 'on his Loyalty and Zeal for the Pretender; but 'that Lord *North* waved the Discourse.

'That not long after, *Lynch* came down again 'to Lord *North* and *Grey*'s to *Epping*, while '*Layer* was there a shooting, and was civilly re-'ceiv'd by his Lordship; and that after he was 'gone, *Layer* making Apologies for *Lynch*'s in-'truding, Lord *North* and *Grey* said, *Lynch* was 'a good honest Fellow, and had entertain'd them 'with several merry Stories.'

The Committee observed, That *Layer* in relating what passed while *Lynch* was at Lord *North*'s, took so much pains to shew that Lord *North* and *Grey* could have no private Discourse with *Lynch*, that he left no room for the said Lord *North*'s having had any private Discourse with him, *Layer*; which yet is inconsistent with his [3] Examination taken before the Lords, as well as with his Confession to your Committee; in another Part of which he owns, that while *Lynch* was at Lord *North*'s, he, *Layer*, shewed Lord *North* some part of his Scheme or Heads relating to a Declaration, as he was walking with him in the Garden, and that they had some Discourse upon it.

They observe likewise, That what he owned to the Committee in relation to his introducing *Lynch* to Lord *North* and *Grey*, falls very short of what he confessed to the Lords of the Council on the same Subject, previously to his Trial. For he [4] then said, 'That *Lynch* having told him he 'would seize Lord *Cadogan*, he carried *Lynch* to 'Lord *North* and *Grey*'s, and recommended him 'as a proper Person for such an Attempt. That 'he had before-hand proposed to Lord *North* 'and *Grey* the carrying *Lynch* to him, that his 'Lordship made a Difficulty of seeing him; but 'that he, *Layer*, insisted on *Lynch*'s being an 'honest Man, fit to be employ'd in an Insurrec-'tion for the Pretender, saying *Lynch* would do 'any thing his Lordship would have him, if 'there should be a Rising: That he was fit to be 'sent with a Party to seize any particular Person, 'and that *Lynch* was impatient to see his Lord-'ship, *Layer* having told him, that his Lordship 'was at the Head of those Designs.'

Layer farther acquainted your Committee, 'That during his Stay at Lord *North* and *Grey*'s 'at *Epping*, in the Vacation, he again pressed his 'Lordship to bring Matters to some Issue in fa-'vour of the Pretender, saying, if something be 'not done speedily, we shall all be taken up; 'that his Lordship reply'd, Is not the Camp 'there still? if you can find some Expedient it 'would be well, it is more than I can do. That '*Layer* said it was his Opinion something might 'be done even during the Encampment; and in 'order to discover whether Lord *North* and *Grey* 'and Lord *Orrery* had any Scheme of their own, 'he drew up a Scheme himself, and having so 'done, lodged it with Mrs. *Mason*, the Day be-'fore he was taken up. That he intended to 'have communicated this Scheme to Lord *North* 'and *Grey* and Lord *Orrery*; that he had some 'Discourse with *George Wilson*, Dr. *Murphey* AND 'OTHERS on the Subject of it, before it was 'drawn up.' Being asked, who those OTHERS were, he said, 'He could recollect no one else 'but one who called himself Serjeant *White*, 'whom he saw in company with Dr. *Murphey* at 'a Tavern, and inquired of him, how far some 'Parts of his Scheme were practicable.'

Being asked whether he had shewn this Scheme to any Body? he said, 'He did shew the Heads of 'it to Lord *North and Grey*, as he was walking 'with him in the Garden, and that his Lordship 'said, all was impracticable during the Encamp-'ment: but that he never shewed his Scheme to 'any Body? after it was drawn up *in the Form in 'which it was left with Mrs.* Mason.' Which last part of his Answer, the Committee observe, may be evasive; since by his own Account, as soon as he had drawn it up in *that Form*, he lodged it with Mrs. *Mason*, and the Day after was taken into Custody.

The Committee farther take Notice, That the Accounts he gave when he was questioned before the Lords, whether he had shewn this Scheme to any Body, are inconsistent and contradictory.

For in some Parts of that [5] Examination, he says, 'Lord *North* and *Grey* would not hear of 'any thing till the Camp was broke up; That 'the said Lord would not see his Scheme; That 'the said Lord said, he might keep his Heads 'and his Schemes to himself, for there was no-

[1] B. II. [2] B. I. [3] B. II. [4] B. II. [5] B. II.

'thing to be done; That the ſaid Lord ſaid 'there was Time enough for forming a Scheme;' and yet in another Part of the ſame Examination, he ſays, 'Lord *North* did not diſlike a Scheme in 'general, but diſapproved his Scheme.'

Your Committee beg leave to make the following Obſervations on theſe Paſſages, with a Deſign to ſhew the Inſincerity and Inconſiſtency of *Layer*'s Confeſſions, and without preſuming to draw from them any other Concluſions.

Firſt, That if what *Layer* ſaid, was true, Lord *North* muſt have peruſed and examined *Layer*'s Scheme, ſince a Man that did not diſlike a Scheme in general, could not be ſaid to diſapprove any particular Scheme, unleſs he had firſt conſidered and examined it.

The Committee obſerve farther, that the Scheme itſelf does not appear drawn up by a Man of *Layer*'s Profeſſion, aſſiſted only, as he would inſinuate, by *Murphey* a Doctor of Phyſick, *Wilſon* a Surgeon, and *White* a Serjeant; and they cannot but think it very extraordinary, that his Scheme drawn up in *Auguſt* or *September*, ſhould have ſo great an Affinity with the 'Paper of Reſolutions, for *the digging up the Arms*, &c. mentioned above, which was drawn up the *April* before; and yet that *Layer* ſhould have had no ſight of that Paper, nor have received any Inſtructions or Aſſiſtance from any Perſons, who were privy to thoſe Reſolutions, which he has declared to the Committee he had not. And the Committee are farther confirmed, that the Scheme was not drawn up by himſelf, from a Particularity contained in a [7] Depoſition of Dr. *Blackerby Fairfax*, who has ſworn, that being for four or five Years paſt employed in reading Civil Law and *French* to the ſaid *Layer*, he recollects that *Layer* once asked him the meaning of the *French* Motto, ſince prefixed to his Scheme in theſe Words, *Au défaut de la Force il faut employer la Ruſe*; and that upon *Fairfax*'s explaining it to him, *Layer* ſaid, it had been explained to him in the ſame manner by others. Neither does the Scheme appear drawn up at a Venture, or merely with a View of engaging the Pretender's Friends in the Execution of this, or ſome other Scheme of their own, as *Layer* would inſinuate, but ſeveral Paſſages in it, compared with his other Papers, make it probable, that the Officers, Serjeants, Soldiers and Arms mentioned in the Scheme, were firſt engaged and prepared, and then the ſaid Scheme drawn up, for employing in the beſt manner poſſible ſuch a Force as had been ſo prepared.

This appears by comparing theſe Words in the third Paragraph of his [8] Scheme ('And as there 'is eight Serjeants, *viz.* Three of the firſt Regi-'ment of Foot-Guards, Three of the ſecond, 'and Two of the third, all ready at an Hour's 'warning to obey Orders)' with two of his Papers taken with his Scheme at Mrs. *Maſon*'s, *viz.* [9] That which contains a Liſt of Thirteen Serjeants of the Guards, and another [10] Paper of *Layer*'s Handwriting, which contains Eleven of theſe Thirteen Serjeants Names, and Eight of thoſe Eleven Serjeants have Marks ſet againſt their Names: ſo that it may be concluded from thence, that *Layer* had been able to engage but Eight of the ſaid Thirteen Serjeants, and therefore in his Scheme he mentions no more than Eight Serjeants.

The Truth of this Obſervation farther appears, by comparing *Layer*'s ſaid [11] Examination of the 1ſt of *October*, with the fourth Paragraph of his Scheme; for in that Examination he ſays that *George Wilſon* had aſſured him, that two hundred of the Soldiers in the Camp had been ſpoken to and were ready: and therefore *Layer*, in the ſaid Fourth Paragraph of his Scheme, mentions only two hundred Soldiers to be ready, and gives every one of his eight Serjeants the Command of Five and Twenty of the ſaid Two Hundred Men. From whence it may be concluded, that the Officer that was to ſeize the *Tower*, and the Arms for executing the Scheme, were alſo in a Readineſs.

It is farther remarkable, that *Layer* intended, as he owned to your Committee, to communicate this Scheme in its preſent Form, to Lord *North* and *Grey* and Lord *Orrery*; and yet ſeveral principal Parts of it are not explained as things new, but referred to as Matters already known and underſtood by the Perſons that were to ſee it, which could only be by previous Conſultations on that Subject; for Inſtance,

In the Firſt Paragraph it is ſaid, 'Let the Ge-'neral *and only one Officer of Note in the Camp* agree 'upon a Day for Execution;' which muſt have appeared a moſt abſurd Beginning to any Body that had not had ſome previous Diſcourſe or Notice, of ſeveral Officers in the Camp engaged in the Deſign. And the ſame Obſervation will hold, with reſpect to the Paragraphs where Arms are mentioned as provided; which ſhews, at leaſt, that *Layer* believed thoſe Perſons that were to ſee his Scheme, had heard of Arms that *were* provided.

In the Third Paragraph, *George Wilſon* is named in ſuch a manner, as makes it probable he was already known to thoſe who were to have a Sight of this Scheme; and the Committee obſerve that *Layer* [12] confeſſed to the Lords that he had told Lord *North* and *Grey*, that *Wilſon* was a Fellow who had ſerved in the Army, had a general Acquaintance, and was fit to be employed if his Lordſhip would make uſe of him; to which the ſaid Lord replied, that when he had Occaſion he would employ him.

In the Thirteenth Paragraph of the Scheme it is ſaid, 'Let the General order four of *the Half-'pay Captains*,' without any farther Deſcription; which ſhews that *Layer* thought thoſe to whom his Scheme was to be communicated, knew already of Half-pay Officers that were engaged, agreeably to what Lord *North and Grey* had [13] told him, that moſt of the Half-pay Officers were well inclined.

In the Nineteenth Paragraph, he allots part of the Execution of the Deſign to *the Duke's Bargemen*, without any other Addition: which is a manner of Expreſſion no one would have uſed in a Paper to be ſhewn to Perſons, who were entire Strangers to the Affair.

Layer being in the Courſe of his Examination deſired by the Committee, to explain, by what Services or Merit on his Part, the Shyneſs, which he would have it believed, the Pretender expreſſed towards him at his firſt coming to *Rome*, and the little Acquaintance he then had with Perſons of Diſtinction at home in the Pretender's Intereſt, came ſoon after to be changed into ſo great a degree of Confidence both at *Rome* and here, that he ſhould be truſted with negotiating Blank Receipts, under the Pretender's own Hand, for unlimited Sums; he told the Committee, that during his Stay at *Rome*, he contracted a Friend-

[7] B. 37. [8] B. X. 1. [9] B. X. 9. [10] B. X. 7. [11] B. 11. [12] B. 11. [13] B. 38.

ſhip with Sir *William Ellis*, who is a Servant of the Pretender's, and that at his leaving *Rome* he ſettled a Correſpondence by Cypher with the ſaid *Ellis*, and acquainted him from time to time how the Pretender's Affairs went on here: but the Committee obſerve, that this general Anſwer does by no means account for the Terms of Thankfulneſs and Reſpect, with which * *Ellis* writes to him from the Pretender, nor lay a ſufficient Foundation for his being admitted to ſo particular a Truſt. He ſaid that in the Courſe of his Correſpondence, he writ to *Ellis* that he had got acquainted with *Burford* and *Symms* (by the firſt of which Names he meant Lord *Orrery*, and by the latter Lord *North* and *Grey*) and that if he had but Blank Receipts, under the King's (meaning the Pretender's) own Hand, he believed he could raiſe a conſiderable Sum of Money upon them, and put the Pretender's Affairs in a great Forwardneſs, by engaging a conſiderable Part of the King's Army in the Pretender's Intereſt, with the Money ſo raiſed. That he did not name any particular Sum to *Ellis*, but hoped himſelf to have raiſed twenty Thouſand Pounds by this Method. He ſaid he received from *Ellis* only the ten Receipts taken among his Papers at Mrs. *Maſon*'s, that he received them at different times by the Poſt, and that the firſt of them came to his Hands the latter End of *July* laſt. He ſaid farther, he intended to have tried to put off theſe Receipts among the *Norfolk* Gentlemen named in the Liſt which he gave to the Pretender, but that he never had ſpoke to any of them on this Subject, nor received any Aſſurance from them.

Being asked by the Committee whether he had ſhewn theſe Receipts to any other Perſons, or had had any Diſcourſe with any Body about raiſing Money this way? he ſaid, he believed he had mentioned to Lord *North* and *Grey* and Lord *Orrery*, his having ſuch Receipts in his Poſſeſſion; and that the ſaid Lords told him, they believed they would be of little Uſe, for that People would ſcarce venture to keep ſuch Receipts by them, or to have them in their Cuſtody, or Words to that effect.

The Committee take Notice, That when he was examined before the Lords, he prevaricated in relation to the Cypher received from Sir *William Ellis*, which he ſaid was an old Cypher, in uſe before the *Preſton* Rebellion. But being ſhewn the Names of ſeveral Perſons in that [1] Cypher, with the addition of their Employments, which they did not enjoy at the time of that Rebellion, nor ſome of them till very lately, he ſaid that he applied to *Plunket* for ſuch Names as were not in the old Cypher; tho the Committee obſerve, that the whole Cypher is in the ſame Hand with the Letters he owned he received from *Ellis*, and that the Perſons deſigned by late Employments are not added or interlined, but placed in their Alphabetical Order in the Body of the Cypher. Being asked by the Committee, whether he had ſeen or knew of any other Cyphers, he anſwered in the Negative; yet they obſerve that in the [2] Letter from Sir *William Ellis* dated the 1ſt of *October*, he is deſired to make uſe of a Pattern of Lace of Mrs. *Kinders*, (which Name he owned to the Lords to mean Mrs. *Hughes*, Nurſe to the Pretender's Child) Sir *William Ellis* having loſt or miſlaid his own. Now the Word Pattern in *Ellis*'s Cypher denotes Cut-Paper, which ſhews that *Layer* was privy to another Cypher of that kind, in uſe among the Pretender's Agents.

He likewiſe denied his knowing any fictitious Names made uſe of by the Pretender or his Agents for carrying on their Correſpondences, except thoſe mentioned in his Examinations before the Lords; yet afterwards, upon being asked by the Committee, who was meant by *Joſeph* in *Dillon*'s [3] Letter to *Plunket*, he confeſſed, that he knew *Joſeph* was one of the Names made uſe of to denote the Pretender.

The Committee farther obſerve, that the Accounts he has given, do by no means clear up ſeveral Paſſages in Sir *William Ellis*'s Letters, particularly one in the [4] Letter of the 30th of *Jan.* in which *Ellis* ſays, 'That *Layer* having read over 'ſeveral times the Paper he ſhewed him, and 'having a good Memory, *Ellis* does not think it 'neceſſary to ſend a Copy of it.'

Layer being queſtioned by the Committee about the Liſts of Names taken at Mrs. *Maſon*'s, ſays he employed *George Wilſon* and Dr. *Murphey* to enquire into the Characters of Officers and Soldiers, and that he received moſt of the Liſts from *Wilſon*, who told him, he believed if the late Duke of *Ormond* were to come over, and Lord *Cadogan* were ſhot, the Soldiers mentioned in thoſe Liſts, would readily joyn *Ormond* in favour of the Pretender.

That *Wilſon* made moſt of the Marks againſt the Names, to explain what Men might or might not be confided in; from which Circumſtance your Committee obſerve, that there were Perſons in thoſe Liſts whom the Pretender's Friends could not confide in. He told the Committee, that *Roath* or *Roach* in the [5] Liſt N° 15, againſt whoſe Name is ſet 1000, is one whom he does not know; but that *Murphey* told him the ſaid *Roath* or *Roach*, was a Perſon of great Intereſt in *Staffordſhire*, and able to raiſe a thouſand Men. That the [6] Paper N° 11. at the bottom of which is writ *Enquire of North and Grey*, was a *Memorandum* for enquiring of the ſaid Lord whether he knew Cornet *Redding* in the Service abroad.

Being ſhewn the two Liſts endorſed [7] *Briquett*'s Liſt, and [8] Lord *Yarmouth*'s Liſt, he ſays *Briquett* is an eminent Tobacconiſt in the City; that the ſaid two Liſts only contain Names of a Jury for a Relation's Cauſe, but that he intended to ſhew thoſe two Liſts to Lord *Orrery* and Lord *North* and *Grey*, as containing an account of Men to be raiſed for the Pretender's Service, in order to magnify to thoſe Lords the Number of the Pretender's Friends.

Being asked by the Committee what was the Occaſion of his taking away his Papers from Mrs. *Maſon*'s, when he went down to *Epping*, and what Papers he at that time took out? he ſaid, he only took out a Paper containing a Tranſcript of the Prince of *Orange*'s Declaration, and ſome other *Memorandum* Papers. He farther added, that he was to have gone to Lord *North* and *Grey*'s to Dinner the Day that he was taken up, and that he ſent his Servant to the ſaid Lord's, to let him know he was arreſted for High-Treaſon, that his Lordſhip might not be ſurpriſed at his not coming, and likewiſe that his Lordſhip

* B. Y. 38. 40. 41. [1] B. Y. 1. [2] B. Y. 39. [3] B. 24. [4] B. Y. 38. [5] B. Y. 15. [6] B. Y. 11. [7] B. Y. 14. [8] B. Y. 18.

might

might provide for his own Security: and before the [9] Lords he ſaid, That he thought it reaſonable to ſend this Notice to Lord *North* and *Grey*, apprehending that the Government would ſeize the ſaid Lord immediately, on Account of what had paſſed between his Lordſhip and him.

It appears to your Committee, that Lord *North* and *Grey* did, in purſuance of this Meſſage from *Layer*, endeavour to provide for his own Security, by making his Eſcape. *Layer* ſent that Meſſage to Lord *North* and *Grey* on *Tueſday* the 18th of *September*, the Day that he was taken into Cuſtody; and *Hugh Floyd*, his Lordſhip's Servant, who attended him to *Portſmouth*, [10] has declared, that Lord *North* and *Grey* came to Town from *Epping* on *Wedneſday* the 19th of *September* (which was the Day after his receiving this Meſſage from *Layer*.) That his Lordſhip did not go to his own Houſe, but to the *King*'s Arms Tavern in *Paul*'s Church-yard, and there diſmiſſed him, *Floyd*, with Orders to meet him at four in the Morning on the *Friday* following, over-againſt St. *James*'s Church in *Piccadilly*. That his Lordſhip came at the Time and Place appointed, in a hired Coach and Six, without Servants, and ordered the Coachman to drive on to *Kenſington*, and then to *Brentford*, and ſo on from Town to Town, and bid him, *Hugh Floyd*, have nothing to ſay to any Body, nor take any Notice that he was travelling with his Lordſhip; ſo that in the whole Journey to *Portſmouth*, he remembred no Town but *Kenſington*, *Brentford* and *Egham*. That the ſecond Morning his Lordſhip proceeded on his Journey, with hired Saddle-Horſes, without Boots, with a Guide, and ſeveral other minute Circumſtances, which may be ſeen in the [11] Examination of *Hugh Floyd*, and [12] others, in relation to his Lordſhip's Journey to the *Iſle of Wight*, and to the manner of his endeavouring to eſcape from thence; which ſerve to ſhew the Precipitancy of his Lordſhip's Flight, and of what Importance he thought it to take Advantage as ſoon as poſſible of the Notice given him by *Layer*.

Layer being aſked by the Committee from whom he received the [13] Names found in his own Hand-writing among his Papers, *viz.*

Digby. —— *Dillon.*
Orrery. —— *Burford.*
Regent. —— *Steele.*
Tories. —— *Tanners.*
Wiggs. —— *Waggs.*
Rogers. —— *Plunket.*

ſaid, the Names of ſome Perſons, whom he had Occaſion to mention in his Letters to Sir *William Ellis*, not being inſerted in the Cypher he had from *Ellis*, he applied to *Plunket* now in Cuſtody, to know by what Names he ſhould denote thoſe Perſons, and that *Plunket* gave him the ſix fictitious Names above-mentioned; which Names the Committee find frequently repeated in *Plunket*'s Letters and Papers. Being asked if *Plunket* ever explained to him who were meant by *Burford*'s Club (an Expreſſion which is often uſed by *Plunket* in his Letters to *Dillon*, as will be obſerved in its Place) he ſaid, that *Plunket* had told him, it was an Appellation made uſe of by the Pretender and his Agents, to denote a Club of Tory Lords and others, of which Club Lord *Orrery* was Chairman. That *Plunket* had named to him ſeveral Perſons of Diſtinction, as Members of that Club, whoſe Names *Layer* repeated to the Committee, as contained in his [14] Examination, annexed to this Report. But the Committee think it a Juſtice due to ſeveral of the Perſons named by *Layer*, to obſerve, that the Matters aſſerted of *Burford*'s Club in *Plunket*'s Letters, ſeem utterly inconſiſtent with the known Characters of ſome of thoſe Perſons.

Layer being aſked by the Committee, whether he ever was employed by *Plunket* to tranſact Buſineſs with this or any other Club, in *Plunket*'s Abſence (which appears to the Committee to be aſſerted in [15] one of *Plunket*'s Letters) he abſolutely deny'd it; but admitted that he went often to viſit Lord *Orrery*, and had frequent Converſations with him relating to the Pretender's Affairs, and the neceſſity of foreign Aſſiſtance. And that Mr. *Swortfegger*, Lord *Orrery*'s Secretary, came to him once and told him, that Lord *Orrery* had left a Note in Writing, that if *Layer* came to Town, he ſhould come down to Lord *Orrery*'s in the Country, which Invitation he underſtood to be with an Intention of their diſcourſing more at leiſure about the Pretender's Affairs, having never had any Buſineſs with Lord *Orrery* in the way of his Profeſſion, nor any other private Buſineſs, that could give Occaſion to ſuch a Meſſage; but that he did not go down at that Time.

The Committee obſerve, that a [16] Paper of *Memorandums* was taken in the Book-Caſe of *Swortfegger*, Secretary to Lord *Orrery*, which he declared to the Lords on his Examination, to be Lord *Orrery*'s own writing, in which the Meſſage to *Layer* is contained, and *Swortfegger* [17] owned, that he delivered this Meſſage to *Layer*, and that he had ſometimes ſeen *Layer* at his Lordſhip's Houſe.

Layer being ſhewn by the Committee a [18] Letter taken among his Papers, ſigned *J. Plunket*, and dated the 8th of *November*, 1720, owned that he received that Letter in *Norfolk* from *Plunket* now in Cuſtody; that it relates to the Pretender's Affairs; that by *Plunket*'s *Friend* in the ſaid Letter is meant, as he believes, *Dillon*, and by his *Law-ſuit*, the Pretender's Cauſe; in which Senſe the Committee find the Word *Law-ſuit* frequently made uſe of in others of the intercepted Letters. *Layer* farther owned, that *Plunket* gave his Wife a Letter of Recommendation to General *Dillon*, when ſhe went to *Paris*, which Letter was ſigned *Rogers*.

Being aſked by the Committee, whether *Plunket* had any Conferences with the Pretender or his Agents, during their Stay at *Rome*, or had owned to him his being employed by the Pretender in *England*, he ſaid that *Plunket* had two private Conferences with the Pretender, and converſed often with *Francis Kennedy*, Secretary to the Pretender, and with others of his Agents at *Rome*. That *Plunket* has frequently owned to him, that he was employed in the Pretender's Affairs, but never explained to him by which of the Pretender's Agents particularly; and that he, *Layer*, never opened himſelf to *Plunket* in relation to the Pretender's Affairs, after their Return from *Rome*.

Yet the Committee obſerve, that *Plunket* in his [19] Letters to *Dillon*, ſpeaks frequently of

[9] B. 11. [10] B. 18. [11] B. 18. [12] B. 13.——17. [13] B. Y. 10 [14] B. 38. [15] C. 61.
[16] B. 35. [17] B. 35. [18] B. 33. [19] C. 61. 62. 65.

himſelf

himself as privy to *Layer*'s treasonable Transactions, and grounds his [20] Recommendation of Mrs. *Layer*, on his Knowledge of her Husband's Merit and Industry in the Service of the Pretender.

They likewise observe, that *Layer* owns he received the Names of *Digby*, *Burford*, *&c.* from *Plunket* since his Return from *Rome*, which they think plainly implies, that *Plunket* and he were privy to each other's treasonable Correspondence.

The several Particulars above-mentioned contain the Substance of what *Layer* confessed on his Examinations before the Lords, and before your Committee. And after this long Account given by him, in which there appear so many and such convincing Proofs of the Conspiracy in general, your Committee think it proper to observe, that though he affected a great Openness and Frankness, when such Questions were put to him as tended only to a general Discovery, to accuse himself, or such as he knew were escaped and fled out of the Kingdom, yet when such Questions were put to him, as he apprehended might affect or discover any others of the Conspirators, he always gave Answers with great Shiness and Reserve; and this Care to say as little as possible that might affect others in a criminal Way, joined with a Desire to seem candid and ingenuous, often produced the Inconsistencies and Contradictions, upon which the Committee have thought it their Duty to make the foregoing Observations.

Your Committee will now proceed to lay before you what they have been able to collect from the Papers and Examinations of *John Plunket*, whose treasonable Practices and Correspondences, as has been observed before, appear to be so closely connected with those of *Layer*, that they give great Light and Confirmation to each other.

The Committee observe, from a careful Perusal of the Letters and Cyphers seized at *Plunket*'s Lodgings, that he not only of late, but for many Years past, has been employed in carrying on several treasonable Correspondences with Persons of high Rank and Distinction abroad; that a very great Share of Confidence has been placed in him by the Pretender, and several of the most considerable Agents for him, and that he has been a principal Actor in the late horrid Conspiracy, and too much, as they have Reason to believe, concerned in the blackest Part of it. And tho the Evidence against him, in several Particulars, is most full and undeniable, yet his Behaviour on his Examination was so hardened and obstinate, and attended with such bare-faced Prevarications and Falshoods, that the Committee are very much confirmed in the Opinion of his Guilt, from the Pains he took to deny with solemn Imprecations the most evident Truths.

Layer [21] confessed to the Lords, that *Plunket* recommended *Wilson* to him as a Man of Integrity; that *Plunket* went by the Name of *Rogers* in *Italy* and since, and [22] signed the Letter which he gave Mrs. *Layer* for General *Dillon*, by the Name of *Rogers*. But the Committee observe, that *Layer* let them remain in the Error of believing that *Plunket*'s Christian Name was *James*, till the Question was put to him, on his second Examination, in such a Manner, that he found the Committee was already apprized of his true Name, which he then owned to be *John*. He farther owned, as has been observed above, that *Plunket* received a Letter under the Pretender's own Hand at *Rome*, was twice in private Conference with the Pretender, conversed with *Kennedy* and other Agents of the Pretender, had assured him, *Layer*, of a good Reception at *Rome*, was kindly spoken of by the Pretender, had owned to *Layer* his being employed in the Pretender's Service, and his corresponding with *Dillon*, writ to *Layer* in *Norfolk*, in relation to the Pretender's Affairs, and gave *Layer* fictitious Names for *Dillon*, Lord *Orrery*, the Regent, *&c.* and among the rest, the Name of *Rogers*, to denote him, *Plunket*; which fictitious Names the Committee find all of them frequently used in *Plunket*'s Papers.

It appears farther to the Committee from [23] Depositions upon Oath of *Matthew Plunket*, that *John Plunket* came to him in *July* last from *Layer*, to desire him to meet *Layer* at the *Italian* Coffee-house in *Russel-Court*, and named to him the same Persons, as ready to head an Insurrection, who were at some other time named to the said *Matthew Plunket* by *Layer* on the same Occasion.

That he [24] farther ask'd *Matthew Plunket*, whether he was well acquainted in the Army among the Soldiers? to which he replied, he knew many of them that had been with him in *Spain* and at *Preston*. That *John Plunket* then told him, he came from Mr. *Layer*, and under the Arch going into *Drury-Lane*, desired him to pick out as many Serjeants as he knew in the Guards to recommend them to Mr. *Layer*. That the next time he saw *Matthew Plunket*, which was in two or three Days, he invited him to his Chambers, and there told him Mr. *Layer* was a very good Man, and the only one he could depend on to do him Service: That the Design on which he, *Matthew Plunket*, was to introduce the Soldiers to *Layer*'s Acquaintance, was to serve the Pretender by disciplining the Mob, who were to rise in his Favour. And that all the Transactions of *John Plunket*, with him *Matthew Plunket*, were, to engage him in Person, and by his Acquaintance among the Soldiers, to serve the Pretender: That *John Plunket* meeting him afterwards in *Covent-Garden*, asked him what he had done, to which he replied, he went on very well, and *John Plunket* bid him go and tell Mr. *Layer*.

Matthew Plunket farther deposes, that *John Plunket* told him, the Business (meaning the Invasion and Rebellion) had been done before, but that the *French* Ambassador wrote to the Regent, and the Regent wrote it to King *George* (or words to that effect) and it was upon that account the Army was sent to Camp.

Dr. *Blackerby Fairfax* has [1] deposed upon Oath, that being in Company with *Plunket* and one *Jefferyes*, *Jefferyes* among other Discourse said, Plunket *give the Doctor a Commission*, adding, Plunket *has Commissions*, which *Fairfax* understood to mean Commissions from the Pretender; but that *Plunket* answered, *the Doctor does not wear a Sword.*

The Committee observe, that among *Plunket*'s Papers was found a large [2] Cypher of Names with fictitious Names over-against them, [3] sworn to be all in *Plunket*'s own Hand-writing, which Cypher tallies with, and explains an original [4] Letter of the 23d of *July* 1722, directed to Mr. *Digby* at *Paris*, and signed *J. Rogers*, which was stopt at

[20] C. 61. [21] B. 11. [22] B. 38. [23] C. 42. 43. [24] C. 44.
[1] B. 36. [2] C. 51. [3] C. 47. [4] C. 62.

the Poſt-Office, and is likewiſe [5] ſworn to be *Plunket*'s Hand-writing. And ſeveral other Letters directed to *Digby*, and ſigned *J. Rogers*, having likewiſe been opened and copied at the Poſt-Office, and then ſent forwards, the Clerks who were employed in copying them have ſworn, that, to the beſt of their Memory and Belief, the Originals of the ſaid Letters were all writ in the ſame Hand with that of the 23d of *July*, which was ſtopped, and is ſworn to be *Plunket*'s Hand-writing; and the ſaid Copies of Letters, treat of the ſame Matters as the other, and contain the ſame fictitious Names which are found in the Cypher ſworn to be in *Plunket*'s Hand-writing.

The Committee are informed, that it was thought proper to ſtop but one of the original Letters from *Plunket*, and to ſuffer the others to go on, becauſe it was judged that one was ſufficient to diſcover the Writer, and that the permitting the Correſpondence to be continued, might help the Government to farther Lights in this Affair.

The Committee likewiſe obſerve, that there was found among his Papers an [6] original Letter ſigned *Digby*, dated the 20th of *May* 1722, which is ſworn by the Clerks of the Poſt-Office to be the ſame which they opened and took a Copy of, and which was directed to Mr. *James Rogers*, at Mr. *Arthur*'s Banker in *London*, tho the Direction is ſince torn off. From this Direction your Committee obſerve, that his Chriſtian Name was diſguiſed as well as his Surname. The Receipt of this Letter is acknowledged in the [7] Copy of one to *Digby* ſigned *J. Rogers*, and dated the 21ſt of *May O. S.* 1722.

The Committee obſerve, that the original Letter ſigned *Digby*, is in the ſame Hand with [8] another ſigned *Dixwell*, found alſo among *Plunket*'s Papers, and owned by *Layer* to be the very Letter ſhewn him by *Plunket* at *Antwerp*, as from General *Dillon*; that the Letter ſigned *Digby* is alſo in the ſame Hand with [9] another Letter ſigned *A. D.* and directed to *Robert Dillon* Eſq; which, as your Committee are informed, was taken on one *Blunt* a Popiſh Prieſt coming over from *France*, and owned by *Blunt* to be from General *Dillon* to his Nephew. And the Committee farther obſerve, that theſe three Letters ſigned *Digby*, *Dixwell* and *A. D.* are in the ſame Hand with [10] another ſigned *C. Howell*, found alſo among *Plunket*'s Papers, which Name of *Howell* is explained in *Plunket*'s [11] Cypher to mean *Glaſgow*, whom the Committee ſee Reaſon to believe to be *Chriſtopher Glaſcock*, an *Iriſh* Officer in *Dillon*'s Regiment, who appears to be employ'd by *Dillon* in writing the treaſonable Letters ſigned by *Dillon* himſelf, as well as in writing others of the ſame Kind, ſigned by fictitious Names belonging to him *Glaſcock*.

The Committee obſerve, that in the [12] Copy of the Letter, ſigned *J. Rogers* directed to *Digby*, and dated the 5th of *July* 1722, the Perſon who writ that Letter, ſays, that his Fellow-Traveller's Wife parted hence the Day before for *Paris*, and that he gave her a Letter to him, *Digby*: which agrees with *Layer*'s [13] Confeſſion that *Plunket* did give Mrs. *Layer* a Letter of Recommendation to *Dillon*, ſigned *Rogers*, and that he received from *Plunket* the Name of *Digby* to denote General *Dillon*, which Name was alſo [14] confirmed to *Layer* by Lord *Orrery* to mean *Dillon*. But that *Dillon* went by the Name of *Digby* is put paſt all doubt, by a Diſcovery made by Mr. *Crafurd*, his Majeſty's Reſident at *Paris*, who being ordered to diſcover the Perſon meant by that Name, made uſe of the following Contrivance, mentioned thus in his own [15] Letter.

'I have juſt now found out, who Mr. *Digby* is. 'I folded up a Paper in the Form of a Letter, and 'ſealed it, and directed it to Mr. *Digby* at *Paris*, 'then wrapt it up in a Piece of waſte Paper 'with a Memorandum in it, to be informed at 'Mr. *Waters*'s Banker in *Chriſtine* Street, in what 'Part of *Paris* Mr. *Digby* lived; I gave it thus 'made up to a ſharp young Fellow who ſpeaks 'both *French* and *Engliſh*, and ordered him to go 'booted and a little dirted to Mr. *Waters*'s, to 'open before him the ſham Letter and read his 'Memorandum, and to ſhew him the Direction 'of the Letter, and to deſire him at the ſame time 'to ſend ſomebody with him, to conduct him to 'the Place where it was to be delivered; that as 'ſoon as he ſhould come to the Door, where he 'was to deliver it, he ſhould pretend to have 'left a Packet at Home, and making as if he 'would go back to fetch that Packet, he ſhould 'ſlip away from the Perſon who ſhewed him thi-'ther. The thing ſucceeded better than I expected, 'for *Waters* was not at home, and my Man acted 'his part ſo well, that *Waters*'s chief Book-keeper, 'without giving himſelf the trouble of going, 'wrote the Direction for him upon my Sham 'Letter, in the manner your Excellency will ſee 'in the encloſed. The Book-keeper was very de-'ſirous to have the Letter in order to deliver it 'himſelf, but my Man inſiſted to deliver it with 'his own Hand, and anſwered boldly to ſome 'Queſtions which the Book-keeper asked him, 'pretending he was to return the next Day for 'England.' The Direction writ by Mr. *Waters*'s Book-keeper under the Name of *Digby* was, *A Monſieur Dillon, Rue Colombier a l'Hotel d'Holande*; which, as your Committee are informed, is the ordinary Reſidence of Lieutenant-General *Dillon*.

Upon this Diſcovery [16] Notice was ſent from *France*, by *Dillon* and his Agents, to his Correſpondents in *England*, to forbid them making uſe any more of that fictitious Name, as ſhall be more fully taken Notice of hereafter in this Report.

Notwithſtanding all this Evidence of *Plunket*'s correſponding with *Dillon*, when he was examined, [17] he denied his knowing General *Dillon*, or his having ever exchanged a Letter with *Dillon*, or his Secretary in his Life; he denied the Letter to *Digby* of the 23d of *July*, ſtopped at the Poſt-Office, and the Cypher found at his Lodgings to be his own Hand-writing; he denied the Receipt of the Letters from *Howell*, *Dixwell* and *Digby* found among his Papers; but owned he had once received a Letter from one *Farelly* a Popiſh Prieſt, formerly Governor to the Duke of *Berwick*'s Children, ſigned by the Name of *Digby*, and relating to Stocks of *Nicholas Wogan*'s and others. The Committee obſerve, that in this prevaricating Anſwer he was labouring to account for the Meaning of the

[5] C. 47. 72. [6] C. 54. [7] C. 57. [8] B. 24. [9] C. 56. [10] C. 53.
[11] C. 51. [12] C. 61. [13] B. 38. [14] B. 10. [15] A. 31. [16] E. 58. D. 38. [17] C. 73.

Word

Word *Stocks*, which is mention'd in the Letter from *Digby*, but will be shewn in the Sequel of this Report, to be meant in a very different Sense from its natural Import, and to mean the Conspiracy only; and in *Plunket*'s own [18] Cypher the fictitious Word *Brokers*, is explained *Agents*. Upon pressing him farther to see if he would own the Correspondence with *Dillon*, and acknowledge the Letters the Committee had such full Evidence were his, they found that in order to avoid the owning it, he run himself into such an evident Absurdity and Inconsistency, as appears to them a strong Argument of his Guilt.

[19] He affirm'd the Cypher (which is sworn to be his own Hand-writing) to belong to one *Hugh Thomas*, formerly of the Herald's Office, who had lodged in the same House with himself; that he had heard this *Hugh Thomas* own in Company with *Neynoe*, that he corresponded with *Dillon*; that *Hugh Thomas* went by the Name of *Rogers*, and that he, *Plunket*, found this Cypher and several Letters directed to *Rogers*, among *Hugh Thomas*'s old Books and Papers. Being asked whether *Hugh Thomas* ever signed *Plunket*, he said, not to his Knowledge; and then he endeavoured to impose on the Committee, by telling them his own true Name was *Plucknett*. Being asked what was become of this *Thomas*, he said, he had been dead a Year and a half, and that he, *Plunket*, could not keep him alive. But the Committee observe, that the Original Letter to *Digby*, signed *J. Rogers*, is dated the 23d of *July* last, and yet is in the same Hand with that Cypher, which he pretends to be the Writing of a Man, who has been dead a Year and a half. They observe likewise, that the Letter from *Digby* directed to *Rogers* is dated the 20th of *May* 1722, and that most of the Letters directed to *Rogers* (which *Plunket* pretends were writ to *Hugh Thomas*) had the Name of *Rogers* blotted out, and that of *John Plunket* writ over it; and yet he owns, he never knew, that *Thomas* went by the Name of *Plunket*: besides which it is notorious, that *Plunket* himself went by the Name of *Rogers* in *Italy*, and *Layer* has [20] owned not only that *Plunket* went by that Name, but that he signed Mrs. *Layer*'s Letter of Recommendation to *Dillon*, by the Name of *Rogers*, and also gave him, *Layer*, the Name of *Rogers* to denote himself, at the same time that he gave him the Name of *Digby* for General *Dillon*.

Your Committee are of Opinion, that these Circumstances laid together leave no room to doubt but that *Plunket* writ and received the Letter abovementioned; the Contents of which will be explained in their Place.

Plunket being shewn a [21] Letter without Direction, signed *N. Wogan*, enclosing a [22] Cypher, which is called in the Letter the Duke of *Berwick*'s Key, he said, this Letter and Cypher likewise belong'd to *Hugh Thomas*, who, he said, corresponded with the Duke of *Berwick* about getting Subscriptions to a Book; which matter, the Committee observe, neither needed any Cypher, nor could well be treated of by the help of that. They likewise take Notice, that *Plunket* owned the receiving a Letter from *Digby* in relation to the said *Wogan*'s Stocks, and that *Wogan* is inserted in *Plunket*'s own [23] Cypher by the Name of *Xoland*, which Circumstances make it probable he did correspond with *Wogan*.

There is one farther Particular relating to this Cypher, which the Committee think it proper to remark to the House, which is, that *Plunket* while he was in Custody, desired a certain Book might be brought to him from his Lodgings, but the Messenger's Wife, searching the Book before she delivered it, has [24] deposed upon Oath, that she found in it this Letter from *N. Wogan*. And as the Committee are informed, that most of his other Cyphers and Papers were found hid in the Leaves of his Books, they think it probable, that he singled out this Book, in hopes of recovering and destroying the Cypher that serves to explain his Letters; the Contents of which the Committee will now proceed to lay before the House, and to avoid Repetition of Names, where-ever they can, will make use of the real Names found in his Cypher, instead of the fictitious ones, by which they are expressed in his Letters annexed to this Report.

Among his Papers was found the [25] foul Draught of a Letter, dated *March* the 22d 1721, and directed to Mr. *Jackson*, which in his own [26] Cypher is explained the Pretender. In this foul Draught (which is sworn to be his Hand-writing) are the following Passages.

'I look, Sir, on your Law-Suit to be in such 'a forwardness, that a speedy and happy *Replica*-'*tion* must inevitably ensue; the *Waggs*, as well 'as the *Tanners* (which Names he explained to '*Layer* to denote the Whigs and Tories) seem 'convinc'd that nothing less can redress their Ru-'in: Nay the latter is apprehensive the former 'will compliment you with it on your own 'Terms, in order to engross your Favour for the 'future. The *Precepts* my Friend and I gave in 'lately, have contributed much to this Emula-'tion: We have more to give in; and if they im-'prove them as they have the former, you will 'have a good Game on't.' The Words *Replication* and *Precepts* are not found in his Cypher, but the Sense of the former may easily be guessed at.

He afterwards adds; 'The Gentleman I men-'tioned to you formerly, is come out of the 'Country, with Instructions to wait on you, and 'tender you their Service; he offers to bear my 'Expenses if I go with him: as I take it that my 'going will be of more use than my staying now, 'I believe I shall accept of his Offer.' In another foul Draught of the same Letter, he says (as has been before observed) 'There is one sets out 'from *Norfolk* in a few Days, to let you know 'the *Tanners* will stand by you on occasion, and 'offers to bear my Expenses; so that I shall wait 'on you, and have the Satisfaction to tell you by 'word of Mouth what will be acceptable. He 'carries *the List* with him.' And in [1] Heads or Minutes of the same Letter, he says, '*Wag* and '*Tanner* will equally concur.—My Friend will 'wait on you to tender *their* Service—*Our Mes*-'*sage* will pin the Basket——You may have daily 'Messages of this kind; you will be courted, 'tis 'the *English* way——.'

The Committee think it unnecessary to repeat here, how inconsistent these Accounts of *Layer*'s Journey, are with [2] those given by *Layer* himself;

[18] C. 51. [19] C. 73. [20] B. 10. 38. [21] C. 49. [22] C. 50. [23] C. 51.
[24] C. 49. [25] C. 41. [26] C. 51. [1] B. 23. [2] B. 23. [3] B. 38.

and how ſtrongly they contradict *Plunket*'s bold [4] Aſſeveration, that he knew nothing of *Layer*'s intending to go to *Rome*, before they ſet out.

'Another foul Draught of a Letter was found among *Plunket*'s Papers, and is ſworn to be his Handwriting; the Matter of which appears to your Committee very remarkable. It is not dated nor directed, but appears plainly to have been writ the beginning of the laſt Year, and in it are the following Paſſages. 'I had four of Count '*Bothmar*'s Letters ſince my laſt to you; Mr. *Burford* had them all; his Clerk gave me to un-'derſtand they were ſent to Mr. *Joſ*—— This 'made me not to trouble you. This only to wiſh 'you a happy new Year. I hope it will bring the 'Law-Suit to bear, afore 'twill end; if they 'would have Courage and Integrity, they may 'walk K. *George* out afore Lady-day next—' (and in another Part he ſays, afore *May* come) 'He is 'weary of them, and thinks no more of ſtaying 'among them.' It appears from this Paper, that *Plunket* had conveyed Copies of ſome Letters of Count *Bothmar*'s to Lord *Orrery*; that Lord *Orrery*'s Clerk had given him to underſtand, thoſe Letters were ſent to the Pretender (from whence it may be concluded, that either Lord *Orrery* or his Clerk had a direct Correſpondence with the Pretender) and that *Plunket* was privy to ſome Deſign for walking K. *George* out (as he calls it) which Deſign required Courage and Integrity, and was to have been executed either before Lady-day, which was during the Elections, or by the beginning of *May*, which was the ſecond Period fixed (as has been obſerved) for beginning the Inſurrection. *Simon Swortfegger*, Secretary to Lord *Orrery*, owned upon his [5] Examination before the Lords, that he was acquainted with *Plunket*, and had been in company with him and *Layer* at Mr. *Aaron Thompſon*'s Chambers. And *Plunket* [7] owned to the Committee his being acquainted with *Swortfegger*, and his having been in company with him and *Layer*, at *Layer*'s Houſe; but denied his knowing any thing of the foul Draughts of the Letters abovementioned.

Plunket in his [8] Letter to *Digby* of the 21ſt of *May*, ſays, 'I hope in a little time Mr. *Joſeph* '(which *Layer* owned to be the Pretender) will 'be the Miniſtry's only Refuge. *Burford* (whom '*Layer* declared likewiſe to be *Orrery*) and his 'Club ſeem to think ſo: They will have a Finger 'in the Pye if they can; I know they can come 'in for a good Share in it, if they can have a lit-'tle Concert and Regulation; there are thoſe 'that will undertake to do the Job in twelve 'Hours time. A little time will ſhew whether 'they will give fitting Encouragement; if two 'or three is taken off, no matter how, King '*George* will go off by hook or by crook, and of 'courſe the *Lowty* will be for *Joſeph*: This has 'been communicated to your Friends.'

What is meant by the *Lowty*, does not appear by his Cypher; but by the Senſe, and the alphabetical Order of the Cypher, it is not improbable but it may mean the Miniſtry.

Whether the Job that was ready to be undertaken on fitting Encouragement, and to be performed in twelve Hours time, relates to the raſh Enterpriſe for ſurprizing the City of *London*, which has been already taken notice of, or to the wicked and execrable Deſign for ſeizing and deſtroying his Majeſty's Sacred Perſon, of which mention is expreſly made in [9] two ſubſequent Letters of *Plunket*'s, is left to the Conſideration of the Houſe.

But the Committee, from comparing the Memorandum at the End of the [10] Paper of Reſolutions, in the following Characters *Diſ. C. W. M.* with *the two or three* that are mentioned in this Letter to be taken off, and likewiſe with *Wilſon*'s Intimation to *Layer*, that if Lord *Cadogan* were but ſhot, the Soldiers would declare for *Ormond*; and alſo with *Layer*'s Negotiation about ſeizing Lord *Cadogan*, and with the Paragraph in his Scheme for ſeizing ſome great Perſons at their Houſes, ſee reaſon to believe, that by the firſt of thoſe Characters is meant *Diſpatch Lord Cadogan*; and by the others, two other Officers of diſtinction.

In the ſame [11] Letter of the 21ſt of *May*, *Plunket* takes notice, 'That *Johnſon*, an Acquain-'tance, was taken up the Day before, but had 'burnt his Papers, and ſeemed to be eaſy in the 'Matter; and adds, I believe they will get no-'thing by him.'

Plunket being aſked by the Committee, whether he was acquainted with *George Kelly*, alias *Johnſon*, ſaid he knew him by Sight and Coffee-houſe acquaintance only; that he did not remember his having ever received a Letter from him; and *Kelly* gave the ſame [12] Account in relation to *Plunket*: yet a [13] Letter from *Kelly* was found among *Plunket*'s Papers; and *John Malone*, who waited on *Kelly* at his Lodgings, has named *Plunket* in his [14] Depoſition, as one who often viſited *Kelly* there. And the Committee are ſatisfied, that they were privy to each other's treaſonable Correſpondence, by ſome Paſſages in the [15] Letters to and from *Kelly*, in which mention is made of *Plunket* by the Name of *Rogers*, as will be ſhewn in its proper Place. *Plunket* concludes his Letter of the 21ſt of *May* with theſe Words: 'The 'Motive of my Journey is over at preſent, my 'Pocket feels it, the Man muſt be fed with Mo-'ney now and then; the labouring Oar will, I be-'lieve, be laid on me.'

As he denied the writing theſe Letters, the Committee could not draw from him any Explication of this Paragraph; but comparing it with the other Part of his Letter, where it is ſaid, that a little Time will ſhew whether *Burford* (Lord *Orrery*) and the Club, would give fitting Encouragement for undertaking the Job; they think it appears probable, that ſome part in this Job is the labouring Oar referred to, for which he expected to be fed with Money.

His next [16] Letter to *Digby* is of the 31ſt of *May*, in which he ſays, 'He finds the Regent 'had a hand in keeping K. *George* from going 'abroad, ſo that the Miniſtry will carry on their 'Game ſafely and leiſurely without any Oppoſi-'tion whatever from the Club, or any of the 'Pretender's Friends.' He adds, 'Let them be 'ever ſo ſanguine, they can do nothing as long as 'the Regent ſtands by the Miniſtry: But ſhould '*Ormond* come, with half a dozen Regiments on-'ly, he would carry his Point, and make K. '*George* run for it.' This Paſſage confirms what hath been ſet forth above, that the late Duke of *Ormond*'s coming over made a Part of the Original Scheme, and agrees with the [17] Accounts received from *Spain*, of *Iriſh* Soldiers provided there for the Pretender's Service.

[4] C. 73. [5] B. 22. [6] B. 35. [7] C. 73. [8] C. 57. [9] C. 58. 60. [10] BB. 2. [11] C. 57. [12] E. 81. [13] C. 40. [14] E. 14. [15] C. 66. 67. 68. [16] C. 58. [17] A. 28, &c.

Plunket

Plunket then adds, 'If *Burford* (Lord *Orrery*) 'and the Club have a mind to have K. *George* 'delivered up to them *he ſhall*; there *are thoſe* 'that will undertake it, and offer to do whatever 'required.' And in his [18] Letter of the 4th of *July* he ſays, '——I can aſſure you, *Deſpair has* 'made ſome to take a Reſolution to lay violent Hands on 'K. George; but there is a Stop put to them at 'preſent: It is not the Pretender's Intereſt, but 'you can't do ſo always; an ill Precedent is dan-'gerous.'

The black and villainous Deſign expreſſed by theſe two Paragraphs, needs no Explication from your Committee, who are ſenſible the Houſe cannot have heard them read, without the utmoſt Horror and Indignation.

He ſpeaks of himſelf in theſe Letters as knowing the Men, who had taken a Reſolution to lay violent Hands on the ſacred Perſon of his Majeſty; and was himſelf ſo far engaged in this execrable Deſign, as to ſay in one of his Letters, If the Club deſire it, *His Majeſty ſhall* be delivered up into their Hands: and in another Letter diſſuades it, not out of any Conſcience or Remorſe for the Crime, but merely for fear the ſame Barbarity ſhould be retaliated on the Pretender: Yet this Man ſtill continues ſo hardned and obſtinate, as to renew his Guilt by refuſing to make the leaſt Diſcovery of his Accomplices, or to give this only Reparation and Atonement he is capable of, to a Country which he has been labouring to involve in the greateſt Calamities.

He afterwards [19] ſays, 'That tho there ſhould 'be a Riſing in moſt Parts, if the Mob is beat 'in one Place, the reſt will go home and be 'quiet for ſeven Years more.'

His next [20] Letter is of the 21ſt of *June:* In this he ſays, 'That *Burford* and the Club think 'themſelves ſlighted by the Regent and Miniſtry 'of *France*; and conceive, that the Regent joins 'with King *George* to be revenged on them. That 'he may have room to repent it early or late; 'for ſhould the Parliament be broke, and a new 'one called, he might find himſelf more emba-'raſſed than he is aware of.' He adds, 'If the 'Regent ſtands neuter, and they will ſoon bring 'the Law-Suit to bear; ſo far I am ſatisfied of 'it, that Four or five hundred Men, and as many 'Arms, with 1500 *l.* will complete the Matters 'in a little Time, and give a good Account of 'King *George* and the Miniſtry. The Army want 'only an Opportunity to do their Duty. This 'Scheme, if duly and diſcreetly managed, will 'give them an Opportunity to do it. Were *we* 'ſure the Regent would not interpoſe, *we* would 'take it in hand forthwith.'

The Committee make no doubt but the Houſe has prevented them, in obſerving how exactly this Letter agrees with the [21] Accounts ſent ſome time before from *France*; that the Conſpirators reckoned on great Part of the King's own Forces; and only deſired the Regent that he would keep himſelf neuter between the Pretender and his Majeſty. And this Letter appears to have been writ at the Time, when *Layer*, *Wilſon*, *Murphey* and *Plunket* were labouring to corrupt the Officers and Soldiers of the Army.

Plunket adds in the ſame Letter, 'If the Re-'gent and Court of *Spain* will but ply King *George* 'with large Demands, and bring the *Czar* down 'to *Hannover*, the Pretender will have a *Carte* 'Blanche from the Miniſtry and King *George*, as 'alſo from all the reſt of his Friends and Foes: 'This I take to be the beſt and ſafeſt way, both 'for the Pretender and his Wellwiſhers.'

This Expreſſion of the Pretender's getting a *Carte Blanche* from the King and Miniſtry, is repeated ſeveral times in *Plunket*'s Letters; and however extravagant and ill-founded ſuch Suggeſtions were, yet the Committee cannot but obſerve, that his Repreſentations appear to have met with ſuch a Spirit of Credulity and Deluſion in the Pretender and his Agents, that not long after he was vain enough to entertain Hopes of capitulating with his Majeſty for the Crown, by that traitorous and inſolent Declaration, againſt which both Houſes have ſo lately expreſſed their juſt Reſentment and Abhorrence.

Plunket's next [22] Letters are of the 4th and 5th of *July*, 1722; in which he has the Vanity to tell *Dillon*, 'That he had been deſired, by ſome lead-'ing Members of the then Parliament, to ac-'quaint the Regent's Agent here, that it was 'now in the Power of the Regent and *Spain*, to 'ſend away King *George*, and to ſend home *Mr. Joſ.* with a *bonne grace*, and much to their Ad-'vantage; that it was only to inſiſt on the Stipu-'lation King *George* had made with them, and 'they would have a fair Pretence to do it.'

It appears by other Paſſages, that this ſuppoſed Stipulation relates to the Ceſſion of *Gibraltar*.

He afterwards gives an Account, 'That he 'did, both on the 4th and 5th of *July*, wait on 'the Regent's Agent with this Meſſage; and 'ſays, That as that Agent was acquainted with 'ſome of the Members of Parliament who im-'ployed him, he gave ſome Attention to him: 'But the Objections which the Regent's Agent 'made, appear to have been, That the Pretender 'had not the Name of a Man of great Parts or 'Reſolution: That he had hitherto no great Opi-'nion of *Burford* and the Club; and that ſuch a 'Procedure on the Part of the Regent, would 'be a Violation of the *bonne Foy*. To which laſt '*Plunket* replied, That it would be no Breach 'of their *bonne Foy* to be grateful to thoſe *who* 'were their Deliverers formerly.' However, *Plunket* ſays, 'He convinced the Agent, that it was 'now in the Regent's Power to make the Mi-'niſtry and King *George* give the Pretender a 'Carte Blanche; and by ſo doing, to make the 'Emperor vomit up what he has now in *Flan-'ders*, without ſtriking a Stroke. That the Com-'mon People, the Country Party, and all the '*Engliſh* Gentlemen might be brought to join 'with the Regent in proper Meaſures to do it; or, 'that if the Regent would but ſtand neuter, they 'would ſoon bring the Pretender's Law-Suit to 'bear independent on any whatever.' He adds, 'That he is ſatisfied the Agent would write theſe 'Sentiments to his Court; and that it is *Dillon*'s 'Buſineſs to let the Regent ſee he has the ſame 'Sentiments from other People here.'

Plunket being examined by the Committee, in relation to this Letter, [23] owned, he had frequent Acceſs to one of the *French* Miniſters on private Affairs: and that *Layer* knowing him to be acquainted with him, aſked him, Whether he could not find out, by the Help of that Miniſter, whether the Regent might not be brought into Tory

[18] C. 60. [19] C. 58. [20] C. 59. [21] A. 4. [22] C. 60. 61. [23] C. 73.

Meaſures?

Meaſures? And *Stephen Lynch* has [24] depoſed, That *Layer* told him, Application had been made, either by himſelf, or ſome other Perſon, to one of the *French* Agents here, to the Effect mentioned in *Plunket*'s Letter. However, *Plunket* denied his having ever ſpoke to that Miniſter in relation to State-Affairs, or his having writ any ſuch Account to *France*.

The Committee, from comparing this Relation of theſe two Converſations with what he ſays in other Letters, of bringing the *Czar* down to *Hanover*, in order to oblige his Majeſty to withdraw from *England*; obſerve, that the Conſpirators were ſo intent on compaſſing their wicked Deſigns by any Means, that having failed in there Applications for foreign Aſſiſtance, they were now labouring to make *France* and *Spain* inſiſt on the Reſtitution of *Gibraltar*, to throw *Flanders* into the Hands of *France*, and to bring the *Czar* into *Germany*, in hopes to involve all *Europe* into Confuſion, and thereby to pave the Way for bringing in the Pretender.

In the ſame [25] Letters he tells *Dillon*, 'Now is 'the Time for the Regent and Miniſtry of *France* 'to ſerve you: If they do not, I can aſſure them, 'they may have room to repent it: for the Pre- 'tender's Friends will find Means to get into the 'Saddle, in ſpite of the Miniſtry and King *George*.'

He adds, 'That the Army, will not ſtand by 'the King and Miniſtry, againſt the great Bent of 'the *Engliſh* Gentlemen, the common People, and 'the Country Party; who are ſo incens'd againſt 'the Court, that the leaſt Accident would ſurely 'overturn what they have been doing theſe ſeven 'Years paſt.'

He then ſays, 'That his Fellow-Traveller is, 'and has been very active ſince his coming from 'his Travels, and is more ſerviceable than thoſe 'who move in a higher Sphere: That he is ſpur- 'ring on the Club daily, and has made many of 'them more active in the Law-Suit, than they 'otherwiſe would have been. That his Wife 'parted the Day before for *Paris*; and that he 'gave her a Letter for *Dillon*; his Fellow-Tra- 'veller thinking himſelf intitled to it, or any 'other Civilities *Dillon* could ſhew her, during 'her ſtay there.' He adds, 'Your Friends con- 'tinue their Preparation, and reſolve to hold 'themſelves in readineſs on Occaſion.'

The Committee take notice, that theſe Letters were writ juſt about the time that *Layer* went down to *Norfolk*. And they think the ſanguine manner in which *Plunket* writes, is in part accounted for by what Lord *North* and *Grey* [26] told *Layer*, That the Encampment had ſpoiled the Project: but we ſhall have them again. And by his Lordſhip's ſaying, [27] Be you quiet, ſomething will be done: If [28] there be a Riſing, you ſhall not want Men, or Money, or Arms. And that theſe Letters and Paſſages make it highly probable, that the Subſtance of *Layer*'s Scheme had not been only ſeen, but approved of.

Notwithſtanding the Account which *Plunket* gives in this and other Letters, of *Layer*'s Proceedings, yet *Layer* denied that he had ever opened himſelf to *Plunket*, in relation to the Pretender's Affairs, after their return from *Rome*; and *Plunket* affirmed, that he only knew *Layer* by Coffee-houſe Acquaintance, and never converſed with him but in the Streets publickly.

Plunket's next [29] Letter is of the 23d of *July*, the Original of which being ſtopped, and being ſworn to be his own Handwriting, the Committee think it proper to lay the whole before the Houſe, with the Explanation of the fictitious Names taken out of the Cypher, which is ſworn to be his own Hand alſo.

A Monſieur Digby *a* Paris.

Under a Blank Cover to Waters.

July 23d, 1722.

'BY the time this comes to hand, King 'George's Agent will arrive there: I'm glad 'on't, becauſe I hope all the Negotiations and 'Proceedings of the Miniſtry and King *George*, 'will be laid before the Parliament, which will be 'a Means to ſend him to *Hannover*. Though he 'thinks to bring the Country Party to approve of 'whatever he will propoſe to the Parliament; he 'will hardly even bring the Court Party to do it. 'He thinks to diſculpe himſelf at the Expenſe of 'the Dead. This I told ſome of the Parliament- 'Men; they ſay 'twont do for Love or Money. 'Certain Perſons are forming Projects that will 'diſtreſs the Court of *Spain*, in caſe of War be- 'tween *Spain* and the Emperor. Count *Bothmar* 'comes into it by King *George*'s Connivance; 'tis 'now in Embrio: When it comes to Perfection, 'I ſhall be Maſter on't. I gave a Hint on't 'to the Regent's Agent; he was not a little ſur- 'prized at it. They muſt not linger much lon- 'ger; if they do, the Emperor and King *George* 'will find Means to diſtreſs the Court of *Spain* 'and the Miniſtry in *France*; they muſt haſten 'the Peace to prevent it.

'My Companion, who has been in the Coun- 'try this three Weeks paſt, came to Town yeſter- 'day: He ſeems to be ſure of his Game, *viz.* 'that Mr. *Joſeph*'s Friends will run down the 'Miniſtry and King *George*, in a little time, and 'bring the Law-Suit to bear on their own Bot- 'tom, and independent of the Regent, or any bo- 'dy elſe. I am reſolved to know nothing of their 'Proceedings; I am for having every thing laid 'before the Parliament firſt, and then every body 'will ſee we want the Pretender more than he 'wants us. Both Friend and Foe will join in 'any Enterprize that will be made in his favour: 'Neither will they ever dare upbraid him, if, on 'any Occaſion, he ſhould look aſquint on 'em 'hereafter. I hinted often, the only way to ſpirit 'em up, was to convince 'em the Law-Suit 'would be brought to bear without them; and 'that by the Regent, and King *George*. The 'Conſtruction they put upon this, that the former 'was ſubtle enough to make uſe of the Folly of 'the latter, to play the Game to his own Advan- 'tage at our Coſt, and that he will govern Mr. 'Joſeph, when here, as he does now King *George*. 'This, or ſome ſuch Imagination, gave them an 'uncommon Reſolution; and I believe they will 'ſtruggle hard for a Start in the Race of Honour. 'Tis in the Regent's Power to make King *George*, 'the Miniſtry and the Club, to give Mr. *Joſeph* 'a *Carte Blanche*: 'Tis incumbent on you to con- 'vince him of it. I am ſure his Agent here is 'already; for I gave him this Morning demon- 'ſtrative Proof, that King *George* deſigns to ſup- 'port the Emperor againſt the *French* King and 'his Conſ. and that without being ſeen in it.

[24] B. 2. [25] C. 60. 61. [26] B. 8. [27] B. 38. [28] B. 11. [29] C. 63.

3

'I

'I would be glad to know how the Duke of '*Berwick* does, and if he continues there this 'Summer. I have little to do in Town, ſo I de- 'ſign to go to the Country for three Weeks. 'The Town is dull and empty.

'We hear the *Czar* is in Motion, I wiſh it 'may be towards *Hannover*, for King *George* 'would ſoon move from his Country Seat here.

'I believe Mr. *Joſeph* will laugh, when he'll 'hear of the Stratagem I made uſe of, to bring 'his Friends to ſo good Temper of Duty. I 'hope they will to keep to it, which is the Wiſh of,

SIR,

Your humble, obedient Servant,

JO. ROGERS.

In his * Letter of the 16th of *Auguſt*, he ſays, 'The Pretender's Law-Buſineſs continues in the 'ſame Plight. My Companion goes on, as he 'thinks, very ſucceſsfully, and is confident he 'will bring the Buſineſs to bear in a little Time.

This Letter was writ nine Days before *Layer* went down to Lord *North* and *Grey*'s with *Lynch*.

Plunket ſays in the ſame Letter, 'That the 'Pretender muſt promiſe the Regent and Mini- 'ſtry of *France* fair, and that he will be a faſt 'Friend, when in his Power, and muſt ſeem to 'rely more on them, than any here; that this is 'the only Game he has to play at this Time.'

In his next † Letter of the 23d of *Auguſt*, he ſays, 'That his Friend came out of the Country 'a few Days ago, and told him, that his Clients 'ſeem now to deſpair of bringing the Law-Buſi- 'neſs to bear this next Term, except the Regent 'were made a Party; that he, *Plunket*, told him, 'in caſe the Regent were applied to in a proper 'Manner, he might be prevailed on to come 'into proper Meaſures, at leaſt indirectly, and 'that without Breach of the *bonne Foy* he owes 'King *George*, or the Miniſtry.' He adds, 'that 'they (his Friend's Clients) are for any thing but 'under their Hands; and that if they ſhould ap- 'ply to *Dillon*, or the Regent (as his Companion 'had told him they ſoon would) they might ſafe- 'ly offer at leaſt to come into their Meaſures, to 'ſtop their Mouths hereafter: And he thinks, 'with Submiſſion, 'tis pity to hinder them from 'plunging themſelves, as they did before.' He adds, 'That it is in the Power of the Regent 'and Miniſtry of *France*, to make the enſuing 'Parliament give the Pretender his own Terms; 'and that as the *French* King is ſoon to be of 'Age, *he* may do every thing with a good *Grace* 'and *bonne Foy*; and ſettle the Pretender ſo, 'that it will always be in his Power to ſerve 'him, and the Court of *Spain*.'

Plunket, who aſſumes to himſelf ſo conſiderable a Part in theſe Tranſactions, being aſked by the Committee, to give ſome Account of his Life and Education, [1] ſaid, that he was born at *Dublin*, and bred up, when a Boy, at the *Jeſuits* College at *Vienna*; that he is a *Roman* Catholick, but not in any Orders. And tho he endeavoured (as has been obſerved above) by his Dreſs, Appearance, and Behaviour, to repreſent himſelf to the Committee as very inconſiderable, and no ways equal to the Part he was taxed with, yet a great Number of [2] Letters from Perſons of the firſt Quality abroad, were found among his Papers, in which the Committee obſerve he is treated with great Intimacy and Confidence. And in a [3] Letter from the Lady *Middleton*, of an old Date, Mention is made of her being to introduce him to the late King *James*'s Queen in *France*; to whom, as he owned to the Committee, he had been introduced. And that the Truſt and Confidence repoſed in him, ſtill ſubſiſts undiminiſhed, appears to the Committee, not only by his own [4] confeſſing, that he did walk and converſe with the Pretender publickly in his Garden at *Rome*, but from *Layer*'s Account, that he had two private Conferences with the Pretender; and above all, from the [5] Letter under the Pretender's own Hand, which he ſhewed to *Layer* at *Rome*, and which has been communicated to the Committee, as before-mentioned, in which the Pretender treats him with ſuch Diſtinction, as to charge him not to mention any Thing of Buſineſs to any Body, till he himſelf had ſeen him alone; than which, the Committee think a ſtronger and more convincing Proof of Truſt could not well have been given. It appears alſo by [6] foul Draughts of Letters taken among his Papers, that he writ directly to the Pretender himſelf.

Mention being made in *Plunket*'s Letters, of *Johnſon*, alias *George Kelly*, and ſome Extracts of Letters to and from the ſaid *Kelly* having been referred to the Committee among *Layer*'s and *Plunket*'s Papers, by which it appeared to them, that *Kelly*'s treaſonable Correſpondence had a Connexion with the others, and particularly, that he was privy to ſome of *Plunket*'s Tranſactions; your Committee thought that their having a general View of all the Papers relating to the Conſpiracy, might help to illuſtrate and explain the ſeveral Parts of it, in the ſame manner as *Layer*'s and *Plunket*'s Papers mutually confirm and give Light to each other.

For this Reaſon they moved the Houſe to have thoſe Papers laid before them, and to empower them to take ſuch farther Examinations, as might be neceſſary to lead them on in tracing out the Source of the Treaſons enquired into.

Having accordingly peruſed thoſe Papers, and examined ſome of the Perſons principally concerned in them, they now proceed to lay before you the Reſult of that Enquiry.

It appears to them, that *George Kelly*, Clerk, has been of late Years conſtantly employed in carrying on ſeveral treaſonable Correſpondences and Negotiations between the Pretender's Agents abroad, and Perſons of great Diſtinction at home, tending to the bringing in the Pretender with an armed Force, and to the overturning the preſent happy Eſtabliſhment in Church and State.

And here your Committee find themſelves obliged to mention the Lord Biſhop of *Rocheſter*, as principally aiding, directing and employing the ſaid *Kelly*, in the Proſecution of his treaſonable Deſigns.

As *Kelly*'s Correſpondences ſeem to derive their Weight and Significancy chiefly from his being employed by the Biſhop of *Rocheſter*, your Committee will firſt lay before you the ſeveral Reaſons that induce them to believe he was ſo employed, and the Part which it appears to them the Biſhop has had in this Conſpiracy.

* C. 64. † C. 65. [1] C. 73. [2] C. 1.—36. [3] C. 34. [4] C. 73.
[5] C. 69. [6] B. 23, C. 41.

It apppears to your Committee, from ſeveral Informations of *Philip Neynoe*, Clerk, formerly mentioned, 'That *George Kelly*, alias *Johnſon*, 'frequently told him, that the Biſhop of *Rochester* held Correſpondences with the Pretender and his Agents: That he, *Kelly*, was 'employed by the Biſhop, in writing for him, 'and carrying on the ſaid Correſpondences; that '*Kelly* told him, the Pretender relied more on 'Advices from the Biſhop, than from any other 'Perſon; that he had ſeveral times left *Kelly* at 'the Biſhop's Door, when *Kelly* went into the 'Biſhop's Houſe, and ſtaid there an Hour or 'two, and upon coming back to him, *Kelly* made 'Apologies for ſtaying ſo long, and told him, 'he had been writing the Biſhop's Letters, which 'he always apprehended to be the Foreign Cor'reſpondence of the Biſhop with the Pretender's 'Agents; and that *Kelly* told him, the Biſhop 'never ſuffered him to take a Bit of Paper of the 'Biſhop's Hand-writing out of the Room.

'That he knows Letters were directed to *Kelly*, 'by the Name of *Moſes Hancock* and *Hatfield*; 'and that he has ſeen at *Burton*'s Coffee-houſe, a 'Letter to *Kelly* from *Howell*, (whom he takes 'to be Agent or Secretary to *Dillon*, and em'ployed by *Dillon* in the ſame manner as *Kelly* 'was by the Biſhop of *Rochester*) in which Letter 'there were Compliments to the Biſhop, by the 'Name of *Naunton*, which Name *Kelley* explained 'to him to mean the Biſhop. That *Kelly* has 'told him, the Biſhop of *Rochester* went ſome'times by the Name of *Jones*, that he had like'wiſe heard the Biſhop went ſometimes by the 'Name of *Illington*, which laſt he was told by 'Mr. *Carte*, to the beſt of his Memory. That 'in the Letter which *Kelly* ſhewed him at *Bur'ton*'s Coffee-houſe, mention was made of *Manſ'field*, which *Kelly* explained to him, to mean the 'late Duke of *Ormond*. That he has ſeen ſeveral 'Cyphers in *Kelly*'s Hands, one in Figures, ano'ther of fictitious Names, in which laſt, *Carpen'ters* ſtood for *Scotch Soldiers*; *Sadlers and Sophi'ſters*, for *Iriſh Soldiers*, and the like; that he 'has ſeen *Kelly* make uſe of theſe Cyphers, and 'that *Kelly* with great Freedom owned, that 'theſe Cyphers were for carrying on the Corre'ſpondence with the Pretender's Agents. That 'he had likewiſe ſeen Cyphers in *Carte*'s Hands, 'who was alſo employed in writing Diſpatches 'to the Pretender's Agents abroad. That he, '*Neynoe*, had been employed to draw up three 'ſeveral Memorials to the Regent of *France*, to 'ſollicit him to ſend Forces to the Aſſiſtance of 'the Conſpirators, the laſt of which was in *De'cember*, 1721, and contained a Demand of five 'Thouſand Men to be ſent to invade theſe King'doms; that the Heads of theſe Memorials were 'given him by *Kelly*, and one who went by the 'Name of *Watſon*, whom he took to be the late 'Earl *Marſhal*.

'That in *March* laſt, *Kelly* brought him the 'Heads of a Letter, to be drawn up with a De'ſign of its being intercepted by the Government, 'in order to amuſe them into a falſe Security. 'That he drew up the ſaid Letter in a Paper 'writ Column-ways; that this Paper was brought 'back to him, corrected by the Biſhop of *Ro'cheſter*, as he believed.'

Your Committee are informed this Letter was not intercepted, but that a Copy of it was ſent, about that Time, to one of the Secretaries of State, from an unknown Hand.

Neynoe farther declared, 'That the Biſhop of '*Rochester*, Lord *Orrery*, Lord *North*, and Sir '*Harry Goring*, were the principal Leaders and 'Directors of the Conſpiracy, which was firſt to 'have been executed in the Spring of the Year '1722, by ſeizing the *Tower*, upon which the 'late Duke of *Ormond* was to have landed in the 'River; that upon the Diſcovery of the Plot, 'and the King's not going abroad, it was put 'off for ſome Time, but that it was afterwards 'reſumed to be attempted in the *Weſt*.' *Neynoe* farther added, 'That *Kelly* aſſured him, the Biſhop 'got Notice of his being to be taken up, ſome 'Days before it happened; and that this No'tice was given the Biſhop by one of the Lords 'of the Council.' But he afterwards confeſſed, (as your Committee are informed) that in this, and other Examinations, he had endeavoured all he could, to create Diffidence and Suſpicions among his Majeſty's Servants.

Theſe Informations of *Neynoe* are contained, great Part of them, in a Paper [8] writ with his own Hand, and delivered by him to a Committee of Lords of the Council. The other Part is extracted out of [9] Papers which he dictated at his ſeveral Examinations; which Papers were read to him Paragraph by Paragraph, and agreed to by him before the Lords.

That *Neynoe* was intimately acquainted with *Kelly*, viſited him often, and ſometimes lay at his Lodgings, and thereby had a better Opportunity of being informed by him, appears from the [10] Depoſitions of *Stevenſon* and his Wife, *Margaret* [11] *Kilburne*, Landlady to *Kelly*, and *John* [12] *Malone*, Servant to Mrs. *Barnes*, who waited on *Kelly* at his Lodgings.

That the Biſhop of *Rochester* was acquainted with *Kelly*, invited him to dine with him, ſent his Servants to enquire after his Health, and wrote to him, appears from [13] *Stevenſon*'s and *Kilburn*'s Depoſitions, as alſo in Part from [14] Mrs. *Levett*'s.

But what gives the greateſt Weight to the ſeveral Particulars contained in *Neynoe*'s Informations, is, that they are corroborated and ſupported in every material Circumſtance, by ſeveral concurrent Proofs, as will appear from the Sequel of this Report.

Pancier has [15] depoſed upon Oath, that *Skeene*, among other Particulars of the Conſpiracy, told him, that the Biſhop of *Rochester*, in Conjunction with the Lord *North* and *Grey*, had the principal Direction of the Conſpiracy; and that two Hundred Thouſand Pounds had been raiſed, and put into the Management of the Biſhop of *Rochester*, which was called *the Military Cheſt*, and was to be kept together till the Project was put in Execution.

Your Committee are informed, that when the Biſhop was taken into Cuſtody, vaſt Numbers of Letters and Papers were found in his Houſe, bearing Date before the Year 1712; but from that Time downwards, few of any Conſequence, except theſe which follow.

[16] One was from the Dutcheſs of *Ormond*, dated *January* 14, 1721. in which are theſe Words:

'I reſolved to ſend what I received: For tho 'it had not happened to belong to the Perſon I 'addreſſed it to, I was ſure it could not be put 'into better Hands.'

[7] E. 7.——10. [8] E. 7. [9] E. 8. 9. [10] E. 12. [11] E. 13. [12] E. 14. [13] E. 12. 13. [14] E. 6. *a*. [15] D. 1. [16] D. 5.

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This Paſſage makes it highly probable, that the Biſhop uſed to receive Letters from abroad, directed by fictitious Names. Which is ſtill further confirmed by the following Circumſtances:

In the [17] Cypher which *Layer* owned he received from Sir *William Ellis*, the Biſhop of *Rocheſter* is deſigned by the Name of *Juſtus*.

Neynoe [18] declared, that in the Letter which *Kelly* ſhewed him from *Dillon*'s Secretary, there were Compliments to the Biſhop of *Rocheſter*, by the Name of *Naunton*.

Among the Biſhop's Letters was found one directed to Mr. *Dubois*, not ſigned with any Name, nor dated from any Place. It was in the following Words:

SIR,

'FOrgive my Silence. You eaſily conceive 'the Difficulties I am under in that Regard. 'I write this only to aſſure you of my ſincereſt 'and unalterable Reſpect; and refer you to the 'worthy Bearer for News, and for every Thing, 'which otherwiſe I ſhould have found *ſome Way* '*or other* of writing to you myſelf. I have heard 'nothing from you ſince the Letter I had about 'two Months ago by Mr. *Johnſon*, to which I 'immediately in his Hand returned my Anſwer. 'A Rumour has reached me of your having writ-'ten hither ſince; but I can find no Body that '*owns* he has ſeen your Letters.

I am always, SIR,

Dec. 16. *Your truly Obedient, and*

moſt Humble Servant.

Your Committee obſerve, That *Johnſon* is the Name by which *Kelly* conſtantly went, as appears to them from ſeveral Affidavits: And that he was at *Paris* the 16th of *December*, 1721. *N. S.* and ſet out in two or three Days after for *England*, as appears from the [19] Pocket-Book taken upon him: And the Letter to *Dubois* ſeems to intimate ſuch a Correſpondence as made it unſafe to write openly, and without Diſguiſe.

Among the Biſhop's Papers was found another [21] Letter, dated *Rouen*, *Jan.* 15th, 1722. without any Name; and the Superſcription torn off: Which Letter is mentioned to be ſent by an honeſt Gentleman; and the Writer of it deſires to know how he may direct; and deſires to be directed to by the Name of *Wiſhart*, at Mr. *Arbuthnot*'s at *Rouen*, which is probably a fictitious Direction, no Name being ſubſcribed to the Letter. He likewiſe mentions a former Letter ſent under Cover to their common Friend Sir *Red.* Who Sir *Red.* is, does not appear to your Committee; but they find one Sir *Red. Everard* inſerted in *Plunket*'s [22] Cypher, and deſigned by the fictitious Name of *Fly*.

Among the Biſhop's Papers were likewiſe found two [23] Letters from Captain *Charles Halſtead* of *Greenwich*; the Perſon who, as has been mentioned above, was ſent to *Bilboa*, to tranſport the late Duke of *Ormond* to *England*.

Some Letters having been intercepted, which there is good Reaſon to believe were from the Biſhop of *Rocheſter*; and [24] one of theſe Letters being ſigned *T. Jones*, and another [25] *T. Illington*, your Committee will now lay before the Houſe the Evidence they have found of the Biſhop's being deſigned by thoſe two Names, collected from Circumſtances, which being in themſelves ſeemingly minute, and of little Conſequence, were for this Reaſon more frankly confeſſed by thoſe, who were obſtinate in concealing ſtronger Proofs; and yet at the ſame Time lead directly to the Diſcovery of the Perſon meant by thoſe Names.

Mrs. *Barnes* being examined before a Committee of Lords of the Council, obſtinately refuſed to make the leaſt Diſcovery relating to *George Kelly*; but when ſhe came to be aſked what ſhe knew about a Dog, ſent over to *Kelly* from *France*; not ſuſpecting this could lead to any Diſcovery, ſhe readily [26] owned, That a ſpotted little Dog, called *Harlequin*, which was brought from *France*, and had a Leg broken, was left with her by Mr. *Kelly*, to be cured: That the ſaid Dog was not for her, but for the Biſhop of *Rocheſter*; and that *Kelly* promiſed to get the Dog of the Biſhop of *Rocheſter* for her, in caſe it did not recover of its Lameneſs. This Declaration ſhe made and ſigned in the Preſence of the Committee of Council: And *Kelly* himſelf made no Difficulty [27] to own the receiving ſuch a Dog from *France*.

But it appears to your Committee, by Letters intercepted between *Kelly* and his Correſpondents in *France*, (the Proofs of which will be ſet forth in the Sequel of this Report,) That a Dog ſo named and hurt, was ſent over to *Kelly* from *France*, to be delivered as a Preſent to the Perſon denoted by the Names of *Jones* and *Illington*.

For in his [28] Letter to *Howell* (who is explained in *Plunket*'s Cypher to mean *Glaſgow*, and has been obſerved above to be *Dillon*'s Secretary) he mentions his having received the Preſent, and the Accident of a Leg being broken in the Voyage; and adds, '*I will inform Mr.* Jones *ſoon of it, to whom I know any Thing from that Quarter will be very acceptable.*' In the ſame Paragraph he ſays, '*Mrs.* Jones *died laſt Week; and when the Days of Mourning are over, he will, I hope, be fit for Buſineſs.*' This Letter was writ on *Monday* the 30th of *April*; and the Biſhop's Lady [29] died the Week before, on *Thurſday* the 26th of *April*.

Kelly in his [1] Letter to *Muſgrave*, (which Name will be hereafter ſhewn to ſignify the late Lord *Marr*) dated the 7th of *May*, ſays 'Mrs. '*Illington* is in great Tribulation for poor *Harle-*'*quin*, who is in a bad Way, having ſlipp'd his 'Leg again, before it was thoroughly well: 'However, *his* Obligations to the Lady are as 'great as if he had come ſafe, which he deſires 'you to let her know.'

The Words *He* and *His* being relative to Mrs. *Illington*, ſhew it is a Man that is ſpoken of: The Biſhop's Lady was dead at the Time this Letter was writ. And this Diſguiſe of putting *Mrs.* for *Mr.* is frequently made uſe of in the intercepted Letters, and is confirmed by a parallel Inſtance immediately following.

May the 9th, *Dillon*'s Secretary [2] writes to *Kelly*, and ſays, 'Mrs. *Chivers*, (which will be 'ſhewn to be General *Dillon*) prays you will 'condole in his Name on the Death of Mrs. 'Illington.'

[17] B.Y. 1. [18] E. 10. [19] E. 6. 12. 13. 14. [20] E. 17. [21] D. 7. [22] C. 51. [23] D. 8. 9.
[24] D. 10. [25] D. 11. [26] E. 4. [27] E. 1. [28] E. 35. [29] D. 47. 48. [1] E. 42. [2] E. 43.

It appears by theſe Paſſages, that the Dog was for Mr. *Jones*, alias *Illington*: And upon *Kelly*'s writing word that Mrs. *Jones* was dead, the Correſpondents condole on the Death of Mrs. *Illington*; which ſhews *Jones* and *Illington* to be the ſame, and both to be made uſe of to denote the Biſhop.

On the 11th of *May*, *Motfield* (who is the ſame with *Muſgrave*, that is, the late Lord *Marr*) ſends a [1] Letter to Mr. *Illington*, encloſed under Cover to *Kelly*; in which, after acknowledging the Receipt of *Illington*'s Letter of the 20th of *April*, he adds 'I did not expect ſo ſoon after to 'have heard of a Loſs you have had ſince; for 'which I condole with you, and nothing which 'concerns you ſo near can fail touching me, as 'in Friendſhip it ought. It is tho, becoming us, 'as it is our Duty, to ſubmit with Reſignation 'to what the Juſt and Great God thinks fit to 'order for us in this vain and tranſitory World; 'but you know ſuch things ſo much better than 'I, that will not trouble you with ſaying any 'more upon it.'

This laſt Paragraph ſeems to point out the Character and Function of the Perſon to whom the Letter was writ.

Motfield adds, 'I would fain hope that your 'own Diſtemper will ſoon give you eaſe;' which agrees with the Circumſtance of the Biſhop's being ill of the Gout, at the time of his Wife's Death.

This Particularity, as alſo ſeveral others, which will be taken notice of, as to the Biſhop's being in Town or in the Country, at the reſpective times mentioned in the intercepted Letters, have been carefully inquired into; and it appears by a [4] Paper annexed to the Report, that theſe ſeveral Circumſtances do exactly agree with what is mentioned in the Letters.

Kelly [5] writing to *Muſgrave* (the late Lord *Marr*) the 7th of *May*, ſays, Mrs. *Jones* is come to Town: the ſame Day writing to *Chivers* (*Dillon*) he ſays Mr. *Illington* is now in Town; which again confirms *Jones* and *Illington* to be the ſame, and agrees with the Inquiry made at that time.

On the 10th of *May*, *Kelly* [6] writes to *Dellon*'s Secretary, *Illington* is gone into the Country, and ſent me word he would be in Town on *Tueſday* Night, when he has deſired to ſee me at a particular Hour, by which I conclude it may be about Buſineſs. And on *Monday* the 14th of *May*, (the Day before, it is ſaid, *Illington* was come to Town) [7] writing to the ſame Perſon, he ſays, *Jones* is ſtill in the Country, but has ſent me word he will be in Town to-morrow.

Theſe ſeveral Circumſtances, join'd to *Neynoe*'s Declaration, that *Kelly* had told him, the Biſhop went ſometimes by the Name of *Jones*, and that *Carte* had told him, the Biſhop went by the Name of *Illington*, ſhew, that wherever *Jones* and *Illington* are named in *Kelly*'s Correſpondence, the Biſhop of *Rocheſter* is to be underſtood by thoſe Names.

Your Committee therefore will next proceed to lay before you the part which *Jones* or *Illington* appear to have borne in the treaſonable Correſpondence.

It appears by *Kelly*'s [8] Pocket-Book, that *Kelly* ſet out for *Paris* on the 22d of *February* 172$\frac{4}{5}$, and return'd to *London* about the 8th of *April* following. It appears by [9] Mrs. *Levett*'s and [10] *John Malone*'s Depoſition, that he came to Mrs. *Barnes*'s on *Wedneſday* the 11th of *April*, at eight in the Morning, extremely fatigued, and went immediately to bed. Mrs. *Levett* has depoſed upon Oath, 'That Mrs. *Barnes* told her he was then 'juſt arrived from *France*, and brought over 'Letters with him: That ſeveral of the Diſaffected had been at her Houſe to inquire after 'him before his Arrival, and expreſs'd the utmoſt 'Concern for fear he ſhould be taken.' And [11] *Neynoe* declar'd, 'That he ſaw a great Bundle 'of Letters, which *Kelly* brought over from '*France*.' Mrs. *Barnes* farther told Mrs. *Levett*, 'That the Day after, (*viz. Thurſday* the 12th of '*April*) the Biſhop of *Rocheſter* ſent his own Coach 'to fetch him, and that *Kelly* was abſent in the 'Country till *Saturday* the 14th.' Two [12] Depoſitions, annexed to this Report, ſhew, that the Biſhop of *Rocheſter* came to Town on *Wedneſday* the 11th, and went to *Bromley* on *Thurſday* the 12th of *April*.

It appears by a [13] Letter writ to *Kelly* from *France* by the late Lord *Marr*, and intercepted, that on *Monday* the 16th of *April* (which was the firſt Poſt-day to *France*, after the Biſhop had ſent for *Kelly*) *Kelly* had writ to *Marr* an Account of his Negotiations with *Illington*, and of *Illington*'s Willingneſs to be reconciled to one, deſign'd by the Name of *Hacket*. Who *Hacket* is, does not appear to your Committee, but he is deſcribed in ſeveral of the Letters as a Perſon in ill Health, retired in the Country, and one in whom the Pretender's Agents at *Paris* place their greateſt Hopes and Confidence next to *Illington*. This Reconciliation with *Hacket*, *Illington* was deſirous might be kept ſecret for ſome time, that it might not be known they acted in concert.

It appears by another [14] Letter to *Kelly* from *Dillon*'s Secretary at *Paris*, that *Illington* had writ a myſterious Letter thither, and that *Kelly* had writ a ſubſequent one in Explanation of it, which had been ſhewn to *Dillon*.

The firſt [15] Letter that was intercepted from *Kelly* himſelf, was dated the 22d of *April*, ſigned *James Johnſon* (the Name he always went by, and often ſigned by) and directed to *Gordon junior*, Banker at *Boulogne*, at whoſe Houſe it is probable he had been entertained in his laſt Return from *Paris*; which *Gordon* is mentioned in a [16] Letter from Mr. *Craufurd*, as being formerly the Pretender's Banker, and as one employ'd in hiring a Veſſel to tranſport ſome of the Chiefs of the Conſpiracy to *England*. In this Letter to *Gordon*, *Kelly* recommends to his Care a Packet encloſed.

This Packet was directed to Mr. *Chivers* (which will be prov'd to be *Dillon*) and conſiſted of three Letters, one to *Chivers* himſelf, ſign'd *T. Jones*, another to *Muſgrave* (which will be prov'd to be *Marr*) ſign'd *T. Illington*, a third to Mr. *Jackſon* (which will be prov'd to be the Pretender) ſign'd 1378, which Number is found by the Decypherers, to denote the proper Name of a Perſon beginning with the Letter *R*, in the Cypher made uſe of in theſe three Letters, the Order of which, as your Committee is inform'd, is alphabetical. All the three Letters were dated the 20th of *April*, and appear by the Matter to be from the ſame Perſon, which prove 1378 to be the ſame with *Jones* and *Illington*. The Letters to *Muſ-*

[3] D. 24. [4] D. 47. [5] E. 42. [6] F. 44. [7] E. 45. [8] E. 17. [9] E. 6. [10] E. 15.
[11] E. 9. [12] D. 47. 48. [13] D. 13. [14] D. 14. [15] E. 26. [16] A. 9.

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grave and *Jackson* were enclosed in that to *Chivers*.

The Person who dictated these Letters, speaks of himself as being in ill Health, in great Pain, under some sad and melancholy Circumstances, which made him uncapable of doing any thing regularly at that time, but which he expected would soon blow over; which agrees with the Bishop's [17] Circumstances at that time, whose Wife was extremely ill, and died six days after, and he himself, as has been observ'd before, was at that time afflicted with the Gout.

The Letter to *Chivers* is a great part of it out of Cypher, and with the Decyphering is in the following Words.

S I R, 20th of *April* 1722.

'I Ought to acknowledge in form the several 'Papers I have successively receiv'd from you, 'if I were capable at present of doing any thing 'regularly; but indeed I am not, as *Hatfield* 'well knows, and why I am not. Some time 'must pass before I am any way capable of Bu'siness; in the mean time you are in the right to 'press the Gentlemen concerned by all manner 'of ways you can think of, to furnish, what by 'being hitherto not supply'd, has render'd the 'thing impracticable. They were desirous of 'having that Matter intirely in their own Ma'nagement, and I not unwilling that they should 'have it, being always diffident of Success on 'my part upon Interpositions of that kind; and 'therefore it gave me no concern to be so freely 'excused from any Share (as I was for a great 'while) in that trouble. At last indeed, when 'the point was found upon trial to be more dif'ficult than they expected, I was press'd to under'take the Matter; but so late, that I did not 'think it reasonable for me then to interpose, 'nor can I yet undertake any thing of that kind, 'it being what (since some former Mismanage'ment wherein I was deeply concerned) I have 'constantly declined, hoping that I might not be 'altogether unuseful to the Service, if I went on 'to promote it in my own, that is, in another 'way. I still hope so, and that a little time '(which must be employ'd in doing nothing but 'soliciting Supplies) will give me room for en'tring into Measures that may be somewhat more 'significant than those formerly taken; this I 'shall endeavour, being at present perfectly tired 'by the distracting Measures which have been 'taken from several Quarters, by Persons no 'ways equal to the Work, and at the same time 'not agreeing among themselves. This is all I 'can say at present, but that I am, with the same 'entire Respect and Fidelity I ever was,

S I R, Your most, &c.

T. Jones.

'I have communicated the Copies of Mr. *Man'field*'s and *Jacob*'s Letters, which besides the '[18] G..... :....., (whereof they had a 'Copy) were the only ones of those transmitted, 'that I was directed, or indeed thought proper so 'to do. Tho I have for some time thought, 'that nothing of Importance should be trusted to 'the Post, and am resolved myself not to send 'that way; yet the Death of Lord *Sunderland* 'makes such a Caution more indispensibly neces'sary; for you may depend upon't, that those 'in Power here will now enter into Measures of 'more Severity and Strictness, and employ all 'their Diligence, as well as Power, on such Oc'casions.'

That *Chivers*, to whom this Letter was directed, means General *Dillon*, is evident from the following Circumstances.

On the 13th of *May*, *Cane* [19] writing to *Kelly*, owns the Receipt of these Letters from the Bishop, but over-against the Name of *Cane* in *Plunket*'s [20] Cypher, is writ *Dillon*, and *Kelly* [21] answering this very Letter of *Cane*'s, directs to *Chivers*. Besides which, it appears from innumerable Passages, that *Cane* and *Chivers* mean the same with *Digby* and *Dixwell*, which have been shewn at large to denote General *Dillon*.

The Bishop's Letter to *Musgrave* (who will be prov'd to be the late Lord *Marr*) is as follows:

To Mr. Musgrave.

S I R, *April* the 20th 1722.

'I Received from Mr. *Hatfield* (after a long In'termission of such Favours) a Letter which 'was very welcome to me: I have also consider'd 'carefully what he had to offer to me in particu'lar, and intirely agree with what is proposed; 'but my present sad Circumstances (of which he 'has already inform'd you) will not suffer me to 'be active soon, or even set forward the Affairs 'entrusted with me in so speedy a manner as I 'could wish. The best is, that as I cannot act 'openly, so neither is there, I think, any imme'diate Need of it, some time being requisite to'wards ripening Matters, in order to fix the '[22] C..... :.....'d, which, if hastily 'begun, may be attended with Suspicions and 'other Inconveniencys; but you may depend up'on it that the [22] :..... :.....s committed 'to my care, shall be forwarded in due time to 'the Persons concerned, as also all such other '[22] :.....s as I judge, and at the time I judge, 'they will best promote the Service. What is 'to be wish'd for, is, that the Person whom I 'am to act with, would come to Town, and his 'doing so may be facilitated better from your 'side, than by any thing that can be done here; 'by that time he comes, I hope I shall be able 'to take my part with him. I add no more now, 'being very unfit to say even thus much, but 'that I am with entire Respect and Confidence,

S I R, &c.

T. Illington.

That *Musgrave* (to whom this Letter was directed) means *Marr*, is thus proved.

Dillon's Secretary [23] writes to *Kelly* that Mr. *Lane* (over-against which Name in [24] *Plunket*'s Cypher is writ Lord *Marr*) was much pleased with his first Letter, which, as has been observed before, was writ on the 16th of *April*.

Soon after a Person [25] writes to *Kelly*, acknowledging the Receipt of this Letter of the 16th of *April*, and expressing his Satisfaction at *Illington*'s Willingness to be reconciled with *Hacket*; his Letter is sign'd 918, which Number is found by

[17] D. 47. 48. [18] Not decyphered. [19] E. 38. [20] C. 51. [21] E. 41. 2. [22] Not decyphered. [23] E. 30. [24] C. 51. [25] E. 32.

the Decypherers to denote the proper Name of a Perſon beginning with the Letter *M*, and *Kelly* [16] anſwering this Letter directs to *Muſgrave*.

Beſides which, *Muſgrave* is found to be a Perſon, whoſe Penſion is ſaid to be ſtopt in *England*, at the very time that a [17] Penſion granted to the late Lord *Marr* was ſtopt, and is ſpoken of in other [18] Letters as one ſuſpected of betraying them, with ſuch Circumſtances as fix the Perſon meant to be the late Lord *Marr*.

The Biſhop's Letter to *Jackſon* (who will be proved to mean the Pretender) is as follows:

To Mr. Jackſon, *under the Cover of*
M. Gordon le fils, Banquier à
Boulogne ſur Mer.

SIR, *April* the 20th, 1722.

'I AM ſorry to find by yours, which *Hatfield* brought, that you know our Circumſtances 'on this ſide ſo well, becauſe that Knowledge 'does not, I apprehend, give you any advantage-'ous Opinion of us; however, let that be as it 'will, 'tis not fit you ſhould be deceiv'd, and re-'ly on more than will be made good to you: 'if you gueſs'd at my right Mind, I dare ſay, it 'was agreeable to your own, and that you could 'not but ſee thro' the forwardneſs of all thoſe un-'ſupported pretending People. Notwithſtanding 'this Opportunity is elapſed, I agree with you, 'another may offer before the end of the Year, 'tho not perhaps every way ſo favourable: how-'ever it became me to ſpeak ſtrongly on that 'head, eſpecially at the time when the [19]: ..... 'was drawn, which was long before it was tranſ-'mitted, for it was kept back a great while, in 'hopes that Deeds might have accompany'd 'Words, and ſent at laſt rather to juſtify the 'Writer in reſpect to that part he had under-'taken, than to puſh on any Deſign in ſo un-'provided a Condition. I find I was not miſtaken 'and am glad I was not ſo, tho every Word of 'that [19]: ..... paſſed the View and Appro-'bation of the Perſons concern'd, but they were 'to be and ſhall always be by me treated ten-'derly; tho nothing ſhall engage me to enter 'deep with them for the future. I had taken this 'Reſolution before *Hatfield*'s Return, and am plea-'ſed to find that you concur with me in Opinion. 'As ſoon as God reſtores me to my Health, and 'ſome other melancholy Circumſtances are blown 'over, which will be as ſoon as there is any oc-'caſion for me, I will not be idle: in the mean 'time give me leave to withdraw myſelf *ſeem-'ingly* from any Engagement of this kind; I 'ſhall return to it, I doubt not, with more Abi-'lity to promote the Work: not that I will 'decline any proper Occaſions that may offer 'themſelves to converſe freely with the Men and 'in the manner I have been uſed to do, for it is 'fit upon all Accounts I ſhould do ſo; but by 'little and little that Confidence will cool, and 'make room I hope for ſomewhat of a more 'ſolid and important Nature. I dictate this in 'great Pain, and for that Reaſon, and becauſe I 'am not at preſent in any readineſs to go fur-'ther, ſhall add only my faithful Aſſurances of 'an entire and unalterable Reſpect for you.

R.

That *Jackſon* (to whom this Letter is directed) means the Pretender, appears from [20] *Plunket*'s Cypher, in which, over-againſt the Name of *Jackſon*, is writ, *The King*; tho two Names had gone before in that Cypher, over-againſt which is writ, King *George*.

Beſides which, [21] *Plunket*'s Letter mentioning his and *Layer*'s Journey to *Rome*, is directed to Mr. *Jackſon*; and *Jackſon* appears from other Letters to be the ſame with *Malcom*, to whom Application is made in a [22] Letter from *Edinburgh*, for a Patent for Knight Baronet, and for Orders to raiſe one or two Battalions.

The Cypher made uſe of in theſe three Letters is the very ſame that is made uſe of in two Letters intercepted from the late Duke of *Ormond*'s Agents in *Spain*, of which Notice has been already taken. And the ſame Cypher is alſo uſed in Letters from *George Kelly*, and to *Dennis Kelly*. And among the Papers of the latter was found a [23] Piece of a Cypher in *George Kelly*'s Hand-writing, which your Committee are inform'd is a Supplement to the Cypher made uſe of in *Jones* and *Illington*'s Letters.

The Clerks of the Poſt-Office, who opened and copied theſe Letters, having been ſhewn ſeveral Papers ſworn to be *George Kelly*'s Hand-writing, have [24] depoſed upon Oath, that the Letter to *Gordon junior*, ſign'd *James Jhonſon*, as well as the three Letters enclos'd in it, directed to *Chivers*, *Muſgrave* and *Jackſon*, were all, to the beſt of their Knowledge and Belief, writ in the ſame Hand with thoſe Papers; which join'd to [25] *Neynoe*'s Information, that *Kelly* had told him, he was employ'd in writing Letters for the Biſhop to the Pretender's Agents abroad; that the Biſhop never let him carry a Bit of his Hand-writing out of the Room; and that *Kelly* made uſe both of a numerical Cypher, and a Cypher of fictitious Names, for managing this treaſonable Correſpondence; appears to be a ſtrong Confirmation that theſe three Letters were dictated to *Kelly* by the Biſhop, and that the Biſhop is the Perſon denoted by the Names of *Jones* and *Illington*, and by the Cypher 1378.

In what manner theſe Letters were convey'd to *Paris*, will be obſerved in that part of the Report which relates to *Kelly*. The Correſpondents at *Paris* [26] own the Receipt of the Packet from their Couſin *Jones*; and on the 7th of *May*, *Kelly* [27] writes *Dillon* word, that *Illington* is glad to hear his Letters came ſafe, and wiſhes his next be more to *Dillon*'s Satisfaction.

Your Committee having thus laid before you the Grounds they have to be convinced, that theſe three Letters were ſent from the Biſhop of *Rocheſter* to General *Dillon*, the late Lord *Marr*, and the Pretender; they think it their Duty to make ſome Obſervations on the Contents of them.

They obſerve from his Letter to *Dillon*, that he has contracted a great Intimacy and Familiarity with a profeſs'd *Roman* Catholick, who appear'd openly in Arms againſt the late King *William* in *Ireland*, and being obliged to leave that Country ſo long ago as the Capitulation of *Limerick*, has ever ſince adher'd to the ſame Cauſe in foreign Parts, and is at preſent more active and induſtrious than any other of the Pretender's Agents in exciting a Rebellion in theſe Kingdoms. He is at this time a Lieutenant-General, and has the Com-

[16] E. 42. [17] E. 71. [18] E. 37. 41. [19] Not decyphered. [20] C. 51. [21] C. 41. [22] I. 9.
[23] F. 11. a. [24] E. 19. [25] E. 10. [26] E. 57. 38. [27] E. 41. a.

mand of one of the *Iriſh* Regiments in the *French* Service.

Your Committee obſerve, That as the different Profeſſions of theſe two Perſons could lay no ſort of Foundation for any Intimacy or Intercourſe between them, ſo the long Abſence of General *Dillon* makes it highly probable, that their Acquaintance could not be commenced before his leaving theſe Kingdoms; and that it can only have proceeded from their being long united and confederated in the common Support of the ſame wicked Cauſe.

Yet their Intimacy is ſuch, that the Biſhop acknowledges the Receipt of ſeveral Papers from *Dillon*, together with Directions of communicating them, which the Biſhop owns he obey'd as far as he judg'd it proper for the Service. Some of theſe Papers appear to have been from the late Duke of *Ormond*, who is attainted; and others probably from the Pretender, whom he has ſo often abjured.

He adviſes *Dillon* to preſs the ſolliciting Supplies; and owns he has been deſired to undertake that Province himſelf, but that he had hitherto declin'd it; not from ſuch Reſtraints as ſhould naturally have ariſen in the Mind of one of his Character and Function, but meerly on account of ſome former ill Succeſs and Miſmanagement, in which he owns he had been deeply concern'd.

He afterwards adviſes *Dillon* to uſe the ſame Caution which he himſelf intended, of not truſting any thing of Importance to the Poſt, endeavouring to act within the Shelter and Safeguard of the Laws for ſubverting our happy Conſtitution.

This great Caution, which (as *Neynoe* ſaid *Kelly* told him) the Biſhop uſed, made him ſo extremely careful, as not to let even the Man he truſted moſt, have one Line of his own Hand-writing; and ſhews that he was wonderfully ſollicitous, not to avoid the Guilt of Treaſon, but only to eſcape the Puniſhment due to it, by ſaving himſelf from the danger of legal Conviction.

Another of his Letters is to the late Lord *Marr*, who ſo lately appear'd in Arms againſt his Majeſty, and has ſince had a Poſt of the greateſt Confidence and Truſt near the Pretender.

In this Letter he owns the Receipt of one from *Marr* by *Kelly*, together with verbal Inſtructions; which, to cut off all Excuſe of Surprize or Inadvertency, he ſays he carefully conſider'd, and yet entirely agreed to.

He then mentions his preſent ſad Circumſtances, but comforts himſelf, that as they will not permit him ſoon to act openly; ſo neither is there, he thinks, any immediate occaſion for it, ſome time being neceſſary towards ripening Matters. So that when a proper Opportunity ſhould have offer'd, the Mask was to have been thrown off, and he was then openly to have avowed the Cauſe, which he has hitherto ſupported only in Diſguiſe.

The other Letter of the Biſhop's is to the Pretender himſelf, in defiance of that Law which makes the holding any Correſpondence with him, or his Agents, High-Treaſon. In this Letter he owns the Receipt of one from the Pretender; and to ſhew how well he deſerv'd that Confidence, he himſelf, who beſt knows the Thoughts of his own Heart, declares, that if the Pretender gueſs'd at his right Mind, he dares ſay it is agreeable to the Pretender's own.

He then encourages the Pretender to hope for a ſecond Opportunity, tho not every way ſo favourable as the firſt, which was elapſed.

This favourable Opportunity appears to have been that of the Elections; and your Committee cannot but obſerve, that the two moſt riotous Elections of any throughout the Kingdom, were that of *Weſtminſter*, a Place under the immediate Influence of the Biſhop of *Rocheſter*; and that of *Coventry*, which appears by this Report to have been animated by *Carte*, an Agent of the Biſhop's, and one employ'd by him in managing his treaſonable Correſpondence.

He afterwards takes to himſelf the Merit of ſome Writing, which he had drawn up and tranſmitted to the Pretender, after it had firſt paſſed the View and Approbation of the Perſons concern'd: tho he ſays it had been kept back a great while, in hopes that *Deeds* might have accompanied *Words*. Which again ſhews his treaſonable Intentions to have been the Reſult of mature Deliberation; and that tho he had hitherto dealt in Words, yet other Acts of Treaſon were what he hoped for, and was aiming at.

As ſoon as God ſhould reſtore him to his Health, he promiſes to abuſe it towards the Proſecution of his Treaſons, and in the mean time deſires leave to withdraw himſelf ſeemingly from any Engagements of that kind, that he might return with greater Zeal and Activity to deſtroy this Church and State, by placing a Popiſh Pretender on the Throne, in violation of the moſt ſacred Oaths ſo frequently taken by him.

Your Committee will now proceed to ſhew what farther Part the Biſhop appears to have had in the treaſonable Correſpondence and Negotiations carried on with the Pretender's Agents in *France*.

On the 11th of *May*, *Motfield* anſwers *Illington*'s [38] Letter ſent to *Muſgrave* (*Marr*) the 20th of *April*. This was incloſ'd in a Letter to *Kelly*. The Subſtance of the Anſwer is to condole with *Illington* on his Loſs, and to expreſs great Satisfaction on finding him in the ſame Sentiments with *Marr*, in relation to their old Friend and Acquaintance (*Hacket*) and in another [39] Letter, to *Kelly*, he lets *Illington* know how agreeable this Reconciliation would be to *Farmer*, and how much to *Farmer*'s Intereſt.

Your Committee ſee Reaſon to believe from Paſſages in ſeveral of the Letters, that *Farmer* means the *Pretender*.

It has been obſerved above, one of the Periods of Time, fixed by the Conſpirators for putting their Deſign in execution, was the beginning of *May* 1722.

On the 1ſt of *May*, *Dillon*'s Secretary [40] writes to *Kelly*, 'that Mr. *Jones* cannot take a better 'time to have himſelf fitted with an eaſy *Saddle*, 'there being a number of Sadlers idle in *France* 'at preſent, who in caſe of Wars would be ſo 'very buſy there would be no coming at them.' This is explain'd by what [41] *Neynoe* ſaid, that in *Kelly*'s Cypher *Sadlers* ſtood for *Iriſh Soldiers*, tho he did not know any Letters had been intercepted where that Term was made uſe of, and in [42] *Plunket*'s Cypher *Saddles* ſtand for Regiments, and Girt for one hundred Men.

[38] D. 24. [39] D. 13. [40] D. 17. [41] E. 10. [42] C. 51.

On

On the 2d of *May*, *Dillon* himſelf [43] acknowledges the Receipt of his Couſin *Jones*'s Letters of the 20th of *April*, and 'expreſſes much Concern 'for that *Lady*'s ill State of Health, being much 'afraid his own ſmall Concerns can hardly be ſet-'tled to Satisfaction, till ſhe is able to ſollicit in 'his Favour.'

On the 7th of *May*, *Kelly* [44] writes to *Muſgrave* (*Marr*) 'that he had communicated his Letter to 'Mr. *Jones*; and that Mr. *Jones* deſir'd a Letter 'from *Muſgrave* or *Farmer* (the Pretender) to '*Hacket*, to bring him to Town, without which 'it would be impracticable for them to do Buſi-'neſs together. That *Jones* finds *Armſtrong and* '*Company* very loth to be any way concern'd, 'having no Opinion of the preſent Hands; how-'ever that it is ſtill neceſſary to make the moſt of 'them.'

Who is meant by *Armſtrong and Company* does not appear to the Committee.

On the 9th of *May*, *Dillon*'s Secretary [45] writes to *Kelly*, 'That if this Poſt had not brought an 'Addition of three to the ſix formerly come from '*Repney*, it is eaſy for Mrs. *Jones* to ſee what is 'ſtill wanting for the Purchaſe ſhe intends to 'make.' Who is meant by *Repney* is not certain, but in the following Part of this Report there will appear Grounds of a probable Conjecture.

This Paſſage relates to a Bill of Exchange (of ſix thouſand Pounds probably) ſent over to *Calais*, and thence to *Waters* the Pretender's Banker at *Paris*, on the 16th of *April*; the Receipt of which is acknowledged in ſeveral Letters both to [46] *George Kelly* and [47] *Dennis Kelly*. This Paragraph, which ſays, 'That if three more are not come, 'beſides the ſix from *Repney*, it is eaſy for Mrs. '*Jones* to ſee what is ſtill wanting for the *Pur-'chaſe ſhe intends to make*;' ſhews plainly, that *Jones* was at leaſt privy to that Remittance: which agrees with what *Pancier* [48] has depoſed upon Oath, that he was told by *Skeene*, among other Particulars relating to the Conſpiracy, that a large Contribution had been raiſed and put under the Management of the Biſhop of *Rocheſter*, which was called their military Cheſt.

On the 10th of *May* (three Days after the Encampment) [49] *Kelly* writes to *Dillon*'s Secretary, 'That it was reported the King had abſolutely 'refus'd to put off his Journey, and intended to 'ſet out early next Month; and that if they could 'then compaſs *Barrels* enough, the ſooner the 'Wine comes, he believes, the better. He adds, 'that *Jones* promiſes to be a good Cuſtomer, 'and that he hopes *Hacket* and *Jones* will give 'them the finiſhing Stroke.' The time of Year in which this Letter was writ, and the abſurd Suppoſition of its being more difficult to find *Barrels* than *Wine*, ſhew ſufficiently that theſe Words are not to be taken in their literal Senſe.

Your Committee are inform'd, that Wine was explain'd by *Neynoe* to mean *Invaſion*, tho he had never been told that any ſuch Word had been made uſe of in theſe Letters, nor had been ask'd any Queſtion about it; and in [50] *Plunkett*'s Cypher, *Barrels* is explain'd *Army*, and *Vines*, *one thouſand Men*.

On the 19th of *May*, *Dillon*'s Secretary [51] writes to *Kelly*, 'That he is aſſured by good 'Hands, *Hacket* and *Jones* are the beſt able to 'adjuſt his particular Concerns; that he does not 'queſtion their good Diſpoſitions, and that doing 'it timely will be a double Merit.'

On the 19th of *May* *Kelly* was taken into Cuſtody, about the 7th of *June* he was admitted to Bail, and on the 11th he [52] writes an Account of his Examination to one *Gerrard*, whom your Committee believe to be Sir *John D'Obryan*, whom *Kelly* [53] owned to be employ'd by *Dillon* in writing for him. In this Letter *Kelly* ſays, 'He 'was chiefly queſtioned about a little Dog he got 'from *France*, and about five or ſix cant Names, 'which were *Illington*, *Jones*, *Cane*, *Howell*, '*Quitwell* and *Hacket*; and that whoever *Illing-'ton* is, he was the Perſon chiefly ſtruck at.'

On the 18th of *June* [54] he writes to *Dillon*, 'That it is abſolutely neceſſary to make no more 'uſe of their preſent *Account-Book*, ſince thoſe 'that have got part, may by the ſame Method 'have got the whole; and that it will be highly 'improper for him to meddle with Buſineſs, at 'leaſt for ſome time.'

From this time forward your Committee obſerve, that the Names of *Jones* and *Illington* are no more heard of in the intercepted Correſpondence; neither does *Kelly* ſo frequently write Letters of great Buſineſs, but in his ſtead *Thomas Carte*, Clerk, takes up the Management of the Biſhop's Correſpondence.

The Letters from *Carte* are ſigned, and thoſe to him directed by the Name of *George Williams*; and Mrs. *Harbin*, to whoſe Houſe they were directed, having been examined before ſome Lords of the Council, [55] has depoſed on Oath, that *Carte* deſired her to take in Letters ſo directed, and that ſhe delivered one ſo directed into his own Hands.

And in the [56] Cypher taken among *Dennis Kelly*'s Papers in *George Kelly*'s Hand-writing, Mr. *Carte* is deſigned by the fictitious Names of *Thomas* and *Trotter*, who appear, by comparing ſeveral Paſſages in the Letters, to mean the ſame Perſon with *George Williams*.

From the time of *George Kelly*'s being firſt taken up, the Biſhop of *Rocheſter* is denoted by the Names of *Rig* and *Weſton*, as will appear from the following Circumſtances.

On the 30th of *Auguſt*, *Kelly* [57] writes to *Dillon* a long Letter, which contains the Particulars of the Biſhop's being taken into Cuſtody, examined and committed. On the 14th of *September* *Dillon*'s Secretary [58] writes to *Kelly*, 'That his Letter on 'the 30th of *Auguſt* came ſafe, and that the Par-'ticulars he gave of Mr. *Rig*'s Caſe were very ac-'ceptable to *Dillon*, whoſe Concern for a true and 'worthy Friend and Relation cannot be doubted, 'and a longing deſire to know *her* entirely clear 'of *her* Diſtemper.' In the ſame Letter he deſires to know what is become of *Carte*.

That *Rig* denotes the Biſhop is farther confirmed by theſe Particulars: *Kelly* in his firſt [59] Letter after his Enlargement, writes word to *Gerrard*; 'All I can do now, will be only to deliver to 'your Couſin *Rig* any *Goods* that you can ſend by 'private Hands: he is determined not to receive 'them any other way, and indeed I cannot ſay 'he is in the wrong. How far this late Affair 'may affect him, I cannot tell.'

[43] E. 38. [44] E. 42. [45] E. 43. [46] E. 31. [47] F. 19. 21. [48] D. 1.
[49] E. 44. [50] C. 51. [51] E. 46. [52] E. 47. [53] E. 81. [54] E. 49. [55] D. 4.
[56] F. 11. a. [57] D. 45. [58] D. 46. [59] E. 47.

Now

Now since it appears that *Kelly* was formerly imployed in conveying Letters to and from the Bishop (which are often called *Goods* in the intercepted Correspondence) since the Bishop himself had desired in his Letter to *Dillon*, that no more Letters of Consequence might be trusted to the Post; and since *Kelly*'s Examination about the Dog could affect no one but the Bishop, it may justly be concluded that *Rig* and the Bishop are the same.

That *Weston* is the Bishop, will appear from the following Circumstances.

On the 7th of *June*, *Dillon*'s Secretary [60] writes to *Carte*, and acknowledges the Receipt of a Letter from him of the 28th of *May* (which was soon after *Kelly*'s being taken up) and after expressing great Satisfaction, 'That the late Rumours 'of a Plot had not occasioned a total Interruption 'of *Commerce*, nor obliged any of their Correspon-'dents to go aside;' he adds, 'That *Dillon* de-'sires to be most kindly remember'd to his good 'Friend Mr. *Weston*, for whom he was in the 'greatest Concern, on account of a Story that 'his *Clerk* had been laid up for *Debt*; but that he 'hopes *Carte*'s next Letter will put him at full 'Ease in this Matter.'

This plainly has reference to *Kelly*'s being taken up; and his relation of *Clerkship* to the Bishop, has been fully explain'd by what goes before.

On the 14th of *June*, *Carte* [61] writes to *Dillon*'s Secretary, and endeavours to put him at full Ease in relation to Mr. *Weston*, by telling him, 'That 'Mr. *Weston* is in the Country, that he saw him 'two Days ago; that he is perfectly well, and as 'easy in all his Affairs as any Man alive, and very 'much *Dillon*'s humble Servant.' It appears by Depositions [62] annexed to this Report, that the Bishop was in the Country at that Time.

On the 14th of *July*, *Dillon* [63] writes to *Weston*, under Cover to *Carte*; and desires he will admit one *Skinner* (sent over from *France* express) to receive his Commands.

On the 26th of *July*, *Kelly* [64] writes word that *Rig* and *Skin* had been lately together; and that before they met, *Rig* sent to him to know how *Skin* stood with *Dillon* and his Partners.

On the same Day, *Stanley* (who appears by the Matter of his Letter to be the same with *Skinner*) writes [65] to *Dillon*, 'That he had been with 'the Correspondent, to whom the Letter of Cre-'dit was sent, and had partly engaged him in his 'Arrack Affair.' On the 30th of *July*, *Carte* writes [66] word, he had the Honour of introducing *Stanley* to Mr. *Weston*, and mentions the Arrack Affair, of which notice will be taken in its Place.

From these Passages it appears, that *Weston* (the Name made use of by *Carte*) means the same with *Rig* (made use of by *Kelly*) which last was shewn before to mean the Bishop of *Rochester*.

Rig therefore, and *Weston* being made use of to denote the Bishop; it remains to be considered what Part *Rig* or *Weston* appear to bear in the Sequel of the intercepted Correspondence.

It appears by the [67] Letter from *Dillon*'s Secretary of the 7th of *June*, that they apprehended in general on *Kelly*'s being taken up, that some of their Correspondents would be obliged to go aside; but that their greatest Pain was for Mr. *Weston*, whose Intimacy with *Kelly* was such, that *Kelly* is stiled his *Clerk*, which is no improper Name for one that kept the Cyphers, which are stiled thro'-out the intercepted Letters, *Books of Accompts*; and in *Layer*'s Cypher are call'd *Rentals*. If *Kelly* had had no Secrets to reveal, the Pain for Mr. *Weston*, and the Fear of other Correspondents going aside, would not have been so considerable.

On the 14th of *June*, [68] *Carte* sets them at ease in relation to *Weston*, who was, he says, as easy in his Affairs as any Man alive: Which might be the Case, *Kelly* having burnt his Papers, being bailed out, and at Liberty to assure his Friends, that the Lords could get nothing out of him at his Examination, where he strenuously denied his having ever heard of the Names of *Jones* or *Illington*.

On the 11th of *June*, *Kelly* [69] sends his Friends at *Paris* an Account of his late Misfortune; and after complaining of their Neglect, in not bailing him out sooner, and intimating that such Usage might have provoked a passionate Man to betray their Secrets; he says, your old Friend *Rig*, indeed, offered all that could be expected from the poor Man. This Passage proves pretty plainly, that *Rig* was one of those whose Secrets it was in *Kelly*'s power to have betrayed; and who therefore thought himself principally concerned to keep *Kelly* in good Temper, by all possible offers of Assistance.

Kelly in his next [70] Letter of the 18th of *June*, says, 'The Occasion of my Misfortune I will lay 'at no body's Door in particular; tho *your old* 'Friend Rig seems to believe, it has rather pro-'ceeded from some pretended Friend than any 'real Enemy: And as his Conjecture lies on this 'side, you may easily guess the Point it tends to.' This Passage shews, that the Discoveries made, were known by *Rig* to be well founded; since no one could be led to suspect, that an Information entirely false should proceed from some Friend entirely in the Secret: besides, it shews *Rig* had Friends, in whose power it was to betray him; and that those Friends were known to the Correspondents in *France*, since *Kelly* says, they are able to guess who it is that *Rig* suspects *on this side*. This is a farther Intimation, that *Rig* had Friends on the other side of the Water, in whose power it was equally to have betrayed the Secret.

Kelly then tells *Dillon*, 'That it is absolutely 'necessary to make no more use of their present 'Accompt-Book; since they that *have got part*, 'may by the same Method have got the whole.' This is a direct Confession, that the Names of *Jones* and *Illington*, and others on which *Kelly* was questioned, were really *a Part* of the Cypher in use between him and his Correspondents in *France*: And as *Kelly* writ Word that *Illington* was the Person principally struck at, and knew very well by Mrs. *Barnes*'s Confession about the Dog, who *Illington* was understood to be; it amounts to a Confession, that that Exposition of the Name of *Illington* was true.

He then adds, 'All that lies in my Power 'now, will be to deliver to your Cousin *Rig* any 'Goods you can send by private Hands; he be-'ing determined not to receive them any other 'way.' So that by private Hands *Rig* was still willing to receive them.

[60] D. 27. [61] D. 29. [62] D. 47. 48. [63] D. 35. [64] D. 41. [65] D. 40. [66] D. 42.
[67] D. 27. [68] D. 29. [69] E. 47. [70] E. 49.

However

However *Kelly* ſays, 'If your Buſineſs can be 'conveyed any other way to him, you cannot do 'me a greater Favour: For to tell you the Truth, 'it is againſt my Opinion and Inclination to have 'any farther Dealing that way.' This ſhews what Dealing *Kelly* had hitherto had; and at the ſame time explains how *Carte* comes to be employed in managing the Biſhop's Correſpondence for the future.

Kelly adds, 'That he does not know how far 'this late Affair may affect *Rig*.' This ſhews that he knew *Rig* was engaged in ſome criminal Correſpondence; ſince the receiving a Dog from *France*, or being called by a fictitious Name, could not otherwiſe have affected him.

On the 16th of *July*, *Carte* writes a long [71] Letter about ſome MSS. and *Weſton*'s Opinion of them, as alſo that of *Finch*. What is meant by *Manuſcripts*, does not appear; neither is it certain who *Finch* is, but he is [72] ſpoke of as being in high Repute with *Weſton*.

On the 1ſt of *Auguſt*, *Dillon* [73] writes to *Carte*, 'That he cannot apply to a more ſufficient Judge 'than *Weſton* about his Concern with Mr. *Finch*:' And he often repeats, 'That he makes a moſt 'particular Caſe of Mr. *Weſton*'s Judgment; and 'that he relies entirely on *Weſton*'s Friendſhip and 'Advice;' and other Expreſſions of the like nature.

On the 14th of *July*, *Dillon* writes a [74] Letter to *Weſton* (the Biſhop) encloſed to *Carte*, in the following Words.

To Mrs. Weſton, *incloſed to Mr.* George Williams, *at Mrs.* Harbin's *over-againſt* Somerſet-Houſe.

Dear Madam, *Saturday* 25 *July* 1722.

'I Cannot on any reaſonable Grounds complain 'of your Silence, tho long it appears, becauſe 'I am informed of the Situation your Health, 'and the Concerns of your Family are in, by 'Bankrupts and Law-Suits. Permit me, however, 'to fulfil a part of my Duty in preſenting you my 'beſt Reſpects, and unalterable Attachment to 'you and yours. I wiſh this may find you ſo far 'recovered from paſt Miſchances, as that you 'may be once more in a Humour of affording 'me a comfortable Line. I have all the Stock I 'bought lying by, and I intend it ſhall remain ſo, 'until you adviſe me of the proper Time to diſ-'poſe of it: being fully convinced, that in the 'ſlippery Age we live in, I cannot confide to any 'better than you. I hear many ſay, that our 'Stocks will infallibly riſe again to a good height, 'by Mr. *Walpole*'s wiſe and able Management; 'from whence I ſhould hope not to be ſo much 'a Loſer in reſerving mine. Still my Lights at 'this diſtance can be but very imperfect: there-'fore, Dear Madam, I will earneſtly pray your 'Direction, when you find leiſure to grant me 'this Favour, as alſo of forgiving this Trouble, 'for which I offer amends in any manner I can be 'of ſervice to you. The few Acquaintances of 'yours I converſe with in theſe Parts, are well; 'and rely, as I do, on your friendly Advice in a 'moſt particular manner, about their Concerns in 'the Funds. They deſire you will be pleaſed to 'admit Mr. *Skinner* to receive your Commands, 'who is directed to call upon you, and explain 'ſome Particulars too tedious for a Letter. He 'ſeems to be very ready at Buſineſs, and will 'obey your Orders punctually. I am, with the 'greateſt Eſteem and Sincerity,

Dear Madam,

Your moſt Humble, and moſt

Obedient Servant,

Digby.

On the 16th of *July*, *Dennis Kelly* [75] writes word to *France*, that *Skinner* arrived in Town the Night before; that he had been to wait on him, longing much to know how the Fall of Stocks affected his Friends.

On the 26th of *July*, *Kelly* [76] writes to *Dillon*'s Secretary, 'That *Rig* and *Skin* had been lately 'together; and that before they met, *Rig* had 'ſent to him, to know if *Skin* ſtood well with '*Dillon* and Partners.' He adds, 'That *Rig* ſtill 'ſeems to promiſe his Aſſiſtance, if he can get 'the better of his Suſpicions: and that *Rig* went 'into the Country, the day after *Skin* and he had 'been together.' It appears by [77] a Depoſition annexed to this Report, that the Biſhop came to Town on the 19th, and return'd to *Bromley* on the 21ſt of *July*.

On the ſame Day that *Kelly* writ, *Stanley* (who is the ſame with *Skinner*) writes [78] to *Dillon*, 'I 'have been with *your Correſpondent* to whom the 'Letter of Credit was ſent, who has partly an-'ſwered my Demands, and *promiſes to comply in* '*all Points with your Directions*.' He then adds, 'I muſt now give you an Account of what Pro-'duct may be hoped for from the Publick Funds.'

Then follows a Paragraph, ſome few Letters of which are in Cypher, but as your Committee is informed, in ſuch an eaſy and obvious one, that any one that reads it, may with the leaſt Attention decypher it. In this Paragraph, inſtead of ſaying a Word about the Funds, he acquaints *Dillon*, 'That they are certainly betrayed by ſome 'one entirely in the Secret, who has given ſuch 'Light into all their Affairs, that the moſt mi-'nute Circumſtances are perfectly found out; that 'therefore he muſt caution him, as he is requeſt-'ed, to be very careful who he converſes with, 'even at *Paris*, without excepting any one.'

This Paragraph explains ſufficiently what is meant by *Stocks* and *Funds*; and it is remarkable, that in *Plunket*'s Cypher, *Brokers* is explained *Agents*. The owning themſelves diſcovered by ſome one *entirely in the Secret*, proves there was a *Secret*, and that the Diſcoveries of the Government were well founded.

He then adds, 'I have partly prevailed with 'the Correſpondent *(Weſton)* to undertake what 'he had firmly reſolved againſt, which is the pro-'curing *Arrack*, which *cannot fail ſucceeding by that* '*Channel*.' And on the 30th of *July*, *Carte* writes to *Dillon* in the following Words:

'I had the Honour of introducing Mr. *Stanley* 'to Mr. *Weſt*, who received him in the beſt man-'ner, and aſſured him of his Readineſs to ſerve 'him in what he could. Mr. *St.* was much pleaſ-'ed with him, but did not engage him to ſollicit 'in his *Arrack* Affair, which yet is of the great-'eſt conſequence to him, and Mr. *W.* is moſt 'capable of ſerving him in, becauſe in the Eſteem 'of all the Commiſſioners in whoſe Power it is 'to relieve him in the Caſe. And as Mr. *W.*

[71] D. 36. [72] D. 40. [73] D. 43. [74] D. 35. [75] D. 37. [76] D. 41. [77] D. 48 [78] D. 40.

'would

'would do it effectually, if engaged in it, ſo Mr. 'Stanley deſires me to beg the Favour of you, to 'requeſt the Favour of Mr. *W.* in a Letter from 'you to Mr. *Stanley*, which he is ſure would for-'tify the good Inclinations Mr. *W.* has already 'to ſerve him, and effectually engage him in 'the thing.'

The Original of this [79] Letter being ſtopped, is, as your Committee are informed, in *Carte*'s own Hand-writing.

What is meant by theſe myſterious Paſſages about *Arrack*, muſt be left to the Conjecture of the Houſe.

If this be compared with the Biſhop's [80] Letter to *Dillon*, and with [81] *Pancier*'s Depoſition, it is not improbable, that by *Arrack* may be meant Contributions of Money.

But whatever is meant by it, the Committee obſerve, that it was a Point of the greateſt Importance to the Conſpirators, ſince it was thought neceſſary to be laboured by a Perſon ſent from *France* on purpoſe; and the Biſhop's Reluctancy to come into it, argues it to have been ſomething very dangerous, and beyond the ordinary Lengths of his Compliance.

And they obſerve, that the principal Direction of the Conſpiracy under all the Diſguiſes of *Stock*, *Manuſcripts* and *Arrack*, is ſubmitted to the Biſhop's Judgment, on which, it is often ſaid, they do entirely rely.

Your Committee having thus laid before you the principal Matters in the intercepted Correſpondence, that relate to the Biſhop of *Rocheſter* more immediately, will now proceed to ſtate to you what they find in the ſame Correſpondence, relating to *George Kelly*; who, as has been ſhewn before, acted ſo much under the Direction and Influence of the Biſhop, that it cannot be ſuppoſed he would take any Step of Conſequence in an Affair of this Nature, without the Biſhop's being at leaſt made privy to it.

The Committee forbear repeating what was mentioned before about the Heads of Memorials to the Regent brought by *Kelly* to *Neynoe*; but they find ſome farther Particulars [82] in *Neynoe*'s Papers, relating to *Kelly* alone.

'That *Kelly* had owned to him his having been 'formerly at *Avignon* while the Pretender was 'there; that at his Return from *France* laſt 'Winter, he brought over ſeveral Papers and 'Letters, and among the reſt, one in *French*, 'in the Hand-writing of *Dillon*'s Secretary, inti-'tuled, *Reaſons humbly offered to Cardinal* Du 'Bois, *proving that the eſtabliſhing the Houſe of* 'Stuart *on the Throne of* England, *preferably to* 'that *of* Hannover, *is the real Intereſt of the* 'Crown *of* France, or to that Effect. That this 'Piece was brought to *Neynoe* to be tranſlated, 'which being written by a Papiſt, and turning 'much on the Advantage that would accrue to 'Popery, *Neynoe* adviſed againſt publiſhing it.

'That *Kelly* told him at other Times, that one 'Hundred Thouſand Pounds, nay, fifty Thou-'ſand Pounds would be ſufficient for bringing in 'the Pretender; and that he would warrant that 'Sum would be found.

'That whenever there happen'd to be a Stand 'made for the Pretender, great Numbers of Vo-'luntiers from *France* would appear for him: Which agrees with the Accounts ſent from thence, and with the [83] Letter from *Dillon*'s Secretary about ſecuring *Sadlers*, which *Kelly* explained to *Neynoe* to mean *Iriſh* Soldiers.

Neynoe farther ſaid, 'That *Kelly* propoſed to 'him to go over to *France*, and to ſettle in Lord 'Lanſdown's Family, where he ſaid he might be 'of Service, and promiſed to make his Recep-'tion eaſy.' And your Committee obſerve, that the very Time when *Neynoe* was taken going to *France*, *Kelly* [84] writ to *Dillon*'s Secretary, 'That he would ſoon ſee a young Fellow, whom 'he had mentioned to him ſome Time before, 'and that he might rely on his Honeſty.'

Neynoe farther declared, 'That *Bingley* his Fel-'low-Traveller (now in Cuſtody) lodging in the 'ſame Houſe with *Kelly*, when *Kelly* was firſt 'taken up, burnt a Bundle of Writings he had 'that Day received from *Kelly*.'

John Malone (formerly Servant to Mrs. *Barnes*) who waited on *Kelly* at his Lodgings, [85] has depoſed, that this *Neynoe*, *John Plunket* now in Cuſtody, *Carte* and *Dennis Kelly*, often viſited *George Kelly*.

As *George Kelly* is frequently deſigned by a great Variety of fictitious Names in the intercepted Correſpondence, the Committee think it proper firſt to apprize the Houſe, what Reaſon there is to aſſert, that thoſe Names do really belong to *Kelly*, and then to ſhew the Nature and Import of the Correſpondence carried on under thoſe Names.

It appears to your Committee, that ſince the Beginning of *April* 1722. (the Time of *Kelly*'s laſt Return from *France*) a great Number of Letters going to *France*, were by Order of the Government opened, and Copies of them taken; and that ſeveral of thoſe Letters, tho ſign'd by different Names, were [86] obſerved by the Clerks who copied them, to be all in the ſame Hand-writing; and [87] one of the Originals having been ſtopped for a Specimen of the Hand, and having been ſhewn to *John Malone*, he has [88] depoſed upon Oath, that he had often ſeen *George Kelly* write, and that he believes it to be his Hand. [89] Three other Papers ſeized at Mrs. *Barnes*'s, having been ſhewn to *Malone*, he has ſworn them ſeverally to be *Kelly*'s Writing; and the ſame three Papers having been ſhewn to the Clerks of the Poſt-Office, they have ſworn, That to the beſt of their Knowledge and Belief, as well the original Letters ſtopped, as the others ſent forwards, which were ſigned, ſome of them *Johnſon*, others *Hatfield*, *J. J. G. H.*, and *Wilkins*, were all in the ſame Hand with thoſe three Papers ſo atteſted.

This general Proof fixes ſeveral of the Names to belong to *Kelly*; and it is remarkable that if any one of the Names above-mentioned be allowed to belong to *Kelly*, all the reſt by which he ſigns, or is directed to, may, by the Series of his Correſpondence, be ſhewn to belong to the ſame Perſon.

But your Committee farther obſerve, that almoſt every individual Name he makes uſe of, is attended with ſome particular Proof, which determines it to belong to him; of which Notice will be taken as the Names are mentioned.

It has been obſerv'd already, that he came from *France* about the Nineteenth of *December*, *N. S.* 1721. and that a [90] Letter was found a-

79 D. 42. 80 D. 10. 81 D. 1. 82 E. 7. 8. 9. 83 E. 37. 84 E. 73. 85 E. 34. 86 E. 19. 87 E. 21. 88 E. 20. 89 E. 9. 90 D. 6.

mong the Biſhop's Papers, dated the ſixteenth of *December*, in which mention is made of a Letter received by *Johnſon*, and an Anſwer returned ſome time before in *Johnſon*'s Hand.

Neynoe [91] declared, that the laſt Memorial to the Regent, which *Kelly* employed him to draw up, was in *December* 1721, and that it contained a Demand of five Thouſand Men for the Aſſiſtance of the Conſpirators. In *February* following, [92] *Kelly* went again to *France*, and towards the End of *April*, the Government received unqueſtionable [93] Accounts, that repeated Application had been made to the Regent for ſuch a Body of Forces.

The Biſhop in his [94] Letters (writ ſoon after *Kelly*'s Return from *France*) acknowledges the Receipt of a Letter, and verbal Inſtructions from *Marr*, by *Hatfield*, and of a Letter by the Pretender from the ſame Hand, and mentions *Hatfield* as knowing his preſent Unfitneſs for Buſineſs.

But the Letters ſigned *Hatfield*, which were copied at the Poſt-Office, are [95] ſworn to have been in the ſame Hand with other Papers which are ſworn to be *Kelly*'s Hand-writing. And it appears by a [96] Letter from *Marr* to *Hatfield*, that he was the Perſon to whom the Dog was ſent for *Illington*; which ſhews *Hatfield* to be *Kelly*, and confirms *Neynoe*'s Information, that *Kelly* received Letters directed by the Name of *Hatfield*: And it appears that he not only brought over Letters from *France*, agreeably to what was told [97] Mrs. *Levett* by Mrs. *Barnes*, and confirmed by *Neynoe*; but that he was truſted with a Letter to the Biſhop from *Jackſon*, the Name made uſe of for the Pretender in [98] *Plunket*'s Cypher; which Cypher it is evident *Kelly* was no Stranger to, ſince he makes uſe of ſeveral other [99] Names found in that Cypher, to denote the very ſame Perſons that are there expreſſed and defined by thoſe Names.

On the twenty firſt of *April*, *Dillon*'s [1] Secretary writes to *Joſhua Vernon* (which will be ſhewn to be another of *Kelly*'s Names) congratulating his ſafe Return, and tells him, 'That his firſt Letter 'was very pleaſing to Mr. *Lane* (which is ex-'plained Lord *Marr* in *Plunket*'s Cypher) who 'waited with much Impatience for thoſe of *Mon-'day*, hoping to receive a more particular Ac-'count of his Bills, which he daily becomes more 'preſſed for; the Proſpect of a good Vintage 'increaſing by late Showers which had dropped 'there, and raiſed the Spirit of the Labourers. 'He adds, that it ſeems more plain, that on Ad-'vances of ready Money, good Bargains may be 'propoſed.'

He afterwards tells him, 'That *Dillon* adviſes, 'the Money, which *Kelly* mentioned in *Clynton*'s 'Hands, ſhould be equally divided between '*Medley* and the Pretender.' Who *Clynton* is does not appear to the Committee; but they ſee Reaſon to believe, from Paſſages in other Letters, that *Medley* means the late Duke of *Ormond*.

He then tells *Kelly*, 'That *Farmer* and Family 'are well, and that Mrs. *Hughes* became ſo very 'uneaſy ſhe was diſmiſſed, and is on return.'

This Paſſage ſhews, that *Farmer* means the Pretender, it being well known that Mrs. *Hughes* was Nurſe to the Pretender's Child, and was on her Return to *England* about this Time.

From this Letter your Committee obſerve, that *Kelly* was employed by *Marr* and *Dillon*, in ſoliciting Supplies for the Service of the Conſpirators; and that he had acquainted them of a Sum of Money lodged in the Hands of one, whom they call *Clynton*, which they adviſed ſhould be equally divided between the Pretender and *Ormond*. Whether *Kelly* was conſiderable enough to have this Advice ſent him for his own Government and Direction, or was only to be the Channel for conveying it to ſome other Perſon of greater Diſtinction, is left to the Conſideration of the Houſe.

On the twenty third of *April* (as has been obſerved above) *Kelly* ſent the Biſhop's Pacquet of Letters under Cover to *Gordon* at *Boulogne*, with [2] Orders to him to deliver it to a *tall black Man*, who would ſoon call on him for it.

This Perſon is in other Letters called *Crow*, and appears to your Committee by ſeveral concurrent Proofs, to be *James Talbot*, an *Iriſh* Papiſt, concerned in the *Preſton* Rebellion, and now in the *Spaniſh* Service.

Kelly in his [3] Examination before the Committee, owned his being intimately acquainted with this *Talbot*, and his having ſeen him the Morning he left *England*; and a [4] Letter ſigned *J. Talbot*, was ſeized among Mrs. *Barnes*'s Papers, in the ſame Hand with a [5] Letter ſent from *France* to *Kelly*, ſigned *J. T.* which is an Anſwer to [6] one writ by *Kelly* to *Crow*.

On the twenty ninth of *April* [7] *Gordon* acknowledges the Receipt of a Pacquet (already proved to be the Biſhop's) and ſays he delivered it to the Gentleman as he was directed, who ſet out for *Paris* on the thirtieth of *April*. On the firſt of *May*, *Dillon*'s Secretary [8] writes to *Kelly*, 'Your 'Friend *Crow* is arrived ſafe, and delivered the '*three Books you gave him*, as directed.'

On the ſecond of *May*, *Dillon* himſelf [9] writes to *James Baker* (which will be ſhewn to be another of *Kelly*'s Names) and ſays, 'I ſaw your 'Acquaintance *Crow* two Days ago, who deli-'vered me a Preſent from my Couſin *Jones*.'

And on the ſame Day *James Talbot* [10] writes to *Kelly*, 'That Mr. *Gordon* gave him the Pacquet at '*Boulogne*, which he delivered ſafe on *Monday* 'laſt, as directed. He adds, the Perſon received 'me very obligingly, and was much more open 'to me than I expected. Then, and ſince, he 'let me know *he does not deſpair of doing his Bu-'ſineſs*.'

On the ſeventh of *May*, *Kelly* [11] writes to *Dillon*, 'That *Illington* was glad to hear he had received 'his Letters by *Crow*, and wiſhed his next might 'be more to *Dillon*'s Satisfaction.'

From theſe Paſſages it appears at one View, that the Biſhop's Letters were ſent by *Kelly* to *Boulogne*, by the Poſt; and thence conveyed to *Dillon* at *Paris*, by *Talbot*, *Kelly*'s intimate Friend.

On the twenty fourth of *April*, *Dillon*'s Secretary [12] writes to *Kelly* a long Account of one *Xoland* (*Nicholas Wogan*) who was to command one of the Ships that was to be hired of ſome *Swediſh* Merchants at *Cadiz*.

[91] E. 10. [92] E. 17. [93] A. 2. [94] D. 11, 12. [95] E. 19. [96] E. 32. [97] E. 6. [98] C. 51.
[99] *Lane, Howell, Xoland, Cant.*
[1] E. 37. [2] E. 30. [3] E. 81. [4] E. 3. [5] E. 62. [6] E. 55. [7] E. 34.
[8] E. 38. [9] E. 26. [10] E. 40. [11] E. 41. *a.* [12] E. 31.

This

This agrees with Mr. *Craufurd*'s [13] Letter of the twenty fifth of *July*, *N. S.* 1722. in which he ſays that *Nicholas Wogan* was to have the Command of one of the Ships under *Morgan*, one of which having been lately taken at *Genoa*, the Commander (as your Committee are informed) has writ [14] over hither, that ſhe was hired of ſome *Swediſh* Merchants at *Cadiz*, with ſeveral other Circumſtances, which agree entirely with this Letter to *Kelly*, and ſhew for what Uſe thoſe *Swediſh* Ships were hired.

In the ſame Letter *Dillon*'s Secretary takes notice 'How kindly *Freeman* (the Pretender) had 'ſpoken of *Kelly* in his laſt.'

On the 30th of *April*, *Kelly* [15] anſwers this Letter, but calls *Nicholas Wogan* by the Name of *Moore*, and ſays, '*I wiſh his Chief may ſucceed in* '*his Journey.*' Which being compared with the Accounts [16] ſent about that Time from Mr. *Davenant* at *Rome*, that the Pretender was preparing to embark; makes it more than probable that he is *the Chief*, to whom *Kelly* wiſhes Succeſs.

Kelly then gives an Account of a very important Converſation he had with one *Hore:* Who is meant by *Hore*, your Committee will not take upon them poſitively to determine, but by comparing ſeveral Paſſages of the Letters together, it appears to them highly probable, that it is Sir *Harry Goring*; in which Opinion they are the more confirmed by *Hore*'s being mentioned as ill of the Gout in *France*, on the 14th of *September:* And *Kelly* takes notice in his [17] Pocket-Book, that Sir *H. G.* went to *F.* the 23d of *Auguſt*, which was the Day before the Biſhop was taken up.

In this Letter *Kelly* ſays, '*Hore* is moſt impa-'tient to have a more ſatisfactory Account from 'your Side; and hopes there may be room now 'to expect it, ſince there was nine remitted by '*Repney:* he will ſoon, as he tells me, ſend you 'two more, which with the Twelve thouſand 'Arms provided by *Mansfield*'s (*Ormond*'s) Rela-'tions, and which are now ready to be ſent where-'ever deſign'd, and paid for too, will, he hopes, 'bring Matters to ſome Proſpect of bearing.'

Your Committee obſerve, that this Impatience of *Hore* falls in, in point of Time, with the Account [18] Lord *Orrery* gave *Layer*, that Lord *North* and *Grey*, Sir *Harry Goring*, Lord *Strafford* and others, were going to do a raſh thing in favour of the Pretender. That it likewiſe agrees with the [19] Letter to *Dodſworth*, mention'd in the former Part of the Report; where it is ſaid, 'That 'the Hopes given by *G.* to expect a great Sum, 'and by *N.* that he had raiſed Twenty thouſand 'Pounds, induced *Ormond* to ſupply *Morgan*, and 'to make other neceſſary Proviſions;' part of which Proviſions appear to have been the Twelve thouſand Arms mentioned in [20] *Ormond*'s Letter of the 27th of *April*, in [21] Mr. *Stanhope*'s the 8th of *June*, and again in this Letter of *Kelly*'s.

Kelly adds, 'That he hears *Ormond* continues 'ſtill upon the old String, that he can get no Of-'ficers, and ſays, I wiſh the ſending over *Hore*'s, '*&c.* Commiſſions may not do more hurt than 'good; for that Affair is already become no Se-'cret, and may pique ſome Friends, as well as 'put Ill-wiſhers on their guard.'

This Paſſage ſhews that the Scheme for an Inſurrection was at that time in ſuch Forwardneſs, that Commiſſions were actually ſent over; and confirms the Account of the late Duke of *Ormond*'s being expected with Officers and Arms to ſupport it.

On the 1ſt of *May O. S. Dillon*'s Secretary writes [22] to *Kelly*, 'That he believes they have a 'ſufficient quantity of *Barrels* beſpoke, for the '*Wine* they intend to buy; and that he hopes '*Clynton* and Company have ſent *Malcom* half 'Money, which *Hore* ſaid he had, to pay for 'the *Barrels* which *Jacobs* has at his diſpoſal.'

It has already been ſhewn that *Malcom* means the Pretender, and as *Clynton*'s Money, which was before to be divided between *Ormond* and *Jackſon*, is now to be ſent half of it to *Malcom:* This is a farther Confirmation that *Jackſon* means the Pretender; and agrees with the [23] Intelligence from *France*, of Sums ſent about this time to *Ormond* and the Pretender.

In a Letter to *Kelly* of the 2d of *May*, was incloſed one [24] from *Dillon* to *Jemiſon*, who appears to be ſome intimate Friend of *John Plunket*'s, and [25] was preſent in *France*, when the Cyphers were ſettled between *Dillon* and *Kelly*; but his real Name is undiſcover'd.

In this Letter *Dillon* acquaints *Jemiſon*, 'That 'Mrs. *Freeman* intends to bring her Cauſe to a 'Trial as ſoon as poſſible; and that he believes 'Mr. *Abel*'s Departure will be no Detriment to 'her Pretenſions.' This Paſſage, compared with other Letters, ſhews that by *Freeman* is meant the Pretender, and by *Abel* his Majeſty; and confirms the Deſign of an Inſurrection at the beginning of *May*.

Dillon then deſires *Jemiſon*, 'To aſſure his Cou-'ſin *Rogers* (*John Plunket*) of his beſt Reſpects, 'and how much he depends on her friendly and 'kind Offices in his Family-Concerns, which have 'great need of ſo good Aſſiſtance.'

Plunket being [26] examined by the Committee in relation to this Letter, denied his knowing any ſuch Perſon.

On the 7th of *May*, *Kelly* [27] writes to *Dillon*, acknowledging the Receipt of the Letter for *Jemiſon*, mentions a long Diſcourſe he had with one whom he calls Mr. *Fox*, who reſented his being put out of the Pretender's Service by *Dillon*; but *Kelly* endeavour'd to convince him that *Dillon* had no hand in it, and laboured to regain him. Who *Fox* is, does not appear to your Committee.

Kelly then takes notice, 'That the Pretender's 'Favours to *Hore*, *&c.* had given great Offence; 'and that *Rogers* (*Plunket*) hearing of the Free-'dom which *Hore* and ſome of his Partners took 'with him, is much diſobliged at it, and order'd '*Jemiſon* to tell *Dillon* ſo.'

Your Committee obſerve from this Paſſage, that *Plunket* is treated as one whom it was thought of conſequence not to diſoblige; and that *Kelly* was appriſed of his Intimacy with *Dillon*.

Kelly then gives an Account of his having called on Mrs. *Medley*'s (the Dutcheſs of *Ormond*'s) Chaplain. The Letter which deſired him ſo to do, was directed to *James Baker*; and this in which he ſays he has called upon the Chaplain, is ſigned *J. J.* which ſhews that *James Baker* is the ſame with *J. J.* which are the initial Letters of *James Johnſon*.

On the 10th of *May*, *Kelly* [28] writes to *Dillon*'s Secretary an Account of the Diſcoveries made by

[13] A. 32. [14] A. 45. [15] E. 35. [16] A. 3. [17] E. 17. [18] B. 10. [19] AA. 6. [20] AA. 5. [21] A. 15. [22] E. 37. [23] A. 6. [24] E. 39. [25] E. 57. [26] C. 73. [27] E. 41. *a.* [28] E. 44.

the Government, and the Encampment of the King's Forces; but your Committee observe his Assurances of Success were so strong, that in the same Letter he says, 'The King will go abroad 'next Month, and if you can then compass *Bar-* 'rels enough, the sooner the *Wine* comes, I be- 'lieve the better.'

On the 19th of *May* he was taken into Custody; and it appears to your Committee by the Deposition [29] of one of the Messengers who seized him, that when he was seized he offered to draw his Sword, but was prevented. That the other Messenger being called out of the Room to rescue one of their Companions, who was in danger of being murdered in the Street, *Kelly* called to the People of the House to lock the Door; and seizing his Sword, which had been laid by in the Window, drew it, and made a Pass at the Messenger, who verily believes he did it with an Intention to murder him: That he afterwards made a second Pass, and swore if he came in again he would stab him; and said, that if the Secretary of State who signed the Warrant had been there, he would have done the same. That the Messenger going out to call for help, and returning within a Minute, was told, that *Kelly* had in the mean time burnt one of the Papers seized upon him.

Another of the Messengers [30] has deposed, That before *Kelly* offered this Violence, he had been shewn by the Messengers the Scutcheons or Badges of their Office, and likewise had been shewn their Warrant, signed by one of the Secretaries of State: That the Warrant was also shewn to a Person present in the Room, who perused it, and declar'd to *Kelly*, that it was a sufficient Authority for apprehending him.

Your Committee think it unnecessary to make any Observation on a Behaviour, which implies his having so strong a Sense of his own Guilt, that he rather chose to stand all the Consequences of resisting and assaulting his Majesty's Messenger in the Execution of his Office, than to let his Papers fall into the Hands of the Government; fearing (as may justly be concluded) that such a Discovery might prove fatal to himself, as well as others.

But your Committee find, that however careful he was to destroy all his Papers, yet one was seized upon him and preserved, which is of itself sufficient to prove him concerned in the treasonable Correspondence above set forth.

It was a List of Directions, in the following Words:

> *To* Anthony Saunders *Esq*; *or Mr.* Joshua Vernon *at* Will's *Coffeehouse*, Covent-Garden, London.
>
> *To Mr.* James Baker, *or* Arthur Stephens *Esq*; *at* Burton's *Coffeehouse in* King's-street, *near* St. James's, London.

By the three first of these Names, most of the Letters to him abovementioned came directed; and your Committee find, that a Person having been employed to watch at *Burton*'s Coffeehouse, who should take up Letters directed to Mr. *James Baker* at that House, has [31] deposed upon Oath, That on the 14th of *May* a Letter so directed being left there by the Postman, *George Kelly* came in and took the same, opened and read it, and went out of the House with a Letter in his Pocket to Mrs. *Barnes*'s.

It appears to your Committee, that when he was [32] examined before the Lords, the 21st of *May*, 1722. he endeavoured to account for his receiving Letters by various Names, by saying, That one Mr. *Talbot*, who was under a Cloud, and who went for *France* or *Spain about a Week before*, had desired him to call at Coffeehouses for Letters directed to the said *Talbot* by several Names; and particularly that the Letter directed to *Baker*, which he own'd he took up, was for the said *Talbot*. Yet your Committee observe, that the said *Talbot* [33] arrived at *Boulogne* on the 25th of *April*, and did himself send a [34] Letter from *Paris* to *Kelly*, on the 2d of *May*, signed *J. T.* directed *To Mr.* James Baker *at* Burton's *Coffeehouse* aforesaid; and Letters [35] continued to be sent by that Direction from *Paris*, till the time that *Kelly* was taken into Custody, tho *Talbot* was all that time in *France*.

Kelly being [36] examin'd by your Committee in relation to these Letters, persisted in the same Account, that they were for *Talbot*, and that the Occasion of *Talbot*'s going abroad, was, that *Talbot* had received an Account of General *Crofton*'s being dead, and of his having left him what he had. Which Particular, your Committee observe, agrees in part with *Neynoe*'s [37] Account, that *Kelly* had shewn him a Letter at *Burton*'s Coffeehouse, from *Dillon*'s Agent or Secretary, in which it was said, that the Death of General *Crofton* would be a great Loss to *Mansfield*, which Name *Kelly* explain'd to him to mean the late Duke of *Ormond*.

Kelly farther [38] owned to your Committee, 'That he went to *France* the beginning of the 'Winter 1721. and again the Spring following, 'on account of Transactions he had in the Stocks 'there. That he was desired by a Brother of the 'Lord *Dillon*'s to carry over to General *Dillon* an 'Act of Parliament relating to the Estate of that 'Family, but that this was the only Paper he 'carried. That he saw *Christopher Glascock*, who 'is a Captain in *Dillon*'s Regiment, and knew Sir 'John *D'Obryan*, who is *Dillon*'s Secretary, and 'had likewise seen *Colin Campbell* of *Glenderoule* at 'Coffeehouses, but had never spoke to the latter.'

Yet your Committee observe, that as in his Letters he often sends Services to Sir *John* and *Christy*, he does also to *Glen* and *Collins*, which last Name is explain'd *Glenderoule* in his own Cypher [39] taken among *Dennis Kelly*'s Papers. And when he was examin'd before the [40] Lords, he own'd his having receiv'd Letters from one *Glasgow* at *Paris*, which Name in *Plunket*'s Cypher is expressed by the fictitious Name of *Howell*, and has been shewn above to mean the same with *Quitwell*, *Querry*, *Bonnaville*, and other Names which belong to *Dillon*'s Secretary, and are subscribed to several treasonable Letters from *France*.

Kelly denied to your Committee his being at all known to the late Lord *Marr*, or *Alexander Gordon* of *Boulogne*; tho he own'd his going by the Name of *Johnson*, by which Name the [41] Letter to *Gordon* was signed, and the [42] Answer from *Gordon* directed: And the [43] Letter from *Marr* was directed to *Hatfield*, which Name has been shewn to mean the same Person as *James Johnson*, and has been prov'd by other Circumstances to belong to *Kelly*.

He own'd his writing to a broken Banker at *Paris* by a fictitious Name in relation to Stocks, but said that he had forgot the Name, and that

[29] E. 5. *a*. [30] E. 5. *b*. [31] E. 36. [32] E. 1. [33] E. 34. [34] E. 40. [35] E. 46. [36] E. 81. [37] E. 10. [38] E. 81. [39] F. 11. *a*. [40] E. 1. [41] E. 26. [42] E. 34. [43] E. 32.

he

he never received a Letter in his Life signed by a fictitious Name.

But your Committee had reason to believe from the whole Tenour of his Behaviour at his [44] Examination, that he grosly prevaricated with them; for at his first coming in, before he would make any Answer, he very formally insisted that nothing he should then say should be made use of against his own Life, nor as Evidence against any other Person: and upon these Conditions he promised to answer directly to all Questions that should be ask'd him.

Your Committee seeing some Reason from the manner of his insisting upon these Conditions, to believe that he was dispos'd to act ingenuously with them, order'd him to withdraw, that they might consider amongst themselves, how far it was in their Power, or proper for them to agree to Conditions, which would have made his Examination of no Effect; and upon his being called in again, and receiving such Answer as the Committee thought it in their Power to give, he deny'd his knowing any thing at all of the Conspiracy. This your Committee apprehend to be altogether inconsistent with the Conditions he insisted on, which manifestly imply'd that a Confession of all he knew, might endanger his own Life, as well as affect other Persons. But in the Course of his Examination he owned to them, that the Promise they had given him, was not satisfactory, tho, as he pretended, he could not have answer'd their Questions in any other manner, if their Promise had come up to the Conditions he insisted on.

Your Committee observe, that *Kelly* was admitted to Bail from his first Confinement about the seventh of *June* last, and they conceive it to be a great Aggravation of his Guilt, that he immediately took advantage of this Enlargement to resume the same treasonable Correspondences, and to send triumphant Accounts to *France*, of his having baffled the Government by the harden'd Obstinacy of his Behaviour; thereby improving, as far as in him lay, the Liberty granted him by the Favour and Indulgence of the Laws, to the Subversion of our happy Constitution. For on the 11th of *June*, but a very few Days after his being out on Bail, he sent a long [45] Letter to *Gerrard*, (whom your Committee believe to be Sir *John D'Obryan*, as has been already observ'd) in which, the better to disguise the Matter, he gives an Account of his Cousin's late Misfortune, as from a third Person; but in a [46] subsequent Letter to *Dillon* the 18th of *June*, he owns the writing this Letter himself.

In this Letter to *Gerrard* he says, 'That he 'was bail'd the *Thursday* before, and that the 'Judges were never known so severe in any Case 'of the like kind: that most of the Questions 'ask'd him at his Examination were about a lit'tle Dog which he got from a Surgeon when he 'was last in *France*; that they mention'd no Per'sons to him but General *Dillon*, and one Mr. '*Morgan*: that to the first he owns he is a little 'known, having carry'd over an Act of Parlia'ment to him that concern'd his Family, but 'that the latter he never saw: that Lord *Car'teret* had a List of five or six Cant Names, as he 'call'd them, which were *Illington*, *Jones*, *Howel*, '*Quitwell* and *Hacket*, and what he never heard 'of before; that however they would persuade 'him he knew some Persons that were meant by 'those Names, which he vows he never did, and 'whosoever *Illington* is, he was the Person princi'pally struck at. That he is not at all satisfy'd 'with the Behaviour of his Friends: that *Gerrard*'s 'old Friend *Rig* indeed offer'd all that could be 'expected of the poor Man; but others in whose 'Power it was to do more, shew'd no Concern at 'all for his Misfortune. That he lay ten Days in 'the closest Confinement, without so much as a 'Message from any of *those* that he depended 'most upon; that it is well he had no Secrets to 'reveal, since such Usage might provoke a pas'sionate Man, and that the World is pretty well 'convinc'd that he had not, since no Persons 'seem'd to be the least apprehensive that he could 'do them any Mischief.

'That this shews what the Friendship of some 'People is; but whilst there is *one righteous Per'son*, we must, for his sake, overlook greater 'Misfortunes.

'That he is very well, and under no great 'Concern for any thing as to himself but the Ex'pence, having more than his own to answer.

'He concludes, with desiring *Gerrard* to di'rect under Cover to Mr. *Andrews* at the *Dog and* 'Duck in St. *James's-street*.'

Your Committee find, that after this Time several Letters did come from *France*, directed to Mr. *Andrews* at the *Dog and Duck*, and that the Master of that House having been examined, [47] has deposed on Oath, 'That one *Andrews* or'der'd him to take in Letters that should come 'by the foreign Post so directed, and that three 'of those Letters were directed to the *Dog and* 'Duck in *King-street*, by Mistake; but were 'afterward brought to his House in St. *James's*-'*street*, and taken up by *Andrews*, who happen'd 'to be there when they came in.'

It appears farther to your Committee, that the said *Andrews* having been examin'd, [48] has deposed on Oath, 'That Mr. *Johnson* alias *Kelly*, 'desired him to take in some Letters directed to 'him, *Andrews*, at the *Dog and Duck* Ale-house 'in St. *James's-street*; that he received in the 'whole four or five in the Months of *July*, *Au'gust* and *September* last, to the best of his Re'membrance; that they appeared by the Charge 'of Postage to be foreign Letters, and that he 'delivered them unopened to the said *Johnson* 'alias *Kelly*, who paid him the Postage; that he, '*Andrews*, knew nothing of the Contents, not 'ever return'd any Answer to them.'

On the 18th of *June*, [49] *Kelly* writes to *Crow* (*James Talbot*) giving him an Account of his late Misfortune, and the Reasons of his Silence, and mentioning his Design of going over into *France*, as soon as his Appearance in *Westminster-Hall* should be over.

'He then sends his Service to all Friends, par'ticularly to Sir *John* and *Christy* (Sir *John* 'D'Obryan and *Christopher Glascock*,) and desires 'Talbot to tell the latter he must find out some 'other Address for him to write by, since he has 'good Reasons for not using the former, which 'have prevented him from writing to him these 'ten Days past, and that if it were to a *French* 'Person, it would be so much the better.'

[44] E. 81. [45] E. 47. [46] E. 49. [47] E. 50. [48] E. 51. [49] E. 48.

Your

Your Committee obſerve, that ſoon after a *French* Direction to Monſieur *Maſſonneuve* [50] was ſent over to *Kelly* by *Chriſtopher Glaſcock*, which *Kelly* made uſe of for ſome time, and the [51] original Letter in *Kelly*'s Hand ſtopt at the Poſt-Office, is ſo directed. They likewiſe obſerve the Reaſons which *Kelly* ſays he had, not to make uſe of the old Directions, appear evidently to have been, that he was queſtioned before the Lords on the Names of *Howell* and *Quitwell*, which were the Names made uſe of for *Glaſcock*.

He concludes his Letter to *Crow*, with deſiring him to direct to him by the Name of *Wilkins* at *Will*'s Coffee-houſe; and your Committee obſerve, that not long after [52] a Letter came ſigned *J. T.* and ſo directed; which was ſtopt, and is in the ſame Hand with the [53] Letter ſigned *J. Talbot*, ſeized at Mrs. *Barnes*'s; which confirms *Talbot* to be *Crow*.

In this Letter to *Crow* was encloſed one from *Kelly* to *Dillon* by the Name of *Dixwell*; the Subſtance of which has been partly ſet forth in that Part of the Report, which relates to the Biſhop of *Rocheſter*. In this Letter 'he deſires to be excuſed from meddling in Buſineſs for ſome time; but ſays, it does not proceed from any Change of Opinion, or Reſentment of the little Concern that has been ſhewn him; but from a Conviction, that without changing both their Method and their People it will be impoſſible to make any thing of it.'

Kelly adds in this Letter: 'Your Correſpondents at *Will*'s and *Burton*'s are gone, and deſire you may write no more that Way; and when you do me that Favour, pleaſe to addreſs under Cover to Mr. *David Wilkins* at *Will*'s Coffee-houſe, *Covent-Garden*, and not to *Andrews*, as I deſired.'

This Paſſage confirms the Liſt of Directions to *Will*'s and *Burton*'s, found in *Kelly*'s Pocket; and ſhews that the Letters to *Wilkins*, as well as *Andrews*, were for *Kelly*, tho, as is before obſerved, 'he denied the having ever received any Letter under a fictitious Name.'

On the twenty-eighth of *June*, *James Talbot* [54] writes to *Kelly*, 'congratulating him on his Enlargement and Behaviour, and expreſſing his Surprize, that he ſhould at ſuch a Juncture have Reaſon to complain of want of Friends.'

On the ſame Day *Glaſcock* [55] writes to *Ireton* under Cover to *Andrews*; and as *Andrews* delivered theſe Letters unopened to *Kelly*, this ſhews that *Ireton* is another Name for *Kelly*, of which the Matter of the Letters furniſhes abundant Proof.

In this Letter *Glaſcock* takes notice, that *Kelly*'s Letter to *Chitwood* came ſafe. This refers to *Kelly*'s Letter of the eighteenth to *Dixwell*, and ſhews *Chitwood* to be another Name for *Dillon*.

'That what he had recommended in relation to the New Book of Accounts would be obſerved, and that *Forreſter* had the ſame Advice given to him and *Ormond*.' Who *Forreſter* is does not appear to the Committee, but as he is mention'd here with the late Duke of *Ormond*, he is probably the Perſon who wrote the Letters to *Dunville* and *Dodſworth* above-mentioned.

Glaſcock then tells him, 'That *Ormond* had expreſſed much Concern for what had befallen *Kelly*. He afterwards deſires the Particulars of his Caſe, and to know what is wanting for paying off the Doctor's and Apothecary's Bills, acknowledges the Receipt of a Letter from *Rogers*, and inquires after *Jemiſon*.'

On the twenty-eighth of *June*, *Kelly* [56] writes to *Talbot* 'of the Neglect that had been ſhewn him, and the Reaſons that he had to decline any *farther Traffick* with the Merchants here; he ſays, if *Talbot* perceives no likelihood of a *ſudden Change for the better*, he muſt retire to ſome cheap part of the Country, if *Dillon* allows of it; expreſſes his great Obligations to *Dillon*, and his Readineſs to execute any *private* Commands of his;' and adds, (what appears to your Committee very remarkable) 'If I were in a Condition to bear the *Weight of publick Buſineſs*, *Dillon* ſhould never be at the trouble to employ another, but that he is heartily ſorry *Dillon* himſelf has done it ſo long, for ungrateful People on this Side; ſays, he never intended to trouble his Friends on this Side on his own *private* Account, *but publick ones of this Nature* are what he thinks *they* ought to take care of, ſince they are beſt able to do it, and expect the *beſt Returns for it*.'

Your Committee obſerve from Paſſages, that, tho *Kelly* would have it believed he only correſponded with Perſons in *France* on private Affairs, relating to the Stocks, yet he here owns in effect, that he had been truſted with Affairs of a *publick* Nature, and that thoſe Tranſactions having brought on him the Diſpleaſure of the Government, it was reaſonable for him to hope for Support from thoſe in *England*, who expected the beſt Returns from his and *Dillon*'s joint Labours.

Your Committee farther obſerve, that this Letter was directed to *Crow*, and yet in it was incloſed one from *Ireland*, relating to Family Affairs, directed to *James Talbot* Eſq;.

On the fourth of *July*, *Glaſcock* [57] writes to *Kelly*, 'That *Dillon* intended to have ſent him a Letter of Credit by the Poſt, drawn on Mr. *Harrold*, but kept it back till he heard from him, for fear by removal into the Country, or by any other Accident, it ſhould be loſt.

On the eleventh of *July* *Glaſcock* [58] repeats the ſame, and his Suſpicion that the Letters to *Andrews* had miſcarried. Then acquaints *Kelly* with kind Expreſſions that he had ſeen from Dr. *Freeman* and Mrs. *Malcom* (the Pretender and his Spouſe) in relation to *Hawksby*'s firſt Operation in his late violent Diſtemper.

Your Committee obſerve from what follows in this Letter, that, tho in *Plunket*'s Cypher *Hawksby* ſtands for King *George*, yet in the Pretender's Cypher it ſtands for *George* without any Addition, and appears for that Reaſon to be made uſe of to denote *George Kelly* in this Place. Be that as it will, it is evident from what follows, that *Kelly* is the Perſon here meant.

The Pretender's Words mention'd in this Letter are as follows:

'*Hawksby*'s ſteddy and reſolute Behaviour in the firſt Operation, anſwers the good Opinion I have long had of him; I am fully perſuaded that all the Surgeons will do hereafter ſhall not be able to alter his Temper, and I hope he will come off with Patience and a ſhort Confinement, by which his Health will become more perfect and ſatisfactory to his Friends.'

[50] E. 54. [51] E. 21. [52] E. 62. [53] E. 3. [54] E. 53. [55] E. 54. [56] E. 55. [57] E. 56. [58] E. 57.

Glaſcock

Glaſcock then adds, 'Mrs. *Malcum* (the Pretender's Spouſe) in her ſhort way of Expreſſion, 'ſays, *I am truly glad that honeſt* Hawksby *is recover'd, for I take him to be a very valuable Man.*'

Then he ſays, 'I know theſe Compliments will 'be comfortable to a ſick Perſon from his Friends, 'for which reaſon I trouble you with them, as a 'Proof of my Attention towards one I wiſh ſo 'well.'

Theſe laſt words ſhew, that this Comfort was intended for *Kelly*, to ſupport him under his Trouble, which is diſguis'd under the Notion of Sickneſs; and your Committee think it unneceſſary for them to make any Obſervation on a Paſſage, which ſhews ſo plainly *for whoſe ſake* it was underſtood he had brought this Trouble on himſelf.

Glaſcock next tells him, 'That as he is upon re-'gulating his new Book of Accounts, he ſhould 'be glad to know whether *Kelly* and *Jemiſon* had 'thoſe by them, they and *Glaſcock* rectify'd to-'gether.'

This ſhews that *Kelly*'s Journeys into *France* were not wholly on private Affairs, and confirms [59] *Neynoe*'s Account of his having ſeen Cyphers in *Kelly*'s Hands, and is again confirm'd by the [60] Cypher found among *Dennis Kelly*'s Papers, which is in *George Kelly*'s Hand-writing.

Glaſcock then ſends him the *French* Direction he had deſired.

On the ſeventeenth of *July Glaſcock* [61] writes again to *Kelly*, to let him know why the Bill was not ſent, and to deſire a ſure Addreſs. He likewiſe cautions *Kelly* not to draw any more on *Digby*, but on Meſſieurs *Chitwood* and *Dupleſſis*, at Mr. *Hues Banker rue de la Monnoye*. Your Committee obſerve, that this was about the time that Mr. *Crawfurd* [62] made the Diſcovery above related about the Name of *Digby*; and that for ſome time after *Kelly* directs his Letters for *Dillon* to *Dupleſſis*, till a new Cypher, which he, *Kelly*, ſent over afterwards, came to be made uſe of.

On the 19th of *July*, *Kelly* [63] writes to *Glaſcock*, that Mr. *Andrews* received the ſeveral Letters from *Glaſcock* all together; which was occaſioned by a Miſtake in directing them to *King's-ſtreet*, inſtead of St. *James*'s; which agrees with *Andrews*'s [64] Depoſition above-mention'd.

He then 'returns Thanks for the Letter of 'Credit intended him, and ſays it will come ſafe 'either to Mr. *Wilkins* at *Will*'s Coffee-houſe, or 'to Mr. *Andrews* at the *Dog* and *Duck*.' This, compared with *Andrews*'s Depoſition, ſhews that the Bill was for *Kelly* himſelf: which Obſervation the Committee think it proper to make, becauſe, when he was examined before them in relation to the Letters directed to *Andrews*, tho nothing was ſaid to him about the ſaid Bill, he immediately endeavour'd to explain away that Matter by the following [65] Prevarication.

He ſaid, 'He had been deſir'd by one Mrs. '*Oxburgh* in the City, Daughter to him who was 'executed, to receive ſome Letters for her from 'abroad, and that he did not know, but he might 'employ one *Andrews*, or ſome other Friend to 'take up ſuch Letters. That he had likewiſe re-'ceived ſome Money on a Bill for the ſaid Mrs. '*Oxburgh*, of a little Man a Banker in *Lothbury*, 'or ſomewhere behind the *Exchange*, and that he 'had endorſed the Bill with his own Hand.'

Your Committee obſerve that this laſt Circumſtance makes it probable the Bill was for himſelf, ſince his Endorſement on a Foreign Bill (which is not uſually made payable to the Bearer) would not have entitled him to have received the Money, nor have been a ſufficient Diſcharge, except the Bill had been made payable to him.

They likewiſe obſerve, that Mr. *Martin Harold*, on whom the Bill was drawn, whom *Kelly* avoided to name, does live behind the *Exchange*, tho not in *Lothbury*; and in *Glaſcock*'s [66] Letter of the Twenty-fourth of *July*, *Kelly* is particularly directed to indorſe the Bill on *Harold* with his own Name. Your Committee ſubmit it to the Conſideration of the Houſe, whether it is not evident from theſe Circumſtances, that *Kelly* received the ſaid Money for his own uſe, as a Reward for his Sufferings, and an Encouragement to perſiſt in his Obſtinacy.

On the 23d of *July*, *Kelly* [67] writes to *Talbot*, 'That this Bill, and the hopes of Succeſs in ano-'ther Particular, when the Term is over, makes 'him a little eaſy.

'That as to what they had ſo often talk'd a-'bout, he did not know what to ſay to it, and 'that *Nicholas Wogan*'s Return gave him the leſs 'hopes of it; but that he heard the *Beautiful Squire* 'was certainly determin'd on ſomething, but 'when, and in what manner, is what he knows 'nothing of.' Who is meant by the *Beautiful Squire*, the Committee cannot take upon them to determine; but they obſerve this Letter was writ the Day after *Layer*'s return by *Epping* from *Norfolk*, at which time he told [68] *Plunket*, 'That the 'Pretender's Friends would run down the Miniſtry 'and King *George* in a little time, and bring 'the Law-Suit to bear on their own bottom, 'independent of the Regent, or any Body elſe;' as is related in *Plunket*'s Letter of the ſame Date with this of *Kelly*'s.

On the 2d of *Auguſt*, *Kelly* [69] writes to *Glaſcock*, 'That he had received the Bill. That his 'Letter of Licence is not out till the end of '*October*, and that his Creditors threaten then to 'ſhew him no mercy: In the mean time he muſt 'hope the beſt, and wiſh that ſome good Turn 'of Fortune may enable him to do them juſ-'tice.'

He adds, 'That he expected to have ſent the 'State of their Accounts before now, but that 'the Gentleman who was to carry them, met 'with an Accident the other Night, which pre-'vented him; therefore he cannot do it till he 'recovers, or ſome other Opportunity offers:' Then ſends a long Account of *Dennis Kelly*'s being taken up.

On the 6th of *Auguſt* [70] he ſends the ſame Account to *Dillon*, and mentions the great Terror the Guards are under from Informers; which Intelligence your Committee obſerve, was thought conſiderable enough to make an Article in the Pretender's late Declaration.

On the ſame day he ſends [71] *Glaſcock* an account of *Sample*'s, *Cotton*'s, and one *Campbell*'s being taken up; 'That there were Reports 'of one Sir *Harry Goring*'s being taken, and of 'Forces being ſent for the Lord *North* and *Grey*,

[59] E. 10. [60] P. 11. 2. [61] E. 58. [62] A. 31. [63] E. 59. [64] E. 51. [65] E. 81.
[66] E. 61. [67] E. 60. [68] C. 63. [69] E. 66. [70] E. 67. [71] E. 68.

'Lord

'Lord *Strafford*, and other Perſons of Quality; 'but that he finds that there is no Truth in them, 'and is told that the two laſt are come to Town. 'He then deſires to know *Dillon*'s private 'Thoughts from whence the ill Report of his 'Couſin's Circumſtances comes, which has occa- 'ſion'd this Severity from his Creditors, and ſays, 'he hopes ſoon to ſend the State of their Ac- 'counts, which has hitherto been delay'd for 'want of a proper Hand.'

On the 9th of *Auguſt*, *Kelly* [72] writes to *Glaſcock*, 'That *Den* is come to Town, and behaves 'like a Friend; but that *Rep* is ſtill in the Coun- 'try, and ſo is *Ho*; and that the latter had ear- 'neſtly deſired *Kelly* to go to him for a few Days, 'which he had hopes of doing, but intended to 'make but a ſhort ſtay.'

Your Committee ſee reaſon to believe, that by *Ho* is meant *Hore*; and they find an Entry into *Kelly*'s Pocket-Book of his having been at Mrs. *H.*'s, and another Entry in theſe Words; *To enquire for Mr.* —— *at Mr.* William Bayſing's *at* Horn-Dean, which is a Houſe much frequen- ted by Sir *Harry Goring*, as appears by a [73] De- poſition annexed to this Report.

Who are meant by *Den* and *Rep* your Com- mittee will not take upon them to determine, tho they think this Letter compared with that writ three Days before, may lead to a Diſcovery of the Perſons meant.

On the 13th of *Auguſt*, *Kelly* [74] writes again to *Glaſcock*, 'That he intends to viſit *H.* who being 'at a pretty good Diſtance in the Country, he 'cannot return under four or five Days. Which agrees with the Circumſtance of his going down as far as *Horn-Dean* near *Petersfield*.

He afterwards adds a very remarkable Para- graph in theſe Words: 'What would you adviſe 'poor *Trotter* to do, he is ready to take a Voyage 'any where, and is, you know, an honeſt and fit 'Perſon for that Buſineſs; he has wrote very 'earneſtly to me for my Advice, which I told 'him I could not give till I heard from you.'

Your Committee think it their Duty to ob- ſerve to the Houſe, that in the [75] Cypher found among *Dennis Kelly*'s Papers, in *George Kelly*'s own Hand-writing, *Trotter* is one of the fictitious Names ſet over againſt the Name of *Carte*, and that on the Day this Letter was writ, His Majeſty had iſſued his Royal Proclamation for apprehending the ſaid *Carte*, againſt whom it is there ſet forth a Warrant had been iſſued by one of the Secreta- ries of State for Treaſonable Practices, and that he had abſconded and fled from Juſtice.

Yet it appears from this Letter, that *George Kelly*, far from diſcovering where the ſaid *Carte* was con- ceal'd, was deſirous to promote his Eſcape, by getting him invited to undertake a Voyage into foreign Parts; and that notwithſtanding the trea- ſon ble Practices alledged againſt him, he here gives him the Teſtimonial of an honeſt Man, owns his having had Communication with him by Let- ter, after the Time of his Eſcape, ſolicited *Glaſ- cock* in his Favour, and undertakes to aid and aſſiſt the ſaid *Carte* with his Advice, as ſoon as he ſhould have an Anſwer from *Glaſcock*.

On the 13th of *Auguſt*, [76] *Glaſcock* writes again to *Kelly*, in relation to the Bill on *Harold*, and mentions his expecting the Gentleman ſoon that was to clear Accounts.

He afterwards tells *Kelly*, 'That Mrs. *Muſ- 'grave* had received Advice from her Father, 'that ſhe is not to expect a Farthing of the Al- 'lowance due to her for the Time paſt, or to 'come, which *Allen* had procured a Seizure of, 'on account of her Husband's Debts and Miſ- 'management.'

Your Committee, from comparing this Letter with others, where *Muſgrave* is mentioned, and from obſerving the Date, ſee reaſon to believe, that this Paſſage relates to the ſtopping a Penſion, which the Committee are informed by his Ma- jeſty's ſingular Bounty and Indulgence, and upon Application from the late Lord *Marr*, and Pro- miſe of Services, was allowed to him; and they cannot reflect, without Indignation and Aſtoniſh- ment, on the black Ingratitude of Perſons, who, while they were in a great meaſure ſubſiſted by his Majeſty's unexampled Liberality, were labour- ing by the moſt wicked and unjuſtifiable Practices to diſpoſſeſs him of his Crown, and to deſtroy his ſacred Life.

On the 17th of *Auguſt*, *Glaſcock* [77] writes again to *Kelly*, and among other things ſays, 'He is 'contriving to get at *Barker* for a Relief in favour 'of *Farmer*'s (the Pretender's) Children, in caſe 'their Step-Father ſhould pretend to deprive 'them of their Due.' It appears by another [78] Letter, *Barker* means ſome conſiderable Perſon in *France*; but what this Paſſage particularly re- lates to, your Committee cannot with certainty determine. However, they have thought it their Duty to lay this and other obſcure Paſſages be- fore the Houſe, that it may be ſeen how much it is in the power of Perſons now in cuſtody to diſ- cover; and of what Importance it is to the Safe- ty of his Majeſty's Government, that ſuch Diſ- covery ſhould be required at their Hands.

On the 20th of *Auguſt*, three Days before the Biſhop of *Rocheſter* was taken into cuſtody, *Kelly* [79] writes to *Glaſcock* (the Original of which Letter is ſtopp'd, and ſworn to be his Hand-writing;) and ſays, Your Couſins *Ireton* and *Wilkins* are both gone into the Country, and earneſtly beg the favour of you not to write to them any more *for which you will ſoon know the Reaſons.*

On the 30th of *Auguſt* he [80] writes to *Dillon*; and after giving a very long and particular Ac- count of all the Circumſtances of the Biſhop's be- ing taken up, examined, and committed to the Tower, he ſays, 'You are by this ſatisfy'd of 'the *Reaſons of my late Silence.*' Your Committee obſerve, That theſe Paſſages ſhew the Connection which *Kelly* thought there was between the Biſhop and himſelf.

In the ſame Letter of the 20th of *Auguſt* your Committee obſerve another very remarkable Cir- cumſtance; *Kelly* ſays, that he is going to the Country that Day, and he had ſaid [81] before that he was going to Mr. *Hore*'s.

In his [82] Pocket-Book notice is taken, that Sir *H. G.* went to *F.* on the 23d.

On the 14th of *September*, *Glaſcock* [83] writes him word, 'That Mrs. *Hore* was under a Fit of her 'old Sickneſs at *Rouen*; but that it was not ſafe, 'for many good Reaſons, to have her tranſported 'to *Paris*, there being abundance of Quacks go- 'ing about, which cauſe much Miſchief.'

[72] E. 69. [73] E. 80. [74] E. 70. [75] F. 11. 2. [76] E. 71. [77] E. 72. [78] E. 71.
[79] E 21. [80] D. 45. [81] E. 69. [82] E. 17. [83] E. 74.

From this time forwards *Kelly* makes uſe of a new *Cypher* of Names, and new Directions to his Letters.

On the 27th *Kelly* [84] writes again, and ſays, 'That ſince Mr. *G. Sampſon* went, he has not 'heard a Syllable from his Correſpondents in 'France, which has been a great Detriment to 'ſeveral of their Friends.'

On the 9th of *October* [85] *Glaſcock* ſends him word, 'That all the Letters he wrote *by the Poſt*, 'came ſafe; but that he had not yet ſeen the 'Perſon who was to deliver him the particular In-'ſtructions and Addreſs he was to make uſe of, 'that Perſon being ſtill detained in the Country; 'but that he had taken meaſures to get from him 'the Memorandum *Kelly* had given him.'

On the 17th of *October*, *Glaſcock* [86] ſends *Kelly* word, 'That the Book of Accounts ſent by *G.* 'Saunders is at laſt come to hand, tho the Perſon 'that brought it is ſtill in the Country, ſo that 'they are now in a Condition to ſettle Accounts 'with *Kelly*.' And from this time forward the Correſpondents in *France* make uſe of a new Cypher of Names, and new Directions to their Letters.

From all theſe Circumſtances, your Committee ſee reaſon to believe, that *Kelly* ſent over a new Cypher, and a new Liſt of Directions to *France* by Sir *Harry Goring*; in which they are the more confirm'd, by obſerving that this new Cypher appears fram'd in ſuch a manner, that the initial Letters of the real Names are always prefixed to the fictitious ones, which laſt are frequently varied, but the initial Letter never. This will be more clearly underſtood by inſtancing in one of the Names.

The Perſon who carried over the Cypher and Liſt of Directions from *Kelly*, is in ſome Letters call'd *G. Sampſon*; in others *G. Stephenſon*, *G. Saunders*, and *G. Sandford*; and appears to be the ſame with Mrs. *Hore*, who was obſerved before to be probably Sir *Harry Goring*.

Your Committee farther obſerve, That all the Names made uſe of in the new *Directions*, were enter'd by *Kelly* in the [87] Pocket-Book that was taken upon him when he was laſt ſeiz'd, with ſuch Marks and Obſervations before them, as need no great Explanation. Over-againſt the Names of *Bonnaville* and *Diſode*, is writ the Abbreviation *Glaſ.* and a [88] Letter ſigned *Diſode*, having been ſtopped at the Poſt Office, appears to be in the ſame hand as thoſe ſigned *Howell*, *Quitwell*, *Querry*, &c. which were ſhewn above to have been writ by *Glaſcock*. Over-againſt *Briſac* and *Du Puy*, is writ *Stur*; and your Committee find that Letters came for *Kelly*, directed by theſe Names to *Sturgis*'s Coffee-houſe. Over-againſt *Contade* and *Lunelle*, is writ *Slau*; and your Committee find, that Letters thus directed were left for him at *Slaughter*'s Coffee-houſe.

The Committee are ſenſible, that their entering into ſo minute a Detail, muſt be tedious to the Houſe; but as the Conſpirators have been no leſs induſtrious, than they are obſtinate in concealing their Treaſon, your Committee have thought it their Duty to trace it thro' every Diſguiſe, as near as they could, and to lay before the Houſe every Circumſtance which may any way tend to a Diſcovery ſo neceſſary for the Safety and Quiet of theſe Kingdoms, and yet ſo little to be hoped for from the preſent Temper and Diſpoſition of the Conſpirators themſelves.

The firſt [89] of *Kelly*'s Letters, writ in this new Cypher, is of the 10th of *September*, directed to *Bonnaville* (*Glaſcock*) under Cover to *Hues*, Banker at *Paris*.

In this he ſays, I hope you have ſeen *G. Stephenſon* before now, and mentions a Trunk that he is ſoon to ſend to him; which Circumſtance ſhews he is the ſame Perſon meant by *G. Sandford* in other Letters.

He then takes notice of a young Fellow that he had recommended, (which was obſerved before to be probably *Neynoe*) 'and earneſtly begs the 'Goods he carries with him may be diſpoſed of 'at any Rate; and, if poſſible, without Mr. *L.* 'Crawford's or his Partners being concerned in 'the Bargain.' Your Committee obſerve from *Neynoe*'s Informations, that he was to be recommended by *Kelly* to Lord *Lanſdown*'s Family. They likewiſe obſerve from ſeveral other Letters, that *Dillon*, upon the Caution given him by *Skinner* from the Biſhop of *Rocheſter*, was grown very jealous of his former Friends at *Paris*; from which Circumſtances, they think it probable, that by *L. Crawford*, is meant Lord *Lanſdown*.

He then adds, 'Your Couſin *C. Saunders* is 'well, and with a Friend in the Country, who 'will take particular care of her, till a better 'Service can be got for her.'

This compared with what he ſays in his Letter of the 13th of *Auguſt*, of *Trotter*'s having writ to him for Advice, and wanting to be employ'd in a Voyage or other Buſineſs, makes it probable, that by *C. Saunders* is meant *Carte*.

He then adds, 'Your Relations *N. Crone* and 'S. *Farrel* have made ſeveral Bargains for ready 'Money in the third Subſcription; and as the 'time allow'd by Parliament for Non-proſecution 'will be out, as ſoon as it ſits, their Creditors 'will then fall upon them and all their Friends, 'and put them in Jayl, except you can ſend them 'ſome Relief: And tho your Actions are at a 'very low Price, however, I believe, they would 'be extremely pleaſed to have them ſold at any 'rate, to enable them to pacify their Creditors 'on this ſide, and to put them in a ſtate of 'Safety.'

It has been obſerv'd that the Conſpiracy is often treated of under the Cant of *Stocks*; and whether this third Subſcription may not mean the third Period of Time fix'd by the Conſpirators, and the Relief deſired be not ſome Aſſiſtance from abroad, is ſubmitted to the Conſideration of the Houſe.

That this Paſſage cannot be underſtood in the literal Senſe, is evident from its being ſaid, that the Time of Non-proſecution expires at the Sitting of the Parliament; but your Committee apprehend, that the Meaning of this Paragraph is fully explain'd by another in the ſame Letter, in which *Kelly* ſays, 'There is no Proſpect of the 'State Priſoners getting out till next Term, and 'if the *Habeas Corpus* Act be ſuſpended at the 'Meeting of the Parliament, they will remain 'during the Government's Pleaſure, and per-'haps *have Company enough*.' Who are meant by *N. Crone* and *S. Farrel*, is ſubmitted to the Conjecture of the Houſe.

[84] E. 75. [85] E. 76. [86] E. 78. [87] E. 17. [88] E. 78. [89] E. 73.

His next [92] Letter to *Glaſcock* is of the 27th *Sept.* in which he complains, 'That he has not 'heard a Syllable from *D. Gainer* (*Dillon* proba-'bly) or *G. Roberts* (*Glaſcock* probably) ſince Mr. '*G. Sampſon* (*Goring*) went, which has been no 'ſmall Detriment to ſome of their Friends.' He adds, 'The Term being ſoon at hand, we ſhall 'be much at a loſs how to manage without their 'Advice; which *G. Sampſon* poſitively promis'd to ſend a ſpeedy Account of.

'The Situation of your Friends ſtands much 'as it did, and nothing has happened of late 'in your Family to eaſe their Loſſes, or mend 'their Condition.'

He then gives a long Account of the Lord *North* and *Grey's* being ſeiz'd at *Portſmouth*, and of his being to be brought to Town that Night; and concludes thus:

'I muſt now plainly tell you, that I am afraid 'your Couſin *N. Clifton* is in a very bad way, 'and a Perſon (whom he lately employ'd to ma-'nage ſome things for him, particularly to com-'pound ſome *S. Sea* Bargains) has not been true 'to him: for his Creditors have actually put him 'in Jayl, and except you can contrive to ſend him 'ſome Relief from what *Effects he put into your* 'Miſſiſippi (for I don't find he has any other Proſ-'pect) his Confinement will prove fatal to him. 'You know his Worth, and for Heaven's ſake 'don't forſake him.'

This Letter being mention'd to be writ on the Day Lord *North* and *Grey* was brought up in Cuſtody, your Committee cannot but be led to conjecture, that by *N. Clifton* is meant the ſaid Lord, and that the Perſon ſaid to be employ'd by him, and ſuſpected of being falſe to him, is either *Lynch* or *Layer*; and if this Conjecture be admitted, it is not improbable that by *N. Crone*, in the former Letter, may be meant the ſaid Lord *North*.

On the 20th *October Glaſcock* [93] writes to *Kelly*, 'That *D. Gainer* (who in another Part of the 'Letter is call'd *D. Gregory*, and is probably *Dil-'lon*) thinks very ſeriouſly of the Commiſſions with 'which *Kelly* had charg'd him for his Friends, and 'does not refuſe to employ his whole Credit in 'that Affair; but that one ſingle Article had con-'ſum'd the Bill of Exchange, which *N. Cleaton* 'ſent, and that there is not any other come that '*Dillon* knows of.'

Here *N. Cleaton* means evidently the ſame as *N. Clifton* in *Kelly's* Letter; and it appears he had ſent a Bill of Exchange to *France*, which was all conſum'd in one ſingle Article of Expence. In former Letters notice was taken of a Bill of Exchange ſent over by *Repney*, and of 20000 *l.* raiſed by *N.*

In the ſame Letter, *Glaſcock* takes notice of ſome *Goods* ſent by *Comtade* and *Lunelle* for *Kelly's* Uſe, which he deſires *Kelly* to ſend for, and to acknowledge the Receipt of them carefully.

It appears to your Committee, that theſe *Goods* were the Pretender's Declarations, which [94] came incloſed that Poſt, or the next, under blank Covers to *Comtade* and *Lunelle* at *Slaughter's* Coffee-houſe, agreeable to the *Memorandum* in *Kelly's* Pocket-Book.

In another part of the foregoing Letter, it is ſaid, that Mr. *G. Sampſon* has ſent over his *Project of Accommodation*, and waits the Event of it, which it is probable relates to the ſame Declaration.

Kelly being examin'd by the Committee in relation to the Names in his [95] Pocket-Book, ſaid, 'They were Names of Perſons, with whom he 'had tranſacted Stock-Affairs in *France* ſeveral 'Years ago. He own'd he had ſeen Letters at '*Slaughter's* and *Sturgis's* Coffee-houſe, directed 'by ſome of thoſe Names, but that it might 'eaſily happen, that there might be Perſons 'in *England* of the ſame Names with others 'in *France*; and that it was his Misfortune 'Letters ſhould come directed by thoſe Names. 'He inſiſted, that his Pocket-Book, tho ta-'ken upon him, was an old one, that had lain 'by neglected theſe three Years.' Yet your 'Committee obſerve, the *Memorandums* in it were of a late Date, and contain'd a particular Account of the Time of his Journeys to and from *France*, and of the Days on which he and *Dennis Kelly*, and the Biſhop of *Rocheſter*, were taken into Cuſtody.

The Houſe will obſerve, that this long and particular Account of *George Kelly* is extracted out of ſuch Papers and Informations, as were in the hands of the Government relating to him, ſupported by ſuch Explications as ſeem to the Committee naturally to ariſe from comparing the ſeveral Parts of them together; but that he himſelf upon his Examination refuſed to make the leaſt Diſcovery that might give Light to any part of this treaſonable Correſpondence, tho he plainly intimated he had it in his power to do it. And if in ſome Particulars, the Committee ſhould have fallen ſhort of the true and genuine Explanation of the Names, or other Facts, which may eaſily have happened in unfolding ſuch Variety of Matter, ſo induſtriouſly wrapt up in the utmoſt Obſcurity; yet they conceive it will not leſſen the Credit of thoſe Facts in general relating to him, which are ſupported by unqueſtionable Evidence, notwithſtanding his denying of them, and his prevaricating ſo groſly with the Committee.

Your Committee will now proceed to lay before you ſuch Particulars, as they have collected from the Papers referred to them, relating to *Dennis Kelly* Eſq; who appears to them, from ſeveral Paſſages in the intercepted Letters, to have acted in Concert with the other *Kelly*, and behaved himſelf with the ſame Obſtinacy on his [96] Examination before them.

Your Committee ſee Reaſon to believe, that the ſeveral fictitious Names of *Kirton*, *Killegrew*, *Sandford*, *St. George*, and *Hubberts*, are made uſe of in the intercepted Letters to expreſs one and the ſame Perſon: and as this Perſon is frequently ſpoken of as living at the *Cockpit*, as being himſelf ill of a Fever and Ague part of laſt Summer, as having a Daughter who was troubled with Returns of ſpitting Blood at particular Times there mention'd, and as being to ſet out with his Family for *France* by *Diepe*, the latter end of *July*; theſe ſeveral Circumſtances being confirm'd to your Committee by the written [97] Examinations of Mr. *Dennis Kelly's* Servants to have been true of him, and being in the Opinion of the Committee applicable to no one elſe, they ſee Reaſon to conclude, that what is affirmed in the intercepted

[92] E. 75. [93] E. 75. [94] E. 23, 24. [95] E. 17. [96] F. 33. [97] F. 2.—8.

Correſpondence

Correspondence of the Person designed by the Names above-mentioned, is affirmed of him.

Your Committee have likewise been [95] informed, that Enquiry having been made at the *British* Coffee-House, who took up Letters directed thither by the Name of *Sandford*, it was found that one Mr. *Kelly*, who frequented that House, took them up. And a Letter from *France* so directed, having been copied at the Post-Office, and then delivered out, the [97] Original of the said Letter, signed *M. Digby*, was found in *Dennis Kelly*'s Pocket, when he was taken up, as appears by the [96] Affidavit of the Messenger who seiz'd him.

In this Letter *Digby* sends his Service to his Cousin *Ireton*, which has been shewn above to be one of the Names belonging to *George Kelly*; and also mentions *Hore*, who has been already explained to be probably Sir *Harry Goring*.

Your Committee observe, that the said Letter was writ in the same Hand with another [99] signed *J. Gerrard*, which was likewise found among *Dennis Kelly*'s Papers, and has been observ'd above to be probably the Name made use of by Sir *John D'Obryan*, whom *George Kelly* declared to be Secretary to *Dillon*.

They farther observe, that both these Letters, signed *Gerrard* and *Digby*, were in the same Hand with [1] others found in his Custody relating to *Dillon*'s private Affairs; which confirms *Digby* to be *Dillon*, and *Gerrard* to be one whose Hand *Dillon* makes use of for his Dispatches.

Another [2] Fragment of a Letter was found among his Papers, mentioning the Names of *Ireton* and *Hore*; which is in the same hand with the Letters to *Plunket*, signed *Dixwell* and *Howell*, and is therefore probably the writing of *Christopher Glascock*, *George Kelly*'s Correspondent.

Some other [3] Papers were also found in his Custody, mentioning others of the fictitious Names used in *George Kelly*'s Letters, as also a long [4] List of Names, with fictitious Names over-against them, and a [4] Cypher of Figures, which appear to be *George Kelly*'s Hand-writing, and are sworn, by the Clerks of the Post-Office, to be the same Hand in which the Letters signed *Johnson*, *Hatfield*, &c. were writ. It has already been observed, that this Cypher of Figures is found to be a Supplement to the Cypher in which the Letters of the late Duke of *Ormond*, and the Bishop of *Rochester* were writ; and that the said Cypher last mentioned is made use of in [5] one of the intercepted Letters from *Dillon* to *Dennis Kelly*.

There was also found, among his Papers, an exact [6] List of the quartering of his Majesty's Forces a little before the time of the Elections, and a [7] Scheme for erecting By-Boats between *London* and *Bolougne*, which seems referred to in the [8] Letters between *George Kelly* and *Gordon* of *Boulogne*.

There was also taken among his Papers a [9] Fragment of a very treasonable Letter, signed *F. M.* which your Committee conjecture was from one *Francis Macnamarra*, a Person concerned in the former Rebellion, there being [10] another Letter among his Papers, with the Name at length, in the same hand.

Your Committee have laid together these several Circumstances, that it may appear *Dennis Kelly* was concerned in the treasonable Correspondence, which is confirmed by [11] Mr. *Crawfurd*'s Letter from *Paris*, $\frac{1}{10}$ of *May*, in which he says, 'There is one Captain *Kelly*, who frequents the 'Cocoa-Tree and *Will*'s Coffee-house, who is much 'in the confidence of *Dillon* and Lord *Lansdown*, 'he was here some Months ago, and is at pre-'sent very active in *England*.'

Your Committee find, that he was abroad for several Months the latter end of the Year 1721, and that some of the Letters, sent to him by fictitious Names from *France*, were directed to *Will*'s Coffee-house and the *Cocoa-Tree*.

The Matters which they find him principally concerned in by the intercepted Letters, are the [12] Remittance of the Bill of Exchange sent over from the Person called *Repney*, the Receipt of which is acknowledged in several Letters to him, his being present at a [13] Consultation with the Persons called *Rep. Ho.* and *Den.* and his being to carry over to *France* their final Answer, together with a new [14] Cypher, List of Directions, and other verbal Instructions, from *George Kelly*, for *Dillon*, *Glascock*, and *Talbot*.

As *George Kelly*'s Correspondence was closely connected with that of the Bishop of *Rochester*, *Thomas Carte*, and *Dennis Kelly*, and as he appears to have been privy to *Plunket*'s; so your Committee see reason to believe, that he was not a Stranger to that of *Sample*, who appears to be mentioned in a [15] Letter from *Gerrard* to *Kelly*.

Your Committee find, that *John Sample*, being examined before the Secretaries of State, and two of your Committee [16], owned, that *Francis* Son of the Lord *Sempill*, commonly so called, had been in *England* that Summer, and returned to *France* about three Weeks before his Examination, which was taken on the 4th of *August* last.

That during his Stay in *England*, he (*John Sample*) was twice in company with him, and that two Letters found in his Trunk were received by him from the said *Francis Sempill* before his coming to *England*.

In the [17] first of these Letters, dated *June* $\frac{2}{11}$ 1722. *Fr. Sempill* tells him, 'That they are daily 'confirmed Mrs. *Hews*'s Distemper is but imagi-'nary or counterfeit.' By Mrs. *Hews*, he said, was meant the King, and by his *Distemper* the late Disturbances.

Fr. Sempill then tells him, 'That this has put a 'Stop to Mr. *Standwell*'s Proceedings (*Standwell* 'he owned to mean the Pretender) but that this 'cannot disconcert *Standwell*'s Measures, nor e-'ven delay any thing *above a few Weeks*.

'That perhaps he may soon produce himself 'to their Cost, but it is not yet full time to give 'him (*Sample*) hopes of that kind. He adds, that 'they have not yet heard from Mr. *Houlder*,' whom *Sample* explained to be the late Duke of *Ormond*.

Your Committee observe, That this agrees with the Accounts given in the former Parts of their Report, of the Attempts that were to have been made in *England* about the beginning of *May*, which were prevented, tho not entirely discontinued, by the Discoveries made here, and by the Encampment.

Sample being shewn the Copies of several Letters, taken at the Post-Office, directed to Mr. *Sempill* at *Paris*, and enclosing others, owned, as appears by his [18] Examination, the writing of

[95] F. 30. [97] F. 29. [96] F. 29. [99] F. 14. [1] F. 15. [2] F. 18. [3] F. 13. [4] F. 11. *a*. [5] F. 19. [6] F. 9.
[7] F. 10. [8] E. 26, 34. [9] F. 16. [10] F. 17. [11] A. 10. [12] F. 19, 21. [13] E. 59. [14] E. 59. [15] E. 33.
[16] G. 1. [17] G. 2. *a*. [18] G. 1.

them all, and gave Explications of the Names made use of in them. [19] One of these Letters is to *Standwell*, whom he owned to mean the Pretender, and [20] another is mentioned to be for *Glascow's* Master, which is probably General *Dillon*. He likewise owned his having writ to the late Duke of *Ormond*, and to *Kennedy* his Secretary; and while he was in Custody of the Messenger, he begun to put down in writing a Confession of his Crimes, [21] which was found in his Room after his Escape. But tho some of his Letters appeared dictated by him to other Persons, your Committee do not find he would discover who those Persons were.

Your Committee will next proceed to lay before you the Substance of the several Papers and Examinations referr'd to them, relating to Mrs. *Spelman*, alias *Tallop*; in doing which, they find themselves indispensably obliged to mention a Person of high Rank and Distinction, *Thomas* Duke of *Norfolk*, among others concern'd in the treasonable Correspondence convey'd thro' the hands of the said Mrs. *Spelman*.

It appears to your Committee, that Mrs. *Spelman* being examined on the 19th of *October*, concerning several Letters from abroad, directed to her by the Name of Mr. or Mrs. *Burton*, has [22] declared upon Oath, that Mr. *George Jernegan*, (who, as your Committee are inform'd, is a Roman Catholick, and appears to have been long employ'd by the Pretender) 'being in *England* about six Months before her Examination, did, 'upon his going for *France*, leave Orders with 'the said Mrs. *Spelman* to send to the Duke of 'Norfolk such Letters as she should receive from 'him, *Jernagan*, *directed* to Mrs. *Jones*; and to Mr. '*Harvey* of *Combe*, such as she should receive from 'him, directed to Mrs. *Williams*, in *Newgate street*, '*Norwich*; and to Mr. *William Moor* (who lives, 'or did live in *Brownlow-street*) such as she should 'receive from him, directed to Mr. *Frampton*: 'and that it was agreed between her and *Jernegan*, that he should direct to her by the Name 'of *Burton*, when he did not do it by her own 'Name.

'That she did accordingly send (as had been 'agreed between them) the Letters that came 'to her with the Directions abovemention'd, 'having first enclosed them under new Covers, 'which she herself directed; that she sent them 'by common Porters, who always brought her 'back an Account of their having delivered them, 'or of the Person's not being at home; that 'particularly one to the Duke of *Norfolk* was 'brought back again by the Porter, his Grace 'not being in Town, which Letter she kept till 'he came to Town, and then sent it to him. 'That she once received a Message from the 'Duke of *Norfolk* by Mr. *Edward Jernegan*, that 'his Grace could not answer a Letter she had 'convey'd to him from *George Jernegan*, because 'he, the Duke of *Norfolk*, had not the Key of 'the Cypher, it being in his Brother's hands; 'she likewise own'd her receiving several Cyphers and Keys of Cyphers from *George Jernegan*, which she burn'd between the time of 'her first and second Examination.'

Copies of these Cyphers having been taken at the Post-Office, it appears that [23] one of them was mark'd, *A Key and Cypher, with Mr.* Farmer *and* Jerry; and [24] another, *D*, *O*, and *J*; the first of which is probably a Cypher betwen the Pretender and *Jernegan*, and the latter between him and the late Duke of *Ormond*.

It farther appears to your Committee, that *Edward Jernegan* being examin'd in relation to the Message from the Duke of *Norfolk* abovemention'd, has [25] deposed upon Oath, 'That about 'a Fortnight before the Duke went to the *Bath*, 'being inform'd that his Grace had inquired for 'some of their Family, he, *Jernegan*, went to 'wait on him, and his Grace told him, that he 'had received a Letter from *George Jernegan*, who 'was then abroad, but that he could not answer it, because his Grace's Brother had the 'Key of the Cypher, in which it was written; 'and that he, *Jernegan*, delivered this Message 'to Mrs. *Spelman*.'

The first Letter directed to Mrs. *Jones*, (the Duke of *Norfolk*) of which a Copy was taken, is dated, *Cambray*, 12th *July*, 1722. and is partly in Cypher, but has been decypher'd in the manner following:

SIR,

'VArious Considerations, which obliged me 'to submit, deprived me till now the Honour of Writing to you; therefore I flatter myself, you incline to favour me with opinion, 'that my Zeal and Attention are above falling into 'any Negligence, where your Sollicitude or private Satisfaction is concern'd. You have been 'in some manner a Witness of the late Turn in 'Affairs, and undoubtedly know so much of them, 'that I fear it will prove superfluous to trouble 'you with the Particulars which I have: after 'several Meetings with some of our Friends at '*Paris*, ... was of opinion, that the 'whole should be communicated to the Regent; 'which being agreed to, that *Lord* was deputed 'to wait on him: they met, and parted in appearance the best Friends in the World, notwithstanding immediately by the Regent's Orders the Secret was discovered to King *George*. 'How is it possible to arm one's self with sufficient Prudence against such a Conduct? These 'being our private Concerns, I leave 'em, to 'divert you with the publick News: the Overture of the Congress seems now in the way to 'be deferred to the K. of *Fr.* Majority, who, 'since his Removal to *Versailles*, is in a manner 'solely in the Hands of the Regent. His Coronation remains still fix'd to the 15th of *October*; so, in all appearance, this Year produces 'no Disturbance to the present Peace of *Europe*. 'The Emperor grows daily more powerful in '*Italy*, by the Pope's falling into that Interest; 'he has lately seiz'd the Fortress of *Massa* in *Florence*, and promises the Investiture thereof, 'with that of *Parma*, to the Prince of *Baviere*, 'upon his Marriage with the Princess *Josephina*. '*Spain* will be under great Difficulties to find 'means to support their claim to these Provinces, 'especially at a time that *France* seems negligent 'of every thing that concerns them. There is 'no appearance likewise that the Affairs in the 'North produce any thing material this Season. 'The pacifick Temper of the K. of *Prussia* secures every thing on that side, and has probably

[19] 6. 6. [20] G. 9. [21] G. 3. [22] H. 3. 4. [23] H. 37. [24] H. 35. [25] H. 7.

'prevented

'prevented the Disturbance threaten'd in those 'Parts. Thus at present are the Affairs of 'Europe.

'I did not fail to repeat my usual Sollicitations 'in favour of your Brother, and to add what in 'Justice I thought you merited: this I did upon 'the first occasion, after my coming over; 'to which, from the *King*, I have this Answer:

June the 15th.

"No body has a better Opinion than I have "of the great Person you mention, nor does his "Character more Justice: I shall be always de-"sirous to do what is in my power to convince "him of my Regard for his Brother, who now "is in the Country with me; but I fear it will not "be time to move in the Particular you mention "of some years yet, which will be the Case of all "others who pretend to the same Right as I "do.

'Thus far was his. There is a Pleasure to see 'with what generous Virtue he repays all who 'consider his Misfortunes.

'I presume to mention one thing more, being 'moved to it out of a pure Consideration to the 'Credit it will give to your Name. Dr. *Witham* 'finds himself under the necessity of building the 'old House, being ready to fall; and next Spring 'they begin, but upon so small a Fund as will 'never finish the Work, as it ought to be; the 'Consequence of which must necessarily oblige 'them to beg the Assistance of their Friends. I 'should be sorry upon this Occasion, that any 'other Person should distinguish himself so, by a 'Donation, as to merit his Arms to be placed in 'the Front, where I could wish to see your own. 'I have not spoke one word of this to any Per-'son in the House, thinking it would look more 'generous in you, if disposed to take the Credit 'in laying the first Stone, to move and offer it 'yourself. As to other Matters, if I can be ser-'viceable in these Parts, either in your particu-'lar, or to the Interest of the Party, you know 'me faithfully devoted to both. I have obtain'd 'leave to return by the end of Summer, finding 'it inconvenient to my private Situation to re-'main longer abroad: I hope then to present 'you with fresh Proofs with what Zeal and Re-'spect I've the Honour to be,

Sir, your most Obedient and

most Humble Servant.

'Be pleased to address to me,
'à Monsieur *Hooker* under Cover à Monsieur
'*Pigault* Banquier à *Calais*.

Your Committee observe from this Letter, that *Jernegan* supposes the Duke of *Norfolk* already acquainted with a Design, on which Application had been made to the Regent, and with the Causes of its Miscarriage; that however, in order to shew his Zeal and Attention in any thing, where he thought the Duke's Sollicitude concern'd, he sends him an Account of what had happen'd to their common Friends at *Paris*, and of the Secret's being communicated to King *George* by the Regent's order; and then laments the impossibility of arming themselves with sufficient Prudence against such a Conduct, which, supposing it to have been such as they represent, yet could not possibly have appear'd blameable to any but the Enemies of our present happy Establishment.

He then shews from the Situation of Affairs in *Europe*, there is but little Prospect of any Rupture, which may be favourable or advantageous to their Designs.

He afterwards acquaints the Duke, that he had *repeated* his Sollicitations *to the Pretender* in favour of his Grace's *Brother*, and had also added what *in justice* he thought *His Grace himself merited*; to which he received an Answer from the Pretender (whom he stiles *the King*) acknowledging his *great Opinion of the Duke*, and the *Justice he does his Character*, and his Readiness to convince his Grace of *his Regard* by any Kindness he can shew his Brother.

And the Inference, which *Jernegan* makes from the Regard express'd towards the Duke in this Letter of the Pretender's, is, That there is a Pleasure to see with what generous Virtue he (the Pretender) *repays* all those, *who consider his Misfortunes*.

He concludes with telling the Duke, that if he can be serviceable in those Parts, either in his Grace's own Particular, or to the *Interest of the Party*, his Grace knows him faithfully devoted to *both*.

On the $\frac{2}{12}$ of *August*, *Jernegan* writes a second Letter to the Duke, as follows.

SIR,

'THE Vicissitude in our Affairs being a 'perpetual ebbing and flowing, 'tis ex-'tremely difficult to assure any thing with cer-'tainty: In my last of the 12th I mention'd how 'things had happen'd; and altho the Fact was 'true, yet the Consequence did not answer what 'we apprehended: It was a politick Necessity, 'which urged and demanded that Conduct, and 'it appears now to have succeeded so well, that 'every Hand is at work, as before, to draw 'things to a right Conclusion; brief's, we are 'flatter'd that the Regent is cordially in our 'Interest, and disposes every thing to undertake 'the Work, which according to some Accounts 'will be put in execution within two Months. 'Those, who are serious and make due Reflec-'tion on these Matters, know how far they may 'be useful to the Cause, and with timely and 'prudent Precautions may dispose their Friends to 'act a lively part; whilst they themselves keep 'retired, till the Success one way or the other 'determines what is necessary to be done.

'I have opportunity, by being in these Parts, 'of picking up several good Officers, and with 'a little trouble as many as would compleat an 'entire Regiment, into which any Gentleman 'might enter himself, and do his Duty with Ho-'nour. This is what I thought fit to propose on 'this occasion, and should be glad to know, if 'solely upon your own Bottom this may be 'thought on. I shall take all necessary Precau-'tion, and shall first know certainly what there 'is to depend upon. Your Opinion on these 'Matters, with the assistance of your Advice, 'will lay a most sensible Obligation on him, who 'entirely devotes himself,

Sir, your most Obedient and

most Humble Servant.

'Let the Conveyer of these furnish you with 'my immediate Address.'

Your

Your Committee obſerve, that in this Letter, *Jernegan* does, with an Air of great Satisfaction, try to leſſen the Apprehenſions and Diſcouragements, which he ſuppoſed his former Account of the Regent's having betray'd the Secret might have rais'd in his Grace, and ſays that every Hand is now *at work as before* to draw things to a *right Concluſion*, without explaining what that *former Work*, or the *right Concluſion* hoped for is; which Particulars, it appears, he thought ſo well known to the Duke, as not to need the leaſt Explanation.

Then after telling his Grace, *We* are flatter'd the Regent is cordially in *our* Intereſt, and is diſpoſing every thing to undertake *the Work* within two Months time, he intimates, that from this Hint one of his Grace's Seriouſneſs and Reflection might be uſeful to the Cauſe, by diſpoſing *his Friends* (who may juſtly be underſtood to be the Roman Catholicks) to *act a lively part*, while he himſelf lies retired, waiting till the Event ſhould determine what part it was proper for him to take.

He then makes the Offer to his Grace of raiſing an entire Regiment of Officers in *Flanders*, into which *any Gentleman* might enter himſelf, and do his Duty with Honour; and deſires to know, whether on his Grace's own Bottom ſuch a thing might be thought of.

This treaſonable Offer, from an humble Servant of his Grace's, ſhews that *Jernegan* was at leaſt perſuaded it would not be ill received; which could only proceed from a thorow Aſſurance of the Duke's Inclinations to the Pretender's Cauſe, and of his Intentions to ſupport it with Men and Money, whenever a Probability of Succeſs ſhould make it ſafe and proper for him to eſpouſe it openly.

Your Committee farther obſerve, that this Letter was writ about the ſame time, that *Plunket* was ſo buſy in preſſing *Dillon* to ſollicit the Regent's Aſſiſtance; and that the Term for putting the Deſign in execution, which is mention'd in *Jernegan*'s Letter to be within two Months from the beginning of *Auguſt*, has an evident relation to the third Period pitch'd upon by the Conſpirators, which, as has been obſerved before, was the breaking up of the Camp. And it appears to your Committee, by ſeveral concurrent [26] Advices from *France*, *Spain*, and *Italy*, during the Months of *July* and *Auguſt*, that the Deſign, which had been ſuſpended upon the firſt Diſcovery of the Plot, was again reſumed, and Preparations made for the Pretender's leaving *Italy* about the beginning of *September*; for which purpoſe the Ship *Revolution* (ſince taken) ſet ſail for *Italy* the latter end of *Auguſt*, having on board near two hundred Men and a great number of Officers.

Mention is made in *Jernegan*'s Letters to Mrs. *Spelman* of a great number of Letters written to and received from Mr. *Harvey* of *Combe*, by the name of Mrs. *Williams*; and in [27] one of his Letters to Mr. *Harvey* he ſays, 'The Regent plays 'a Game a-part, and confides in none but *Bri-* 'tain, and has ſacrificed *Us* to make a firm Friend 'of King *George*. The late Diſappointment in 'our Affairs has given a ſurprizing Power to the 'Court of *France*: they ſilence all other Princes 'in regard to *Us*; none now dare look that way, or 'undertake the leaſt trifling Service in *our* favour.'

On the 20th of *July*, Mr. *Harvey* ſent an Anſwer to this Letter, the Original of which is ſtopp'd, and is [28] ſworn by Mrs. *Spelman* to be his Hand-writing; but it contains ſuch an odd Heap of low and virulent Scandal, that the Committee do not think proper to trouble the Houſe with any Extract of it, but have [29] annexed it entire to their Report.

Your Committee have already taken notice, that the treaſonable Correſpondence, above ſet forth, was not confined to *England* only, but was carried on in *Scotland*, under the ſame Cant Expreſſions of *Wine*, *Trade*, *Goods*, &c. And it appears that the Pretender's Agents were equally buſy in diſpoſing Matters for an Inſurrection in that part of the Kingdom, at the ſame Periods of Time as were fix'd on in *England*.

They find that the Government has receiv'd [30] Information upon Oath from one *Lodoick Anderſon*, 'that on the 28th of *January* 1721, Bri- 'gadier *Mackintoſh* was ſeen by him (*Anderſon*) 'at the Houſe of Sir *John Mackenzie* of *Coul*, and 'told *Anderſon* that the Pretender deſign'd to have 'on the Crown of *Scotland* before Midſummer, 'and that he was to be aſſiſted from *France*, *Spain*, 'and *Muſcovy*; that General *Gordon* and Captain '*Tullock* were to land at the *Loach Elch* with 'Arms for this purpoſe.'

That *Mackintoſh* was then in *Britain*, agrees with [31] *Pancier*'s Depoſition.

'*Anderſon* farther depoſed, that on the 15th 'of *February* he met the Lord *George Murray* at a 'place not far from the Earl of *Kintore*'s, who con- 'firm'd to him what *Mackintoſh* had ſaid, with 'ſeveral other Particulars; that two days after 'he met Mr. *James Keith*, Brother to the Earl '*Mariſhall*, who after having told him that there 'would be a Deſcent in favour of the Pretender, 'named to him ſeveral Perſons (ſpecified in his 'Depoſition) that were come over to get Mat- 'ters in a readineſs.'

This, your Committee obſerves, anſwers to the firſt Period of Time for beginning an Inſurrection with the help of foreign Forces during the Time of the Elections.

About the beginning of *May* a [32] Letter was intercepted, directed to Mr. *Peter Smyth* at *Boulogne*, and incloſing [33] another to *De Martin*: which Letters, as your Committee are informed, are in the Hand-writing of Mr. *Cochran*. Who is meant by *De Martin*, does not appear.

In this Letter *Cochran* ſays, '*Our Cuſtomers*, on 'this Side the Water, are as fond of taking *our* 'Goods, as you are of ſending them; but I am a- 'fraid if they are not ſent ſoon, the Market will 'be foreſtalled, for our Enemies begin to be upon 'their Guard. He adds, that their Friends in '*England* are willing to ſend Money to pay for 'them *per* Advance, and that they in *Scotland* are 'not backwards, but hope, in a few days to re- 'mit as much Money as will be ſufficient for their 'Country. He then deſires to know how ſoon 'they may expect their Wines on this Side the 'Water, that they may put themſelves *in a ſufficient* 'Poſture for receiving them.'

Your Committee likewiſe find that *Chriſtopher Glaſcock*, *Dillon*'s Agent, carried on [34] Correſpondences to the ſame effect, with one who went by the Name of *James Johnſton* at *Edinburgh*; and

[26] A. 24. 26. 29. 31. 33. 41. 42. 43. [27] H. 19. [28] H. 4. [29] H. 16. [30] I. 2. [31] D. 1. [32] I. 3. [33] I. 16. [34] I. 3.

that [35] *George Kelly* corresponded with the same *James Johnston*, and owned to the Lords, at his [36] Examination, his having sent the said *Johnston* a Paper from *Glascock*, which he pretended related only to the *Mississippi*.

Letters were likewise intercepted going from *Edinburgh*, directed to *Collins* at Mr. *Waters*'s, Banker at *Paris*; which *Collins* appears, by *Kelly*'s [37] Cypher, to be *Colin Campbell* of *Glenderoule*.

In [38] one of these Letters to *Collins*, mention is made of a Person of great Consequence and Distinction, lately regained to the Pretender's Party, who insisted on a Sight of the *Contract of Copartnery*, which *Collins* is desired to send over by the first sure Hand; and *Collins*, in his [39] Answer, signed *R. Broun*, promises it shall be sent over.

Your Committee observe, that this Particular agrees with [40] *Fairfax*'s Deposition upon Oath, That *Layer* told him, The People of *England* were backward, but that those of *Scotland* had already entered into an Association.

In the same [41] Letter to *Collins*, it is said, That the Person of Consequence, who had insisted on a Sight of the *Contract of Copartnery*, desired an Order from Mr. *Malcom* for raising one or two Battalions, but was told those Orders might come time enough by the hands of those who happened to come first to open *the Commerce*; which shews of what nature *that Commerce* was.

In the same Letter Application is made to Mr. *Malcom* for a Patent for Knight Baronet; both which Circumstances confirm *Malcom* to be the Pretender.

Your Committee observe, that these Letters, and [42] some others, which appear to have been intercepted about the Month of *May*, and are annexed to this Report, fall in with the second Period of Time fixed by the Conspirators in *England*.

And on the 18th of *August*, O. S. Mr. *Stanhope* [43] writes word from *Madrid*, that he had received Intelligence, that the *Scotch* had engaged to bring 22000 Men into the Field in ten days time, in case the late Duke of *Ormond* would come over with Arms to head them, and that they daily sent most pressing Messages to *Ormond* on that Subject; which shews that the Design was reassumed a third time in *Scotland*, as it was in *England*.

Your Committee farther observe, that agreeably to what was promised in Mr. *Cochran*'s Letter of the 28th of *April*, [44] Mr. *William Erskine* did on the 3d of *May*, remit Two Thousand Pounds Sterling to Mr. *Gerrard* (*Dillon*'s Secretary) at *Paris*, and owned his so doing on his [45] Examination before the Lord Justice Clerk, but refused to discover who *Gerrard* was, or from whom, and for whose Use the said Sum was remitted.

When he was taken into Custody, a Letter was seized in his Pocket, which, as your Committee is [46] informed, is all in the late Lord *Marr*'s own Hand-writing, dated *Paris*, *February* the 9th, 1722. in the following words.

Paris, *February* 9. 1722.

'I Have, *William*, yours of the 7th, for which 'I am obliged to you, and take all you say, 'as I ought, from the good Heart from whence 'I know it comes, tho at the same time you put a greater Value on your Friend than he deserves: 'But be that as it will, I am fully persuaded, as 'you may be, that he will never fail an Occasion for what you mean, nor neglect endeavouring to bring it about, where he sees it can be of 'Advantage to his Country; and his Friends and 'Countrymen may depend on it, when they see 'him engaged again, that the retrieving of it from 'the low Condition it is now in, and otherways 'ever like to be, is the chief Motive that induces 'him, and he hopes in that way he will not be 'without the Assistance of all who wish the same 'thing; and the more, that he will take all the 'care he can not to expose them for serving that 'of others, if at the same time he be not pretty 'sure of its doing effectual Service to their own, 'and putting it on a better foot than it has been 'these hundred years past. If he looked but to 'his own private Interest, he could perhaps find 'a way, which could conduce more to it: but 'he hopes, by his former Actions, it appears, 'that he never put that in competition with what 'he thought was the Interest of his Country, tho 'in which he owns he was once mistaken, as many others may have been; but as he never scrupled owning his Fault, since he found it by Experience to be one, so he has ever since endeavoured to make amends, and will as long as he 'lives.

'Things are in such a Situation at present over 'all *Europe*, that there appears little of any Opportunity of doing what is to be wish'd upon 'that account; but things of this kind are very 'uncertain, and an Opportunity may come, or be 'brought about, when least expected; and you 'may believe it will not be neglected when it 'does: nor will any Endeavours be wanting to 'bring it to that pass. Hush! tho must be the 'word, and Friends must not take amiss their not 'being acquainted previously to the Execution, in 'which it is to be hoped they will not fail.

'You see I make no scruple in writing freely to 'you, but you know the Consequence of this coming into wrong hands, and those it is fit and of 'use to be told to, you know too: So I leave it 'to your own Discretion, of which you have 'given me many Proofs. I have been much out of 'use of writing to *H. S.* for some years past, and 'I have not yet got a return of one I wrote him 'last Summer; but I shall write to him of what 'you mention in yours.

'As to *M*——*y*, I care not to say more about 'him, and were it not that I think it for the 'good of a certain Person and Cause, I should not 'even wish to have all the truth told of him, 'since his being abroad. I cannot answer for 'what handles may be given him for his Justification; but let honest Men, who wish right, 'tell the Truth, where they know it, and that 'it is necessary, and shame the Devil.

'I wish you a good Journey and good Luck with 'all my heart, and that we may soon have an 'Opportunity to meet merrily, and be of use 'to our Country. My Compliments to my 'Friends, and I hope we shall never have cause 'to be ashamed of other.

'I shall long impatiently to hear from you after 'your getting to *London* and *Edinburgh*; and pray 'do not fail writing after your coming to both 'Places, and have seen People.

[35] I. 1. [36] E. 1. [37] F. 11. *a.* [38] I. 9. [39] I. 17. [40] B. 36. [41] I. 9. [42] I. [43] A. 42. [44] I. 7. 8. [45] I. 10. [46] I. 10.

'Send

'Send me your Addreſs, and you may be ſure 'of hearing from me, when it can be of any 'uſe. Pleaſure it would be always to me, but 'that muſt yield ſometimes to Circumſtances.

'My Family ſalute you, and wiſh you all Hap- 'pineſs, as I do, who am ſincerely and affectio- 'nately yours, &c. *Adieu.*

'I wiſh you may have ſomething agreeable to 'tell me of your Brother and Uncle, when you 'have ſeen them, and remember me kindly to 'your Father-in-law. Sure we muſt all wiſh 'the ſame way to our Country.

'What is become of our Couſin *Will*, who I 'hear is ſtill where you have been for ſome 'time?

Your Committee likewiſe find evident Footſteps of this treaſonable Correſpondence [47] from *Ireland*; but having already ſhewn ſufficiently the Extenſiveneſs of the Conſpiracy, they forbear to tire the Houſe with any further Particulars.

Your Committee have now gone thro' the ſeveral Matters, that appear'd to them from the Examinations of the Perſons or Papers referr'd to them; and they are in hopes, that in reporting every Circumſtance, that ſeem'd material, they have ſtrictly comply'd with the Intentions of the Houſe in appointing them.

If the frequent Repetitions of the ſame Matter have ſwell'd the Report into too great a length, they are perſuaded the Houſe will excuſe it, ſince it was in all the Places where they have done it, neceſſary to explain the Paſſages related, or elſe to ſhew the Connection of the Treaſons, as well as the Co-operation of the Conſpirators in their wicked Deſign of dethroning his moſt ſacred Majeſty, and overturning our preſent happy Eſtabliſhment in Church and State.

ON *March* 8. The Houſe proceeded to take the ſaid Report into conſideration. Whereupon the Houſe came to the following Reſolutions, *viz.*

'That upon Conſideration of the Report, and 'the ſeveral Papers and Examinations relating to 'the Conſpiracy, it appears to this Houſe, That 'a deteſtable and horrid Conſpiracy has been 'formed and carried on by Perſons of Figure 'and Diſtinction, and their Agents and Inſtru- 'ments, in conjunction with Traitors abroad, 'for invading theſe Kingdoms with foreign For- 'ces, for raiſing Inſurrections and a Rebellion at 'Home, for ſeizing the Tower and City of *Lon- 'don*, for laying violent Hands upon the Perſon 'of his moſt ſacred Majeſty and the Prince of '*Wales*, in order to ſubvert our preſent happy 'Eſtabliſhment in Church and State, by placing 'a *Popiſh* Pretender upon the Throne.

'That it appears to this Houſe, that *John* '*Plunket* has been a principal Agent and Inſtru- 'ment in the ſaid horrid and deteſtable Conſpi- 'racy, and has carried on ſeveral treaſonable 'Correſpondences, to procure a foreign Force to 'invade theſe Kingdoms, and to raiſe Inſurrec- 'tions and a Rebellion at Home, and was en- 'gaged with others in the villainous and exe- 'crable Deſign of laying violent Hands upon His 'Majeſty's moſt ſacred Perſon.

'That it appears to this Houſe, that *George* '*Kelly*, alias *Johnſon*, has been a principal Agent 'and Inſtrument in the ſaid horrid and deteſta- 'ble Conſpiracy, and has carried on ſeveral 'Treaſonable Correſpondences, to raiſe Inſurrec- 'tions and a Rebellion at Home, and to pro- 'cure a foreign Force to invade theſe King- 'doms from Abroad.

'That it appears to this Houſe, that *Francis* 'Lord Biſhop of *Rocheſter* was principally con- 'cern'd in forming, directing and carrying on the 'ſaid wicked and deteſtable Conſpiracy, for in- 'vading theſe Kingdoms with a foreign Force, 'and for raiſing Inſurrections and a Rebellion at 'Home, in order to ſubvert our preſent happy 'Eſtabliſhment in Church and State, by placing 'a *Popiſh* Pretender upon the Throne.'

In Purſuance of theſe Reſolutions, it was order'd by the Houſe, that Bills of Pains and Penalties ſhould be ſeverally brought in againſt the ſaid *John Plunket*, *George Kelly*, and *Francis* Lord Biſhop of *Rocheſter*.

March 14. The Houſe came to a Reſolution to communicate their Report to the Lords at a Conference, and alſo (*having obtained the King's leave*) the Letters and Papers relating to the Conſpiracy.

March 16. The Houſe of Lords choſe the following Peers to be a Committee to inquire into the ſaid Conſpiracy.

His Grace the Duke of *Dorſet*.
His Grace the Duke of *Montroſe*.
The Earl of *Scarborough*.
The Earl of *Lincoln*.
The Earl of *Ilay*.
The Lord *Lonſdale*.
The Lord *Torrington*.
The Biſhop of *Lincoln*.
The Biſhop of *Salisbury*.

This Committee made their Report on *April* 23d, which was as follows.

THE Committee to whom the Report and Original Papers relating to the Conſpiracy, delivered by the Houſe of Commons at ſeveral Conferences, were referred; and who were impowered by your Lordſhips to examine *Chriſtopher Layer*, and ſuch other Perſons as they from time to time ſhould think proper; having carefully compared the ſaid Report with the Original Papers referred to them, and having examined ſeveral Perſons in relation to the Treaſonable Practices and Correſpondences therein ſet forth, are fully ſatisfied and convinced, That a deteſtable and wicked Conſpiracy has been formed and carried on for ſolliciting a Foreign Force to invade theſe Kingdoms, for raiſing a Rebellion and inciting Inſurrections in *London*, and divers other Parts of *Great Britain*, and even for laying violent Hands on the Sacred Perſon of His Majeſty, and on His Royal Highneſs the Prince of *Wales*, in order to deſtroy our Religion and Conſtitution, by placing a Popiſh Pretender on the Throne.

And the Lords Committees think themſelves obliged in Juſtice to obſerve, that the extraordinary Vigilance and Application which has been ſhewn by the Houſe of Commons in detecting this Scene of Iniquity, and laying its moſt hidden Springs in ſo full and clear a Light, as it has greatly contributed to the Publick Safety, by opening the Eyes, and awakening the juſt Re-

[47] K. 1—3.

sentment of an injur'd Nation; so it cannot fail to excite a proportionable Zeal and Emulation in your Lordships, for concurring with that House in the no less necessary Work of bringing the Authors of these wicked Designs to such exemplary Punishment as may be a lasting Admonition to Posterity, that Artifice and Disguise can no more lessen the Danger, than mitigate the Guilt of Treason; and that they act under a fatal Delusion, who hope to abuse the Lenity of our Laws to the Ruin of our Constitution.

The Lords Committees think it a strong Confirmation of the Truth and Exactness of the said Report, that several material Observations which are there advanced as grounded on probable Conjectures only, have since been amply verified and supported by fresh Discoveries arising from the Papers lately referr'd to them by your Lordships; which Papers are contain'd in an [48] Appendix annex'd to this Report.

The Intelligence sent by Colonel *Stanhope*, and Sir *Anthony Westcombe*, in relation to the Pretender's Ships under *Morgan*, as well as the Explication given by the Committee of the House of Commons to several of the fictitious Names in the intercepted Correspondence, is very much illustrated and confirmed by Papers seized on board the *Revolution*, and by the Examinations of some of the Prisoners belonging to that Ship.

It appears by [49] those Papers and Examinations, that *Morgan*, who went by the Name of *Walton*, and *Gallwey* (an *Irish* Roman Catholick) who went by the Name of *Gardiner*, with others acting under their Direction, have for several Years past been employ'd in fitting out Ships under *English* Colours, which were ready on all Occasions to attend the Motions of the Pretender, who in [50] several of the Letters is stiled *their King*, and *their Royal Master*. That the Money for these Ships was supply'd [51] partly by Persons in *England*, [52] partly by *Waters* the Banker at *Paris*, and [53] partly the late Duke of *Ormond*. That one of these Ships, in the Year 1719, [54] was sent by *Morgan* to the *Groyne*, with an Express to fetch the late Duke of *Ormond* to *England*; at which time it appears, [55] that *Morgan* and *Gallwey* were promis'd a Supply of Fifty Thousand Pounds from Friends in *England*; that others of these Ships lay hovering about the Coast of *Britanny*, from the Year 1718, to 1721, [56] expecting to be employed either by *Cane* and *Chivers* (General *Dillon*) or [57] by *Hore*, (Sir *Harry Goring*) in what they call their *Home Trade*. That in the Year 1721, despairing of any Employment of this kind, on account, as is express'd in [58] one of their Letters, of *Hore* and his Partners being Cowards in *Trade*, they engaged themselves in the Service [59] of the *Swedish Madagascar* Company, and in *December* 1721, rendezvouz'd in the Bay of *Cadiz* for this Purpose; but this Project likewise failing, on account of some Deficiency on the Part of the *Swedes*, *Morgan* waited on the late Duke of *Ormond* at *Madrid*, and was by him supplied with Twelve Thousand Pieces of Eight, for fitting out the Ships *Lady Mary* and *Revolution* [60] for the Pretender's Service; [61] soon after *Morgan*'s Return to *Cadiz*, the Arms and Ammunition which had been prepared for the *Madagascar* Voyage, consisting of two thousand Muskets, two thousand Bayonets, one thousand Carbines, four hundred Barrels of Powder, and a proportionable Quantity of Match, Flints, *&c.* were consigned to *Morgan*, and by him put on board the Pretender's Ship called the *Lady Mary*, and *Morgan* having embarked on board the said Ship with several *Irish* Officers, set sail from the Bay of *Cadiz* the latter End of *April* 1722, and went first [62] to *Sancto Antonio*, and then to *Sancto Andero* in the Bay of *Biscay*.

The Committee having sent for Mr. *Gustavus Bâhr*, formerly a Captain in the *Swedish* Service, who being at *Cadiz* on account of the *Madagascar* Expedition, had occasion to transact several Affairs with *Morgan*, and the other Officers of the Pretender's Ships, they were informed by him that the Arms above-mentioned were brought, part of them from *Gottemburg*, and part from *Hamburg*, by one of the Pretender's Ships, named the *Fortune*, commanded by one *Butler*. That two thousand of the said Arms belonged to the *Swedish Madagascar* Company, and were delivered by him, *Bâhr*, to *Morgan*.

That the Remainder, which belonged to Count *Rhenstierna* a *Sweed*, were also purchased by *Morgan*, but not till some Weeks after the first two thousand. That *Morgan* went to *Madrid*, and returned with twelve thousand Pieces of Eight in Bills and Money, which Sum, he, *Bâhr*, saw in *Morgan*'s Hands. That Baron *Seebach*, and one *Osthoff* (who are frequently mention'd in *Morgan*'s Letters) as also Count *Rhenstierna*'s Agent, who delivered the Arms to *Morgan*, declar'd to him, *Bâhr*, since his Return to *Gottenburg*, That *Morgan* was supplied with these twelve thousand Pieces of Eight from the late Duke of *Ormond*, and that the Arms were paid for out of the said Money. And *Morgan*'s Son being examined by the Committee, owned that his Father went at that time to *Madrid*, that the late Duke of *Ormond* was then there, and that his Father did there receive Bills for fitting out the Ships, but from whom he cannot tell.

Bâhr farther declared, That all the *Swedish* Officers at *Cadiz* looked on *Morgan*'s Ships as belonging to the Pretender, and spoke of them in all Conversations as such, which was confirmed to him expressly by Baron *Seebach* and *Osthoff*. And one of the Sailors of the said Ships owned to the Committee, That they went from Port to Port without taking in any Cargo; That they had sometimes but sixty, and sometimes one hundred and thirty Men on board the *Revolution*, and often received Orders for Sailing with all possible Expedition, which Orders were afterwards countermanded, without any apparent Reason for one or the other; and that this unaccountable Proceeding satisfied him, the said Ships were engaged in some unwarrantable Design. *Bâhr* farther declared, That *Osthoff* told him, the Ship *Revolution* was at first purchased in *England*, for transporting the late King of *Sweden* in Person, in his projected Descent on *Scotland*; and that he, *Bâhr*, saw the Name *Carolus* still standing in the Cabin of the said Ship, when he was last on board her. And *Morgan*'s Son owned, That he had observed the Arms of the Crown of *Sweden* in the said Cabin, which he supposed were placed there as a Token that the said Ship was engaged in the

[48] *Number'd from* 1 *to* 48 *inclusive.* [49] 17--48. [50] 19, 20, 21, 25. [51] 23, 29, 31. [52] 17, 21, 22. [53] 17. [54] 36. [55] 23. [56] 22, 24, 27, 31, 32, 34. [57] 27, 31, 32. [58] 32. [59] 17. [60] 47, 48. [61] 17. [62] 47, 48.

Service of the *Swediſh Madagaſcar* Company; tho he owned that the other Ships engaged in the ſame Service had no ſuch Token.

Some of the Particulars above related, do very much explain and confirm [61] *O*——'s Letter to *L*—— of the 27th of *April*, as alſo [64] thoſe to *Dunville* and *Dodſworth*, in which it is ſaid, That the Hopes of Remittances from Perſons in *England* had induced *O* —— to ſupply *M*—— (which appears to be *Morgan*). That *O*—— could depend on two thouſand Arms from *M*—— (which appear to be the two thouſand Arms delivered to *Morgan* by *Bâhr* [63] before the Date of *O*——'s Letter.) That *M*—— had writ from *C*—— (which appears to be *Cadiz*) that he could get more Arms if he had more Money; and accordingly the Committee find that a ſecond Supply of Arms was purchaſed by *Morgan* from Count *Rhenſtierna*'s Agent. *O* —— in his [66] Letter to *L*—— dated the 27th of *April*, ſays, 'I have order'd '*M*——'s Ship to come to *A*——;' and it [67] appears that *Morgan* did at that very time embark on board the *Lady Mary*, with the Arms abovementioned, and [68] went firſt to *Sancto Antonio*, and ſoon after to *Sancto Andero*.

The Sailors on their Examination having mentioned one *Hilton*, as commanding a Ship under *Morgan*, and the Committee finding a [69] Letter from *Morgan*, directed to *Don Nicholas*, which in a ſubſequent [70] Letter is mentioned to have been writ to the ſaid *Hilton*, they thought it probable *Hilton* might be a fictitious Name for *Nicholas Wogan*, in the ſame manner as *Walton* was for *Morgan*, and *Gardiner* for *Gallwey*. Having accordingly examined the Sailors as to this Particular, one of them ſaid, he believed *Hilton* was a fictitious Name; and *Morgan*'s Son owned that *Hilton*'s true Name was *Nicholas Wogan*, and that he had been confined in *England* on account of the *Preſton* Rebellion, as he was told by *Nicholas Wogan* Jun. who went by the Name of *Paterſon*: and one of the Sailors declared, that the ſaid *Wogan* Sen. obtained the Command of one of the Ships under *Morgan*, after their Arrival in the Bay of *Cadiz*.

Theſe Particulars agree with *Glaſcock*'s [71] Letter to *George Kelly* of the 24th of *April*, *O. S.* in which he mentions *Nicholas Wogan* by the Name of *Xoland*, as being to have the Command of a Veſſel at *Cadiz*, to cruiſe againſt the *Turks*, or *for other Views*, on which he will not pretend to decide; and *Kelly* [72] anſwering this Letter, wiſhes *Wogan*'s *Chief* may ſucceed in his Journey. The ſame Particulars confirm Mr. *Crawfurd*'s [73] Letters of the 18th and 25th of *July*, by which it appears, that the two *Nicholas Wogan*'s were at that time come to *Morlaix*, expecting *Morgan*'s Ships to follow them to that Port, in order to their ſetting ſail for *England*; that the eldeſt of them was to have been Captain, and the other Lieutenant of one of thoſe Ships, and that they owned the Project in *Spain*, by what they had learnt of it, was for the late Duke of *Ormond* to have landed in the *Weſt* with *Iriſh* Officers and Arms.

On the 8th of *June*, *N. S.* Colonel *Stanhope* [74] writ Word that the late Duke of *Ormond* was preparing to embark with Arms and Officers for *England*. And your Committee find, that [75] about that time the Ship *Revolution* ſet ſail from the Bay of *Cadiz*: That the Sailors knowing the *Madagaſcar* Voyage to be dropped, refuſed to do their Duty till they were ſatisfied as to the Place they were deſigned for. That hereupon *Gallwey* aſſured them it was to *Gibraltar*, in order to clean the Ship; but having got them under ſail, and ſatisfied them about their Wages, they proceeded to the Bay of *Biſcay*: That they put in at *Sancto Antonio* to take *Morgan* on board, and then joined the *Lady Mary* at *Sancto Andero*. That upon their Arrival at this Place, the common Report on Shore was, That the late Duke of *Ormond*, and four Companies of Soldiers, were to be taken on board the *Revolution*: That Corn and Cattle were provided for the ſaid Soldiers; and that the late Duke of *Ormond* was within a ſhort Day's Journey of *Sancto Andero*: That hereupon the firſt and ſecond Mate of the ſaid Ship, ſuſpecting *Gallwey* to be engaged in ſome unwarrantable Deſign, agreed not to ſerve any longer, unleſs *Gallwey* would give them a Note under his Hand, that they were forced into the Service, and would alſo declare whither they were bound, and give them Security that they ſhould not be employed in any other Voyage than ſuch as he ſhould declare to them; whereupon one of them was confined, and the other diſcountenanced by *Gallwey*.

But that *Gallwey*'s real Expectations were to have come over with the late Duke of *Ormond*, appears to the Committee moſt evident from the [76] Copy of a Letter of his, dated the 16th of *June*, the Day before he ſet ſail from *Cadiz*, in which are theſe Words, 'I hope the —— will 'ſet ſail to-morrow; your not repeating Or-'ders and Advice concerning the Buſineſs in 'hand, gives me a thouſand Apprehenſions; 'God ſend our Bankers and the reſt of our 'Friends are ſafe, and ſtand their Ground. I 'intend to embark myſelf on board the—— for 'fear *my Dear Aunt* ſhould have any Occaſion 'for Aſſiſtance, of whom I am ſo tender that I 'would not if poſſible have the Care of her put 'into any other hands.'

The Committee obſerve that the ſame Expreſſion of *My Aunt* is uſed in the Letter to *Dodſworth*, with ſuch Circumſtances as make it highly probable, that in that [77] Letter, as well as this of *Gallwey*'s, it denotes the late Duke of *Ormond*. They likewiſe obſerve, that the Names of *Manfield* and *Medley* are uſed in *Morgan*'s and *Gallwey*'s Letters, in ſuch a Manner as confirms thoſe Names to mean the late Duke of *Ormond*, agreeably to the Explication given them in the Report of the Committee of the Houſe of Commons.

Gallwey in his [78] Letter of the 3d of *November* 1722, ſays, He has a couple of fine Grey-hounds, a Dog and a Bitch, for Mr. *Freeman*; the ſame Dogs are mentioned in [79] another Letter, and in the [80] Depoſitions of two of the Sailors, to have been a Preſent from the late Duke of *Ormond*, *to the Pretender*: which confirms the Explication of the Name of *Freeman*, mentioned in the ſaid Report, to be true.

There was likewiſe ſeized on board the *Revolution*, a [81] Letter to *Gallwey*, ſigned *John Obrien*; which appears to be in the ſame Hand-writing with the [82] Letters ſigned *Gerrard* and *M. Digby*, taken among Mr. *Dennis Kelly*'s Papers, and confirms *Gerrard* to mean Sir *John Obrien*, one of *Dil-*

[61] A A. 5. [64] A A. 4, 6. [65] 17. [66] A A. . [67] 17. [68] 47, 48. [69] 27.
[70] 28. [71] E. 31. [72] E. 35. [73] A. 30, 31. [74] A. 15. [75] 47, 48. [76] 39.
[77] A A. 6. [78] 42. [79] 19. [80] 47, 48. [81] 26. [82] F. 14, 28.

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lon's Secretaries, agreeable to the Conjecture in the said Report.

Gallwey, in a [83] Letter dated from *Alicant Bay*, the 13th of *September* last, expresses his Concern for *Kelly's* Confinement, but hopes that is the worst that can befall him; and a [84] Letter in *Kelly's* Hand-writing signed *Ja. Johnson*, directed for *Gardiner*, but enclosing a Note for twenty Guineas payable to *Gallwey*, was found on board the *Revolution*, as also a Direction entered with *Kelly's* own Hand in a [85] Pocket-Book, supposed to belong to *Morgan*. *Kelly* in his Letters acknowledges the Receipt of one from Sir *John* (which is probably their common Correspondent, Sir *John Obrien*) and says their Friends in *Spain* are well, as one of the Family writes him word: which shews how extensive *Kelly's* Correspondences were.

Gallwey in a [86] Letter from *Genoa* of the third of *November*, 1722, (which appears to have been writ to one of the Pretender's Family) says, he has acted for many Months past under the Direction of *Medley* (*Ormond*) who, he makes no doubt, has mentioned him to Mr. *Freeman* (the Pretender:) yet in his [87] Letter to Lord *Carteret*, after his Ship was taken, he has the Assurance to affirm, that he never saw the late Duke of *Ormond* since he left *England*, nor ever corresponded directly or indirectly with him or the Pretender, or any of their Adherents at home or abroad, but was always zealously well affected to his present Majesty and our happy Establishment.

Gustavus Bâhr above-mentioned [88] deposes among other Particulars, that he has been informed the Pretender's Agents had Arms for three thousand Men, lodged at a House belonging to the late Duke of *Ormond*, near *Morlaix* in *Britanny*; which Port the Committee observe was one of the usual Stations of the Pretender's Ships under *Morgan*. And it appears probable, that these three thousand Arms made part of the ten thousand mentioned in *O*——'s [89] Letter to *L*—— as provided by *D*———, who is supposed to be *Dillon*.

Robert Franklyn, second Mate of the Ship *Revolution*, [90] deposes, that Letters directed to *John* or *James Jacobs* at *Genoa*, were taken up at the Post-house by *Gallwey*. The Committee observe, that *Jones* in his [91] Letter to *Chivers*, mentions his having communicated the Copies of *Mansfield's* and *Jacobs's* Letters; and *Glascock* in his [92] Letter to *George Kelly* of the first of *May*, says, 'He hopes Money is sent to pay for the *Barrels*, 'which *Jacobs* has at his Disposal.' In both which Places it is probable, that *Jacobs* means *Gallwey*; and that *Barrels* mean Stands of Arms, is confirmed by a [93] Letter of *Morgan's*, in which speaking of that very Ship that brought the Arms above-mentioned from *Gottenburg* and *Hamburg* to *Cadiz*, he says, 'She had received Orders 'for taking in nineteen *Barrels*, with every thing 'necessary to make use of them:' Which last Words seem to refer to the Bayonets, Flints and Powder. [94] The Intelligence sent by Mr. *Crawford*, on the 27th of *May*, That *Gordon* of *Boulogne* was to have a Ship ready to transport some of the Chiefs of the Conspiracy to *England*; is confirmed by the Deposition of *Roger Garth* (already published) who declares, 'That the said *Gordon* '(whom he had good Reason to believe to be an 'Agent of the Pretender's) did some time last 'Summer endeavour to engage him to ply off of 'that Station with his Sloop, in order to carry 'over such Persons as he the said *Gordon* should 'recommend to him, promising him that he 'should have Employment enough.'

The Lords Committees conceive, that the several Particulars above related, will appear to the House very much to corroborate the Accounts received from abroad, of Ships provided for transporting the late Duke of *Ormond* to *England*, with Arms and Officers, the beginning of last Summer; and that they also confirm the Decyphering of the Letters, and Explication of the Names, contained in the Report of the Committee of the House of Commons.

The Lords Committees observing that some Paragraphs of the Letters referr'd to them were writ originally in Cypher, thought it proper to call the Decypherers before them, in order to their being satisfied of the Truth of the Decyphering. The Account they receiv'd from those Persons, was, that they have long been versed in this Science, and are ready to produce Witnesses of undoubted Reputation, who have framed Letters in Cypher, on purpose to put them to a Trial, and have constantly found their decyphering to agree with the Original Keys which had been concealed from them. It was likewise confirmed to the Committee, that Letters decyphered by one or other of them in *England*, had exactly agreed with the decyphering of the same Letters performed by Persons in foreign Parts, with whom they could have no Communication; and that in some Instances after they had decyphered Letters for the Government, the Keys of those Cyphers had been seized, and upon comparing them, had agreed exactly with their decyphering.

With respect to the intercepted Letters in question, they alledged that in the Cypher used by *George Kelly*, they find the Words ranged in an alphabetical Order, answering the progressive Order of the Figures by which they are expressed, so that the farther the initial Letter of any Word is removed from the Letter A, the higher the Number is, by which such Word is denoted: that the same Word will be found to be constantly denoted by one and the same Figure, except in the Case of Particles or Words of very frequent Use, which have two or three Figures assign'd to them, but those always following one the other in a progressive Order. They likewise set forth, that in the Cypher above-mention'd, a certain Order is constantly observed as to the placing of the Words made use of, that under each Letter of the Alphabet the first Cyphers are allotted to the proper Names of Places, the next to the proper Names or Titles of Persons, the next to whole Words in common Use, and the last to denote single Letters.

As to the Truth of the Decyphering, they alledged that several Letters written in this Cypher had been decyphered by them separately, one being many Miles distant in the Country, and the other in Town, and yet their Decyphering agreed; that Facts unknown to them and the Government at the time of their Decyphering had been verified in every Circumstance by subsequent Discoveries, as particularly that of *H*———'s Ship coming in Ballast to fetch *O*—— to *England*, which had been so decyphered

[83] 40. [84] 46. [85] 45. [86] 42. [87] A. 45. [88] 17. [89] A A. 5. [90] 48.
[91] D. 10. [92] E. 37. [93] 27. [94] A. 9.

by them two Months before the Government had the leaſt notice of *Halſtead*'s having left *England*: That a Supplement to this Cypher having been found among *Dennis Kelly*'s Papers the latter end of *July*, agreed with the Key they had formed of that Cypher the *April* before: That the decyphering of the Letters ſigned *Jones*, *Illington*, and 1378, being afterwards applied by them to others written in the ſame Cypher, did immediately make pertinent Senſe, and ſuch as had an evident Connexion and Coherence with the Parts of thoſe Letters that were out of Cypher, tho the Words in Cypher were repeated in different Paragraphs and differently combined. And they inſiſt that theſe ſeveral Particulars duly weighed amount to a Demonſtration of the Truth of their decyphering.

As to the other Cyphers made uſe of by *Jerningan*, *Stanley*, and *Walter Grahame*, they conſiſt only of twenty four Figures, for the twenty four Letters of the Alphabet, and ſome other Figures for proper Names or whole Words, in the placing of which Names a certain Order is alſo obſerved.

Theſe ſeveral Particulars they declared themſelves ready to atteſt upon Oath, and to produce ſufficient Witneſſes to their Character and Integrity as well as their Skill.

The Committee being empowered by your Lordſhips to examine *Chriſtopher Layer*, did accordingly ſpend ſome time in the ſaid Examination, which produced a tedious Repetition of the Particulars contained in his Examination before the Committee of the Houſe of Commons, and ſome few Circumſtances which they found he had recollected by reading the printed Report and Appendix.

All that he confeſſed to them which is new, was, that he did before his ſetting out for *Rome* acquaint *Plunket* with his Intentions of carrying over a Note of the Names of the Tory Gentlemen of *Norfolk*, if *Plunket* thought it would be acceptable; that during his ſtay at *Rome*, Sir *William Ellis* told him, that he had formerly correſponded with *Plunket* at the Requeſt of the Lady *Middleton*, but that he had not for ſome time paſt correſponded with *Plunket*, or any one elſe, in relation to the Pretender's Affairs; for that from the time of the Action at *Dumblain* ſo many *Scottiſh* Noblemen and Gentlemen had come over to the Pretender, that he and all the reſt of the old Servants had been forbid all Correſpondence in *England*, or elſewhere. Upon *Layer*'s deſiring leave to correſpond with him if it were practicable, he told *Layer*, that on Condition he would promiſe to write nothing but what might be ſhewn to the Pretender himſelf, he would ſettle a Correſpondence with him; for that tho he had followed the Fortunes of the late King *James* and his Family, ever ſince the Revolution; and had always been faithful to the Pretender, and for many Years his Caſhier, yet if any of the *Scottiſh* Gentlemen that were about the Pretender ſhould know he received a Letter without communicating it to him, it would coſt him his Place, and he ſhould be in utter Diſgrace: That *Layer* promiſing to write nothing but what might be ſhewn, *Ellis* gave him a Cypher of his own Hand-writing, as alſo another Cypher of cut Paper for carrying on the Correſpondence; that he *Layer* likewiſe ſettled a Cypher of fictitious Names with Mrs. *Hughes*, Nurſe to the Pretender's Child, and received a Letter from her in relation to the Chriſtening of his Daughter. He would not own that he knew of any other Cypher, and perſiſted that Mrs. *Kinder* meant the ſaid Mrs. *Hughes*, tho in *Ellis*'s Cypher it ſtands for Mrs. *Fox*. He ſaid that the Paper which he deſired a Copy of from Sir *William Ellis*, and which is referred to in [95] *Ellis*'s Letter of the 30th of *January*, was a ſhort Scheme relating to the *Preſton* Affair, ſhewn him by *Ellis* while he was at *Rome*, of which he remembers no other Particulars, but that Inſurrections were to be begun in ſeveral Counties in a dark Night. That when he made Application to *Plunket* for the fictitious Names of *Burford*, *Steele*, &c. he was forced to acquaint *Plunket* with his having ſettled a Correſpondence with *Ellis*, which *Plunket* reſented, and ſaid he thought *Ellis* had been forbid all Correſpondence with Perſons here. That the Reaſon of his asking *Plunket* for a fictitious Name for Lord *Orrery*, was, that he had occaſion to mention to *Ellis* a Club which *Plunket* had often told him of; that *Plunket* once ſhewed him a Liſt of this Club of his own Hand-writing, which he read over two or three times, but that *Plunket* talked ſo inconſiſtently of them, that he, *Layer*, verily believes it was a mere Fiction of his own, and that there never was any ſuch Club. That he, *Layer*, thinks Lord *Orrery* mentioned to him Lord *Strafford*, as one of thoſe who, with Lord *North*, Sir *Harry Goring*, and others, were (as Lord *Orrery* was informed) going to do a raſh thing in favour of the Pretender: but that he cannot be poſitive as to Lord *Strafford*. That he, *Layer*, wrote himſelf to the Pretender, concerning the Difference of Opinion which he obſerved in Lord *North* and Lord *Orrery* about the Means of reſtoring him, and the Neceſſity there was that the Regent ſhould permit General *Dillon* to come over here with ſome foreign Forces. That he alſo drew up a Scheme of a Lottery to have been opened here in favour of the Pretender, and encloſed the ſaid Scheme in a Parcel with ſome Silk Stockings, which he ſent as a Preſent to the Pretender and his Spouſe by *Andrew Haye*, who travelled to *Italy* with Alderman *Barber*. That he delivered this Parcel to *Haye* with his own Hands, who promiſed to convey it to *Ellis*, and ſaid he could do it with Safety. That *Haye*, as he believes, underſtood the Stockings to be for the Pretender and his Spouſe: That he likewiſe had ſome Diſcourſe with *Haye* about getting Copper Plates engraved at *Rome* in *Engliſh* and *Italian* for the Tickets of the ſaid Lottery, and deſired him to receive Sir *William Ellis*'s Directions about it, which *Haye* promiſed to do. That while he, *Layer*, was at *Rome*, *Haye* asked him whether he would not ſee the King, meaning the Pretender; and that the ſaid *Haye* went frequently to the Pretender's Family in the way of his Buſineſs, and was, as he believes, preſent while the Pretender's and his Spouſe's Pictures were drawn.

Haye being examined by the Committee, owned the Receipt of the Stockings, but denied their being delivered to him by *Layer*, or that he knew who they were for. He likewiſe owned the carrying a Packet to *Belloni*, the Banker at *Rome*, which was brought to him by a Porter from *Layer*, as he ſuppoſed.

[95] B Y. 38,

Layer

Layer owns, that *Haye* told him *Belloni* was the Pretender's Banker, but denies his sending any such Packet by *Haye*: and in several other Particulars of their Examinations they contradicted each other.

96 A Scheme of the Lottery above-mentioned (for raising 225,000 Pounds Sterling) having been found among the Papers of *Walter Jefferyes*, now in Custody, the Lords Committees thought proper to examine him how he came by it. He owned his being acquainted with *Layer* and *Plunket*, that he saw *Layer* about the time of his going abroad, and help'd him to a Bill on a Banker at *Antwerp*: but he denied his knowing from whom he received the said Scheme, or his having had any Conversation with any one about it; and said it might be put into his Hands by *Plunket*, for ought he knew, but that he was not sure he had ever read it; and if he had known such a Paper had been in his Custody he should have destroyed it.

The Lords Committees being informed that *Layer*, between the time of his delivering the larger and lesser Bundle of Papers to Mrs. *Mason*, had deliver'd to her a large Parcel covered with blue Paper and sealed in several Places, and that he did within a few Days after take it back again, telling her he wanted to carry it to Lord *North* and *Grey*'s, they examined *Layer* particularly on this head, but he denied that he ever delivered her any such Bundle.

The Lords Committees next proceeded to the Examination of *John Plunket*, who began with large Protestations of his Innocence, and offered of himself to account for three Facts charged upon him in the Report, and to shew they were great Mistakes. The first was, his receiving a Letter from *George Kelly*; the second, his receiving the Letter at *Antwerp*, signed *Dixwell*; and the third, his receiving the Letter from the Pretender, taken at Mrs. *Creagh*'s. And as in his Examination before the Committee of the House of Commons he had fallen on the Expedient of substituting *Hugh Thomas* to personate *Rogers*, so now they found he had furnished himself with three different Persons, at different Places, all of the Name of *Plunket*, to whom he would have it believed these Letters were written; without offering any the least Proof or Circumstance of Probability to shew that such Persons were at all concerned in those Letters, or that there ever were any such Persons in being.

The Letter from *George Kelly*, he said was not writ to him, but to one *Harry Plunket*, who delivered it to him at *Will*'s Coffee-House, *Covent-Garden*, and that it related to some Money that was to be raised on a Security of Mrs. *Barnes*'s.

As to the Letter signed *Dixwell*, he said, there were two Clergymen of the Church of *Rome*, one or both of which travelled with him and *Layer* from *Dover* to *Antwerp*; that one of them went by the Name of *Loyd*, but his real Name was *Plunket*. That this Man dropped the Letter signed *Dixwell* at a Coffee-House; and he, *John Plunket*, taking it up with a design of restoring it to him in *Lorrain*, (to which Place sometimes one and sometimes both of these Clergymen were gone) shewed it to *Layer*, who took it into his Head that this Letter had been writ to him, *John Plunket*.

The Letter from the Pretender, he said, fell into his Hands much in the same manner; that there is one Father *Plunket* at *Rome*, to whom the Pretender always writes when any Body is to be introduced to him. Being asked whether Father *Plunket* travelled with *Layer* to *Rome*, (because mention is made in the Pretender's Letter of a Companion of *Plunket*'s) he said the Pretender always called the Person that was to be introduced by Father *Plunket*, his Companion. That this Father *Plunket* happening to shew him this Letter, and commending the Hand, he, *John Plunket*, said he had a Friend at *Rome*, that would be glad to see the Pretender's Hand-writing. And Father *Plunket* having accordingly left the Letter with him, he shewed it to *Layer*, and forgot to return it to Father *Plunket*, who never called for it, having fifty more Letters of the same kind by him.

Upon the Lords Committees asking him whether he went by the Name of *Rogers*, he said he went by several Names in his Travels, that he, might not be imposed upon in his Reckonings as the *English* generally are. Being asked whether he took the Name of *Rogers* to prevent his being thought an *Englishman*, he said that in *Italy* he was called *Rogieri*.

They farther asked him, whether he had dictated any fictitious Names to *Layer*, or had mentioned any thing to him of a *Club*? to which he answered, that he had given *Layer* the fictitious Name of *Bedford* or *Burford*, for Lord *Orrery*, which Name he had from *Neynoe*. That one Night being in company with *Layer*, and some Clergymen whose Names he has forgot, the Discourse turning on the Protests of the Lords, and the Names that were subscribed to them, one of the Company said, These are a Loyal Club; another said, They are Jacobites; and that he, *Plunket*, said, there was a Loyal Club of eighty or ninety Lords who would stand in Defence of their Country.

He farther observed to the Committee, that in the Bill now depeuding before your Lordships, he is not mentioned by the Name by which he was baptized and confirmed: he said his Sirname was *Plucknet*, but his Christian Name he declined telling; and seemed to place some Hopes and Confidence in this Subterfuge.

The Committee finding him trifle with them in this egregious manner, asked him in general, whether he had ever been in Conference with the Pretender, or had corresponded with him, or any of his Agents: to which he answered in the Negative.

The Committee next sent for *George Kelly*, who told them that the Affair being soon to be brought before your Lordships, he desired to be excused from answering any Questions; so that they had no Opportunity of examining him as to the new Matters alledged against him in the Depositions of Mr. *Philip Caryll* and others.

However they thought it proper to send for the said Mr. *Caryll*, and to ask him whether he had any thing to add to or retract from his former Accounts. His Depositions being read over to him, he expressed himself very angry and uneasy at their being made Publick; and told the Committee he was not disposed to answer any farther Questions, being sorry for what he had said al-

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ready;

ready; he likewiſe inſinuated, that what he had ſaid had not been taken down exactly as he dictated it, and ſemed apprehenſive that he was called upon to accuſe himſelf of Matters that might be prejudicial to him. But upon the Committee's telling him that the moſt effectual way he could take to do himſelf Service, was to make a candid and ingenuous Diſcovery of the whole Truth, he ſaid he had already given a candid Account, and hoped he ſhould not have been a Sufferer for his Candour. Being asked whether his Depoſitions had not been read over to him before he ſigned them, he ſaid they were; but that he was in a great Confuſion at the time they were taken. Being then required by the Committee to read them over himſelf, and to ſhew in what Particulars they vary from his Senſe and Meaning, he grew more compoſed; and having read over the firſt, dated the 27th of *March*, ſaid, he believed it was right enough. In reading over the ſecond (dated the 29th of *March*) he ſaid it was not ſtrictly true that Sir *Harry Goring* had *told him* what is there related, concerning an Invaſion, Commiſſion, &c. but that it was true, he had heard Sir *Harry Goring* ſay ſo; that as to Lord *Lanſdown*'s being to land in the *Weſt*, he could not be poſitive, but he thinks Sir *Harry Goring* ſaid ſo. He ſaid, it was but a Suppoſition of his own, that the Diſcourſe which occaſioned the Biſhop of *Rocheſter*'s taking Sir *Harry Goring* by the Collar, related to the Pretender's Affairs: but that he remembers very well, Sir *Harry Goring* did affirm, that on his ſaying the Words there recited, (this is Rocking the Cradle indeed) the Biſhop did take him by the Collar, and that he, *Caryll*, did *apprehend* the ſaid Diſcourſe to have Relation to the Pretender's Affairs. He ſaid it was about two Years ago that being at Sir *Harry Goring*'s he ſaw a Letter lie on his Scrutore, directed to Mr. *Hore*, and upon his asking Sir *Harry* who the ſaid Letter was for, Sir *Harry* told him it was writ to himſelf. He ſaid that the Words in his Depoſition which import, that he, *Caryll*, *had Reaſon to believe Kelly* and Sir *Harry Goring* were ſettling together a Key at his Houſe at *North*, by which they might correſpond, are too ſtrong; for that he, *Caryll*, did not ſee any ſuch Key, only it was his Suſpicion and Thought at that Time that they were framing ſuch a Key.

He likewiſe ſaid, that what relates to *Boyce* in the ſaid Depoſition is rather ſtronger than he meant it; for that *Boyce* only told him he was afraid the Servant, he, *Caryll*, had ſent to him to help off, was *Sample*; alledging this Reaſon, that he had obſerved he was diſguiſed, and that he was afraid he was ſomewhat like the Deſcription given of *Sample* in the Proclamation. All the other Particulars of his Depoſitions he averred to be true, but ſaid, he had nothing farther to add, and that he would rather a thouſand Times die in *Newgate* than be an Evidence.

Boyce, being examined by the Committee, owned that Sir *Harry Goring* went to *France* in his Yatch, and that a Servant went over with him in a Black Wig, whom he had never ſeen with Sir *Harry Goring* before; but he utterly denied his having conveyed over any Perſon ſent to him by Mr. *Caryll*, or his having had any Diſcourſe with *Caryll* about any Perſon's anſwering the Deſcription of *Sample*.

The Committee having ſummoned before them *William Beaſing*, of *Horn Dean*, and having read to him his former Depoſitions, find that he retracts what he had there depoſed on Oath, of *Caryll* and Sir *Harry Goring*'s being in Company at his Houſe with the Perſon who had but one Hand: he ſays, ſuch a Perſon was at his Houſe with two other Gentlemen, but that he now recollects *Caryll* and Sir *Harry Goring* were not there at that time. Being asked whether he had received any Letter or Meſſage, ſince his being in Cuſtody, which had helped to ſet him right in this Particular, he anſwered in the Negative.

The Committee obſerve from the Parts of Mr. *Caryll*'s Depoſitions which he affirmed, that the Explication given to the Name of *Hore*, in the Report of the Committee of the Houſe of Commons, as alſo the Decyphering of that Part of *Kelly*'s [97] Letter which mentions *Hore*'s Commiſſion, and the Conjecture of *Goring*'s having carried over a new Cypher from *Kelly* to *France*, are very much confirmed. They likewiſe obſerve that what is ſaid in *Glaſcock*'s [98] Letter to *Kelly* of the $\frac{2}{13}$ of *October*, concerning the Arrival of the little *French* Merchant, mentioned by *Kelly*, and the Precaution they intend to uſe in relation to him till ſome other appears with whom they may talk of Buſineſs more to the Purpoſe, has probably relation to *Sample*'s being got ſafe to *France*. And the Letters ſigned *Fra. Phillips*, which *Caryll* owns he received from *Kelly*, not only confirms *Kelly*'s writing by fictitious Names, but is a ſtrong Argument of his being the Perſon that writ the [99] Letter to *Bonnaville* of the 27th of *September*, and conſequently the other Letters charged upon him in the Report. For as in his Letter to *Caryll*, he ſays: 'I *have never heard a Syllable* from your other Lawyer, (Sir *Harry Goring*) ſince you and I were with him, which you'll ſay *is pretty ſurprizing*, and am afraid very *detrimental*.'——ſo in that to *Bonnaville* (writ within five Days of the other) he ſays, 'I *have not heard a Syllable* from *D. Gainer*, or *G. Roberts*, ſince Mr. *G. Sampſon* went, which has been a great *Surprize*, and I may ſay no ſmall *Detriment*, to ſome of their Friends.'

This Identity of Expreſſion, in two Letters writ ſo near the ſame time, appears to be a farther Confirmation that the ſame Perſon writ them both, and confirms *G. Sampſon* to be the ſame with the *other Lawyer*, which *Caryll* has explained to mean Sir *Harry Goring*.

The Lords Committees alſo find in the Papers referred to them new Evidence of *Kelly*'s viſiting, writing to, and receiving Letters from the Biſhop of *Rocheſter*, as appears by [1] Affidavits from the Perſons who carryed *Kelly* to the Biſhop's Houſe, and who alſo delivered Letters from him to the Biſhop, and brought back the Biſhop's Anſwers; and Mrs. *Levett* [2] depoſes on Oath, that Mrs. *Barnes* has told her, *Kelly* received in one Day as many Letters from abroad as came to fourteen or fifteen Shillings, the Directions of which ſhe, *Barnes*, ſaw, but they were in ſuch odd fictitious Names, as no one could find out but *Kelly*, who had the Key; that among theſe Letters there was one for the Biſhop of *Rocheſter*, (as *Kelly* told her) which he was at that time gone to deliver to the Biſhop. And *John Malone* [3] depoſes, that among the Letters which he carried from *Kelly* to the Poſt, there were ſome directed to *Waters* the

[97] E. 35. [98] E. 79. [99] E. 75. [1] 13, 14. [2] 11. [3] 12.

[a] Banker

Banker at *Paris*, under whose Cover it appears that most of the Treasonable Letters were sent; and the original [4] Letter in *Kelly*'s own Hand stopt at the Post-Office was enclosed in a Cover so directed. Mrs. *Levett* farther [5] deposes, that Mrs. *Barnes* told her, under Secrecy, that the Dog sent from *France* was a Present *from the late Lord Marr*, to the Bishop of *Rochester*'s Lady; which is in some measure confirmed by the Draught of the Affidavit prepared for *Birmingham* at *Paris*, in which he is desired to swear that *Lord Marr* knew nothing of any such Dog. And tho this Affidavit does not appear to have been sent over by *Kelly* directly, yet express mention is made in the Letter to *Gordon*, that the said Affidavit is the Copy of a Note from the Person concerned, with the Substance of what *he thinks requisite*. This Circumstance of the Dog's having been sent by the late Lord *Marr*, which is not expressly alledged in any part of the Report of the Committee of the House of Commons, is a new Confirmation that the [6] Letter signed 918, which mentions the sending the Dog, is from *Marr*; and that *Musgrave*, to whom the Receipt of the Dog is acknowledged in [7] two several Letters, is likewise a Name denoting *Marr*, agreeably to what is asserted in the said Report.

The Committee find by [8] two Affidavits referred to them, that *George Kelly*, the last time he was taken into Custody, offered the Woman of the House a Gold Watch, forty Guineas in Money, and a Note for forty Pounds more, to let him escape.

The Committee have laid the Substance of these several Examinations together, as having some Reference to *George Kelly*.

They likewise examined Mr. *Dennis Kelly*, who utterly denied his being advised with, or knowing any thing relating to any Conspiracy. Several Papers found in his Custody being shewn to him, he denied his having ever seen them before, except when some of them were shewn to him, at former Examinations.

They next sent for Captain *Pancier*, and having ordered his [9] former Depositions to be read to him, ask'd him whether he had any thing to add or retract; he affirmed every part thereof to be true, and said he had only this farther Particular to add, That having lately seen *George Kelly*, as he was brought down to the House of Commons; he recollects that he has often seen him at the Gaming-Tables with *Skeene*, and that *Skeene* and the said *Kelly* were intimately acquainted, as he is able to prove by several Witnesses of Credit. *Skeene* being call'd in, and having heard *Pancier*'s Depositions read over to him, own'd that he was acquainted with *Pancier*, and had been in Company with him at several of the Times and Places mention'd in the said Depositions; That he was taken Prisoner in the *Preston* Rebellion, but is not related to *Marr*, nor has ever seen *Mackintosh* since he parted from him at *High-gate*. He own'd he had had general Discourse with *Pancier* relating to a Plot, and that *Pancier* had ask'd him several Questions about it, to some of which he (*Skeene*) assented, and to others not; but he deny'd his having told *Pancier* any farther Particulars than were in the News-Papers, or in the current Report of the Town. As for Instance, when *Pancier* asked him where the late Duke of *Ormond* was, he told him the News-Papers said he was at *Corunna*; but he *positively* denied his having ever mentioned to *Pancier* any *Particular Persons* as concerned in the Conspiracy, or any of the *Particular Facts* specified in his Depositions.

He farther said, he had reason to believe that *Pancier* had sent to him since his being in Custody, to advise him to make his Escape; for that one *Gerard Fitzgerald* having been walking with *Pancier* in the *Park*, came directly from thence to him, *Skeene*, at the Messenger's House, and advised him to make his Escape; tho he own'd that *Fitzgerald* made no mention of *Pancier*'s having sent him any such Advice.

Fitzgerald being sent for by the Committee, owned he had been to see *Skeene*, and finding no body at that time in the House but a Woman, told *Skeene* it would be an easy Matter for him to escape; but he cleared *Pancier* from having sent any such Intimation or Advice. He farther said, that *Skeene* told him he did not know but he might have talk'd foolishly to *Pancier*, but that if he had, *Pancier* was but a single Evidence, or to that effect.

The Committee find, among the Papers referred to them, a [10] Copy of the Orders which *Arnold* received from the Owners of the Ship *Phineas*, requiring him to follow the Directions of *Roger Nowell* (*Halstead*) during the Voyage; as also an [11] Affidavit, by which it appears, That the said *Halstead* was to visit the Bishop of *Rochester*, and staid an Hour at his House, a few Days before his setting out for *Bilboa*.

They also find a very remarkable [12] Letter sent to one of the Secretaries of State, by an unknown Hand, dated the 12th of *February*, 1721-22, and inclosed in [13] one, dated the 31st of *March*; which first appears to be the Letter referred to in [14] one of *Neynoe*'s Examinations, as drawn up by *Kelly* and himself, and brought back to him corrected, as he believ'd, by the Bishop of *Rochester*.

They likewise find a [15] Paper taken in Lord *North* and *Grey*'s Study at *Catlige*, which contains several very extraordinary Reasonings on the Nature of Oaths; tending to prove, That the Oaths to the present Government are not Obligatory; and that tho the taking such Oaths is in itself unlawful, and a grievous Sin, as being inconsistent with prior Oaths, or Obligations, yet neither the taking nor breaking them can in strictness fall under the Denomination of Perjury.

This is the Substance of what the Committee have been able to collect from a careful Perusal of the Papers referred to them, and a long Examination of several of the Persons concerned; in some of whose Power they have Reason to believe it was to have made ample Discoveries, if they had been disposed to speak the Truth.

And tho the Lords Committees cannot reflect, without Pity and Compassion, on the misguided Zeal, and wretched Infatuation of those Men, who rather chuse to expose themselves to the greatest Dangers, than to discover the Authors or Accomplices of their Treasons; thereby declaring to the World, that the Leagues and Confederacies of private Villany are dearer and more sacred to them than the strongest Tyes and Obligations of Society; yet the Committee make no doubt but the Matters contained in the Report referred to them, and corroborated by the Result of

[4] E. 21. [5] 11. [6] E. 32. [7] E. 35, 42. [8] 15, 16. [9] D. 1, 2. [10] 7. [11] 8. [12] 6. [13] 5. [14] E. 9. [15] 2.

their preſent Enquiry, will appear to your Lordſhips ſo clearly made out, that the Conſpirators, ſooner or later, will have leiſure to repent of the raſh and impious Choice they have made, of being rather true to one another, than to God, their Conſciences, and their Country.

ON *April* 24 the Houſe (according to Order) took into Conſideration the Report from the Lords Committees, to whom the Report and Original Papers delivered by the Houſe of Commons at ſeveral Conferences, were referred; and who were impowered by this Houſe to examine *Chriſtopher Layer* and ſuch other Perſons as they from time to time ſhould think proper: And the ſaid Report being read, It is Reſolved by the Lords Spiritual and Temporal in Parliament Aſſembled, That this Houſe is fully ſatisfied and convinced, That a deteſtable and wicked Conſpiracy has been formed and carried on, for ſolliciting a Foreign Force to invade theſe Kingdoms, for raiſing a Rebellion, and inciting Inſurrections in *London*, and divers other Parts of *Great Britain*, and even for laying violent Hands on the Sacred Perſon of His Majeſty, and on His Royal Highneſs the Prince of *Wales*, in Order to deſtroy our Religion and Happy Conſtitution, by placing a Popiſh Pretender on the Throne.

Ordered, By the Lords Spiritual and Temporal in Parliament Aſſembled, That the Thanks of this Houſe be given, by the Lord Chancellor, to the ſaid Lords Committees, for their having diſcharged the Truſt in them repoſed, with great Exactneſs, Care, Fidelity, and Candour. Thereupon,

The Lord Chancellor addreſſing himſelf to the Lords of the ſaid Committee, (*viz.* Duke of *Montroſe*, Duke of *Dorſet*, Earl of *Scarborough*, Earl of *Iſlay*, Lord Viſcount *Lonſdale*, Lord Viſcount *Torrington*, Lord Biſhop of *Sarum*, Lord Biſhop of *Lincoln*) gave them the Thanks of the Houſe in the following Words:

My Lords who were of the Committee,

I Am commanded by the Houſe to give your Lordſhips the Thanks of this Houſe, for your having diſcharged the Truſt repoſed in you, with great Exactneſs, Care, Fidelity, and Candour.

My Lords,

The Truſt was as great as ever was repoſed by this Houſe in any of its Members. The Subject Matter of your Inquiry, a Conſpiracy the moſt dangerous as well as deteſtable, big with Miſchiefs of all kinds, and deſtructive of every thing that is valuable amongſt us; carried on and managed in a new deviſed Method with the utmoſt Cunning as well as Wickedneſs, and covered with all the Diſguiſes the moſt artful Dexterity could contrive: and which therefore required the greateſt Penetration and Skill to lay open. And the Papers, ſome of them of ſuch a Nature, that it was thought fit to refer them to your Lordſhips, lock'd up as they were, without reading them in the Houſe.

My Lords,

Your Lordſhips have fully anſwer'd the Expectations the Houſe entertained, when they pitched upon you for this Truſt.

Your Application in going thro' ſo many Papers of affected and ſtudied Obſcurity, your Candour and Exactneſs in Examining the Perſons concern'd, or any way capable of giving any Satisfaction, and in repreſenting what they ſaid; the Accuracy and Judgment of your Remarks; the Light you have ſo happily given to ſeveral Paſſages in the Report of the Committee of the Commons, which, tho in themſelves juſt, were yet liable to Cavils, by ſuch as were loth to have the Truth found out, give, I dare ſay, a ſenſible Pleaſure to every Lord here, that has heard your Report read, and finds himſelf thereby enabled to form a Judgment with ſo intire Satisfaction to himſelf, concerning this abominable Work of Darkneſs, which the Actors have endeavoured to ſurround with impenetrable Obſcurity.

This noble Pleaſure of ſeeing the Truth, notwithſtanding ſo many Contrivances to hide it, and of being thereby enabled to come to right Reſolutions in a Matter of ſuch Importance, has very naturally and agreeably broke out into ſo unanimous a Reſolution of returning the Thanks of this Houſe to your Lordſhips, to whom they ſo much owe it. And in Obedience to their Commands, I do, with particular Pleaſure, give your Lordſhips the Thanks of this Houſe, for your having diſcharged the Truſt in your Lordſhips repoſed, with great Exactneſs, Care, Fidelity, and Candour.

March 19. The Bill to inflict Pains and Penalties on *John Plunket* was brought into the Houſe of Commons, to which *Plunket* making no Defenſe, it paſs'd that Houſe on *April* 5. and was ſent up to the Lords, who after hearing Counſel for the Bill, and *Plunket* himſelf againſt it, paſs'd the Bill; which afterwards obtained the Royal Aſſent, and was as follows.

An Act to inflict Pains and Penalties on John Plunket.

'WHEREAS in the Years One thouſand ſeven hundred and twenty one, and One thouſand ſeven hundred and twenty two, a deteſtable and horrid Conſpiracy was formed and carried on by divers Traitors for invading your Majeſty's Kingdoms with foreign Forces, for raiſing an Inſurrection and Rebellion againſt your Majeſty, for ſeizing the Tower and City of *London*, and for laying violent Hands upon your Majeſty's moſt Sacred Perſon, and upon his Royal Highneſs the Prince of *Wales*, in order to ſubvert our preſent happy Eſtabliſhment in Church and State, and to place a Popiſh Pretender on your Throne: And whereas for the better concealing and effecting the ſaid Conſpiracy, divers treaſonable Correſpondences were, within the time aforeſaid, carried on by Letters written in Cyphers, cant Words, and fictitious Names; which Conſpiracy, had not Almighty God in his great Mercy diſappointed the ſame, would have deprived your Majeſty's Kingdoms of the Enjoyment of their Religion, Laws and Liberties, involved them in Blood and Ruin, and ſubjected your People to the Bondage and Oppreſſion of Romiſh Superſtition and Arbitrary Power: for which execrable Treaſon *Chriſtopher Layer* hath been indicted, tried, convicted and attainted. And whereas *John Plunket* hath been a principal Actor in the ſaid horrid and deteſtable Conſpiracy, by traiterouſly conſulting and correſponding with divers Perſons, to raiſe an Inſurrection and Rebellion againſt your Majeſty within this Kingdom, and

'to procure a foreign Force to invade the same, 'with a design to depose your Majesty, and to 'place the Pretender on your Throne, by traite-'rously corresponding with the said Pretender, 'and by engaging in a most execrable and vil-'lanous Design of laying violent Hands upon the 'Sacred Person of your Majesty (whom God 'long preserve.) Therefore to manifest our just 'Abhorrence of so wicked a Conspiracy, and our 'Zeal and tender Regard for the Preservation of 'your Majesty's Person and Government, and 'for the Protestant Succession in your Majesty's 'Royal Family, the solid Foundation of our pre-'sent Happiness and future Hopes; and to the 'end that no Conspirator may, by any Contri-'vance or Practice whatsoever, escape Punish-'ment, and that all Persons may be by the Justice 'of Parliament for ever hereafter deterred from 'engaging in any traiterous Conspiracies or At-'tempts, We your Majesty's most dutiful and 'loyal Subjects, the Lords Spiritual and Tempo-'ral, and Commons in Parliament assembled, do 'humbly beseech your Majesty, that it may be 'enacted; and be it enacted by the King's most 'excellent Majesty, by and with the Advice and 'Consent of the Lords Spiritual and Temporal, 'and Commons in Parliament assembled, and by 'the Authority of the same, That the said *John* '*Plunket* shall be detained and kept in close and 'safe Custody, without Bail or Mainprize, du-'ring the Pleasure of his Majesty, his Heirs and 'Successors, in any Goal or Prison within the 'Kingdom of *Great Britain*, to the Custody of 'the Goaler or Keeper whereof the said *John* '*Plunket* shall from time to time be committed, 'in pursuance of this Act, by Warrant under the 'Hand and Seal of any Secretary of State of his 'Majesty, his Heirs or Successors: Which War-'rant or Warrants any Secretary of State for the 'time being is hereby authorized and impow-'ered to make; and that the said *John Plunket* 'shall forfeit to his Majesty all his Lands, Tene-'ments, Hereditaments, Goods and Chattels what-'soever.

'And for more sure detaining the said *John* '*Plunket* in safe Custody, be it further enacted by 'the Authority aforesaid, That if the said *John* '*Plunket* shall break such Goal or Prison to which 'he shall be so committed, or shall escape out 'of the Custody of the Person in whose Custody 'he shall be by virtue of such Commitment, That 'then the said *John Plunket*, and all and every 'Person and Persons whatsoever, who shall be 'aiding or assisting the said *John Plunket* in break-'ing such Goal or Prison, or in making such 'Escape, as aforesaid, or who shall by Force 'take or rescue the said *John Plunket* out of such 'Custody, Goal, or Prison, during the Conti-'nuance of his Imprisonment by virtue of this 'Act, being thereof lawfully convicted, shall be 'adjudged Guilty of Felony, and shall suffer 'Death as in Case of Felony, without Benefit of 'Clergy.'

In pursuance of this Act, *John Plunket* was continued Prisoner in the *Tower* of *London*.

The same Day the Bill to inflict Pains and Penalties on *George Kelly* alias *Johnson* was brought into the House of Commons, who after hearing Counsel for the Bill, and *Kelly* and his Counsel against it, pass'd it on *April* 6. and sent it up to the Lords, who heard Counsel for and against the Bill, when *Kelly* made the following Speech.

My LORDS,

'SINCE my Counsel have so fully answered 'every Article alledged against me, it may 'seem unnecessary to take up your Lordships 'Time, by saying any thing for myself. And, 'indeed, it would be so; if my Charge were Or-'dinary or Particular. But, my Lords, I have 'been represented as a Person doubly guilty; 'First, In transacting Treason for myself: and, 'Secondly, In doing it for other People. These 'are Crimes of the most heinous Nature; and 'if they were as clearly proved, as they have 'been strongly asserted, I should justly merit 'your Lordships highest Displeasure, and all the 'Pains and Penalties you could possibly inflict 'upon me.

'And since my Charge is so very extraordi-'nary; since these Proceedings seem to be with-'out any Precedent; and, that the Innocence 'of other Persons calls upon me for publick 'Justice; I believe your Lordships will easily al-'low, That to be silent in such a Case would be 'truly criminal, and too justly censured.

'To enter into all the Particulars of my Ac-'cusation, would take up more Time than is rea-'sonable for me to ask, or for your Lordships to 'allow: And tho the many Inconsistencies, Con-'tradictions, and false Conclusions which appear 'in almost every Page of the printed Reports, 'plainly shew the Weakness, Absurdity, and 'Sophistry of them; however, I shall only beg 'Leave to touch upon those material Parts 'which relate to myself, and my Defense to 'them.

'The first Article which I find myself charged 'with, is, The employing of one *Neynoe* to 'draw up three Memorials to the Regent of '*France*, to sollicit Foreign Forces to invade 'this Kingdom. And for Proof of this, the Ex-'aminations of the same Person, which are nei-'ther upon Oath, nor so much as signed by him, '(and whom the Committee of the Honourable 'House of Commons have represented as a very 'infamous Fellow) are the only Evidence assigned 'against me.

'*This*, my Lords, is the Crime! and *This* the 'Proof!

'And tho the bare mentioning of it might be 'sufficient to convince your Lordships of its 'Weakness; however, since so great a Weight 'has been laid upon *this Kind* of Evidence in '*another Place*, it will be necessary to be a little 'more particular about it.

'The two first of these Memorials (*viz.* 'those before and after the *South-Sea Scheme*) are 'but slightly mentioned: But the One pretended 'to be drawn up in *December* 1721, (and con-'taining a Demand of 5000 Men) and a Letter 'said to be written the *March* after (to amuse the 'Government into a false Security) are the chief 'Things upon which any Stress is laid. And 'how false both these Allegations are, has evi-'dently appeared to your Lordships. For, had 'my Accuser been really employed to draw up 'any such Memorials, it is reasonable to believe, 'that he would have Copies of some, and especi-'ally of the last of them; since a Person who 'turned Informer so suddenly after, may very 'well be presumed to have had Thoughts of it

for ſome Time before; and ſuch Papers would, no doubt, give great Weight to his Information. But the Miniſtry have produced no ſuch Copies; neither do they pretend to have them: Which is a very great Indication, that there never were any ſuch Memorials at all.

'Beſides, There are no two of his Examinations of a-piece. Nay! he contradicts himſelf in almoſt every one of them. For in his ſecond Examination he ſays, That theſe Memorials were all drawn up by the Order of one *Henry Watſon* (whom he really did not know, but took to be the late Earl *Mariſhall*) without making the leaſt mention of me. In his third Examination he ſays, They were delivered to me and *Watſon*; and in his fourth he ſays again, They were all drawn up by the Order of *Henry Watſon* only. And in a few Lines after contradicts himſelf, and ſays, that the Heads of them were given to him by *me* and *Watſon*: Which are ſuch Inconſiſtencies, as (your Lordſhips will eaſily grant) are not to be reconciled: And if his Memorials were no better drawn than his Examinations, I believe they were not likely to meet with any great Succeſs.

'As to the Earl *Mariſhall*, how reaſonable it is to believe, that a Perſon in his Circumſtances ſhould venture to come into *England*, and live ſo openly here, as to intruſt himſelf, and a Secret of this Nature, to a Fellow, who (by his own Confeſſion) did not know him, is humbly ſubmitted to your Lordſhips. And as for my Part, it is very plain that I could have no Hand in them, ſince the *Minutes* in my Pocket-Book (in which I could have uſed no Diſguiſe) agreeing with the concurrent Teſtimony of *ſeveral Witneſſes*, plainly ſhew, That I was not in the Kingdom at the Times in which my Accuſer pretends to have been ſo employed. For, by thoſe Minutes, and *their* Teſtimony, it appears, That I went to *France* the 23d of *November* 1721, and did not return till the latter End of the next Month: And my Accuſer himſelf owns in his firſt Examination, That he did not ſee me after my Return, till the *January* following; which makes it impoſſible that he could have been ſo employed by me in *December*, ſince I was moſt part of that Month out of the Kingdom; and the few Days of it that I was here, he owns he did not ſee me.

'Nor has the other Part of his Information relating to the Letter (which he pretends to have drawn up in *March*) better Grounds—— For, by the ſame Minutes, and by the ſame Evidence, it likewiſe appears, That I went to *France* the 22d of *February* after, and did not return till the middle of *April*; which makes it as impoſſible that he could have been employed by me in *March*, ſince I was then likewiſe out of the Kingdom. Had this Examination been at any Diſtance of Time, it is poſſible he might be miſtaken in it: but his firſt Information muſt have been about the middle of *April*, ſoon after my Return from *France*; for he confeſſed to the Perſon taken up with him at *Deal*, That he was the firſt who ſet the Miniſtry upon intercepting Letters. And the firſt Letters ſo intercepted, are owned, in the 42d Page of the Report made to the Lower-Houſe, to have been the 22d of *April*, 1722.——And, ſurely, he cannot be ſuppoſed to have forgot ſo ſoon what happened the very Month before; eſpecially ſince he has been ſo particular, as to name the very Day (*Saturday*) upon which he ſays this Letter was ſo drawn up. By all which it plainly appears, That this Article is not only groundleſs, but evidently falſe; and likewiſe, that he had no ſuch Intimacy with me (as the Report pretends) ſince he has declared, That I never ſpoke to him of the Conſpiracy; and that I could be a Month *at one Time*, and Two Months at another out of the Town, without his knowing any thing of it. As to what is ſaid to his coming ſometimes to my Lodgings, I believe it may be true; but it has been fully proved, That his Viſits were never to me, but always to another Perſon who lodged in the ſame Houſe. And I do ſolemnly affirm to your Lordſhips, that I never was acquainted with the late Earl *Mariſhall*, or with any ſuch Perſon who went by the Name of *Watſon*: That I knew very little of my Accuſer; ſo little, that I am confident, I never ſpoke to him Ten times in my Life; nor ever employed him in this or any other Affair whatſoever.

'*The ſecond Article charged upon me, is, the carrying on a Treaſonable Correſpondence for the Biſhop of* Rocheſter. And for Proof of this, the Examination of the ſame Perſon is the only Evidence produced againſt me, wherein he ſays, That I frequently told him, the Biſhop was concerned in ſuch a Correſpondence; and that I managed it for him; with other Particulars not worth mentioning. How reaſonable it is, that I ſhould tell ſuch a ſtrange Untruth to a Perſon that I knew ſo very little of, and what Credit ought to be given to his bare Aſſertion, who has affirmed ſuch groſs and notorious Falſehoods in the former Article, muſt be ſubmitted to your Lordſhips. And, in my preſent unhappy Situation, I cannot but think it a very great and ſingular Happineſs, to have ſo publick and honourable an Occaſion of purging myſelf from ſo vile a Calumny, and of doing Juſtice to that moſt worthy and learned Prelate.

'And I do ſolemnly declare to your Lordſhips upon the Faith of a Chriſtian, That I never wrote or received a Letter of any kind for the Biſhop of *Rocheſter*, or was privy to any Correſpondence of his at Home or Abroad: That I never ſhewed him any Letter that ever I wrote to *France*, or ever ſent one there by his Privity or Direction: That I am very little known to his Lordſhip, went very rarely to wait upon him; ſo rarely! that I am confident few of his Servants know either my Name or Face; and I have not ſeen him above three or four Times theſe two Years paſt, and not above eight or ten times in my whole Life.

'I do farther declare, That my Viſits to his Lordſhip were always publick; that I never went privately in a Chair to his Houſe; always found other Company with him, who were generally Strangers to me; and never once mentioned his Name, upon this or any other Account, to the Perſon who has thus accuſed me. Which with the Evidence that has been produced of his own Confeſſions to that Purpoſe, is, I hope, ſufficient to convince your Lordſhips of the Truth of it.

'And as for the Dog, which has been brought as a Circumſtance to prove this Matter, I do in the ſame ſolemn Manner declare, That he was given to me by a Surgeon at *Paris*, whoſe

'*Affidavit*

'*Affidavit has been offered to be produced*) and who, 'at that Time, I do verily believe, never heard 'of his Lordship's Name; and that he never was 'design'd for any body but the Person I gave 'him to. And I appeal to the very Ministers 'themselves, if the *British* Resident at *Paris* (who 'is constantly attended by that very Surgeon, 'and examined him about it) has not confirmed 'the Truth of this Account to them. I do far-'ther affirm, That the Bishop of *Rochester* never 'saw him; never received any Letter or Mes-'sage by me, nor (do I believe) by any other 'Person about him: Neither did I ever know or 'hear, That his Lordship had any Intercourse or 'Correspondence with the late Earl of *Marr*, or 'any other disaffected Person abroad.

'*My* LORDS,

'It cannot be imagined, that I have any par-'ticular Interest or Concern in this Matter; for 'I never received any Favours from his Lordship; 'neither do I owe him any Obligations, but those 'of common Justice: And those I should per-'form, where I have so much Truth of my Side, 'to the greatest Enemy I have upon Earth. As for 'the other Circumstances, which are brought to 'strengthen my Accuser's Examinations, and are 'set forth in one *Pancier*'s Deposition, They will 'appear, I don't doubt, as groundless and in-'consistent as the Examinations themselves. For 'this Person swears, That another told him of 'this Conspiracy; that six or eight Battalions of '*Irish* Forces were to come from *Spain* to assist 'the Conspirators; that 200000 *l.* were raised, 'and 800 Men regularly subsisted for this Pur-'pose in *London*. These, My *Lords*, are called, 'in the 38th Page of the Report of the Lower 'House, *The Concurrent* and *Corroborating Proofs* 'of my Accuser's Examinations: And I humbly 'appeal to your Lordships, if any one of them 'carries the least Colour of Reason or Probabi-'lity with it. For can it be imagined, That such 'a Force should come from *Spain*, when there 'appears to be so strict a Friendship between 'the two Kingdoms? Or that 200000 *l.* could 'possibly be raised among all the disaffected 'in *England*, in case there was a Licence for 'it? Or 800 Men regularly subsisted in this 'City, without a Discovery? These are such 'idle inconsistent Tales, as (I am persuaded) 'can never have any Weight with your Lord-'ships. Besides, my Lords, this is only bare 'Hear-say; and if the Hear-say of such infamous 'Persons (or, indeed, of any Persons) be look'd 'upon as sufficient Evidence, I believe no Man 'in *England* can be sure of his Life or Liberty 'an Hour, since any two People may talk him 'into High-Treason whenever they please; and 'the greater the Person is, the greater his Dan-'ger always will be.

'The *Third Crime* which I stand charged with, 'is, the Writing of three treasonable Letters 'for the Bishop of *Rochester*, supposed to be for 'the Pretender, the late Earl of *Marr*, and Ge-'neral *Dillon*, which Letters are said to have 'been sent by me to Mr. *Gordon* at *Boulogne*, with 'Directions to be delivered to one Mr. *Talbot*. 'And for Proof of this, the Clerks of the Post-'Office are produced, who swear, That those 'Letters were (to the best of their Knowledge) 'written in the same Hand with an Original 'which was stopt as a Specimen of it. Which 'Original has been sworn by two Persons to be 'my Writing, and consequently those Letters 'must be so too.

'*My* LORDS,

'These Letters are dated the 20th of *April*, 'and the Specimen so stopt the 20th of *August*, 'just four Months after. And how it is possible 'for People (who receive such a Number of 'Letters) to swear to a Likeness of Hands, at 'such a Distance of Time; and what Weight 'ought to be laid upon this kind of Evidence; 'or upon that modern and mysterious one given 'by the Decypherers, in which they don't pre-'tend to a Certainty themselves, must be sub-'mitted to your Lordships. And as to the Per-'sons who have sworn to my Hand, I hope it 'will be considered, That one of them is a Mes-'senger, who never saw any of my Writing, but 'the Superscriptions of a few Letters, which '(your Lordships may easily see) do not bear the 'least Likeness with what he has sworn to. Be-'sides, this very Person was turned out of his 'Employment upon my Account; and a few Days 'after he gave this Evidence in the House of 'Commons, I saw a Paragraph in the News-Pa-'pers that he was restored to it again. And as 'to the other, it is to be hoped, That it will be 'likewise considered, that he is a Servant, who 'attended me only about three Weeks, and was 'turned off for an infamous Action, which he has 'acknowledged himself to have been guilty of: 'Besides, he has confessed, That he never saw 'me write, but as he went backwards and for-'wards in the Room; and at such a Distance 'as not to be able to distinguish one Character 'from another: And it has been proved by two 'Witnesses, (one of which was a particular Friend 'of his own) That he declared he never knew 'any thing of my Hand; but was threatned by 'the Secretary into the Affidavit, which has been 'printed in the *Appendix*. And if that Paper had 'been my Writing, it is impossible they could be 'reduced to a Necessity of making use of such 'improper Evidence, since no Pains have been 'spared to procure better; since Numbers of 'People have been taken up, confined and exa-'mined to this very Point; and *Newgate* sent to, 'more than once, for Witnesses to it. And tho 'it might be proved by the very Report of the 'Lower House, That those Letters could not 'have come from the Bishop of *Rochester*; how-'ever, my Business is only to convince your Lord-'ships, That I was not the Writer of them, and 'of this, I believe, it is impossible to give clearer 'Proofs than I have done: For if those Letters 'had been dictated to me the twentieth of '*April* (as the Report pretends) it must have 'been at his Lordship's House in the Coun-'try; since it appears by the Deposition of 'his Coachman, that he went there the 12th 'of that Month, and did not leave it till the '5th of *May*.

'But it has been proved, that I was in *London* 'all that time; and if it had been permitted, 'there is not a Person in the Bishop's Family, 'but would testify, That I was not then at his 'House in the Country; and consequently could 'not have written any such Letters for him. 'Besides, I have brought several Persons of Cre-'dit and undoubted Characters, who have all 'testified, that the Hand in which those Letters 'are said to be written, is not mine, nor any 'thing like it.

'An

'An Affidavit has been produced from Mr. *Gordon*, That he never received any ſuch Letters from me, nor ever had any Correſpondence, or even an Acquaintance with me.

'And it has been likewiſe proved, That Mr. *Talbot*, to whom thoſe Letters are ſaid to be delivered by Mr. *Gordon*, was in this Town the very Day upon which they are ſaid to have been delivered to him at *Boulogne*: And if I had any ſuch Letters to tranſmit, can it be imagined that I would truſt them to the common Poſt, when I had ſo good an Opportunity to ſend them by, or direct them to *Boulogne*, when the ſame Poſt might as well have carried them to *Paris*? Theſe are ſuch full, ſuch evident Proofs, as, I hope, cannot fail of giving your Lordſhips the utmoſt Conviction in this Matter; and, conſequently, that this Article is, like the reſt, both groundleſs and manifeſtly falſe.

'But, if any Credit is to be given to the Confeſſions which my Accuſer made to the Perſon taken up with him, it is very plain, that thoſe Letters muſt have come from *another Quarter*; and, to ſay no worſe, were at leaſt calculated to carry on his own *baſe* and *villainous Deſigns*.

'For it has been proved to your Lordſhips, that he confeſſed to have been employed by one of the Miniſters, received 300 *l.* from him, and was to have 2000 *l.* more. That this Miniſter declared a perſonal Prejudice, upon ſome private Account, *to the Biſhop of* Rocheſter; *was reſolved to pull down the Pride of that Haughty Prelate, and to ſqueeze me* (as I think the Expreſſions were) *to that Purpoſe*.

'*My* LORDS,

'I ſay, if any Credit is to be given to this Confeſſion, there can be no great Difficulty in tracing out the Source of *this Part* of the Conſpiracy; and I am heartily ſorry to ſay, That there are ſome Circumſtances which ſeem to give but too great a Countenance to the Truth of it. For, my Lords, He made this Confeſſion at a Juncture, when he may very well be ſuppoſed to have ſpoken in the Sincerity of his Heart; when he ſaw his Villainy detected; believed himſelf to be in the greateſt Danger, and depended upon the Perſon's Aſſiſtance (to whom he made it) to help him out of his Misfortunes. ——And how particular this Proſecution is, and how ſufficiently I have been *ſqueezed*, are Things but too viſible, and too well known to the World.

'Beſides, the very Cypher by which thoſe Letters were written, (and which he owned to have received from that Miniſter) was actually caught upon the Perſon to whom he gave it; and he confeſſed, That he put a Paper of Directions into one of my Drawers, by which (the Report ſays) moſt of the treaſonable Letters were addreſſed. And it has been proved to your Lordſhips, that thoſe Drawers were conſtantly open, and that he made ſome Pretext for being alone in my Lodgings, the very Night before I was firſt taken up. And ſince he was the firſt that ſet the Miniſtry upon intercepting Letters, which he ſaid were mine; it is very extraordinary, that ſuch a material Part of his Evidence ſhould be omitted in his Examination; or that the very firſt Letters ſo intercepted, ſhould be thoſe alledged againſt the Biſhop of *Rocheſter*: And if the Originals of thoſe Three Letters were ſtopt, I don't at all doubt, but they might be proved to be my *Accuſer's own Hand-writing*. And how ſtrong a Senſe he had of his Guilt, by attempting an Eſcape which proved fatal to him; and how viſibly the Hand of God has interpoſed in that eminent Prelate's Favour, by taking one of the Perſons (deſigned for his Deſtruction) out of the World, and giving the other *Grace* and *Virtue* enough to withſtand all Temptations to his Prejudice, are Things highly worthy of your Lordſhips juſt and moſt ſerious Conſideration, and no ſmall Indication of his Innocence. And as to the Money which my Accuſer owned to have received, That there was a very ſudden and extraordinary Change in his Condition; that from the loweſt State of Poverty and Want, he ſoon arrived to that of a vicious and moſt profligate Affluence, is a Truth ſufficiently known to all thoſe who were acquainted with him. But from whence this Change proceeded, or what real Grounds he had for aſperſing that Honourable Perſon, I will not pretend to ſay: But if thoſe Aſperſions be falſe (as I wiſh they may) it may be juſtly inferred, That a Fellow who was capable of vilifying one Perſon, may very well be judged as capable of doing ſo to another: And if his Veracity is not to hold good in one Caſe, there can be no Reaſon for allowing it in the other.

'The *fourth Crime* alledged againſt me, is, a Number of intercepted Letters, ſuppoſed to be written to, and received from the late Earl of *Marr*, General *Dillon*, and other diſaffected Perſons abroad. And for Proof of this a *Frenchman* has been produced, who ſwears, That he once ſaw me take up a Letter at *Burton*'s Coffee-houſe, by the Name of *Baker*, which Name (it is ſaid) ſome of the treaſonable Letters were addreſſed by; and was, in a Paper of Directions, found in my Lodgings.——How that Paper came there, has been already proved; and as to the Perſon who has ſwore to this Particular, I muſt obſerve, That when he gave this Evidence to the Houſe of Commons, he did not know me, tho he ſpoke to me, and look'd ſeveral times earneſtly at me: and for the Truth of this, I can appeal to moſt of the Members of that Honourable Houſe, who were Witneſſes of it: And he would ſtill have probably continued in his Ignorance, if ſome private Hints (as I have been told) were not given him, or the ſame Method taken which has been done with a Number of other ſtrange Fellows, who were frequently ſent to the *Tower*, and had no other Buſineſs but to take a View of me. Beſides, the People of the Coffee-houſe have teſtify'd the contrary, and that no ſuch Letter ever came to their Houſe. And tho it be ſet down in my Examination before the Council, That I confeſſed to have taken up ſuch a Letter, I humbly appeal to my Lord Chancellor (if it can be worth his Lordſhip's while to recollect it) If he did not aſk me that very Queſtion two or three times? and if I did not as often deny it? Neither is this the only Particular that is falſely ſet down in that Examination. And I do ſolemnly affirm to your Lordſhips, That I never did receive any ſuch Letter, nor ever ſaw that Paper of Directions, till it was printed in the Report. And there is one Cir-

'cumſtance

'cumstance pretty remarkable in this Correspondence, That as it began with my Accuser's Information, so it ended with his being taken up. For immediately after a new Correspondence is pretended to be discovered; and to fix this likewise upon me, it has been suggested, that I sent Cyphers by Sir *Harry Goring* to *France*, and had Letters directed by them to *Sturges*'s and *Slaughter*'s Coffee-house.

'But, my Lords, no such Cyphers were found in my Custody, nor any Papers relating to such a Correspondence; and the People of those Coffee-houses have all sworn, That I never ordered any Letters *of that kind* to be taken in, or received one, either by my own or any other Name from them. Nay! one of them has sworn, That no such Letters ever came to his House at all; and the other says, That a Messenger from the Secretary's Office, was the only Person that ever called at his House for those directed to it.

'As to the printed Examination of one Mr. *Carryl* to this Purpose, it were to be wished, That this Gentleman's Reasons had been published, as well as his Accusation. For I am confident, he will not pretend to say, that ever he saw me write a Line in his Life, or give a Piece of Paper of any kind to Sir *Harry Goring*; and what Reason he could have for believing that we settled a Key for such a Correspondence, is very extraordinary: Nor have the other Particulars which he has affirmed, the least Foundation of Truth; for I do solemnly aver, That I never saw *Sample* in my Life, or gave Captain *Bonin* any such Letter of Recommendation; neither had I ever the Honour of speaking to my Lord *North* and *Grey*, or of being any ways known to his Lordship: And that I should mention him so familiarly by the fictitious Name of *Johnson*, (and which, of all Names, I should never make use of in that manner) will, I hope, appear very incredible to your Lordships; especially since Mr. *Carryl* himself has furnished so good a Reason for the Disbelief of it.

'For he has likewise affirmed, That my Examination before the Council was read at Doctor *Talden*'s House: The Doctor has, indeed, already done me Justice in that Point; and Mr. *Tucker* (who was all the while in company) will, I am very sure, do the same. And since Mr. *Carryl* appears to be so plainly mistaken in this Particular, surely he may very well be supposed to be so in all the rest; especially since he has not assigned the least Reason for any of them.

'As to the rest of the intercepted Letters, the People of the several Coffee-houses have likewise cleared me from them; and all testify, That they never delivered me any such Letters, or received any Directions from me about them; which, I hope, will be sufficient to convince your Lordships, that I was not concerned in any such Correspondence; especially since no Letters of this kind were found in my Possession, nor any other Papers relating to the Conspiracy.

'There are two other Crimes, in which I most humbly crave your Lordship's Patience to be heard, because they are the blackest that can be imagined, and seem to be Personal. The First is a Letter directed to Mr. *Gordon* at *Boulogne*, with two Affidavits, which have been printed, and are suggested to be sent by my Directions, 'in order to have him and one *Birmingham* perjure themselves upon my Account:—For in this 'Letter it is said, *That the Inclosed is a Copy of a 'Note from the Person concerned, with what he thinks 'requisite.*

'*My* LORDS,

'This Letter is dated the 20th of *March*, at 'which Time, and for five Months before, I 'never was allowed the Use of Pen, Ink, or Paper, or the Liberty of seeing any Person that 'could possibly have conveyed such a Note for 'me; for I have been guarded in a different manner from other People in the *Tower*: My Warders were put into the very Room with me, and 'ordered never to stir a Moment, Night or 'Day, out of it; which Orders they punctually 'obeyed, and were constant Witnesses to all my 'Actions.

'And those Warders will depose, that they believe it was impossible for me to have written 'or sent out any such Directions; the Officers, 'I don't doubt, will do me the same Justice. 'And when my Sollicitor was admitted, finding 'that Mr. *Gordon*'s Affidavit might be of use, if 'allowed as Evidence, a Person was immediately 'dispatched, and who brought it in a different 'Form from those which have been printed. 'And my Sollicitor can testify, That no Draughts 'were sent by him; which, with the gross Management of the Persons concerned in this Affair, is, I hope, sufficient to give your Lordships the clearest Conviction of my Innocence 'in it. And I do solemnly affirm, That I never 'knew any thing of them; never heard of the 'Name of *Aikenhead* before; nor can I find out 'any Person (besides the Master of that Vessel) 'that ever did.

'The other Crime is set forth in one *Levett*'s Deposition, in the Report made to this most Honourable House: wherein (among a great many 'other most notorious Falshoods) she swears, 'That one Mrs. *Barnes* told her, that I was instrumental in, or privy to, the shutting up of a 'Person in a Dungeon, for fear of his turning Informer; and not only of him, but of 200 more 'upon the same Account. Which, I believe, is 'the most surprizing Crime that ever yet was 'alledged against any Christian. Mrs. *Barnes* 'denies every Syllable of this Conversation; and 'if the Person that swears this against her had 'been produced, she would be proved to your 'Lordships to have been a vile infamous Creature 'all her Life. And if she is to be believed, or 'that your Lordships can think it possible there 'can be the least Truth in her Deposition, it will 'be a Sin to let me live, and impossible to find 'out a Punishment too cruel for me.

'These, my Lords, are the chief Crimes which 'I am charged with; and very great ones they 'are, had they been in any degree made out against me. I am a Stranger to the Methods of 'legal Proof, but have been told by Counsel, 'That the greater a Person's Crime is, the clearer the Evidence ought to be against him; and 'how weak and insufficient the Proofs produced 'for this Purpose are, and how clear and convincing those which have been offered in my 'Justification, has I hope evidently appeared to 'your Lordships, and given you entire Conviction of my Innocence; and that all the Crimes 'alledged against me, are without the least Colour or Foundation of Truth. But how much

'I have ſuffered for theſe ſuppoſed Crimes; and 'what extraordinary Means have been made uſe 'of againſt me, are things much worthier of your 'Lordſhips judicial Conſideration. To be taken 'up, and held to exorbitant Bail, without ever 'aſſigning any particular Crime againſt me; to 'ſuffer a long and cloſe Confinement, where the 'Expence bears no Proportion to my Circum-'ſtances: To have Numbers of People, and 'ſome of them Creatures of the meaneſt Rank 'and Condition, taken up, examined, and tam-'pered with, upon my Account; and *Newgate* 'ſent to for Witneſſes: To have a Servant (who 'was turned off for his ill Behaviour) brought as 'an Evidence, and my moſt intimate Friends im-'priſoned for not ſwearing againſt me; are 'Hardſhips and Proceedings, I believe, hitherto 'unheard of in *England*; and ſuch as, I hope, 'your Lordſhips will, in your great Wiſdom 'and Juſtice, think fit to redreſs. All which is 'of a piece with an infamous offer made to my-'ſelf by one of the Under-Secretaries of State, 'who, the Morning after I was firſt examined, 'came to me with a Meſſage (as he ſaid) from 'one of his Superiors, to let me know, *That I 'had now a very good Opportunity of ſerving myſelf; 'and that he was ſent to offer me my own Conditions.* 'And when I declared myſelf an entire Stranger 'to the Conſpiracy, and was ſorry to find that 'Noble Lord have ſo baſe an Opinion of me, he 'ſeemed to wonder that I would neglect ſo 'good an Occaſion of ſerving myſelf, *eſpecially 'when I might have any thing I pleaſed to ask for.* 'What Authority that Perſon had for this Meſ-'ſage, or the reſt of his After-Proceedings, I 'will not pretend to ſay: But as I have been 'ruined and utterly undone by them, I hope 'your Lordſhips will take my Sufferings, as well 'as Circumſtances, into your Conſideration; 'and, inſtead of inflicting any farther Pains 'and Penalties, look upon me (as I really am) a 'Perſon highly injured, and not a Criminal con-'cerned in any Tranſactions againſt the Govern-'ment.

'As for my Circumſtances, they are but too 'well known in the World.

'And here I cannot omit my Gratitude to the 'late, and preſent Conſtables of the *Tower:* for 'the late Conſtable (tho I never had the Ho-'nour to ſee his Lordſhip) was, upon a Repre-'ſentation of my Circumſtances, ſo very good, 'as to procure me the Promiſe of an Allowance 'from the Government: And his Lordſhip, the 'preſent, has been ſo kind as to get it paid. 'But the Officers of the Place can teſtify, That 'this Allowance has not been converted to any 'private Uſe of mine, but conſtantly given to 'the Perſons appointed to attend me. And I 'muſt take leave to aſſure your Lordſhips, That 'it has coſt me more ſince I was ſent there, than 'the Government has now left me really worth 'in the World; and I muſt ſuddenly become a 'Sacrifice to my Neceſſities, if not ſet at Li-'berty by your Lordſhips great Clemency and 'Compaſſion.

'If I have dropped any Expreſſion which may 'not be ſo agreeable to ſome particular Perſons 'in Power, I could wiſh that my Defence had not 'laid me under that Neceſſity: And I do ſo-'lemnly proteſt, that they have not proceeded 'from any Reſentment for my Sufferings; but 'from a ſincere Endeavour to give your Lord-'ſhips the cleareſt Conviction of my Innocence. 'And ſince I could not merit their Favour, I 'ſhall always endeavour to preſerve their good 'Opinion.

'As to the Legality of *theſe* Proceedings, and 'the Danger of making Precedents of this Kind, 'thoſe are things which have been already fully 'ſet forth by my Counſel, and muſt be ſubmit-'ted to the great Wiſdom and Juriſdiction of this 'moſt illuſtrious Aſſembly: An Aſſembly! which 'is not only the Higheſt and moſt Honourable, 'but the Uprighteſt and moſt Impartial, I be-'lieve, upon Earth; and whoſe Juſtice has ever 'appeared as extenſive as their Power. The 'great, and the *only* Argument, which I have 'heard offered for the paſſing of this Bill, is, 'That the Occaſion is extraordinary; that your 'Lordſhips are in your Legiſlative Capacity; 'and tho the Proofs may not be ſo legal, how-'ever, *in Terrorem*, it is neceſſary to paſs it. But 'I humbly beſeech your Lordſhips to conſider 'where the Extraordinarineſs of this Occaſion 'lies:—Has there been the leaſt Commotion in 'any Part of the Three Kingdoms? Or any 'Perſon injured in his Liberty or Fortune, be-'ſides thoſe who have been ſo unhappy as to fall 'under this Suſpicion? Or, Is this Occaſion 'more extraordinary than when there was a 'Publick Inſurrection in the Kingdom? And 'when the Perſons concerned in it, were tried 'by the common and ordinary Courts of Juſ-'tice? And becauſe your Lordſhips are veſted 'with a Supreme Authority, and not tied up 'to the common Forms of Law, can that be a 'Reaſon for your acting directly contrary to it? 'And to ſuppoſe your Lordſhips capable of do-'ing ſo, was not, I muſt ſay, ſo becoming an 'Argument to have been offered upon this Oc-'caſion. And to have a Seſſion, which opened 'with ſo mild, ſo gracious a Speech from the 'Throne, end in ſuch an extraordinary Manner, 'muſt ſurely be very contrary to the Deſign and 'Intention of the Throne at that time; and is, I 'hope, ſo ſtill; eſpecially ſince no intervening 'Accidents have happened to ruffle the Quiet and 'Tranquillity of the Kingdom.

'*My LORDS*,

'The firſt extraordinary Bill, that, I believe, 'ever paſſed in *England*, was that of the Earl of '*Strafford*; and how much perſonal Prejudice 'was in his Proſecution, and how fatal that 'Bill proved in its Conſequences, I need not 'mention, ſince the Royal Martyr himſelf has, 'in his dying Words, called it, An unjuſt Sen-'tence, and imputed all his Misfortunes to it. 'And pray, my Lords, why was that Sentence 'unjuſt, but becauſe it was not ſupported by 'Law?——And, to the eternal Honour of 'this Houſe be it ſaid, That when the Proofs 'upon his Trial were not found Legal, they 'refuſed to find him Guilty. But when this ex-'traordinary Method was taken, and the Tor-'rent of the Times bore down their uſual Juſtice, 'then the Flood-gates of all thoſe Miſeries were 'opened, which overwhelmed and ſunk the Con-'ſtitution: And of which, ſome of your Noble 'Predeceſſors had ſo ſtrong and lively a Senſe, as 'to declare in this very Houſe, That they 'would be ſooner torn in pieces, than come into 'ſuch illegal Proceedings; and ſo fell a Sacrifice 'to the Love and Laws of their Country.

'To which I shall only beg leave to add one Observation, that, I am sure, is but too well known to that Right Reverend Bench: —— *That of all the Prelates who advised his Majesty to the Passing of that Fatal Bill, not one of them escaped the Violence of those very Persons whom they endeavour'd to oblige by that Advice.* These, my Lords, were the unhappy Effects and fatal Consequences of one extraordinary Bill: And what those of another may prove, the great Director of all Things only can foresee!

'Many are the Arguments which might be brought to shew the great Injustice, as well as Inconveniencies, of these Laws in particular: But as *my* Liberty can be of no great Moment to the World, I shall only beseech your Lordships, not thro' me to give a Wound to the Constitution, which, perhaps, may not so easily be cured. The great Characteristick which distinguishes *England* from the rest of the neighbouring Nations, is, the Excellency of our Laws, of which your Lordships are the great Guardians: And if you suffer those Laws to be broke in upon, and render *Life* or *Liberty* so precarious, as to be affected or taken away, by every idle Hearsay, *that* Excellency must soon disappear, and the best Form of Government now upon Earth, consequently sink into Anarchy and Confusion.

'*My* LORDS,

'The Words of my Bill are very severe, and do not bear the least Proportion to the Proofs which have been produced against me: And I humbly hope, That my past Sufferings will be looked upon as a sufficient Punishment; especially since it is not pretended, that I have transgressed any Law yet in being. I propose no great Happiness in this Life, and would willingly avoid as much Misery as I could: And must therefore humbly beseech your Lordships, to look upon me as a Stranger in your Kingdom, and a Person (as I really am) inconsiderable in myself; and, consequently, incapable of doing the least Prejudice to any Government. For my Behaviour, I am willing to give the best Sureties that I am able: But if that be not approved of, I hope your Lordships will give me leave to retire to some other Part of the World, where I may enjoy my Poverty with Freedom. But, let my Fate be what it will, I shall ever pray for your Lordships particular Welfare, as well as the general Prosperity of the Kingdom.

'And so resign myself, with the utmost Humility, to your Lordships great Clemency, Justice, and Compassion.'

After which the House pass'd the Bill, which obtain'd the Royal Assent, and was as follows:

An Act to inflict Pains and Penalties on *George Kelly* alias *Johnson*.

'WHereas in the Years One thousand seven hundred and twenty one, and One thousand seven hundred and twenty two, a detestable and horrid Conspiracy was formed and carried on by divers Traitors for invading your Majesty's Kingdoms with foreign Forces, for raising an Insurrection and Rebellion against your Majesty, for seizing the *Tower* and City of *London*, and for laying violent Hands upon your Majesty's most sacred Person, and upon his Royal Highness the Prince of *Wales*, in order to subvert our present happy Establishment in Church and State, and to place a Popish Pretender on your Throne; And whereas for the better concealing and effecting the said Conspiracy, divers treasonable Correspondencies were, within the time aforesaid, carried on by Letters written in Cyphers, cant Words, and fictitious Names; which Conspiracy, had not Almighty God in his great Mercy disappointed the same, would have deprived your Majesty's Kingdoms of the Enjoyment of their Religion, Laws, and Liberties, involved them in Blood and Ruin, and subjected your People to the Bondage and Oppression of Romish Superstition and Arbitrary Power: For which execrable Treason *Christopher Layer* hath been indicted, tried, convicted, and attainted: And whereas *George Kelly* alias *Johnson* hath been a principal Actor in the said horrid and detestable Conspiracy, by traiterously consulting and corresponding with divers Persons to procure a foreign Force to invade this Kingdom, and to raise an Insurrection and Rebellion against your Majesty within the same, with design to depose your Majesty, and place the Pretender on your Throne; for treasonable Practices in which Conspiracy the said *George Kelly* alias *Johnson* being arrested, and divers Papers then found about him seized, in pursuance of a Warrant under the Hand and Seal of one of your Majesty's Principal Secretaries of State, for seizing and apprehending him the said *George Kelly* alias *Johnson*, together with his Papers, and the said *George Kelly* alias *Johnson* being in Custody of a Messenger by virtue of the said Warrant, did, by Force and Violence, with a drawn Sword, make an Assault upon, and resist the said Messenger, with intent to destroy the said Papers, and did burn the same: Therefore to manifest our just Abhorrence of so wicked and abominable Conspiracy, and our Zeal and tender Regard for the Preservation of your Majesty's Person and Government, and of the Protestant Succession in your Majesty's Royal Family, the solid Foundation of our present Happiness and future Hopes; and to the end that no Conspirator may, by any Contrivance or Practice whatsoever, escape Punishment, and that all Persons may by the Justice of Parliament be for ever hereafter deterred from engaging in any traiterous Conspiracies or Attempts, We your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Commons in Parliament assembled, do humbly beseech your Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by the Authority of the same, That the said *George Kelly* alias *Johnson* shall be detained and kept in close and safe Custody, without Bail or Mainprize, during the Pleasure of his Majesty, his Heirs and Successors, in any Goal or Prison within the Kingdom of *Great Britain*; to the Custody of the Goaler or Keeper whereof the said *George Kelly* alias

'*John-*

'*Johnſon* ſhall from time to time be committed, 'in purſuance of this Act, by Warrant under the 'Hand and Seal of any Secretary of State of his 'Majeſty, his Heirs or Succeſſors: Which War-'rant or Warrants any Secretary of State for the 'time being, is hereby authorized and impow-'ered to make; and that the ſaid *George Kelly* 'alias *Johnſon* ſhall forfeit to his Majeſty, all 'his Lands, Tenements, Hereditaments, Goods 'and Chattels whatſoever.

'And for the more ſure detaining the ſaid '*George Kelly* alias *Johnſon* in ſafe Cuſtody, be it 'further enacted by the Authority aforeſaid, That 'if the ſaid *George Kelly* alias *Johnſon* ſhall break 'the Goal or Priſon to which he ſhall be ſo 'committed, or ſhall eſcape out of the Cuſtody 'of the Perſon in whoſe Cuſtody he ſhall be by 'virtue of ſuch Commitment, that then the ſaid '*George Kelly* alias *Johnſon*, and all and every Per-'ſon and Perſons whatſoever, who ſhall be aiding 'or aſſiſting the ſaid *George Kelly* alias *Johnſon* in 'breaking ſuch Goal or Priſon, or in making 'ſuch Eſcape, as aforeſaid, or who ſhall by Force 'take or reſcue the ſaid *George Kelly* alias *John-'ſon* out of ſuch Cuſtody, Goal, or Priſon, du-'ring the Continuance of his Impriſonment by 'virtue of this Act, being thereof lawfully con-'victed, ſhall be judged guilty of Felony, and 'ſhall ſuffer Death as in Caſe of Felony, without 'Benefit of Clergy.'

In purſuance of this Act, *George Kelly* was continued Priſoner in the *Tower* of *London*.

March 22. The Bill to inflict Pains and Penalties on *Francis* Lord Biſhop of *Rocheſter* was brought into the Houſe of Commons, to which the Biſhop making no Defenſe, it paſs'd that Houſe *April* the 9th, and was ſent up to the Lords, where the Biſhop made his Defenſe by Counſel, who were Sir *Conſtantine Phipps*, and Mr. *Wynne*. Sir *Conſtantine Phipps* ſpake as follows:

My Lords,

BY the Appointment of this Honourable Houſe I have the Honour to attend your Lordſhips, as Counſel for the Reverend Prelate, the unfortunate Priſoner at the Bar: And perſuade myſelf it will not be difficult to defend his Lordſhip from the heavy *Pains* and *Penalties* of this Bill; ſince the Counſel for it confeſs that it is ſupported *only* by *circumſtantial* Evidence.

Bills paſſing into Laws for taking away Mens Liberties and Eſtates by *Circumſtances* only, are new. Convictions by Circumſtances were never heard of in Ages paſt; and I hope will never be known in this, or any which is to come: And tho one of the Gentlemen ſaid, that Circumſtantial Evidence is ſufficient at *This Time of Day*; I hope, the Law is the ſame at *This Time of Day*, as ever; and that the Lives and Fortunes of *Engliſh* Subjects will be as well protected and defended by *your Lordſhips*, as they were by *your Predeceſſors*.

The Securities which the Laws have provided for our Liberties and Eſtates, and the Happineſs that we cannot be depriv'd of them but by full and legal Proof, are Advantages which were obtain'd at great expence of Blood and Treaſure, by your Lordſhips Noble Anceſtors: And we doubt not but You will tranſmit them to Poſterity, as entire as they have been continued down to your Lordſhips.

The Law is the Rule of Mens Actions; and Perſons accuſed as Criminals for Facts committed by them, ought to be tried by the Laws that were in Force *at the Time* of the Facts committed, *ſecundum Allegata & Probata*. But Laws made *ex poſt Facto*, to puniſh Men for Facts which were not Offences when they were committed, render all things that are dear to *Engliſhmen* precarious; and for that Reaſon have been as often *condemn'd*, as they have been *made*.

The Charge againſt the Biſhop and Mr. *Kelly* are ſo interwoven, that I beg you will excuſe me, if, in my Vindication of him, I urge any thing, which I offer'd in behalf of Mr. *Kelly*, when I had the Honour to attend Your Lordſhips as his Counſel: But I ſhall take care to repeat no more than is neceſſary.

My Lords,

I am very far from denying, or conteſting, the *Power* of Parliaments as to Bills of *Attainder*; but I hope I may have Leave to obſerve, that ſuch a Power hath been very *rarely exerted*, unleſs upon *extraordinary* Occaſions, and in Caſes of *Neceſſity*. I hope too I may be permitted to ſhew, that the Caſe of my Lord Biſhop is not within either of thoſe Reaſons.

He never withdrew himſelf out of the Kingdom; never fled from Juſtice, but was always amenable and forth-coming, ready to be try'd according the uſual and ordinary Methods of Juſtice. And the Attainders of *Mortimer*, and the Earl of *Arundel*, in *Edward* III's Time, of Sir *Thomas Haxey* in *Richard* II's Time, and others afterwards, were revers'd, becauſe the Perſons accuſed were forth-coming, and might have been brought to a Trial according to the uſual Courſe of Juſtice. Wherefore, I hope the ſame Reaſons which prevail'd with thoſe Parliaments to reverſe thoſe Attainders, will have Weight enough with your Lordſhips to prevent this Bill's paſſing into a Law.

The Parliament, at the Reſtoration, did not think fit to interpoſe their Legiſlative Authority even in the Caſe of the *Regicides*; but left ſuch of them, as were alive, and forth-coming, to the *ordinary* Methods of Juſtice, and gave them a *fair Trial* for their Lives and Eſtates. The only remarkable Bill of Attainder, which hath been in ſome Ages (except of ſuch as were in *actual Rebellion*, or *fled* from Juſtice) was that of Sir *John Fenwick*. I own, I mention'd this Caſe on behalf of Mr. *Kelly*; and it being a Caſe ſo material for my Lord Biſhop's Defenſe, I cannot in Juſtice to his Lordſhip omit making ſome Obſervations upon it: From which it will appear, that the *Reaſons* given for *paſſing* that Bill are the ſtrongeſt Arguments in the World *againſt* this.

The Preamble of Sir *John Fenwick*'s Attainder ſhew'd the Neceſſity of it: For the Preamble ſets forth,——That Sir *John Fenwick* was upon the Oaths of *George Porter*, and *Cardel Goodman*, indicted of High-Treaſon: That he obtain'd his Majeſty's Favour to have his Trial delay'd from time to time, upon his repeated Promiſes of making an ingenuous and full Confeſſion: That ſeveral times were appointed for his Trial; at one of which he had been actually try'd, had it

not

not been for the Expectation of the Discoveries so often promised: That since the times appointed for his Trial, *Cardel Goodman*, one of the Witnesses, was withdrawn, so that he could not be had to give Evidence. And it appear'd upon the Trial, that *Porter* had been tamper'd with, and had 300*l.* paid him, and 200*l.* more promis'd him, to go beyond Sea. This made the Presumption very strong, that *Goodman* was sent away by some of Sir *John*'s Friends. So that there was an *Indictment* against him; *two Witnesses* were *sworn* upon it, and *prov'd the Treason*; and *he promis'd* from time to time to *make Discoveries*.

Hath my *Lord Bishop* been *indicted?* Hath there been any *Oath* made against him? Did he ever *impose* upon his Majesty or the Ministry, by *promising* to make any *Discovery?* Hath he *sent away* any one that was *Witness* against him? Since these *Circumstances* were *thought necessary* by the Parliament at that Time to *induce* them to pass *that* Act; and the present Case is not attended with *any one* of these Circumstances; this, we humbly conceive, is a Reason, why your Lordships *should not* pass *this* Bill.

The *greater* the *Offence* is of which any Person is accused, the *plainer* and *clearer* the *Proof* ought to be: And my Lord *Coke* in his 4th Institute, *Page* 37. (which I mention'd the other Day) speaking of the Attainder of *Cromwell* Earl of *Essex* by Parliament, says; 'The more *high* and 'absolute the *Jurisdiction* of the Court is, the 'more *just* and *honourable* it ought to be in its 'Proceedings, to *give Example* of Justice to *inferiour* 'Courts.'

The *Offence* charg'd on my Lord Bishop is of the *highest* Nature; and this *Jurisdiction* the *most high* and *absolute:* Therefore the *Proceedings*, without doubt, ought to be the most *Just* and *Honourable*.

The *Punishment* inflicted by this Bill, is the *greatest* that can be, next to *Death* itself: For what can be worse, than for a *Reverend Prelate* of such *advanced Years*, and of so *infirm a Body*, to be *banish'd* into another Country, and be forced to *seek his Bread in desolate Places?*

The Punishment is still much severer to his *Lordship*, who hath saved nothing to support himself: For his eminent *Hospitality*, and his extensive *Charity*, tho they have fitted and prepared him to live in another *World*, yet have disabled him from subsisting in another *Country:* There he will himself want that *Charity*, which he so liberally bestow'd upon others; and must beg upon his Crutches, or starve.

As to the *Evidence* offer'd against his Lordship, I humbly apprehend the *Proof* would not be sufficient *at Law* to support an *Indictment* for the *lowest* Misdemeanor. And will your Lordships, in your great *Wisdom* and *Justice*, convict a *Lord of Parliament*, a *Member of your own Body*, and subject him to such *severe Punishment*, upon *Evidence* that at Law would not be sufficient to convict the *meanest Subject* of the most *minute Trespass?*

This, I humbly apprehend, will appear to be the Case, when the *Charge* against my Lord Bishop, and the *Evidence* to support it, have been consider'd.

The Bill recites, 'That there was a detestable 'and horrid Conspiracy for invading his Majesty's 'Kingdoms with foreign Forces; for raising a 'Rebellion; for seizing the *Tower* and City of *London*; and for laying violent Hands upon his 'Majesty's most sacred Person, and upon his 'Royal Highness.'

As to the *seizing the Tower, and the City*, and *laying violent Hands on the King and Prince*; neither of *These* Crimes is charged upon my Lord Bishop. But the Charge against his Lordship is, that *he hath been deeply concern'd in forming, directing, and carrying on, the wicked and detestable Conspiracy, by traiterously consulting and corresponding with divers Persons to raise an Insurrection within this Realm, and to procure foreign Forces to invade this Kingdom; and intending to raise a Rebellion, at the time of the Elections; and when the King went to* Hannover; *and at the breaking up of the Camp.*

As to the first, *viz.* The *sending for foreign Forces*; the Bishop is not charged with being *privy* to any one of the three *Memorials:* For *Neynoe* says, *he* wrote them, and they were dictated to him by *Kelly*, and *Watson*, whom he suppos'd to be the Earl *Marishal*.

As to the Charge of *raising a Rebellion* at the time of the *Elections*, 'tis founded on a Letter, sign'd 1378, and directed to Mr. *Jackson*; which, the *Report* says, the Committee have *good Reason to believe* was from the Bishop of *Rochester* to the *Pretender*.

The Letter says, 'Notwithstanding this Op-'portunity is elapsed, I agree with you, another 'may offer before the end of the Year.' And the Observation made upon it is, that it was wrote the 20th of *April*, when most of the *Elections* were *over:* So consequently the *Opportunity* was *elapsed*.

The Letter of the 20th of *April* is suppos'd to be wrote to the Pretender at *Rome*. It supposeth a Letter to the Pretender had been wrote, taking notice that an Opportunity was elapsed at the Elections; and that an Answer had been made to that Letter by the Pretender, that another may offer before the end of the Year: which must be at least *two Months* before the Date of the Letter; and that was before the *Elections* were *begun*.

As for raising a Rebellion, when the *King went to* Hannover; it is inferr'd from *dark Passages* in Letters of the 20th of *May* 1722, *N. S.* 9th of *May O. S.* and 10th of *May O. S.* which are said to have pass'd between *Dillon*, or his Secretary, and *Kelly*. And by comparing those Passages, you will observe what Foundation there is for such a Charge.

In the Letter of the 9th of *May O. S.* 20th *N. S.* *Quitwell*, suppos'd to be *Dillon*'s Secretary, writes to *Baker*, suppos'd to be *Kelly*, 'That if this 'Post hath not brought an Addition of Three to 'the Six, formerly come from *Repney*, it is easy 'for Mrs. *Jones* to see, what is still wanting for 'the Purchase she intends to make.'

In the Letter of the 10th of *May O. S. Hatfield*, who is suppos'd to be *Kelly*, writes to *Howell*, who is suppos'd to be *Dillon*'s Secretary, 'That the 'King intends to set out early next Month; if 'they could then compass Barrels enough, the 'sooner the Wine comes, the better; *Jones* pro-'mises to be a good Customer.'

From hence, and from what *Pancier* said *Skeen* told him, 'twas insinuated, that great foreign Forces were to be brought in for the Pretender; that great Sums of Money were contributed for that Purpose; and that those Sums were under the Management of the Bishop of *Rochester*; and all this,

this, becauſe *Quitwell* tells *Baker*, if the laſt Poſt did not bring an Addition of three to ſix, Mrs. *Jones* may ſee what is ſtill wanting for the Purchaſe ſhe intends to make.

Now ſuppoſe, by *Quitwell* and *Howell* are meant *Dillon*'s Secretary; and by *Baker* and *Hatſtead*, *Kelly* is intended: and ſuppoſe, that by the *Addition of* three to ſix, is meant a *Remittance of Money*; by *Wine* are meant *Soldiers*; and by Mrs. *Jones* is meant my Lord Biſhop of *Rocheſter*: Yet can what *Dillon*'s Secretary writes to *Kelly*, or what *Kelly* writes to *Dillon*'s Secretary, affect the Biſhop of *Rocheſter*? If it can, it is in the Power of *any two Men*, one reſiding *here*, and the other *beyond Sea*, to take away the Life of *any Man* breathing. But ſuppoſe we can make it appear, as moſt certainly we ſhall, that by Mrs. *Jones cannot* be meant the Biſhop; then what becomes of this Part of the Charge?

The next thing to ſupport this Charge, is, a Paſſage in an Extract of a Letter dated the firſt of *May*, written from *Quitwell* to *James Baker*; in which 'tis ſaid, that 'Mrs. *Jones* cannot take a 'better Time to have *himſelf* fitted with an eaſy 'Saddle, *&c.*' If an Extract of a Letter can be of any Weight, and the Conſtruction put upon it is to be allow'd; then the *Biſhop* is turn'd *General*, or at leaſt a *Colonel*. For by *Neynoe*'s Information and *Plunket*'s Cypher, *Saddlers*, and *Saddles*, are *Iriſh Soldiers*, and *Regiments*: ſo the Biſhop is repreſented as undertaking to raiſe a Regiment of *Iriſh* Soldiers, and to mount on Horſeback himſelf to command them.

As to the third thing charged, which was to raiſe a Rebellion *at the Breaking up of the Camp*; there is no *Pretence* of *Evidence*. So that, upon the whole, there does not appear to be any Pretence for that Part of the *Preamble* to the Bill, which chargeth the Biſhop with having been *deeply concern'd in forming, directing, and carrying on the Conſpiracy*.

The next thing charged againſt his Lordſhip, is, that he was *concern'd in a Correſpondence Abroad, and ſome Tranſactions at Home, for bringing in the Pretender*.

Now as to this, I would obſerve, that there is not *one Witneſs* againſt his Lordſhip of any criminal Act; that tho *all his Papers have been ſeiz'd*, yet there appears not any *Letter*, or *Paper*, under *his Hand*, of a criminal Nature; nor any Letter *prov'd* to be *written* or *receiv'd* by him, which is criminal: Neither is there any Charge of any *Meeting* or *Conſultation* with any Perſons for carrying on this Conſpiracy. Indeed he is mention'd as a Member of a Club, call'd the *Burford-Club*, of which the Earl of *Orrery* was ſaid to be Chairman; which Club (as I apprehend) was never heard of till *Layer*'s Trial. This Accuſation *I know* to be *falſe*; and never met with *any one* that *believed* it: Therefore ſhall not trouble your Lordſhips with any farther Obſervations upon it, than juſt to take notice, that tho he who made the Liſt hath join'd me with Perſons of great Quality and Honour; yet I preſume to ſay, that my Profeſſion in the Law, as well as my Religion, has given me ſuch a Senſe of my Duty, that no Perſons whatſoever are great enough to draw me into a Plot againſt his Majeſty and the Government.

I beg leave to obſerve that this Charge is founded, partly upon the *Hearſay* of *Pancier* and *Neynoe*, and partly upon the three Letters dated the 20th of *April*, 1722.

As to the *Hearſay*-Evidence; *Pancier* depoſeth, that *Skeen* told him, that the Biſhop of *Rocheſter* and Lord *North* and *Grey* had the principal Direction of the Conſpiracy; that 200000 *l.* had been raiſed by Contribution, and was put into the Management of the Biſhop; and that it was call'd the *Military Cheſt*. Now can this be *Evidence* in an *Indictment*, or *Action*, for the moſt *minute Treſpaſs*, or in *any Caſe*? Can it be imagin'd, that *ſo much Money could be* raiſed among the *Jacobites*? or that ſuch a Sum could be *raiſed*, and not *one Contributor diſcover'd*? Can it be imagin'd, that ſuch a Sum ſhould be *entruſted* with *one Man*? Or that *my Lord Biſhop* would *be that Man*, who would have the *Care* and *Trouble*, and run the *Hazard*, of ſuch a Sum? To which it may be added, that *Skeen*, the *only* Perſon *living*, who *by any Perſon living* is *ſaid to have ſaid* this, is now in Cuſtody, ready to be examin'd upon *Oath*, and *denies every Word of it*.

As to *Neynoe*'s Examinations, he ſpeaks only what *Kelly* told him; and can what *Kelly* told him affect the *Biſhop*? Beſides, none of his Examinations are *upon Oath*, or ſo much as *ſign'd* by him; (whereas the Examination of *Goodman*, that was given in Evidence againſt Sir *John Fenwick*, was *upon Oath*:) all of them appear to be taken *after he was in Cuſtody*, under great *Apprehenſions* and *Terrors*; nay, it appears that one of them was taken *the Day before he drown'd himſelf*: And moreover, that only *one of them* was read, which was extracted out of *three* Examinations, mark'd *A*, *B*, *C*, and ſaid to contain the Subſtance. We deſire *all* the *Three* Examinations may be produced, and read; and then it will appear, whether that one contains the whole Subſtance; or whether there be not *ſome Things* very material *omitted*: And it will likewiſe appear, that there are ſuch *Inconſiſtencies* in them, as will take off their Credit. For in one Place he ſays, he ſaw *Kelly* make uſe of the Cyphers; and that *Kelly* own'd *with great Freedom* they were for carrying on a Correſpondence with the Pretender and his Agents: and yet in another Place he ſays, That *Kelly* never *open'd himſelf* as to the Plot now on foot; that indeed he had ſeen ſeveral Letters from *Paris* and other Places, but they contain'd *nothing material*. So that it muſt be ſuppoſed, either that there was no Treaſonable Correſpondence carry'd on by *Kelly*; or that *Neynoe* was not ſo great a Confident of *Kelly*'s as he pretended.

Neynoe ſays, he drew *three* Memorials; and the laſt was in *December* 1721, to the *Regent* for five Thouſand Men; that all the Memorials were drawn by the Order of, and dictated by, one *Henry Watſon*, whom he did not know, but took to be the late *Earl Mariſhal*; that *Henry Watſon*, whom he took to be *Earl Mariſhal*, was in *England* all laſt Spring, and that he lay with him ſeveral Nights.

'Tis very extraordinary, that the *Earl Mariſhal* ſhould truſt a mere *Stranger* to draw three *Memorials*, and one of them *for five Thouſand Men to invade the Kingdom*; and that afterwards he ſhould *lie with him* ſeveral Nights, and *not know who he was*.

In one of his Examinations he ſays, the *Heads* of the Memorials were given *him* by *Kelly* and *Watſon*; in another he ſays, they were *all drawn*

by *Watſon*: And 'tis obſervable, that the *rough Draught*, or a *Copy* of any one of them, is not produc'd; which certainly, he that intended to turn Evidence, and ſo ſoon after became an Informer, would have done, if there had been any ſuch.

The Committee are pleas'd in their Report, *Pag.* 38. to take notice, that *Neynoe ſaid, Kelly told him*, that a *Lord of the Council* gave the Biſhop *Notice* of his being to be taken up, ſome Days before it happen'd; and are pleas'd likewiſe to ſay, that he afterwards confeſſed, (as they were informed) that in that, and other his Examinations, he endeavour'd all he could to *create Diffidence and Suſpicions among his Majeſty's Servants*. And what *Credit* can be given, after this, to one, who had ſo *little Regard to Truth*, as to ſay *any thing*, tho never ſo *falſe*; to ſo *wicked a Purpoſe*, as to create a Miſunderſtanding among his Majeſty's Servants? eſpecially if one conſiders how probable it is, that the *Remorſe he had upon his Conſcience*, occaſion'd by the Evidence he had given, and his Dread of the *Shame* of being *forc'd*, when he came *upon his Oath*, to *deny* what he had *ſaid* when he was *not upon his Oath*, were the Reaſons of his making away with himſelf. And we ſhall call ſome Witneſſes, who will give a full Account of him.

We ſhall call one, who but lately depos'd before your Lordſhips, that *Neynoe* told him, he had *ſaid* ſeveral things to *a great Man*, which he neither would nor could *ſwear* without being perjur'd.

I moſt humbly beg your Lordſhips Pardon, for being ſo particular in a Matter which I had ſo lately an Occaſion to mention: But this is the Hinge upon which the Weight of the whole Charge againſt the Biſhop turns, and therefore I doubt not but your Lordſhips will excuſe me.

The next Charge againſt my Lord Biſhop ariſeth from *three Letters*, dated the 20th of *April*, 1722. One ſigned *J. Jones*, *innuendo* the Biſhop; to *Chivers*, *innuendo Dillon*: The ſecond ſigned *Illington*, *innuendo* the Biſhop; to *Muſgrave*, *innuendo* Lord *Marr*: The third to *Jackſon*, *innuendo* the Pretender; and ſigned 1378, *innuendo* the Biſhop. Theſe Letters are ſaid to be wrote by *Kelly*, and dictated by the Biſhop.

Now as to theſe Letters, I beg leave to obſerve there is *nothing Criminal* appears to be in any one of them. But then 'tis objected, that two of the Perſons are attainted of *Treaſon*, and are Agents of the *Pretender*; and 'tis High-Treaſon to write to them: And the third is the *Pretender himſelf*.

Suppoſing *Chivers* were *Dillon*, and *Muſgrave* were *Marr*; yet writing to them in *private* Matters, not *criminal* in themſelves, nor relating to the Pretender, is not Treaſon.

But how comes the Lord *Marr* to be an Agent for the Pretender? He quitted the Pretender's *Service* many Years before; and from the Time of quitting his Service, till after the Date of thoſe Letters, had a Penſion from his preſent Majeſty. I believe the Counſel for the Bill, and all Mankind, will be at a Loſs to tell by what Law writing to one, who hath quitted the Pretender's Service ſo many Years, and who hath ſubſiſted ever ſince by a Penſion from his Majeſty, can be an Offence.

Indeed, if it be proved that *Jackſon* is the Pretender, I admit Writing to him is Treaſon: But if it be proved (as it will beyond all Diſpute) that by *Jackſon* neither *is* nor *can be* meant the Pretender; and that my Lord Biſhop neither *did* nor *could* write or dictate any one of thoſe Letters; then the whole Charge againſt my Lord Biſhop, founded upon thoſe Letters, falls to the Ground.

The next thing I would obſerve, as to thoſe Letters, is from the Report, *Page* 42. where the Committee are pleas'd to obſerve, that the Letter to *Chivers* is, great Part of it, out of Cypher; which ſeems to allow that the other Part was *in* Cypher. Therefore it was very neceſſary, I think, to have *printed* the Letters in the *Cyphers* and *Characters*, in which they were *written*; and alſo *as they are decypher'd*: Then the Perſons accus'd would have had an Opportunity of employing Men skill'd that way, to ſee if they were *rightly* decypher'd. This was done in *Coleman*'s Caſe.

The *French* Papers, in the *Appendix*, are printed firſt in that Language, and then as they are tranſlated; which was not ſo neceſſary as Printing the Letters in *Cypher* in this Caſe: Becauſe almoſt every one underſtands *French* enough to tell, at firſt Sight, whether a *French* Letter be rightly tranſlated; but 'tis impoſſible for a Man of the greateſt Skill in the Art of decyphering, to tell, upon a ſudden at the Bar, whether a Letter be rightly decypher'd: So that all a Man hath in the World, is to depend upon the Skill and Integrity of the Decypherers. Nor are they infallible; for the Witneſſes who decypher'd the Letters, admit, that there are ſome Words in them which they could not decypher; and thoſe Words may give a Turn to the whole Senſe of the Letters. Nay, Mr. *Willes* ſaid, that one of the Numbers he could not decypher ſtood for *two Words*: He was likewiſe pleas'd to ſay, it was *impoſſible* that the Number he could not decypher could make an Alteration in the Senſe; which is very extraordinary for a Man to *ſwear*: But if *one* Word could not make an Alteration in the Senſe, ſurely *two might*.

The writing theſe Letters is charged upon *Kelly*; which cannot affect my Lord Biſhop, unleſs they were dictated by him, or written by his Direction, or Privity; of which there is no *Pretence* of Proof. And therefore I ſhall next offer to your Lordſhips ſome Obſervations upon the Arguments and Circumſtances alledged to ſupport this Charge.

It is obſerved in the *Report*, that the Perſon who wrote theſe Letters, ſpeaks of himſelf as being in *ill Health*, in *great Pain*, under ſome ſad and *melancholy Circumſtances*, which he expects will ſoon blow over; and from thence 'tis inferr'd it muſt be the Biſhop, becauſe his *Wife* was then ill, and died in ſix Days after; and that he himſelf was at that time afflicted with the *Gout*. One of the Gentlemen, who was Counſel for the Bill, ſaid, Theſe were Circumſtances, that did not happen to *any two Men* in the World at that time: And give me leave to inſtance one other Circumſtance, which, I believe, did not happen to any one Man in the World; which is, *writing a Letter of Politicks*, when *his Wife lay a Dying*.

Why theſe Circumſtances muſt neceſſarily intend the *Biſhop*, more than *any other* Perſon that was *ſick*, and under *Misfortunes*, I cannot apprehend. That *ill Health* muſt neceſſarily imply the *Gout*; and that it muſt be intended, that *no Man*

had the Gout *the 20th of April*, but the *Biſhop*; that *melancholy Circumſtances* neceſſarily imply a Man's *Wife being ſick* or *dying*; and that *no Man* had a Wife ſick or dying, but the *Biſhop*; is, in my humble Apprehenſion, a new way of arguing.

Another way of proving theſe Letters to be wrote by the Biſhop, is by the Names and Figures ſubſcribed. For one Letter is ſubſcribed, *T. Jones*, and another Letter is ſubſcrib'd, *T. Illington*: And the Report obſerves, that wherever *Jones* and *Illington* are named, the Biſhop is to be underſtood. But *why* the Biſhop is to be underſtood by thoſe Names, *non conſtat*; nor is there any *Preſumption* or *Evidence*. And if we ſhew (as we infallibly ſhall) that by thoſe Names the Biſhop *could not be meant*, and that he *could not write*, or *dictate thoſe Letters*; then the *Inferences* againſt the Biſhop *from thoſe Letters*, and from the *ſubſequent Correſpondence* under *thoſe Names*, become of no Force or Weight.

A Third Letter is ſubſcrib'd, 1378; which the *Decypherers* ſay denotes a Perſon, whoſe proper Name begins with an *R*. And the Report is pleas'd to infer, that *it muſt be* the Biſhop of *Rocheſter*. Now why 1378 denotes a Perſon, whoſe Name begins with an *R*, the *Decypherers* only know: And we are as much at a Loſs to know, why by a Name beginning with *R*, muſt be intended the Biſhop of *Rocheſter*. If that Number appear'd to denote a Name beginning with *R*, and if no Name began with that Letter but the Biſhop of *Rocheſter*'s; there would then, I confeſs, be ſome Weight in the Obſervation.

That *Jones* and *Illington* are not the *ſame Perſon*, appears from the Letter of the 10th of *May*, from *Hatfield* to *Howel*; where, within the Compaſs of *two Lines*, they are *diſtinguiſhed*. For in one Line he ſaith, *Jones* promiſeth to be a good Cuſtomer; and in the next Line but one he ſaith, *Illington* is gone into the Country; which plainly ſhews them to be diſtinct Perſons. Beſides, in the Papers mention'd concerning the Duke of *Norfolk*, his Grace is ſeveral times denoted by the Name of *Jones*: In *Layer*'s Liſt, Sir *William Ellis* is deſcrib'd by that Name; and in *Plunket*'s Liſt, *Jones* ſtands for the *Germans*.

The Evidence to prove *Jones* and *Illington* to denote the Biſhop, and the Intimacy between the Biſhop and *Kelly*, is the *Preſent* of a *Dog* called *Harlequin*.

The Evidence ſtands thus. ——*Rep.* 40. *E.* 35. ‘ *Hatfield*, who is ſuppoſed to be *Kelly*, in his ‘ Letter of the 30th of *April* to *Howel*, who is ‘ ſuppoſed to be *Dillon*'s Secretary, writes thus. ‘ Mrs. *Jones* died laſt Week; pray preſent my ‘ Reſpects to Mr. *Muſgrave* (meaning *Marr*) ‘ and let him know, I receiv'd the Preſent ſent ‘ by the young Lady; that he had a Leg broken ‘ in the Journey: However I will take all the ‘ Care imaginable of him; and inform Mr. *Jones* ‘ of it, to whom I know any thing from that ‘ Quarter will be very acceptable.’

Hatfield, in his Letter to *Muſgrave* of the 7th of *May* 1722, ſays; ‘ Mrs. *Illington* is in great ‘ Tribulation for poor *Harlequin*: However his ‘ Obligations to the Lady are as great, as if he ‘ had come ſafe.’

From theſe Letters 'tis inferr'd, that by *Jones* and *Illington* the Biſhop is meant; and that a young Lady ſent the Dog to *Kelly* as a Preſent for the Biſhop: And 'tis urged, that Mrs. *Barnes* in her Examination of the 23d of *May*, ſays, The Dog was not deſign'd for her, but for the Biſhop of *Rocheſter*; That *Kelly* told her, the Dog was for the Biſhop; and that *Kelly* promiſed to get the Dog for her from the Biſhop, in caſe it did not recover its Lameneſs.

It is admitted, that Mr. *Kelly* brought ſuch a Dog from *France*; that Mrs. *Barnes* had it; and that its Leg was broken: But that it was deſign'd for the Biſhop, or that the Biſhop ever had, or ſaw it, there is no *Pretence* of *Proof*; and my Lord Biſhop utterly denies it; and Mr. *Kelly* hath ſolemnly deny'd it to your Lordſhips: And inſtead of its being a Preſent from a young Lady to the Biſhop, Mr. *Kelly* ſays he bought it of a Surgeon at *Paris*, to give it to Mrs. *Barnes*.

There is one Expreſſion in the Letter of the 7th of *May*, which is remarkable; and, in my humble Opinion, enervates and deſtroys the Force of all thoſe Letters relating to the *Dog*: For it was written four or five Days *after the Biſhop's Lady was bury'd*; and it ſays, ‘ Mrs. *Illing-* ‘ *ton* is in great Tribulation for poor *Harlequin*.’ Mr. *Kelly* was ſuppos'd to write that Letter, and was ſuppoſed to be a Friend of the Biſhop's; and could a *Friend*, could any Man of *Common Senſe*, be guilty of ſuch a *fooliſh* and *ridiculous* Expreſſion? Could any Man ſay of one of my Lord *Biſhop's Character*, who was in the *utmoſt Affliction for his Lady*, that he was in *great Tribulation* for the *breaking of a Dog's Leg*? 'Tis evident, he who wrote that Letter, *did not know* the Biſhop's *melancholy Circumſtances*: 'Tis likewiſe well known, that the Biſhop *never loved a Dog*, nor ever *had one*.

The next Method of *proving Letters* upon the Biſhop, is by *Similitude and Compariſon of Hands*; not by *comparing* any Paper *written by him* with *any other Writing*; but by *producing* a Letter *ſuppos'd to be written* by Mr. *Kelly* in *Auguſt*, and by proving that the *three Letters* written in *April*, were *open'd* and *copy'd*, and *ſent forward*; and that *thoſe Letters* were of the ſame Hand with *that produced*.

It was to be hoped, that, ſince Mr. *Sidney*'s Caſe, the *Evidence by Similitude of Hands* in *criminal* Proſecutions would never have been offer'd: He was convicted upon *ſuch* Evidence, and for *that Reaſon* his *Attainder* was *revers'd* in Parliament. And therefore, I humbly hope your Lordſhips will not in your *Legiſlative Capacity* admit that to be Evidence in *this* Caſe, which in *the ſame Capacity* you were pleas'd to condemn in Mr. *Sidney*'s.

In 1695, *Crosby* was indicted for writing treaſonable Letters; and the Evidence was Similitude of Hands: which Evidence was *diſallow'd* by the Chief Juſtice *Holt*, and *Crosby* was *acquitted*.

In *Francia*'s Caſe, my Lord Chief Baron *Bury* declared Similitude of Hands to be *no Evidence*: And if it was not admitted in *thoſe* Caſes, where *Papers* were *produced*, and *proved to be of their own Hand-writing*, and the Papers with *which they were charged* were produced, and *compared* with thoſe other Papers; we preſume, your Lordſhips will not allow it in *this* Caſe, where it is *carry'd farther* than ever it was attempted before.

The Proof, as to this Point, ſtands thus. ——Three *Clerks of the Poſt-Office* ſwear, that the 20th of *April* 1720. *theſe three* Letters were open'd; that they took Copies of them, and ſeal'd them up again, and ſent them forward;

that *four Months* after, *another Letter* came to the Office, which was stopp'd: *That* is produc'd; and they all swear, they *believe* the *three Letters* were the *same Hand-writing* with the *Letter produc'd*. Now that Men, who *never saw* a Hand *but once*, and thro' whose Hands *so many* Letters pass in a Month, should be able to *swear*, that three Letters, which were sent in *April* 1720, were of the same Hand-writing with a Letter which was stopp'd *four Months* after, is strange and incredible.

I beg leave farther to observe, that the Clerks of the Post-Office own they *did not compare* the *Copies* of the three Letters with the *Originals*. And was ever a Copy allow'd to be read, unless the Person who produced it swore that he compar'd it with the Original, and that 'twas a true Copy?

It is remarkable, that *Clark*, one of the Post-Office, said, It was *impossible* to write a Hand, that had *any Resemblance* to those Letters; but yet, he said, the *Figures* bore a Similitude to the *Hand-writing*: So that *one* Hand cannot be like *another*; but *Figures* may be like a *Hand-writing*.

It is also observable, that the Letter produced is proved to be *Kelly*'s Hand-writing, only by *Hutchins* the Messenger; who says he had him in his Custody a Week, and saw him write several Letters; and by *Malone*, who proves Mr. *Kelly*'s Hand by a Superscription in *French*, and yet owns he *cannot read French*: Whereas, *we* shall *prove* by *three positive Witnesses*, that this *is not* his Hand. Besides, they might have produced the Letter which he wrote to my Lord *Townshend*, which is *admitted* to be his Hand.

We shall likewise prove by several Witnesses, That *at the time* when the three Letters are *said to be written*, the *Bishop* was at *Bromley*, and *so lame* with the Gout, that he could not *stir Hand or Foot*; that his *Lady* was *dying*; that *no Person* was *admitted* to him, but two or three Servants; and that Mr. *Kelly* was *not* at *Bromley* at *that time*, nor for *three or four Months before, or after*. And therefore 'tis impossible those Letters should be written, or dictated, by the Bishop.

The Evidence of *Wood* the Coachman, confirms this. For he swore, that he never saw Mr. *Kelly*, till he was carry'd to see him in the *Tower*; and that *Kelly* was not at *Bromley*; that no *Stranger* was at *Bromley* from the 12th of *April* till the 26th, when the Bishop's Lady died; and that he *must* have *known it*, if there had; that the Bishop *never sent the Coach* for *Kelly*, or any other Person in *Berry-street*, or any Place near *Pall-Mall*. So that by this, the Examinations of *Elizabeth Levet* and *Neynoe* are quite destroyed.

But 'tis objected, that a Man might put his Horse at an *Inn*, and come to see the Bishop, and *Wood* not know it. Can it be imagined, that *Kelly*, who is supposed to be so particular a Friend of the Bishop's, would leave his Horse at an *Inn?* But we shall examine other Witnesses to this.

It was objected, that on the 10th of *June* the *Bells rang*, and the Servants had *Roses*. But it appears, most of them were *red* Roses: And if it should be *criminal* to ring the Bells on the 10th of *June*, we shall shew that the *Bishop knew nothing* of the Ringing of the Bells, or of the Roses.

In the Report, *Page* 50. the Committee of the Commons are pleased to take Notice; "That "on the 11th of *June*, *Kelly* sends his Friends at "*Paris* an Account of his late Misfortunes; "and after complaining of the Neglect in not "bailing him out sooner, says, your Old "Friend *Rig*, indeed, offer'd all that could be "expected from the poor Man," and infer, "That by *Rig* is meant the Bishop of *Ro-*"*chester*."

Can it be imagined, that *Kelly* would call the Bishop *Gerrard*'s old *Friend*; who, 'tis not *pretended*, ever *knew* him, or *saw* him? And if *poor Man* be taken by way of *Contempt*; can it be imagined that Mr. *Kelly*, a Gentleman of that *good Sense*, and *Breeding*, would use *such an Expression* of my Lord Bishop? If these Words are taken in the *literal* Sense, 'tis as improbable; for the Bishop was not taken for a *poor Man*: Besides, how could he, who had 200,000 *l.* Contribution-Money, and had the *Command of the Military Chest*, be said to be *poor?* And I dare say, there is nobody but believes, that if my Lord Bishop would have intermeddled on Mr. *Kelly*'s behalf, he had Interest enough to procure whatever Bail *Kelly* wanted: And therefore I apprehend, that *Rig* cannot be intended to be the Bishop.

Indeed, *no Credit* can given to *Cant-Names*; for the *same Names* are us'd for *several Persons*: As *Laws* in *Plunket*'s Cypher stands for *Marr*; and in the Cypher found on *Dennis Kelly*, it signifies Mr. *Cæsar*. *Hawksby* in *Plunket*'s Cypher, stands for King *George*: And in the Report 62, there are Compliments from the *Pretender* and his *Spouse* to *Hawksby*; which, I presume, they did not mean for his Majesty. *Jones* is used many times for the Duke of *Norfolk*. It is used for Sir *William Ellis*; and it is also used for the *Germans*; as I before observ'd.

That *Jackson* cannot mean the Pretender, is plain. *App. E.* 30. A Postscript in the Letter from *Quitwell* to *Vernon* says, "Mr. *Chivers* ad-"vises, that the Money you mention, in *Clinton*'s "Hands, should be equally divided between "*Medley* (meaning the late Duke of *Ormond*) and "*Jackson*, meaning the Pretender." Now would any one devoted to the Pretender's Interest, put *Ormond* before the Pretender? *Jackson* is put for the Pretender only in *Plunket*'s List; and yet 'tis observable, that *Plunket* in all his Correspondence never calls him *Jackson*, but *Joseph*, or *Jephson*: And in the voluminous Correspondence charged on *Kelly*, he is not once called *Jackson*; but the usual Names are *Jephson* and *Joseph*.

As for the Letter to *Dubois*, it seem'd at first to be a Letter written from *France* TO the Bishop, by the Name of *Dubois*; and after a Month's time they find it to be a Letter written BY the Bishop. If so; *Writing* a Letter, and *not sending* it, can be no Offence. But how comes the Bishop to keep that Letter *seal'd*, which he had written *seven Months before?* The Writer of that Letter owns, he had receiv'd one from *Dubois* two Months before, by Mr. *Johnson*; which was the Name *Kelly* went by: And 'tis very strange, that the Bishop should be so weak, as to mention the *Name* of the very Person, who, 'tis said, used to write his Letters, and by whom he was suppos'd to carry on his Correspondence. If it be presum'd that *He* wrote this Letter; it must also be presum'd, *he was out of his Senses* when he did it.

That

That Letter was not ſigned, and was dated the 16th of *Dec.* but no Year; tho they have put the Year 1721 to it. For a Month together they never thought the Letter to *Dubois* to be the Biſhop's Hand; tho they had ſeveral of his Letters. As to the Obſervation made by one of the Gentlemen, that the Letter to *Dubois* was ſealed by a *particular Seal*, and not the Seal with which he ſeal'd ſuch Letters, as He *intended all the World ſhould ſee*; that Gentleman would do well to let us know, *what* Letters were written by the Biſhop, which he intended all the World ſhould ſee.

That *ſo many* Letters were written before 1712, and ſo *few ſince*; was occaſioned by his Lordſhip's great Correſpondence about Matters of *Learning at* that Time, and his being *from* that Time often afflicted with the *Gout*, ſo that he could not write many Letters, and conſequently receiv'd but few. Beſides, He was made Biſhop in 1713, and Dean of *Weſtminſter*; ſo had not Time to write much himſelf, but kept a *Secretary*.

As the Matters before mention'd to be charg'd againſt my Lord Biſhop, aroſe from Letters ſuppoſed to be written *by* him; I ſhall next conſider the Charge againſt Him, which ariſes from Letters ſuppoſed to be written *to* Him.

There are *Two Letters* mention'd in the Report as written to Him; one of the 11th by *Motfield*, interpreted to be Lord *Marr*, wrote to *Illington*; the other of the 25th of *July* from *Digby*, interpreted *Dillon*, to Mrs. *Weſton*.

Now I would obſerve, That it is not pretended, that either of thoſe Letters was ever *receiv'd* by the Biſhop; ſo conſequently muſt be *intercepted*: Therefore it would have been proper, to have *produced the Letters*, and to have *proved the Hands*.

As to the Letter from *Motfield*, 'tis only a *Compliment of Condolence*: And 'tis inferr'd that it *muſt be the Biſhop*, becauſe his *Lady died* a little before. The Letter ſays, "We muſt ſubmit "with Reſignation, to what the juſt and great "God thinks fit to order; but you know ſuch "Things ſo much better than I do, that I will "not trouble you with ſaying any more upon it." From theſe laſt Words it is infer'd, That this Letter was written to a *Clergyman*, and *conſequently* the *Biſhop*.

What Weight this way of Reaſoning will have with your Lordſhips in *criminal* Proſecutions, is humbly ſubmitted: But it muſt be obſerv'd, That this Letter is ſaid to be an *Anſwer* to the Letter, ſaid to be written the 20th of *April* to *Muſgrave*. And as we have ſhew'd, that it was impoſſible the Biſhop ſhould write or dictate either of the Letters of the 20th of *April*, the *Anſwer* muſt fall with the Letter. But from hence the Obſervation is natural, and undeniably true; that if *Jones*, who wrote the Letter to *Muſgrave* of the 20th of *April*, could not be the *Biſhop*; and *Illington*, to whom *Motfield* wrote, be the ſame as *Jones*; then neither *Jones* nor *Illington* can denote the Biſhop.

As to the Letter from *Digby* to Mrs. *Weſton*, who is interpreted the Biſhop; it was written the 25th of *July*, *N. S.* wherein *Digby* ſays, "I cannot on any reaſonable Grounds complain "of your Silence, becauſe I am inform'd of the "Situation of your Health, and the Concern "your Family are in, by Bankrupts, and Law-"Suits."

It muſt be obſerv'd, that on the 7th of *July* O. S. *G. W.* in his Letter to *Digby* ſays, "I "ſaw Mrs. *Weſton* yeſterday; ſhe never was "better in her Life than now." It is ſtrange, that *Digby* the Week following ſhould take Notice of the ill Situation of Mrs. *Weſton*'s Health. 'Tis plain both theſe Letters can't be Genuine, and therefore no Credit can be given to ſuch a Correſpondence.

One Way of fixing the intercepted Correſpondence, and the Cant-Names mentioned therein, upon the Biſhop, is, by the *Coincidence* of *Times*, and other *Circumſtances*; as of his Lordſhip being *in Town*, and *out of Town*: And there are ſeveral Miſtakes in them. For in *Hatfield*'s Letter to *Muſgrave* of the 7th of *May*, he ſays, Mr. *Jones* is come to Town *only for a Day*: If That be to be underſtood of the Biſhop, it is not true; for he came to Town the 5th of *May*, and did not go out of Town till the 10th.

In the Letter from *I. H.* to *Dixwell*, of the 18th of *June*, 'tis ſaid, 'Mr. *H. Rig*, and *Rep.* 'are I hear in the Country.' And 'tis ſaid by *Rig* is meant the Biſhop: Which cannot be, for the Biſhop was then in Town. So in a Letter to *Maiſonneuve*, of the 19th of *July*, 'tis ſaid, '*Rig* 'is in the Country." Whereas the Biſhop was then in Town. This is the more obſervable; becauſe the *Report*, taking notice of the Biſhop's being ill of the *Gout*, ſays, *Page* 41. 'This Par-'ticularity, as alſo ſeveral others, which will be 'taken notice of as to the Biſhop's being in Town, 'or in the Country, at the reſpective Times men-'tion'd in the intercepted Letters, have been care-'fully inquir'd into.' And in the next Paragraph, the *Report*, taking notice of the Letter to *Muſgrave* of the 7th of *May*, which ſays Mrs. *Jones* is come to Town, ſays, 'This agrees with the In-'quiry.' And yet it will plainly appear, that there are ſuch Miſtakes, as to thoſe Times, as I have before mention'd.

I hope I may have leave to obſerve, that theſe Miſtakes eſcaped the Obſervation of the Honourable Committee of the Houſe of Commons; and that tho the Letter of the 7th of *May*, in the *Appendix*, ſays, 'Mrs. *Jones* is come to Town 'only for a Day;' yet in the *Report*, the Words *only for a Day* are left out.

All the Circumſtances before mention'd are made uſe of to fix the Names of *Jones* and *Illington* upon my Lord Biſhop; and therefore the next Paragraph but one in the Report is very obſervable: Which is this.

'Theſe ſeveral Circumſtances, joined to *Ney-'noe*'s Declaration, that *Kelly* had told him, the 'Biſhop went ſometimes by the Name of *Jones*, 'and that *Carte* had told him, the Biſhop went 'by the Name of *Illington*, ſhew, that where-'ever *Jones* and *Illington* are named in *Kelly*'s 'Correſpondence, the Biſhop of *Rocheſter* is to 'be underſtood by thoſe Names.'

So that the whole Proof of the Correſpondence, charged to be carry'd on by my Lord Biſhop under the Names of *Jones* and *Illington*, is reſolv'd into this; that *Neynoe* DECLARED that *Kelly* and *Carte* TOLD HIM the Biſhop went by thoſe Names.

I beſeech your Lordſhips, Is this *Proof?* Is this Evidence ſufficient to deprive a Reverend Prelate of all his Eccleſiaſtical Preferments? And to ſend him into perpetual Baniſhment? Do

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the Lives and Liberties of *Engliſhmen* ſtand upon ſo weak a Foundation? If they do, I preſume to ſay they are very *precarious*, and the moſt *innocent* Man alive cannot ſay he is *ſafe*.

I beg your Lordſhips Indulgence to obſerve farther, that this heavy Charge againſt my Lord Biſhop is ſupported only by *Innuendos*: And with what an Eye *Innuendos* have been always look'd upon in *criminal* Caſes, many Inſtances may be given.

I ſhall trouble your Lordſhips but with *one*; which is full to this Purpoſe, and of the greateſt Authority: I mean the Reſolution of your Lordſhips in the Caſe of Sir *Samuel Barnardiſton* in 1683. He was proſecuted for writing Letters, alledged to be ſeditious, and highly reflecting on the Government, and the Publick Juſtice of the Nation; and was found guilty, and fined 10000 *l.* He brought a Writ of Error in this moſt Honourable Houſe, and your Lordſhips were pleas'd to reverſe that Judgment; for that the Information being grounded on *Letters*, which in *themſelves* were *not criminal*, but made ſo by *Innuendos*; your Lordſhips were pleaſed to declare, that *Innuendos* and *forced Conſtructions* ought not to be allow'd; for all *Accuſations* ſhould be *plain*, and the *Crimes aſcertain'd*.

Now if it can be ſuppos'd, without any *Evidence*, that my Lord Biſhop *wrote* the Letters charged to be written by him; even then this Caſe is the ſame with Sir *Samuel Barnardiſton*'s. For the Letters are not *criminal* in *themſelves*; nor can be made ſo but by *Innuendos*, and *ſtrain'd*, *forc'd Conſtructions*. Nay, I preſume to ſay, there is not *one Part* of the Charge but ſubſiſts *purely* by *Innuendos*, and *ſtrain'd Conſtructions*.

I will trouble your Lordſhips with inſtancing only *one* Letter; which is that of the 20th of *April*, written to Mr. *Jackſon*, and ſubſcribed 1378. With the *Innuendos* it is thus: 1378, *Innuendo* a Perſon whoſe proper Name begins with an *R*, *Innuendo* the Biſhop of *Rocheſter*, did write to Mr. *Jackſon*, *Innuendo* the *Pretender*; that, notwithſtanding *this* Opportunity, *Innuendo* an Opportunity of *raiſing a Rebellion in* England *at the Time of Elections of Members of Parliament*, had elapſed; I, *Innuendo* the *Biſhop*, agree with you, *Innuendo* the *Pretender*, that another, *Innuendo* another *Opportunity of raiſing a Rebellion in* England, may offer before the end of the Year, *Innuendo* at the *breaking up of the Camp*. Your Lordſhips will pleaſe to obſerve what a *Superfetation* of *Innuendos* (if I may ſo ſay) there muſt be to ſupport this Charge; and without *Innuendos* no Part of the Charge againſt the Biſhop can be maintain'd: And therefore, I humbly hope that the ſame Reaſons which induced your Lordſhips to reverſe the Judgment againſt Sir *Samuel Barnardiſton*, will prevail upon you to reject this Bill.

To what I have objected, I imagine it will be anſwered, That your Lordſhips are now acting in your *Legiſlative* Capacity; and that in your Legiſlative Capacity you are not bound by the *Forms of Law*: But I humbly ſubmit it, whether you will not think fit to proceed according to the *Rules* of Law, tho not according to the *Forms* of it.

Mens *Lives*, and *Properties*, are to be try'd and determin'd *ſecundum Allegata & Probata*; and the Proof in ſuch Caſes muſt be *legal* Proof. And I apprehend, with great Deference, that when your Lordſhips proceed in your *Legiſlative* Capacity in *other* Inſtances, you proceed according to the *Rules* of Law: As in Bills for enabling Perſons to *ſell*, or *ſettle Eſtates*; or for *making Rivers navigable*. If the Title or Property of any Perſon come in queſtion, your Lordſhips are pleaſed to hold the Parties to *ſtrict legal Proof*: And why not in Bills of *Attainder*? Are Bills of Attainder (whereby Mens *Lives* are forfeited, their *Eſtates* confiſcated, their *Blood* corrupted, and their *Families* undone) of leſs moment than Bills to enable Perſons to ſettle their Eſtates for the benefit of their Families? I humbly apprehend, that your *Legiſlative* and *Judicial* Capacities are here ſo *united*, that they *cannot be ſeparated*. For a *Bill* of Attainder is a *Condemnation* by Parliament; and your Lordſhips always hear and judge whether a Party be *Guilty*, before you *condemn* him. Will you then be pleaſed to judge, and determine upon *leſs Proof* in *one* Caſe than in *another*? Can it be conceived that your Lordſhips will not act by the *ſame Rule* in *both* your *Capacities*? or that you will not have an equal *Tenderneſs* and *Regard* for the *Lives*, *Liberties*, and *Eſtates* of the Subject in *one* Capacity, as in the *other*?

When a Man *flies from Juſtice*, he gives *Judgment againſt himſelf*; and when a Perſon accuſed doth by corrupt or indirect Means *conceal* or *convey away* the *Witneſſes* againſt him; then *he* is the Cauſe, why *ſtrict* and *legal* Proof *cannot be had*: And that may be a Reaſon, why leſs Proof *ſhould be admitted*. But in Caſes not attended with *either* of *theſe Circumſtances*, to ſay that *leſs* than *legal* Proof is *ſufficient* for a *Bill of Attainder*, is to affirm that PRIVATE OPINION *alone*, *without Proof*, is a *ſufficient Foundation* to paſs a Bill of *Attainder*. And how harſhly that would ſound in the Ears of *Engliſhmen*, is humbly ſubmitted to your Lordſhips.

My Lords, By our Law a *Judge* cannot go according to his own *private Opinion*; but muſt be govern'd by the *Evidence* given before him *in Court*. For the Rule is, *Nil refert, quod notum ſit Judici; ſi non notum ſit in Forma Judicii*. And if Mens Rights and Liberties were to be determin'd by *private Opinion*; how *precarious* would the *Lives* and *Eſtates* of *Engliſhmen* be? The moſt *innocent* Man could not be ſafe; the wiſeſt Man could not *foreſee*, where it would *end*; and *England* muſt no longer boaſt of the Excellency of her Conſtitution.

It is a Rule, both in Law and Reaſon, that *Nemo bis puniri debet pro eodem Delicto*: And yet that may happen to be the Biſhop's Caſe. For the *Charge* in the Bill is *general*; intending to *raiſe a Rebellion*, and holding *treaſonable Correſpondence* in order to bring in foreign Forces: But there is *no particular Fact* charged upon him. Now if he ſhould be *indicted* for either of thoſe Species of Treaſon; and *particular Overt-Acts* of ſuch Treaſon ſhould be alledg'd, as *buying Arms*, and *liſting Men* for the *Pretender*, and the Overt-Acts ſhould be *proved* by *two Witneſſes*; he might be *condemn'd* and *executed* for it. For he could not *plead this Bill* in *Bar* to ſuch *Indictment*; becauſe the Indictment would not be for the *ſame Facts*, there being *no particular ones* charged in the Bill. And yet it may happen (as I ſaid) that my Lord Biſhop may be *indicted* and *try'd* for the Treaſon mention'd in this Bill: As in the Caſe of *Hampden* and *Fitzharris*, which I lately mention'd. For Mr. *Hampden* was try'd for meeting and conſulting to raiſe a Rebellion, was fined 40000 *l.*

40000 *l.* and was afterwards tried for High-Treaſon for the ſame Fact: And tho he inſiſted on his having been try'd for the ſame Fact, and deſired to plead it; yet the Court would not allow it. And in *Fitzharris*'s Caſe, he was indicted for High-Treaſon, and pleaded an Impeachment; and averr'd, it was for the ſame Fact. But the Plea was overruled: For there being no particular Article, the Averment could not be ſupported; becauſe he could not aver any thing that was out of Record.

I humbly hope your Lordſhips will excuſe me for taking up ſo much of your Time. But the *Multifariouſneſs* of the Matters of which the Accuſation conſiſts, and the *Weight* of the Subject, drew me into it. I humbly thank your Lordſhips for your great Indulgence and Patience in hearing me: And if as a *Lawyer*, thro' my Zeal for my Client's Service, or as an *Engliſhman*, aſſerting thoſe *Laws* which I apprehend are the *Security of Britiſh Liberties*, I have let drop any Expreſſion, which may be thought improper; I moſt humbly beg your Lordſhips Pardon. And if there be a difference between your *Legiſlative* and *Judicial* Capacity; I ſubmit it, whether your Lordſhips will be pleaſed to give that Judgment in your Legiſlative Capacity, which the Counſel for the Bill do, in my Apprehenſion, admit you could not give in your Judicial. And therefore, I hope your Lordſhips will be pleaſed to reject this Bill.

Mr. *Wynne* (his Lordſhip's other Counſel) ſpake next.

May it pleaſe your Lordſhips,

I AM of Counſel for this Reverend Prelate: and however unneceſſary I know Apologies to be before your Lordſhips, who are always ready to hear what the youngeſt and moſt unexperienced Perſon has to offer; yet it becomes me to ſay ſomething for my firſt Appearance at your Lordſhips Bar, in a Matter of the laſt Conſequence; and it was the Deſire of this Reverend Prelate, rather to make his Defenſe by ſuch weak Hands as mine, as if he was perſuaded, that his Cauſe needed not the Aſſiſtance of Art or Experience, in order to move the Paſſions, or to impoſe upon the Reaſon of his Hearers; which he knows to be but an impotent Help to Perſuaſion, in compariſon of Truth and Innocency. He appears before thoſe, who (he hopes) will regard plain Facts and poſitive Law; and Truth, notwithſtanding all the Diſadvantages of an unſkilful Pleader, will, he hopes, at laſt prevail.

For my own part, ſince your Lordſhips have aſſign'd me for his Counſel, I ſhall be under no Apprehenſions of Danger or Diſpleaſure in performing my Duty to him, in humbly offering every thing I think neceſſary for his juſt Defenſe: and I will not doubt, but I ſhall be fully and favourably heard. And tho it is his Lordſhip's Misfortune to be already pre-judg'd in another Place, and to be condemn'd without Doors, by ſome few vulgar miſled Apprehenſions; yet he hopes better Things of you, my Lords: He does not doubt, but that your Lordſhips, who in Matters of leſs Importance proceed with Calmneſs, Juſtice and Prudence, will be careful not to deviate from thoſe Meaſures in a Matter which demands the greateſt Caution and Deliberation: For it is the Caſe, the Reputation, the Liberty, the Fortune, and (I was going to ſay) the Life of a moſt Learned Prelate; becauſe ſome Circumſtances of this Bill are ſo cruel and extreme, that it is little better than if it had affected Life itſelf.

Every one that is a Friend to this Bill, muſt avow, that it is not to be offer'd without an evident and cogent Neceſſity. But, I hope, my Lords, tho the Grounds and Suggeſtions of it were true, and duly proved, yet that there is no ſuch Neceſſity.

In order to diſcover whether there be any ſuch Neceſſity or not, I ſhall conſider the End propoſed by this Bill, and then weigh the Means whereby 'tis hoped to attain that End, and whether this Bill be a Means neceſſary or convenient to attain it.

The End, I hope, is the Security of the Government, and the Execution of Juſtice, and it ought to be purſued by all regular and lawful Means; and therefore, before I ſpeak particularly to the Crimes ſuppoſed in this Bill, or the Proofs which have been offer'd to make them out, I ſhall beg leave to ſay ſomething as to the Manner and Method of this Proceeding. Not that I ſhall preſume to queſtion your Lordſhips Power in ſuch Caſes: But, as on the one hand we muſt admit your Lordſhips may, and have in ſome Caſes exerted your Legiſlative Capacity, in declaring That a Crime which was not ſo before, or by inflicting particular or extraordinary Puniſhment on common and ordinary Crimes; yet, on the other hand, till that is done, I hope I am at Liberty freely to repreſent the Inconveniency, the Injuſtice, and the Imprudence of making ſuch a Declaration, or of paſſing ſuch a Law, in the Caſe now before you. If it ſhould become a Law, his Lordſhip muſt diſpute it no longer, but ſubmit to it as juſt, whatever Hardſhips he may, in the Retirement of his own Heart, conceive introduced upon him by it. But, thanks be to God, this is yet no Law, and that I am at full Liberty to repreſent the Injuſtice and the Unreaſonableneſs of this Bill; and to ſay, this is not a proper Occaſion that needs or calls upon your Lordſhips to exert your Legiſlative Power.

I might here enlarge upon the Injuſtice of all Laws made *ex poſt facto*, and for one particular Caſe or Perſon, and no other; that they are againſt the Common Law, and the Common Right which every one is entitled to, in the Place or Community where he lives; becauſe Laws, in their Nature, ought to be Rules for the general Order, and Good of Society: and Natural Juſtice would ſurely in all ſuch Caſes ſtop the Precipitancy of your Lordſhips Reſolution, by this Queſtion; Againſt what Law hath he tranſgreſs'd? If he hath tranſgreſs'd any publick known Law, he is undoubtedly ſubject to undergo the Pains or Penalties enacted by it, when the Proof is duly and fully made which that Law requires. But if there is no ſuch Law yet in being, or if there is no ſuch Proof as that Law requires to ſuppoſe him guilty, will your Lordſhips introduce a new Law, or a new Sort of Proof to make him ſo? If theſe Methods are to be taken, the moſt innocent Man is not ſafe, and the wiſeſt Man cannot judge what is an Offence, or in what Degree; what Proof is neceſſary for his Defenſe, nor how he is to be try'd. And in vain does the Legiſlature every Seſſion provide

Laws, if a particular Law or a particular Proof is ſtill to be made for every particular Purpoſe, not only contrary to the Tenor of all the former; but ſuch as is not to be a Rule or Law in any other future Caſe whatſoever.

Thus much I am ſure may be juſtly urged in any Place of Judicature in the World, againſt all ſuch Laws in general; but much more as we are *Engliſhmen*, as we have Laws, which my Lord *Bacon* calls wiſe and juſt, that give to God, that give to *Caſar*, that give the Subject, that which belongeth to them. Not like thoſe of other Countries, impoſed upon the Subject at the Will of the Prince, before Probation or Trial, whether they are fit and convenient for the Genius of the People; nor the Production of one Man, or of one Parliament in any one Age, but the Wiſdom and Experience of many Generations,

And I am ſure one of the greateſt Excellencies of this Law, beyond that of other Nations, has been always eſteem'd the common and ordinary Method of Trial. It has been always accounted the Birth-right of an *Engliſh* Subject to be try'd *per Pares*, according to the known Courſe of the Law.

And therefore, the better to ſhew the Difference, and to evince the Hardſhip of this extraordinary Proceeding, I ſhall a little conſider the Nature of the ordinary Trial; and tho I might do this in the Language of *Magna Charta*, and of many eminent antient Writers of the Law, I rather chuſe my Lord Chief Juſtice *Hales*, that great and good Man, whoſe happy Moderation between the Prerogatives of the Crown, and the juſt Liberties of the Subject, can never be remember'd by Poſterity, without the deepeſt Honour. He ſays [16] it is the beſt Trial in the World, and one of the firſt Principles upon which our Conſtitution is erected. Here a Man has a legal Exception to any one of his Triers, if they have any Dependance upon either of the Parties, are preposſeſs'd or prejudiced before they hear the Evidence. All the Evidence is given openly, in the Preſence of the Judge, Jury, Counſel, and Parties; not in private, before a Commiſſioner or a Clerk, (as in Chancery, or by the Civil Law) where oftentimes a Witneſs delivers that, which he will be aſhamed to teſtify *ore tenus*, and wherein a crafty Clerk will oftentimes make a Witneſs ſpeak what he really never meant, by dreſſing up his Evidence in his own Terms, Phraſes, and Expreſſions. Or a Man may depoſe in Writing, what the Fear of being falſified, or perhaps a better Recollection wou'd not let him adhere to in open Court, where he has an Opportunity to correct, amend, or explain his Teſtimony.

Beſides this, (ſays that Learned Judge) a Jury muſt all agree in their Verdict, and are not to be concluded by a Majority; and therefore, tho in ſome Caſes, the Law don't poſitively require two, nor one Witneſs, *viva voce*; yet the Credit of a Verdict is great, where twelve Men on their Oaths unanimouſly agree.

The Counſel on the other ſide may be apt to reply upon me, with the frequent Abuſes and Corruptions of Juries. My Lords, I do agree, that may happen to be the Caſe; or it may happen that one more knowing or over-bearing Man among them, may ſometimes govern all the reſt. But, if the ſame may happen, and often does in every Society or Number of Men, and the beſt regulated Bodies in the World, ſurely that can never be a Reaſon to deprive a Man of his common Right, and to lay aſide a moſt valuable Inſtitution.

I am afraid, my Lords, this little has been too much upon a Point that ſo little needs it: but the Love of one's Country, and its antient legal Conſtitution, is an honeſt Prejudice, which every one is apt to indulge; and the Advantage of this Privilege, every one that hears me, (I doubt not) is in the Heart ſufficiently convinced of, and would boldly inſiſt on it as his Birth-right in any Caſe of his own, where his own Property, his Reputation, his Life, or his own Liberty was in the leaſt concerned.

It is urged by the Counſel for the Bill, and indeed by the Bill itſelf, that this is an extraordinary Caſe, and requires an extraordinary Remedy, where the Offender has taken Care, by ſubtle Contrivances, to keep out of the Verge of the Law, and the Reach of all ordinary Proceedings. But if ſuch a cruel artificial Suggeſtion be allow'd to be a good Reaſon to deprive a Man of the Benefit of the Law, no Man's Life or Liberty is ſafe. The ſame may be ſuggeſted of every Offender, and in every Offence: That a Man endeavours to evade the Puniſhment of the Law. The ſame may be ſaid with more Juſtice of every one that pleads Not Guilty, and inſiſts on his Trial, that he endeavours to evade the Law, becauſe ſuch an Accuſation or ſuch an Indictment is found againſt him. And yet the moſt rigid Caſuiſt never yet maintained, but that any Man (tho he knew himſelf to be a moſt guilty Criminal) might plead Not Guilty, and inſiſt on his Trial.

But if this cruel Artifice is to prevail, and this ſhould be a Reaſon to exert ſuch an extraordinary Proceeding: Wo! be to all Men of Senſe and Ingenuity. Nay, my Lords, if ſuch a Notion is to take Place, the Biſhop is in a much worſe Condition, than if *Neynoe* were alive, or any other Witneſs would have depoſed, *viva voce* againſt him, all they would have had them. For even then, his Accuſation or Indictment muſt have been found upon the Oaths of Twelve Men at leaſt, he would have had his legal Trial, and his Challenges. This I ſay upon a Suppoſition that the Gentlemen of the other ſide may not allow his Lordſhip to be a Peer of the Realm; but if they do allow his Right of Peerage before your Lordſhips Bar, and conſequently that he is intitled to a Trial by his Peers, yet ſtill he would have had his legal Exceptions to the Teſtimony of the Witneſſes; there muſt have been two poſitive Witneſſes to the ſame Overt-Act; and his Accuſation muſt have been found by Twelve Men at leaſt upon their Oaths; and after all, if his Lordſhip ſhould have been found Guilty, he might move in Arreſt of Judgment. All which Benefits he is now utterly deprived of, by this Method of Proceeding.

We ſhall be told (I doubt not) by the Counſel for the Bill, that your Lordſhips ſit now in a Judicial Capacity; that you are Judges of the Fact, as well as of the Law. No Man will doubt, but your Lordſhips have a Judicial Capacity, and have at all times moſt worthily exerciſed it; but yet I muſt beg leave to doubt, whether your Lordſhips are now properly acting in that Capacity or not? You have a Power, 'tis true, in this

[16] *Hiſt. of the Law*, cap. 12.

Method of Proceeding to condemn this Reverend Prelate, if Guilty; but not to ſave and acquit, if you are ever ſo well ſatisfy'd of his Innocency: and whether it be your Lordſhips Pleaſure to paſs or reject this Bill, I deſire to know of the Learned Counſel, whether it may be pleaded in Bar of a Proſecution in the Courts below, that he was *auterfoits acquit*, or *auterfoits convict* before your Lordſhips; or whether this Proceeding by Bill might be pleaded in Bar, even of an Impeachment for the very ſame Treaſons; or whether your Lordſhips Reſolution on this Bill (whatever it be) would be any legal *Eſtopel* to any other Bill in a future Seſſion. No, my Lords, I humbly apprehend, it would not be a good Bar or a legal Plea, either at Common Law, or according to any Rule or Uſage of Parliaments; and therefore we hope your Lordſhips will not do that, which after all cannot be a complete or a final Judgment, and by that Means draw this Reverend Prelate into the Danger of a double Trial. Which, I am ſure, is not only contrary to the Rules of Law, but alſo of Natural Juſtice. I have the more Countenance in ſaying this, not only from *Hampden*'s Caſe, but from the known Caſe of *Fitz-Harris*, who pleaded this very Matter to the Juriſdiction of the Court of *King*'s-*Bench*, that he was impeach'd for the ſame Crime by the Commons of *England*: but it was the Opinion of that Court, with the Advice of all the Judges, that he might, notwithſtanding, be try'd there: and in fact, was try'd and condemn'd by the Court of *King*'s-*Bench*, tho the Impeachment was ſtill depending before your Lordſhips Houſe.

But if your Lordſhips are reſolved to proceed in your *Legiſlative* Capacity, and my Lord Biſhop muſt, after all, be in Danger of the ordinary Method of Trial; yet ſuffer me to ſay what has been done, in former Times, by former Parliaments, on the like Bills: and how light ſoever other Authorities may ſeem, we hope your Lordſhips will have ſome Regard to your own Uſage and Reſolutions.

There have been too many Inſtances, I confeſs, my Lords; but thoſe, that can be in any Degree juſtify'd, may be reduced to theſe few. They are ſuch as paſs'd againſt Perſons dead, or who fled from Juſtice, and did not render themſelves by the Time appointed; or they have paſs'd againſt ſuch as were in actual Rebellion, in direct Oppoſition to all Methods of Trial, and in Defiance to all Courts of Juſtice; or againſt ſuch whoſe Treaſons were flagrant and undeniable, but their Perſons above the reach of inferior Courts and Commiſſions. Thoſe few Sacrifices to the Heat and Neceſſity of the Times have been moſt of them revers'd with Infamy and Deteſtation, when Men were cool, and at Liberty to hearken to the Voice of Law and Reaſon, and began to conſider they had only prepared Shackles for themſelves. Thoſe few melancholy Inſtances, procured without due Trial by an Exceſs of Prerogative, of Perſons that have been forth-coming, principally becauſe it was the Will of a Prince, are not to be mention'd without Horror and Deteſtation. Such as thoſe, ſays my Lord *Coke* [17], *auferat oblivio ſi poteſt, ſi non, utcunque tegat ſilentium.* Let ſuch groſs Breaches and Violations of the ſacred and unalterable Rules of Juſtice be forgot, if it be poſſible; or at leaſt draw a Veil over them, and let them be buried in perpetual Silence.

But in all ſober regular Times, a free Trial in the ordinary Courſe of Law has ſeldom been denied, even where the Facts have been ſo notorious as (one would think) almoſt to need no Trial, and ſo evident as to need no Proof; as the Regicides, except ſuch as fled from Juſtice, were admitted to Trial, no leſs than Twenty Nine before one Commiſſion of *Oyer*, and every one heard with Patience in the ordinary Courſe. Even *Felton*, that ſtabb'd a Prime Miniſter in the Execution of a High Commiſſion, tho he confeſs'd the Fact, both before the Council and Court of *King*'s-*Bench*, and juſtify'd it as a publick Service to the Nation, in the moſt daring and impious Manner, was brought to Trial, without ſuperſeding any of the ordinary Methods and Circumſtances of Juſtice. Indeed where ſome flagrant Crimes have been legally prov'd and determin'd in the Courts below, Parliaments have ſometimes thought fit to add to, or heighten the Degrees of Puniſhments. It was ſo reſolved in the Caſe of the Gunpowder Plotters 5 *November*, that they were at firſt to be try'd at Law, and then the Parliament (if need be) to add a Confirmation to it. Nay, that Reſolution went farther; it ſays they were not competent Judges of it, before it was found in the Courts below.

I might mention the Opinion of Judge *Doddridge*, the Mirror of Juſtice, Lord Chief Baron *Atkins*, &c. who ſay the Parliament is a ſupreme Court of *Oyer*, and that the proper Subject of their *Oyer* is ſuch Offences for which Right cannot otherwiſe be had, and to deal with Delinquents too high for the ordinary Courts. And, as I am before your Lordſhips Bar, I am very proper to mention the Reſolution of your Lordſhips Predeceſſors, in the Caſe of *Fitz-Harris*, who (as I before mention'd) was impeach'd by the Commons of High-Treaſon; they refuſed to take him out of the Hands of ordinary Juſtice, and directed him to be proceeded againſt according to the Courſe of the Common Law.

And what Opinion ſubſequent Parliaments have had of my Lord *Strafford*'s Bill of Attainder, beſt appears from the Words of the Act of Reverſal, by ordering all the Records and Proceedings relating to it to be cancell'd and deſtroy'd, that no Remains of ſo evil and unjuſt a Precedent might be viſible in after Ages, or brought into Example to any one's Prejudice. But even in that deteſtable Inſtance, ſuch Informations and Evidence were not admitted, the Witneſſes were all examin'd, *viva voce*, upon Oath, and he was firſt adjudged Guilty, by way of Impeachment at the Bar of the Lords, before there was any Order for a Bill. The very ſame Method was obſerv'd in the Caſe of Archbiſhop *Laud*, and Articles fully proved againſt him, as they thought. If it had not been ſo, even that Houſe of Commons, as bad as they were, and as thirſty as they were after the Blood of thoſe Noble Perſons, probably would not have order'd thoſe Bills. But yet this latter Inſtance of Archbiſhop *Laud*, never had the Royal Aſſent: and 'tis well known in Hiſtory, what deſperate Meaſures were made uſe of to induce the Lords to paſs it; and at laſt I think there were but ſeven of your Lordſhips whole Houſe, that were preſent when it was paſs'd. But if this Bill ſhould paſs, we muſt no longer blame and condemn thoſe Inſtances; for this will, in effect, re-enact them, and many others, which the Wiſ-

[17] 4 Inſtitut. 37.

dom of former Parliaments have revers'd with Marks of Infamy and Deteſtation.

How much more is there to be ſaid of Sir *John Fenwick*'s Caſe? he had been indicted upon the Evidence of two poſitive Witneſſes: There had been ſeveral preceding Trials, at Law, by which it manifeſtly appear'd that he was equally concern'd with thoſe that were found Guilty. Sir *John Fenwick* had likewiſe withdrawn himſelf from Juſtice, and was retaken; (a Circumſtance always urged as a ſtrong Preſumption of Guilt.) He had protracted his Trial by Offers of Diſcovery, the Reaſon of which afterwards appeared to be, that one of the King's Witneſſes might withdraw himſelf beyond Sea; and altho that Witneſs was gone, yet his Evidence not only remained in Writing ſign'd, and upon Oath, but was atteſted and confirm'd by ſome of the Grand-Jury themſelves that found the Bill, and by others of the Petty-Jury, before whom that Witneſs had given the very ſame Evidence. There was a Proof likewiſe that he had attempted to corrupt the remaining Witneſs, as well as ſome of the Jury. Theſe were Circumſtances upon which that Caſe was founded; no Man can ſay, but there was a reaſonable Evidence, tho not ſtrictly legal; one full and poſitive Witneſs, and many ſtrong undeniable Circumſtances; and yet the Oppoſition, which that had in both Houſes, was very great. Whether the Reaſons that prevail'd for the paſſing of it were ſufficient, becomes me not to enquire: Since it is ſtill a Law, I muſt preſume them juſt.

But is there any thing, my Lords, like that, in the Caſe now before your Lordſhips? Has there been any Attempt to withdraw from Juſtice? and yet that Honourable Committee have been pleaſed to obſerve, his Lordſhip had Notice that he was to be apprehended ſome conſiderable Time before. Has there been any preceding Trial, in which my Lord Biſhop's Name was mention'd as an Agent, much leſs (as this Bill ſuggeſts) a principal Manager and Director in the Conſpiracy? Or, in that one Trial which hath been, has any thing appeared to derive the leaſt Suſpicion of Guilt upon him? Can any one ſay he has uſed any Methods or Artifices to avoid or protract his Trial in the ordinary Courſe of Law? Has he not on the contrary (and as one of the ſtrongeſt Proofs and Convictions of Innocency) ſought and petition'd to be tried? Yes, my Lords, he has applied in all Courts, and in all Places, in the moſt earneſt and legal manner, to be brought to Trial? Has this Reverend Prelate uſed any indirect Meaſures to corrupt or withdraw a Witneſs? And yet Mr. *Kelly*, (who is the only Perſon ſuppos'd capable of teſtifying againſt him, 'tis well known, had his full Liberty, even after his Lordſhip's Apprehenſion, but wou'd not hazard his Recognizance by one Day's Non-appearance. No, my Lords, nothing of that kind has been attempted to be prov'd, nor ſo much as inſinuated in this Caſe; nor is there here before your Lordſhips any one poſitive Witneſs of any kind: Nor is there the Sanction of any one Oath here, or any where elſe, in any one material Point againſt his Lordſhip. What need therefore, or what Reaſon can there be for this Bill? Surely your Lordſhips will never pronounce a Judgment that ſhall affect any Man's Life, Liberty, or Fortune, without ſome Oath, and on Circumſtances ſo widely different in every reſpect from thoſe of Sir *John Fenwick*.

And if this Caſe bears Proportion not Similitude with that of Sir *John Fenwick*; I am ſure it has much leſs, or rather none at all, with any of thoſe before mention'd. For we hope, after ſo long and full a Diſcovery of the Conſpiracy, and thoſe many juſt Methods of Preparation againſt it, the Danger cannot now be ſo great or cogent, as to require ſo precipitate a Reſolution. His Perſon, your Lordſhips ſee, is ſafe and forthcoming, and the Courts of Law in their uſual and open Courſe; and at this Time filled with ſuch learned and reſolute Judges and Miniſters of Juſtice, that they are equal and able to deal with the moſt bold and daring Offender.

There can be leſs Reaſon therefore, none at all we hope, for your Lordſhips at this Time to exert ſuch an extraordinary Method of proceeding.

But there is this further Objection againſt proceeding by Bill, that it makes not only your Lordſhips pronounce Judgment againſt one of your own Members, and a very terrible one too; but it makes the King himſelf, without hearing one Word of the Defenſe, in Perſon, pronounce a Judgment upon his Subject, which his own gracious Temper muſt be averſe to; which the Common Law therefore has wiſely left to be pronounced by his Juſtices, even in thoſe Courts where he is always ſuppoſed to be preſent. But in this inſtance, there is ſomething which muſt be ſtill more ungrateful to him; in that it is to exclude a Branch of Prerogative which his Majeſty moſt delights in, and it muſt be ſome Surprize to every good Subject to find his Royal Judgment ſo highly miſtruſted.

There is another Thing, which, I perſuade myſelf, your Lordſhips will fully conſider; that if this Method of Proceeding by Bill be encourag'd and grow familiar, it will put an End to one conſiderable Branch of Judicature, which your Lordſhips were heretofore ſo juſtly jealous of, as not to admit at any time the leaſt Competition. The Lower Houſe will hardly care to appear any more before your Lordſhips as Accuſers or Proſecutors, when they can ſo eaſily partake in your Judicial Capacity. And every ſuch Bill (eſpecially againſt a Member of this Houſe) is a direct Infringement and Diminution of that high and valuable Privilege, and will open a Door to ſome other Miſchiefs to the Peerage: which I had much rather your Lordſhips wou'd ſuggeſt to yourſelves, than I expreſs. It has been always doubted without Doors, whether your Lordſhips could begin ſuch a Bill againſt a Commoner; but I think it may be more juſtly doubted, whether the Lower Houſe can begin ſuch a Bill againſt any one of your Lordſhips; and, if this Bill ſhould have no other Conſequence, it will eſtabliſh this ſo far, as to bear no Queſtion hereafter. My Lords, I need not ſay, how much more proper it would have been, for the Lower Houſe to have left this Matter intire to your Lordſhips; becauſe it has been ſo often reſolv'd by your Lordſhips Predeceſſors, that the *Houſe of Commons* have no Power of Judicature or Coercion againſt any one, but in Matters concerning that Houſe: Whereas this is a Caſe of Peerage, the Puniſhment, and the Excluſion of a Member of this Houſe. There is an Inſtance on your Lordſhips Journals, where the Lord *Purbeck* voluntarily ſurrendred his Title and Dignity of Viſcount to the King by Fine, and yet your Lordſhips una-

nimouſly revers'd that Judgment, and declared, that no Place could judge of, or intermeddle with Dignities or Rights of Peerage, but your Lordſhips own Houſe.

And thoſe my Lords of that Reverend Bench, will ſurely conſider what a fatal Blow this Bill will give to the Diſcipline and Polity of the Church of *England*. They have more than ordinary Reaſon to be jealous of increaſing ſuch Precedents, and of introducing Methods of depriving Biſhops and Deans, hardly known to former Ages. The antient Canons have already preſcrib'd Methods of judging, cenſuring, and depoſing Biſhops, and the Caſes when and where thoſe Methods are fit to be exercis'd. I don't ſay the Parliament cannot do this, or any thing elſe which they think proper; but the Metropolitan, their Lordſhips know, is intruſted with this Power over his Suffragans, or a Provincial Synod. And 'tis plain, the Law of *England* takes notice of no other Power, that can regularly deprive. For to Mention but this Inſtance, if an Iſſue ſhould be join'd, whether a Biſhop be depriv'd or not, the Court where ſuch Iſſue ſhould ariſe, could only write to the Archbiſhop to certify. And to prove this Aſſertion, I will not name Biſhop *Stillingfleet*, or any of thoſe great Eccleſiaſtical Authorities, (ſince poſſibly they may be excepted againſt, as Perſons who have too much Intereſt in the Caſe to be impartial) but it is ſo laid down by my [18] Lord Chief Baron *Atkins*, in his great Argument of Eccleſiaſtical Commiſſions, and by my Lord Chief Juſtice *Holt*, and the Court of *King's-Bench*, in the Caſe of Dr. *Watſon*, Biſhop of St. *Davids*.

All Precedents, my Lords, will increaſe; and the Scorn and Contempt of Libertines againſt your Lordſhips ſacred Order is too great, to drop or to forget a Precedent ſo grateful and pleaſing to them as this will be. Every one knows the Deſtruction of the ſmaller religious Houſes only made way for that of the greater. A Time has been when their Lordſhips Predeceſſors were all excluded and ſequeſtred; and it has been attempted, even ſince the Reſtoration, to take away Deans and Chapters. I am far from apprehending any ſuch thing at preſent, and I hope it will never enter into the Heart of any Man. But, my Lords, I confeſs I thought as little at this Time of ſuch a Bill as is now before you, to deprive a Biſhop and Dean at once, not only of all his Dignities and Benefices, but from the Exerciſe of any Part of his holy Office and Function: And I will ſay, that if this Bill ſhould paſs, and by any of their Lordſhips Aſſent, ſuch a Deſign will be rendred more eaſy and familiar, and much more unpitied, by all Mankind.

Give me leave, my Lords, next to obſerve, with what Caution and Moderation other Parliaments have proceeded, even in thoſe Caſes where they have thought proper to exerciſe their Legiſlative Capacity. I paſs over the Statute 7 *W.* c. 19. for Impriſonment of Sir *Thomas Coke*, &c. and many other ſuch Caſes, which were too great and intricate for the ordinary Courſe of Law, but yet too low and inconſiderable to enter into this Compariſon. But the Statute 8 *W.* c. 5. may be named, I am ſure, with that now before you, for the Impriſonment of *Couuter*, &c. concern'd in the Aſſaſſination Plot, againſt all whom there was ſome Poſitive Evidence upon Oath. Tho the Zeal of that Parliament can never be queſtion'd from an Act ſo full of Gratitude, and in ſuch ſtrong Terms and Accents of Loyalty to the King, yet they did not at once, and at one ſingle Stroke, cut them off from the Land of the Living, and utterly deprive them of all the Neceſſaries of Life. The firſt Step that Parliament took, was to paſs an Act for the Detainment of them for the Space of one Year only, not to the Forfeiture and Deprivation of all they were worth, or to the Excluſion of his Majeſty's Mercy, but even to leave a diſcretionary Power of Bailing within that Time, to any ſix of the Privy-Council, if they judged proper. Their further Obſtinacy and Impenitency occaſioning another Act, 9 *W.* c. 4. to detain them a Year longer, it was ſtill under the ſame Exception. At the End of that Term another Act was made, impowering the King to detain them during his Pleaſure, 10. *W.* c. 11. After theſe, two other Acts paſſed, impowering the late Queen and his preſent Majeſty to detain them. What the particular Reaſon of theſe Alterations were, I cannot take upon me to determine, becauſe the Acts themſelves are wholly ſilent; but, my Lords, ſuch were the prudent and moderate Steps taken by former Parliaments, even in that bold and wicked Conſpiracy.

I may alſo juſtly take Notice of the Prudence and Clemency of the laſt Parliament, when there was ſo loud and ſo general a Cry for Juſtice, and when the Neceſſity of the Time ſeemed to require a more ſpeedy and extraordinary Degree of Puniſhment than the Common Law was acquainted with: but with what Difficulty, with what ſlow Paces, and with how many tender Circumſtances did that Bill paſs? Your Lordſhips will eaſily imagine, that the Perſons I here ſpeak of are the late Directors of the *South-Sea* Company.

It would ill become me (my Lords) if I had Inclination, to inſult the Diſtreſſes, or to aggravate any of thoſe Gentlemen's Misfortunes; but the Service of the Reverend Prelate now under Conſideration, requires me juſt to mention what a State of Confuſion they had reduced the Kingdom to: How many Thouſands have felt, and ſtill feel the pernicious Effects of that Scheme? Tho their Crimes had no particular Appellation, or determinate Puniſhment in our Law, yet the [19] Civil, and the Laws of other Countries could have told us, That *Crimen Peculatus*, the Robbery of the publick Money, was ſuch an infamous Tranſgreſſion, That the Puniſhment of it was Death, both in the Principal and Acceſſaries. How different and how mild was the Puniſhment inflicted by the late Parliament, in compariſon of that, I need not mention; and every one knows, how tenderly and ſparingly that Law has ſince been executed upon them, and how much they ſtill enjoy of the Spoils and Plunders of the Nation.

Let us not then follow every Precedent that has been, but the juſt and prudent Precedents of moderate Times, and of good and peaceable Reigns. Let us not be ambitious to ſurpaſs the Proceedings of violent and arbitrary Men, which we or our Poſterity may have Cauſe to repent of hereafter; but let us imitate ſuch only as are

[18] Sal. *Rep.* 135.

[19] Dig. 48. 13. 1. 6. &c.

agreeable

agreeable to the Law and Conſtitution, ſuch as are grounded upon true Reaſon, and the Principles of exact Juſtice.

Having thus ſpoken as to the Method of theſe Proceedings in general, and ſhown (in ſome meaſure, I hope) that they are contrary to the publick Wiſdom, contrary to the known Rules of Law, and the common Right of the Subject, I ſhall, with your Lordſhips Favour, next examine the Foundations and Suggeſtions of this particular Bill. As for thoſe general Matters and Allegations with which it is introduced, and upon which the Counſel for the Bill have ſpent ſo much Time, there is no Neceſſity, as we conceive, to anſwer to. We are here before your Lordſhips only as Counſel for this Reverend Prelate, one ſingle ſuppoſed Conſpirator; and it would ill become us in the leaſt to controvert, that there has been a Conſpiracy formed and carried on by ſome Perſons abroad and by others at home, after it has been ſo ſolemnly reſolved by both Houſes of Parliament. Nor can we deny, but that Mr. *Layer* has been Tried, Convicted, and Attainted of it: But we are yet to ſeek, how thoſe Things have any Relation to the Caſe now before your Lordſhips; or how that unhappy Gentleman's Caſe comes to be connected and made Part of my Lord Biſhop's, as it is by this Bill. We may juſtly appeal to every one that heard or read that Trial, whether this Reverend Prelate's Name is ſo much as mention'd in any one Line of it; whether there are any Grounds to think, from any of that Gentleman's Papers or Examinations, that his Lordſhip was privy to, or in the leaſt concerned or acquainted with his Perſon, or his Intentions: And I dare ſay, his Lordſhip is as much amazed at the Raſhneſs and Folly of his Schemes, as he deteſts the Wickedneſs of them. Notwithſtanding which, it is his Misfortune to be charged in this Bill as a principal Actor and Director in the framing and carrying on of thoſe very Schemes and Deſigns for which that Gentleman has been Convicted. And as to the Cyphers and Papers of *Plunket*, I am as much at a Loſs to imagine, upon what Grounds they ſhould be given in Evidence againſt the Biſhop, ſince 'tis not ſo much as ſuggeſted in the Bill; nor is there any thing thro'out the *Report* or *Appendix*, that in the leaſt charges his Lordſhip with any Intercourſe or Correſpondence with him.

It is ſtrange, my Lords, that Perſons Thoughts and Intentions, ſo widely diſtant in all other Reſpects, ſhould yet center in ſuch unnatural Projects, and wild Undertakings, without ſome previous Diſcourſe, ſome Conſultations, or Acquaintance one with the other; and yet as ſtrange and unaccountable as it is, this Reverend Prelate is charged in the very ſame manner by this Bill, with conſulting and endeavouring to raiſe an Inſurrection, to procure a Foreign Force to invade the Kingdom, and Correſponding with the Pretender, and Perſons employ'd by him, knowing them to be ſo employ'd. And if theſe Facts, my Lords, had been duly and legally proved, I ſhould have very little to ſay in his Defenſe, but humbly intreat the Mercy and Compaſſion of this Honourable Houſe; for they are Offences in themſelves ſo great, that on the one hand they are not capable of Aggravation, nor on the other of Excuſe or Diminution, by any thing I can ſay. But if the Facts have not been proved in the Whole nor in Part, the bare Affirmation or Allegation of them is only *Brutum fulmen*, and does his Lordſhip no more Harm, than any other innocent Man, whoſe Misfortune it is to fall under an unjuſt Accuſation. Or if thoſe Circumſtances which have been proved, are not Criminal in themſelves, they ſhall not, we hope, by Inferences and Deductions, be heightned into Crimes; and the Number or Complication of them, ſhall never make them exceed their Nature. And, my Lords, we hope, that notwithſtanding all that has been affirmed, alledged, or proved, this Reverend Prelate can ſtill ſay, not only in the Form of Law, but boldly and with a ſafe Conſcience, and upon an impartial and ſerious Recollection ſay, That he is Not Guilty of any one of the Charges contained in the Bill: That he is not conſcious to himſelf of any one treaſonable or irreverent Expreſſion, or of any one Degree of Offence committed by him, with reſpect to any of thoſe Charges. He can ſtill ſay, that he has not acted in direct Violation of his Oaths and Obligations, nor to the Scandal of Religion or his Holy Function. I am ſure, my Lords, I ſhould not take upon me to ſay this for his Lordſhip, or any Man alive, unleſs I thought we had a full and poſitive Anſwer to every thing that has been ſaid, unleſs I was verily perſuaded we had a ſufficient and a legal Proof to encounter all that has been offered on the other Side; or unleſs my Inſtructions told me, that many Things in the Courſe of their Evidence are utterly falſe and groundleſs; falſe I ſay, as we ſhall prove (if my Inſtructions are true) by the fulleſt Proof, and the moſt ſatisfactory Evidence that is poſſible in the Caſe; by ſuch Arguments and Reaſonings, as we think are clear and undeniable; by ſome Witneſſes we never ſaw nor heard of before, conſequently the more credible and impartial; by others, whom I am ſure we had no Opportunity to lead or inſtruct: and all (as I am informed) glad, that it is conſiſtent with the Rules of your Lordſhips Houſe, to receive their Teſtimony upon Oath. In ſhort, every Circumſtance, every Part of the Evidence produced againſt us, your Lordſhips, in the End, we hope, will find, turn ſtrongly for us.

There is one thing which I take for granted, from the Nature of the Evidence that has been offer'd, That it is admitted as fully by the Counſel for the Bill (as if they had ſaid ſo in expreſs Terms) that there is no legal Evidence againſt his Lordſhip in all they have offer'd; or elſe this extraordinary Method of Proceeding, and this new ſort of Evidence had never been ſet up. Nay, I am ſure, it is a ſort of Force upon thoſe Learned Gentlemen, ſo well verſed in Methods and Notions of Law, to maintain ſo many groſs Paradoxes, which have not the leaſt Colour of legal, or even a reaſonable Evidence, and would never be allowed, they well know, in any Court of Law or Equity. And tho your Lordſhips have been pleaſed to permit thoſe Papers and Letters to be read, your Lordſhips did not (as I apprehend) finally declare or determine them to be Evidence; but were willing to hear all Things, and afterwards judge how far it was reaſonable or fitting to admit them as Ingredients in your Lordſhips Judgments. And whatever Opinion your Lordſhips might be of on the two former Bills, as we are Strangers to them, ſo we hope we are not precluded from offering any thing farther, why they ought not to be allowed in this Caſe. If it be your Lordſhips Pleaſure at laſt to

adhere to that Opinion, or to reſolve the like in this Caſe, we muſt ſubmit.

If there is any thing certain in Law, or agreeable to Reaſon, it is this, That in all Criminal Charges, the Evidence ought to be clear and poſitive; and that the higher and more heinous the Nature of the Charge is, the more clear and undeniable the Evidence ought to be by which a Man is convicted. Now, I beſeech your Lordſhips to conſider at one View (as far as it is poſſible in ſuch various and perplex'd Facts) the Methods made uſe of to prove his Lordſhip Guilty, and what they have offer'd to your Lordſhips under the Name of Evidence. Where Words have been capable, and ſometimes where they have not been capable, of two Senſes, an arbitrary and invidious Interpretation has been put upon them. Where Words have been plain and proper for the Occaſion, and which conſidered ſeparately by themſelves, it was impoſſible to put criminal Gloſs upon, the Writer is ſuppoſed to have ſome myſterious Meaning or double Entendre; or elſe they are complicated and thrown together with thoſe which will infer ſome criminal Meaning. In other Letters the Names and Words relative to Men, are ſuppoſed to be uſed for thoſe of Women, and the proper and uſual Appellation of Women, for thoſe of Men; and becauſe one fictitious Name will not anſwer all they would have it, the Names are often ſhifted, one and the ſame Perſon is ſuppoſed to paſs under ſeven or eight different Denominations: and often two or three Names in the ſame Letter, within the Compaſs of two Lines one to the other, are urged to ſtand for the ſame Perſon. Some Letters which are writ of another, and ſpeaking in direct Terms of a third Perſon, they would have to mean the Writer himſelf, tho as often without any Name, Date, Subſcription or Superſcription at all. Books of Accompt, Manuſcripts, and common Mercantile Terms, which ſeem proper for the Perſon and the Occaſion of the Correſpondence; and the Name of Stocks, which every one knows the true Meaning of, and carries all the Appearance of Reality, are very particular and exact in the current Prices at that time, by a new kind of Metaphor are to be taken in an ill Senſe. Others which are only to be inform'd of the Diſtemper of a Friend, the Variations which happen in it, and the Opinion of Doctors upon it, by a ſtrange and arbitrary Conſtruction are applied to explain very different Purpoſes: and as if they were ſuſpicious even of their own Suſpicions, and diſtruſtful of theſe Explanations, they call in Aid ſeveral disjointed Fragments, Extracts, and Scraps of Papers, which no Man but themſelves can tell what to make of; and when there happen to be ſome Words which cannot be reconciled with ſuch a Conſtruction, or the Uſes which they would make of them, they are totally omitted, and we are told they are not material, or not yet decypher'd, or not legible in the Original, but your Lordſhips and the World muſt intend them to mean ſomething Criminal.

My Lords, if ſuch foreign Suppoſitions, Gloſſes, and Intendments; ſuch unnatural Conſtructions, falſe Inferences and Innuendos, are to be admitted as Evidence, and deſerve the Name of Proof, I muſt confeſs, they have given you ſome. If the Whimſies and Conjectures of Decypherers, the Hearſays and Reports of third, fourth, and fifth Perſons are to take place in your judicial Proceedings, inſtead of that plain, honeſt, and poſitive Proof, which the Law requires; or if the Number of Facts and the Variety of Circumſtances could make them alter or exceed their Nature, I muſt confeſs, they have offered ſome Things worthy of your Lordſhips Conſideration.

But if it were your Lordſhips Pleaſure to conſtrue Things according to the moſt natural plain Senſe and Import of the Words, as others would have underſtood them, and in ſuch a Senſe as the Writer probably meant them, or in that juſt manner which your Lordſhips have hitherto done on criminal Proſecutions, no one can ſay they have ſhewn one Degree of legal or reaſonable Evidence, to prove any one Suggeſtion in the Bill. This I moſt humbly aſſert, and I think no one can diſprove my Aſſertion.

Thus far in general of the Proofs that have been offered; but I ſhall, under your Lordſhips Favour, ſpeak now more particularly to them, and ſhall be ſo far from abridging or ſliding over any thing that has been ſaid, that I am willing every thing thoſe learned Gentlemen for the Bill have been pleaſed to offer, or that Honourrble Committee have obſerved in their *Report*, ſhoud have its full weight, and be put in the ſtrongeſt Light againſt us.

It has been obſerved, that there were three ſeveral Methods and Times fixed for the Execution of this intended Conſpiracy.

The firſt was to have procured a Regular Body of foreign Forces to invade the Kingdom, at the time of the late Elections (which were from the middle of *March* to the middle of *April* 1722.)

But have they ſhew'd your Lordſhips any Evidence, or even one Paſſage in the *Report* of that Honourable Committee, that particularly charges his Lordſhip with being privy to any one of theſe three Deſigns thus generally and roundly affirmed? He is not charg'd with being privy to either of the three Memorials to the Regent for Forces. The only Paſſage that can be pretended to contain any Imputation of that kind, is in the Letter ſign'd 1387 to *Jackſon*, which, they ſay, there is reaſon to believe was from my Lord Biſhop to the Pretender: but this we hope in the Courſe of our Evidence effectually to diſprove.

The ſecond Deſign was to have made an Attempt at the time it was believed his Majeſty would go abroad; but all that is inſinuated in relation to his Lordſhip, is contained in two or three obſcure Paſſages relating to one *Jones*, in Letters ſaid to have paſſed between *Dillon*, or his Secretary, and Mr. *Kelly*: which Paſſages being ſomething ambiguous, are interpreted in an ill Meaning, by Hearſays from *Neynoe* and *Pancier*, and *Plunket*'s Cypher; but cannot, without the greateſt Abſurdity, be thought to relate to his Lordſhip.

Two of theſe Paſſages [9] relate to Remittances of Money, which they inſinuate the Biſhop was to furniſh; but it amounts in the whole to no more than the bear Hearſay of one Man, and an arbitrary Interpretation of ſome Expreſſions in the Letters of two others, (to either of which his

[9] Rep. *p.* 47, 8. App. E. 43, 4. C. 51.

Lordſhip

Lordship has not in the least been ptov'd privy;) and the Whole depends upon a Supposition, that *Jones* here and elsewhere in the Correspondence means him; which depends again upon another Supposition, that the Bishop dictated those three Letters of the 20th of *April*, one of which is signed *Jones*; a Supposition which we hope likewise to prove absolutely false, and by that means shake the Foundation of the whole Charge.

The other Passage [21] is in a Letter from *Dillon*'s Secretary to *Kelly*, about *Jones*'s fitting and providing himself with Saddles; which by the same Methods is explained to mean Soldiers and Regiments, which his Lordship is supposed to have undertaken to procure: and if the Words are to be taken in that Sense, and applied to him, he must likewise be supposed to have undertaken to be at the Head of them; which, considering his Lordship's Function, Age, and Infirmities, is so absurd and ridiculous, that instead of spending more of your Lordships time in answering of it, I shall only make use of it hereafter, as one Instance (among many others) to shew, how much they are mistaken in affirming, that wherever *Jones* is named, his Lordship is to be understood.

The third and last Design, tho I must confess the most enormous, if it were true, because Part of it was the Seizure of his Majesty's Person, was to have been put in Execution at the breaking up of the Camp. But, I am sure, there is not one the least Hint thro'out all this voluminous Affair, that his Lordship was concern'd or privy to that.

And therefore 'tis surprizing to think upon what Grounds his Lordship can be (as he is in the Preamble of the Bill) charg'd with having been deeply concern'd in forming and directing this Conspiracy; which, as your Lordships have heard, consisted of those three several Designs. The Counsel, indeed, for the Bill have endeavour'd by divers Methods and Reasonings, by some little Circumstances, and seeming Probabilities, to charge upon his Lordship in general such a Correspondence: And they may all be reduc'd to these four Heads:

1. Hearsays.

2. The three Letters said to be dictated by his Lordship, and wrote by *Kelly* to Lord *Marr*, *Dillon*, and the Pretender.

3. Two Letters said to be wrote to the Bishop.

4. The Co-incidences of Circumstances, Times, and Names, in the intercepted Correspondence, to induce a Belief of the before-mention'd Hearsays, and supposed Facts.

To all which I shall endeavour to give some Answers.

But before I enter upon these Particulars, I shall beg leave to observe to your Lordships, That if such Evidence is to be countenanced, it will be in the Power of any two Men, the one in *England*, the other beyond Sea, getting an Account of the Circumstances and Motions of a third Person, by an artificial intercepted Correspondence, to raise what Suspicions of him they please; and yet he be all the while innocent and ignorant of what is doing. Whether that is the Case here, I shall afterwards submit to your Lordships Judgments.

But it is very remarkable, that in all the intercepted Correspondence to and fro, there are no Footsteps or Descriptions which any ways point out to, or of whom they are written, but those alone which are supposed to relate to his Lordship; and in them, as the Counsel observe, things are said and done in such a manner, and with such particular Circumstances, as lead directly to him, and him only. And this being so contrary to the Caution and Reserve practised in all other Instances, carries in it some manifest Marks of Fraud and Contrivance.

This Remark I humbly apprehend to be the stronger, because there has been no Proof of any particular Meetings or Consultations with other Persons, towards carrying on these Designs. And how a Man can conspire with himself, I know not, except that it is barely alledg'd he was a Member of the *Burford Club*; the Falsity of which Assertion that Honourable Committee themselves seem so sensible of, and by that Indulgence and Enlargement which one of those Noble Persons (tho said to be the chief of them) has since met with, is now so well understood, as to need no manner of Refutation.

I may also as justly observe, that there is no one Witness against this Reverend Prelate of any one criminal Act or Expression, from the Time of his Majesty's Accession to the Throne, tho one of the Counsel (as your Lordships may remember) was very particular about the Manner of his passing of the 10th of *June*, which the Coachman gave them an Account of for four Years together; and tho all his Papers were seiz'd, not one Letter, or Paper, under his own Hand, produced of a criminal Nature, or pretended to have been seen or intercepted. Not any one Letter intercepted that is pretended to have been written to him, much less any prov'd to have been receiv'd by him, the Matter of which appears to be Treasonable, or any ways Criminal. My Lords, I must own a great Consequence is drawn by that Honourable Committee, because a great Quantity of Letters and Papers were found dated before the Year 1712. This very Objection was made in the Accusation of his Lordship's worthy Predecessor, and a slight Answer satisfy'd his Examinants; and the plain Reason is, that his Lordship at that Time had a settled Correspondence with many eminent Men on Matters of Learning, which he esteemed so valuable as to preserve; but since the finishing of those Controversies, he had less occasion to write, and his Lordship's Merits having call'd him up to a more high and busy Station, he had less Oportunity to write; and he that writes little will receive but little. From that Year therefore (they justly observe) few of any Consequence were found, and even those few, (if no other than what are printed, and as yet produc'd) we beg leave to say, are of no Consequence at all, to support the Inference drawn from them.

The first, I think, is from a great Lady; but so general and uncertain, that it does by no means warrant the Conclusion drawn from it; for it does not so much as appear to have been a Letter, or what it was that was enclos'd. And I beseech your Lordships, what more can be inferr'd from Captain *Halsted*'s Letter, [22] the Contents of which is no more, than that a Neighbour, as

[21] Rep. *p.* 47. App. D. 17. [22] D. 9.

Captain

Captain *Halſted* was to the Biſhop, deſires Leave to dine with his Lordſhip on a *Thurſday*, which was his publick Day, in Company of 20 other People? I muſt confeſs they have laid a Streſs upon the Character of the Man in their Opening; but nothing more has been prov'd, than that he was in a Ship by ſome Nature different from his own. Another Letter that was ſaid to be found among his Lordſhip's Papers, was that directed to *Dubois*. But this (my Lords) I ſhall beg leave to reſerve for a more proper Occaſion.

I ſhall now conſider the four ſeveral Charges againſt the Biſhop: And the Firſt ariſes from *Neynoe* and *Pancier*'s Informations, all mere Hearſays; ſome from living, and ſome from a dead Perſon; but poſitively and expreſly denied by the living Perſons, from whom ſuch Informations are ſuppoſed to have come,

All that *Pancier's* Informations [23] ſay, relating to this Reverend Prelate, is, That one *Skeen* told him, that the Biſhop of *Rocheſter* had the principal Direction of the Conſpiracy; and that 200000 *l.* had been rais'd and put into his Management. This *Skeen*, it ſeems, is ſtill in Cuſtody, and your Lordſhips will hear how far he will ſupport this Charge.

Tho the very Accuſation itſelf we beg leave to call abſurd and incredible; that ſuch a Sum of Money as 200000 *l.* could be rais'd and depoſited in one Man's Hands, and not yet traced up to ſome of the Contributors, or to the Hand where it was depoſited, eſpecially when it is chargd upon a Perſon not uſed to deal in Merchandizes, or Remittances. Tho the Counſel for the Bill have ſlid over this, yet being often repeated in the Report, as if there had been ſome Weight in it, I thought myſelf oblig'd to take Notice of it, tho it is ſo incredible, I confeſs, that it is ſcarce worth removing.

Of *Neynoe*'s Informations, your Lordſhips may obſerve there are Four, but none of them ſworn to nor ſigned; and it was expreſly reſolved, in Lord *Audley*'s Caſe, [24] by all the Judges of *England*, that no Examination without Oath ought to be read except of the Party himſelf that is tried. They are all either of a Date ſubſequent to his Lordſhip's Commitment, (and therefore till then thought [25] inconſiderable, and not worth reducing into Writing,) or elſe they are of no Date at all. One of the Two without a Date appears manifeſtly to have been taken after he was ſeiz'd, and brought up from *Deal* in *September*, which ſufficiently ſhews that juſt Diſtruſt there was at that Time of his Credit; that on the 27th of *September*, was on the Day before he drown'd himſelf; and both, when he is known to have been under the greateſt Terrors and Apprehenſions, in that he was not able to make good what appears by the Paper (mark'd E. 11. and found afterwards in his Pocket) to have been undertaken by him, or required of him. It is not ſaid, as to one of his Examinations, [26] before whom it was taken: Another of them, and the only one they now think fit to make Uſe of, is an Extract only from three other Papers, and ſaid to contain the Subſtance of them; but the Papers themſelves, out of which it was extracted, do no where appear. And there are ſome Particulars in the Report [27] of that Honourable Committee, which he is ſaid to have confeſs'd, which do not appear in any one of theſe Examinations, and are of ſuch a Nature as to affect the Credit of all he ſaid, and (if produced) would, we doubt not, in other Reſpects entirely blaſt the Credit of his Teſtimony. And, my Lords, if the Examination of a Man is thus taken to pieces, the Antecedents and the Conſequents left out, Treaſon (and what not) may be made and inferred from the moſt innocent Things and Expreſſions.

But his Examinations, even as they lie in the Appendix, are full of Inconſiſtencies and Abſurdities: Inconſiſtencies, I mean, not only with *Pancier*'s and the Depoſitions of other Perſons, but even with themſelves. For *Pancier* ſays, little paſs'd in Writing in the Conduct of the whole Affair: *Neynoe* ſays, there were many Bundles of Letters that Mr. *Kelly* brought with him from *France*, and which he had ſeen him write at ſeveral Times. But yet they are much more inconſiſtent with themſelves; for inſtance, *Neynoe* ſays, in his Examination, mark'd E. 7. that he had ſeen ſeveral Letters written by *Kelly*, and ſent to him from *Paris*, and other Parts, but they never contain'd any thing material: And yet in E. 8. he ſays, that he had ſeen ſeveral Cyphers of *Kelly*'s, and ſeen him make uſe of them; and that *Kelly* with great Freedom acknowledged they were for carrying on the Correſpondence with the Pretender's Agents. Whereas it is utterly incredible that a Man, who had really been ſo communicative in his Diſcourſe, and of his Cyphers, ſhould yet be ſo reſerv'd as to hide from him any thing material in his Letters. In the very ſame Examination (he ſays) he was well acquainted with one *Watſon*, *i. e.* the late Earl *Mariſhall*, and lay ſeveral Nights with him; but after all his Intimacy, at laſt it comes out, that he did not know really who he was. There are ſome other Inconſiſtencies, which have been already taken notice of by Sir *Conſtantine*, which I ſhall not repeat.

But, my Lords, if the Perſons and Credit of *Neynoe* and *Pancier* were unexceptionable, yet what they ſay is only Hearſay, or mere Affirmation: And was ever that allow'd as Evidence in any material Point by any Law, or in any Court in the World? 'Tis expreſly reſolv'd in the Trials of *Langhorn* and Lord *Ruſſel* to be no Evidence; and it is the firſt Time it ever receiv'd ſo much Countenance as to be read in judicial Proceedings; and I dare ſay, there is no ſuch Practice in the Court of *Inquiſitions* abroad. Even common Fame and Reputation is but of little Weight in any Caſe that I know of. It may, my Lords, be a ſufficient Ground for an Officer of the Peace, in ſome few Caſes, to arreſt a Perſon, or for a vigilant Miniſtry to make Enquiries, *i. e.* to accuſe or apprehend; but was never yet allow'd to be a Guide in judicial Proceedings, or to condemn any Man in any Criminal Caſe whatever. But even when the Commons (in the Caſe of the Duke of *Buckingham*, 1 *Car.* I.) had declar'd, that common Fame was a good Ground of Enquiry, it was complain'd of, and the Commons afterwards receded from it, and proceeded upon the Examination of Witneſſes, and other Evidences, and in every Article of their Accuſation the particular Facts are expreſs'd. Much leſs will your Lordſhips allow the Hearſay of one ſingle Man, and only Extracts of that Hearſay, to be of any Weight, nay, to be of more Weight and Authority now he is dead, than if he were living: for if he were living, and could only depoſe by Hear-

[23] Report 10. 35. Append. D. 1. [24] State Trials. [25] E. 7. [26] E. 9. E. 10. [27] Page 38.

ſay,

ſay, no one ſurely can ſay it would be admitted as Evidence; but ſince he is dead, and we have no Opportunity of croſs-examining of him, why ought not his Lordſhip to have the Advantage of it, as was reſolv'd in the Caſe of the [28] King againſt *Pain*? Or like the known Caſe of a Man dying in Execution, the Law is ſatisfied, and his Creditor is without Remedy? And it cannot be deny'd, but if one of our Witneſſes had died, and a Perſon had taken Minutes of what he could ſay, we ſhould not have had the Benefit of his Teſtimony; and where there is the ſame Reaſon, there ought in Juſtice to be the ſame Law and Conſtruction. And yet this is the Foundation and Support of the whole Charge againſt his Lordſhip. It is upon this Man's Examination ſingly that it is affirm'd, among other notorious Untruths, That the Pretender rely'd more upon Advices from the Biſhop, than from any other Perſons. But this, and whatever elſe is in them, with Submiſſion to your Lordſhips, amounts to no more than this, That *Neynoe* was heard to ſay, what he heard *Kelly* ſay, what *Kelly* muſt have heard ſome other Perſons ſay, what they had heard the Pretender ſay, what neither they, nor any one elſe, ever had Reaſon to ſay.

But, my Lords, there is ſtill ſomething more ſtrange in what is now attempted; for the Perſons of whom 'tis pretended they heard all this, and into whoſe Teſtimony it muſt all be reſolv'd, are now both living, and are ſo far from ſupporting what 'tis pretended they have heard from them, that they abſolutely deny and contradict every Word of it. One of them has already done it (if my Inſtructions are true) in the moſt ſolemn Manner at your Lordſhips Bar, and the other is now ready to do the ſame. And *Neynoe* was ſo conſcious to himſelf of the Falſity of what he had ſaid, that he loſt his Life to avoid the Puniſhment that might otherwiſe have fallen on him, (for his Flight, my Lords, can admit of no other Senſe or Conſtruction.) He could not apprehend himſelf in Danger, if what he had ſaid was true; but on the contrary, had reaſon to expect Rewards, if he could make out the Truth of his Information. Charity forbids me now, my Lords, to ſay any more of him, unleſs it be thought requiſite to prove the Falſity of his Information by his own free and voluntary Confeſſion, often repeated and confirm'd to Strangers and indifferent Perſons. And (if my Inſtructions are true) we have thoſe that will ſpeak moſt fully to it.

This is the firſt and the principal Part of their Proof; and if we take away this Foundation, all the mighty Superſtructure raiſed upon it muſt fall to the Ground, and all their corroborative Proofs and concurrent Circumſtances muſt come to nothing.

The ſecond Head of Accuſation againſt his Lordſhip, is, from three Letters, ſuppoſed to be dictated by him, of the 20th of *April*. The firſt to *Chivers*, interpreted *Dillon*, ſign'd by the Name of *Jones*; the ſecond to *Muſgrave*, interpreted *Mar*, ſign'd *Illington*; a third to *Jackſon*, explain'd to mean the Pretender, ſign'd 1378, and ſometimes 'tis printed 1387; and therefore which of theſe two is right I cannot tell.

Before I ſpeak of the Letters themſelves, I ſhall mention one Word as to the Manner of their Conveyance: They are ſaid to be enclos'd in a Packet to one *Gordon* of *Boulogne*, in a Letter from *Kelly* himſelf, ſent by the ordinary Poſt, and ſign'd with a Name, which they ſay he moſt uſually ſign'd and went by. This is ſo improbable, that out of eight or ten Names they are pleaſed to give him, he could bethink himſelf at that Time of no other Name to ſign a Letter enclo-ſing three of the utmoſt Conſequence; and is ſo inconſiſtent with that Caution and Subtlety all along inſinuated in this Correſpondence, that it almoſt needs no Confutation. But yet (if my Inſtructions are true) Mr. *Gordon*, to whom they are ſaid to have been directed, and the only indifferent Perſon in the Caſe, and can be under no ſort of Influence from hence, has atteſted upon his Oath, that there was no ſuch Letter, or Packet, ever came to his Hands.

And ſuppoſing theſe Letters were ſent, as they ſuppoſe, to the Perſons they ſuppoſe, and dictated by the Perſons they ſuppoſe; is there one Paſſage in them of ſuch a criminal Import, as would be ſufficient to found an Indictment at Law? If there is not, they are not to be made criminal by Arguments, Innuendos, and Implications. The Caſe of Sir *Samuel Barnadiſton*, already mention'd by Sir *Conſtantine*, is expreſly in Print; and the Reaſon given for the Reverſal of that Judgment (as appears by your own Journals) is, becauſe the Information was grounded upon Letters, which in themſelves were not criminal, but made ſo by Innuendos, and forc'd Conſtructions. There is *Crosby*'s Caſe to the ſame Purpoſe, before the Court of *King's Bench*, in the Year 1695, who was indicted of Treaſon; and the Overt-Acts laid in the Indictment, were for inviting the *French* King to invade the Kingdom, and by ſending Letters and Inſtructions, how and where to make the Deſcent. Tho the Court thought his Hand-writing was prov'd, and the Matter of the Papers of a very odd and ſuſpicious Nature, and the *French* King frequently mention'd in them, and the Indictment ſuppoſed them to be contriv'd for to invite him over; yet they held it not Treaſon.

And the chief Thing that gives any Ground of Suſpicion, in this Caſe, is, the Perſon to whom they are ſuppoſed to be directed: but I muſt ſubmit to your Lordſhips, that there has been no Proof, that either *Chivers* and *Muſgrave*, or *Jackſon*, are the very Perſons ſuppos'd, or that his Lordſhip was privy to the Writing of one, or the other of them; nor are they capable of Proof, as we hope immediately to make appear.

However, for the preſent, ſuppoſing as they have ſuppos'd, that *Chivers* and *Muſgrave* mean *Dillon* and *Mar*, and that ſuch Letters were wrote to them by his Lordſhip without any Diſguiſe, (unleſs the Matter of them, as I before ſaid, were plainly criminal) or unleſs your Lordſhips will ſuppoſe (as they ſuppoſe) ſomething criminal contain'd in the Words not decypher'd; and unleſs it could have been prov'd, that the Perſons writing or dictating theſe Letters, knew them to be the Pretender's Agents, and as ſuch addreſs'd to them; I don't know (my Lords) how it could be conſtrued a treaſonable or criminal Correſpondence, either within the Letter or Intention of *Stat.* 14 *W.* 3. *c.* 3. or any other Law whatſoever.

[28] 5 Mod. Rep. 161.

For tho the late Lord *Mar* is an attainted Perſon, it can't be denied but he is ſtill in many Senſes a Subject of *England*, and is no more diveſted of his natural Allegiance, than a baniſh'd, or an out-law'd Man: and tho he appear'd in open Arms and Rebellion againſt his Majeſty, he was not thought ſo dreadful a Man, as to have a Correſpondence with him made Treaſon or Felony; but that was a peculiar Favour, reſerved for this Reverend Prelate and his Friends. My Lords, I would not be underſtood to mean, as if the moſt innocent Correſpondence with a Perſon under ſuch Circumſtances, was prudent or convenient; but I think I may affirm (even from the Clauſe of this Bill) it would not of itſelf have been criminal. But (according to my Inſtructions) this Reverend Prelate was little known to that Lord, and never had any Friendſhip or Acquaintance with him while in *England*, and cannot be ſuppoſed to have contracted ſuch a Friendſhip ſince he was abroad.

That *Dillon* was an Agent of the Pretender's, nothing appears antecedent to theſe Letters: Nor did *Mar* at that Time appear to be one of his Agents, when it was ſo well known (as that Honourable Committee obſerve) that he was at that Time ſubſiſted by a Penſion from the Court of *England*. This Penſion indeed, is ſaid to be ſtopt laſt *Auguſt*; but the Letter to him of the 20th of *April* (by whomſoever wrote) was ſome Months before.

Indeed, if *Jackſon* had been proved to mean the Pretender, the Writing to him would be High-Treaſon plainly within the Statute: but that the Pretender is not, and cannot be underſtood by that Name, we hope to make appear fully, before we have done, even from the Lights that Honourable Committee have afforded us.

I ſhall next conſider the Nature of the Proofs to induce your Lordſhips Belief, that theſe Letters were dictated by my Lord Biſhop: And the firſt they offer, is, Becauſe the Matter of them agrees with his Lordſhip's Circumſtances at that Time; *i. e.* his being ill of the Gout, and the approaching Death of his Lady; which (they ſay) is morally impoſſible ſhould ſuit ſo exactly to any one Man elſe. Theſe two Circumſtances muſt be allow'd to be agreeable to thoſe which his Lordſhip was then under: But one would think (my Lords) they are Circumſtances ſo melancholy in themſelves, that they might have been ſpared, eſpecially conſidering the little Uſe or Advantage that can really be made of them. But theſe Circumſtances were no Secrets; every one that knew his Lordſhip, muſt likewiſe know them; and whoever wrote theſe Letters with a Deſign to have them intercepted, and imputed to him, (as we hope to ſhew the Caſe really was) would certainly mention ſuch Matters or Circumſtances in them, as might be naturally thought to deſcribe him. Or if they were written without his Knowledge, (as they will be clearly proved to have been) it is no wonder, if the Writer, who perſonated his Lordſhip, ſhould inſert all that was proper to faſten the Suſpicion he intended on him.

Another Proof that they were dictated by his Lordſhip, they ſay, is, from the Subſcription of the Names *Jones*, *Illington*, and the N° 1378, which are all affirmed to denote his Lordſhip: And the Reaſon why that Number belongs to him, is, becauſe the Decypherer has found that Number to denote the proper Name or Title of a Perſon beginning with the Letter *R*. If this is his real Opinion, muſt that needs be the Biſhop? Is there no body elſe, whoſe Name or Title begins with the ſame Letter?

But, with Submiſſion to your Lordſhips, it ſeems impoſſible to affirm even thus much with any Degree of Certainty, and it muſt be only Matter of mere Conjecture. Dr. *Wallis*, who is allow'd to be the Father of the Science, (ſuch as it is) and was the Wonder and Envy of all Foreigners, directly owns, that the Whole was built upon Conjectures; and he that had the beſt *Gueſs*, was the beſt *Artiſt*. Such, my Lords, is the Science of Decyphering. And from ſuch uncertain and conjectural Premiſes, what certain Concluſion can poſſibly be drawn? And 'tis plain, Mr. *Willes* is not ſo infallible as he pretends to be, by that Number of Paſſages not yet decypher'd.

When we took our Objection firſt againſt the Nature of this new ſort of Evidence, the Counſel for the Bill were pleaſed to cite a Statute in Q. *Eliz.* Time, wherein they ſaid the Word *Cypher* is mention'd. I have ſince look'd for that Statute, but could find nothing about it; and, perhaps, may be miſtaken in the Statute which they mean. But, my Lords, I am ſure they did not mention any particular Trial, where it was ever heard of, or allow'd as Evidence. I rather believe, that, according to the Notions of thoſe Times, (for ſoon after the Statute was made againſt *Witches*) if any Decypherers had appear'd then as Evidence, they might have been in more Danger than the Criminal.

But if there are any certain Rules, or any reaſonable Methods in Decyphering, I am ſure 'tis highly improbable, that Perſons ſo cunning and wary, as theſe are all along repreſented to be, ſhould be guilty of ſuch a fatal Overſight, as juſt to ſign with ſuch Numbers, that all, it ſeems, who underſtand Cyphers, muſt neceſſarily know to be intended for the Initial Letter of their Names. It would, my Lords, in my humble Opinion, have been more conſiſtent with that Care and Caution, to have made thoſe Numbers ſtand for quite contrary Letters, and thoſe Letters to have been expreſs'd by quite contrary Numbers; and there is no doubt, but they might have made any others ſignify the ſame thing. However, ſince the Decypherer has not ſhew'd us by what Methods he has arrived at this Concluſion, 'tis impoſſible for us, by any poſitive or direct Evidence, to confute it: But 'tis ſufficient for us, to deny on the one hand, what he has on the other hand affirm'd, without telling us the Reaſons of it.

That the Names of *Jones* and *Illington* belong to his Lordſhip, is endeavoured to be proved by ſome Paſſages in ſubſequent Letters, and by refining on the Matter of them, which they think is applicable to his Lordſhip only.

I have already mentioned Two of thoſe Inſtances, *viz.* his Lordſhip's own Indiſpoſition, and the Death of his Lady, which are likewiſe mentioned in the ſubſequent Letters, in order to faſten the Imputation intended, yet deeper on him. There is a Third, which relates to the Preſent of a Dog.

That such a Dog was sent does indeed appear; but that his Lordship had received it, or saw it, or had any Letter or Message about it, has not been proved, and he positively denies it; and to whom, or from whom it was really sent, Mr. *Kelly* can best determine, and his Lordship must refer himself to what he has always affirmed in his Examination; and (if I am rightly inform'd) since re-affirm'd at your Lordships Bar, that he gave it to Mrs. *Barnes*, and designed it for her from the first, and for her only.

My Lords, I should apologize for taking Notice of such minute and low Circumstances; but it is the Evidence and Nature of the Proof made use of against us. I should rather have expected, that ingenious Gentleman (the Decypherer) would have shewn, by some Rules of his Art, that the whole Story of the Dog had been a Fable or Fiction, and explain'd it to something that was reasonable and probable, which I am sure this is not, to suppose (as the Letters read to your Lordships do suppose) *Musgrave*, i. e. *Mar*, in one Part of the World, General *Dillon* in another [29], widely distant one from the other, and a learned Prelate, to be in such Tribulation and Concern for a little Dog; which no way suits the Characters of any one of the Persons to whom it is applied; much less the Circumstances of this Learned Prelate, who had at that time a much nearer Concern upon him, from the Death of his Wife, and was himself in such great Disorder and Weakness of Body. The speaking therefore of this Present, backwards and forwards, with such particular Circumstances, and the Report of it so industriously spread many Months before my Lord Bishop's Apprehension, (as some of your Lordships cannot but remember) is absurd and ridiculous upon all other Suppositions, but upon the Design of fastning something on his Lordship, the Point all along in their View.

If the Writer of these Letters had been really and truly informed of his Lordship's Circumstances, he might, perhaps more properly have affirm'd it of his Lady; which 'tis plain, the Writer was not, because he speaks of her as Living 11 Days after she was Dead. And how ignorant of them the Writer really was, appears by another Passage in that very Letter; where he says, [30] 'Mr. *Jones* is come to Town for a Day only, 'May 7th.' Whereas his Lordship had been in Town Two Days, and staid Three more, as appears even by their own Evidence, *Lawson* and *Wood*.

By these your Lordships may see, how many forced Inferences and Constructions, and what a Train of Absurdities and Suppositions are necessary to support one poor, and (if true) yet inconsiderable Assertion, when once we depart from the sure and known Rules of Law!

A Third Way of proving these Letters to be the Bishop's, is from the Hand-writing, which is supposed to be *Kelly*'s, and he is supposed to have been his Lordship's Secretary in these Matters: Both which Suppositions are destitute of any proper or satisfactory Proof.

The first is attempted to be supported by the Testimony of the Clerks of the Post-Office. But before I speak to the Testimony which they have given, I must beg leave to offer one Word as to their manner of obtaining it; and shall endeavour not to transgress your Lordships late Resolution: And when I mention any Words of that Act of Parliament, it is only to shew the cautious Measures the Legislature took even in imparting this Power to them, and the just Apprehensions they had of the Abuses and ill Consequences that might attend it. My Lords, I am so far from endeavouring to bring them in danger of a Penalty, as the Counsel were pleased to object, that I am willing to suppose those Clerks had proper Warrants at that Time, and for that particular Opening and Detaining. But that is all which the Act gives, and the Words of it are fully satisfied by such a Construction, without going farther, and extending the Words of the Act to that which was not in the least within the Intention or Purview of it. It don't appear to me, my Lords, I confess, how they are impower'd to take Copies (for all such Acts which are in Restraint of Trade and Commerce, are to be strictly and literally construed:) But I am utterly at a Loss to know, from what Words of the Act it can be inferr'd, that such Copies shall be received as Evidence in Courts of Judicature; and not only against the Writer himself, but against other Persons too.

A private Act of Parliament (tho printed in *Rastal* and other authentick Collections of Statutes) has been disallow'd, when it has not been examined with the Record. But, my Lords, I don't know that a Copy of any Thing was ever allow'd as Evidence, but what was made by a proper Sworn Officer, known in Law, and where every one may have Access to it; and therefore, if false, may be disproved by the other Side. But is there the same Reason here? My Lords, can the Party ever have an Opportunity to disprove it, if falsly copied, when the Original is sent forward? Or, if it were still in their Possession, have we any Power to procure a Sight of the Original? or to have a Copy of that Copy? And therefore, we hope your Lordships will not regard that Part of the Evidence, if it were material. But to consider also, my Lords, what it is they have deposed of these Copies; That the Originals were written in the same Hand with some Papers shewed them; and which, they were told, were Mr. *Kelly*'s Hand-writing. Your Lordships, I doubt not, observe the Time when they deposed this first, *viz.* the 24th of *August*, and afterwards the first of *January* last; *i. e.* The first of these Depositions four Months, the other eight Months, after they had seen the Originals of the 20th of *April*: For, they were forwarded by the Post, and the Clerks only took Copies of them, and did not detain any one Original for a Specimen till their first Deposition; and surely that was a little of the latest: So that it rests singly upon the Memory of the Clerks for four or eight Months. I think St. *James* says, *That a Man may even behold his own Face in a Glass, but he is no sooner gone, but he straitway forgetteth what manner of Man he was*: And it is much more impossible for any one so exactly and nicely to remember all the little Strokes and Dashes of the Pen, by which the Sameness or Diversity of Hands can only be made out.

And all *Malore* swears, is, That he believes it to be *Kelly*'s Hand-writing; and 'tis remarkable, that his Deposition is but in *January* last, and he left Mrs. *Barnes*'s Service in *May*, so that he

[29] Rep. 40. App. E. 42. [30] App. D. 47, 8.

could not have ſeen him write ſince that Time. He don't ſay, he ever read any of his Writing, or at moſt the Superſcription of a Letter: He might, perhaps, ſee him write at ſome Diſtance, as he came in and out of the Room; but ſurely, that cannot be ſufficient to form a Judgment of a Man's Hand-writing; and I am ſure the Improbability is much greater after nine Months Time. And *Hutchins* the Meſſenger, from ſeeing the Superſcription of a Letter to the Secretary of State, has likewiſe, I think, taken upon him to ſwear the ſame thing.

But ſuppoſing theſe Perſons had ſeen Mr. *Kelly* write frequently, and had, within a more reaſonable Diſtance, ſwore it to be like his Hand, will any one ſay, That it is a ſufficient, or even a reaſonable Proof, in any Criminal Caſe? But becauſe Mr. *Kelly* is all along affirmed to have acted in theſe Matters as his Lordſhip's Secretary, I muſt beg your Lordſhips Patience to conſider, How far that Doctrine of Similitude of Hands has prevailed.

Colonel *Sidney*'s Caſe was the firſt wherein it was ever admitted as a Proof in a Criminal Caſe; but that Judgment was afterwards reverſed by Parliament, as manifeſtly unjuſt. In Lady *Car*'s Caſe, *Sid. Rep.* 419. which was only an Information of Perjury, yet a Letter under her own Hand was poſitively denied to be Evidence; tho a Witneſs ſwore he believed it to be hers. I muſt own, my Lords, this Caſe at the late Trial of Mr. *Layer*, was not only denied to be Law, but all Men defy'd to make common Senſe of it: But, with the utmoſt Deference to that Learned Gentleman that ſaid ſo, I beg Leave to mention the Words of Sir *J. Hawles* upon that Caſe, who was of a different Opinion. 'At that Time, 'ſays he, when the Caſe of Lady *Car* was ad-'judged, beſides *Twiſden* and *Keyling*, Two very 'eminent Judges, there ſat in that Court Sir '*Wad. Windham*, whom all will own to have 'been the Second beſt Judge who ſat in *Weſt-*'*minſter-Hall* ſince the Reſtoration; and if it is 'not Evidence in Miſdemeanour, much leſs, ſays 'he, in Treaſon.' Which Inference, beſides the Reaſon of the Thing itſelf, is ſupported by the Authority of Lord *Coke*.

In my Lord *Preſton*'s Caſe, his Hand-writing was proved by Three Witneſſes, that had belonged to him while in the Secretary's Office, and muſt neceſſarily have ſeen him write a thouſand Times: But that was not all; for thoſe Papers were ſeized on him, ſealed with his own Seal, as he was going to *France* in the Heat of War, contrary to an Act of Parliament; which at that Time made it Treaſon.

In the Trial of the Seven Biſhops, the ſame Queſtion aroſe, Whether Similitude of Hands was a Proof in a Criminal Matter? and it was not admitted.

In *Francia*'s Trial, before all the Judges at the *Old-Baily*, it is poſitively laid down by the Chief Baron, and not contradicted by any others, That it was no Proof or Evidence of itſelf; and the Letter in that Caſe would not have been admitted, but that it was found by his Bedſide, and a Copy of the very ſame Letter enter'd in his Pocket Book, which he had owned and explained to ſome Lords of the Council.

In *Crosby*'s Caſe, the Hand-writing was ſworn to by Three poſitive Witneſſes, and owned in one of the Papers by the Priſoner himſelf; yet Lord Chief Juſtice *Holt* and the Court held it no Evidence, *Becauſe one Hand*, ſays he, *may be like another, and Preſumptions ſhall never take Place in Treaſons.*

In the late Caſe of Mr. *Layer*, 'tis well known, that beſides the Proof of his own Hand-writing, the Treaſonable Papers were deliver'd by his own Hand to the Witneſs; and 'twas upon that Ground only, they were permitted to be read againſt him. Beſides this, he had ſaid *that* before the Lords of the Council, which the Court thought amounted to a full Acknowledgment that it was his Writing. But even all this, my Lords, was made uſe of againſt him but as concurrent Evidence, becauſe there were Two poſitive Witneſſes, *viva voce*, againſt him, as to the other Overt-Acts.

I will mention to your Lordſhips ſome Foreign concurrent Authorities upon this Point, to ſhew, that the Reaſon and Equity of this Doctrine has been uniform and univerſal, That Similitude or Compariſon of Hands is not a ſufficient Proof of it. There is a famous Caſe of *Jean Millard*, in a Book called, *Le Journal du Palais.* He had lived 40 Years from his Wife, and then returned and reclaimed her, after ſhe was marry'd to another. One of his Methods made uſe of to prove him to be the ſame Perſon, was, the Hand-writing of Letters that had formerly paſſed between them: Which occaſion'd this Queſtion before all the famous Judicatures of *France*, 'Whether the Teſ-'timony of skilful Notaries, who fully depoſed 'of the Similitude of the Hands, was a ſufficient 'Proof in this Caſe?' and it was univerſally denied. And yet this, my Lords, was a Caſe highly favour'd in all Laws; but more highly in thoſe Places, where Marriage is reputed as a Sacrament, and in favour of which they will often admit even the Party's own Oath.

Codex Fabrianus, Lib. 4. *Tit.* 14. *Def.* 71. ſays, 'A Proof by Compariſon of Hands, is a very 'dangerous Proof: *Idque in cauſis civilibus duntax-*'*at, ſed in criminalibus, in quibus periculum majus* '*verſatur, aut capitis, aut exiſtimationis, non item.*'

Voet, an eminent Modern Civilian, *Lib.* 22. *Tom.* 4. *Sect.* 11. to the very ſame Purpoſe. And ſo does *Cujacius* in his Commentary on the Novels 73. 'The *Romans*, ſays he, never allow'd it, but 'when no other Proof could be had. And in 'latter Times, when Forgeries became more fre-'quent, they would not allow of it at all, unleſs 'the Writing had been acknowledged by the Par-'ty, or proved by Two Witneſſes who ſaw him 'write it.'

And then it was neceſſary to bring both into Court, that the Judges themſelves might make the Compariſon, and not leave the Witneſſes to be the only Judges of it.

But it was never known, and I may defy all the Writers of Law to ſhew me one Inſtance, that any Evidence of the Similitude of Hands (which can only be made out by Compariſon) was admitted, but where the Papers pretended to be written in the ſame Hand, were produced and compared: Which is ſo far from being the preſent Caſe, that even the atteſting Clerks, who are the only Witneſſes in the Caſe, never had an Opportunity of comparing the Original Letter ſtopp'd in *Auguſt* laſt, with any one of the three Original Letters dated *April* 20. or with

any of the intermediate Letters, which they affirm to have been written in the same Hand.

And if it be consider'd, how much more difficult it is to distinguish the Hand of one writing in Figures (which stand single one from another) from the Hand of one writing in Words at length (which are variously connected and combined) your Lordships will never give them the least Degree of Credit.

But at once to put an End to this Evidence (if my Instructions are true) it has already appear'd to your Lordships, upon Mr. *Kelly*'s Bill, That the only Original Letter of the twentieth of *August*, stopt as a Sample at the *Post-Office*, and the only Ground of affirming these Three to have been his, was not his Hand-writing; and if need be, we have the same and stronger Evidence to produce. Upon the whole therefore, I think I may affirm, That there is no legal or reasonable Ground to infer those Letters to have been wrote by *Kelly*.

And surely, my Lords, it was incumbent on them to prove, as well as to affirm, that they were wrote by his Lordship's Direction, before they can affect him; even tho the Writer (whoever he was) had presumed to have signed them with his Lordship's own Name and proper Appellation. I beseech your Lordships, how does it in the least appear, that Mr. *Kelly*, or Mr. *Carte*, (as is afterwards upon no better Grounds suggested) was employ'd by his Lordship to carry on that Correspondence? It has, I confess, been frequently said at your Lordships Bar, as well as by that Honourable Committee, but like other Charges, without any Shadow of Proof; unless it be an obscure Passage in a Letter of *Chitwell* from abroad, to one *Williams* here, *D.* 27. which says, *They had a Story in* France *of* Weston*'s Clerk being laid up for Debt:* Which, as I shall afterwards shew, could not possibly mean his Lordship. There is another Passage also in the Letter to *Dubois*, from whence the same Inference is made. What unknown Person that *Dubois* is don't appear, or whether it is a real or fictitious Name; for all their Lists and Cyphers afford nothing like it. The Committee are pleased to suppose it a Letter to the Bishop, and received by him from Abroad; and from thence infer, he used to receive Letters directed to him by fictitious Names. The Counsel for the Bill suppose it a Letter from *himself* to *himself*, because the Hand-writing, they say, (or rather the Letter *e*) is something like his Lordship's. It is not signed by any one, and dated only the sixteenth of *December* without any Year; and tho that Honourable Committee are pleased to affix, in their Observations on it, 1721. because *Johnson*, they say, was about that Time at *Paris*, yet for what appears from the Letter itself, it might be written before his Majesty's Accession, or before the several Acts of Grace that have been; and if it had any Criminal Meaning, 'tis improbable his Lordship would have mentioned the Hand of Conveyance at length; and much more improbable, that he should have destroyed all his other Letters (as the Committee are pleased to insinuate) and to preserve this only, which is of no Consequence, but to furnish Evidence against himself, and to explain the Thing most wanted. Another Proof that it is his Letter, is from a broken Seal, which, they say, is made by the same Seal as that seized on his Servant at the *Tower*. But consider, my Lords, how many *Similitudes* we are at last come to in this one Attempt, *Similitude of Hands*, *Similitude of Figures*, *Similitude of Characters*, and *Similitude of Seals!*

That Similitude of Hand-writing is no Proof, I have shewn by a Variety of the best Authorities: much less, the Similitude of one Letter in the Alphabet; that is, I dare say, a Conceit perfectly new. And 'tis well known, Artists are capable of counterfeiting any Man's Hand or Seal in such a Manner, that even the Person whose Hand or Seal it is, shall not be able to distinguish it from his own: And your Lordships yesterday saw an ample Specimen of it.

It is upon these Grounds, my Lords, that *Kelly* hath been affirmed to have been his Lordship's Secretary in these Matters; but there is not the least Charge or Pretence of his having writ any other Letters of any kind for the Bishop, but these Three only, and not one thro'out the whole Correspondence charg'd to have been written by *Carte*, (tho he is in general charged as another Manager of this Correspondence.) This, my Lords, we must insist, ought to have had the fullest Proof, and the most undeniable Evidence: For it is the Gist of the Offence, 'tis the Foundation of the Statute 14 *W.* III. *c.* 3. and 'tis the particular Suggestion of this Bill. 'Tis possible some such Letter might be wrote by *Kelly* or *Carte* to the Persons they are address'd to, without the Bishop's Privity or Direction; 'tis not so uncommon a thing to pretend Acquaintance with Persons of Distinction, or to make use of their Name and Authority, to give themselves a greater Degree of Credit with their Correspondents.

If this may be so, and ought now to be presumed so, since no Man has proved it otherwise; then no Man surely ought to suffer by the Act of another, or to be punished for another Man's Fault.

I believe no one will think it any Reflection to hear many of your Lordships Names in these Cyphers, and afterwards to find a frequent Mention of them in the Correspondence; or to find his Majesty's own Name in *Plunket*'s Cypher, under the Disguise of *Hawkesby*, and Page 62. of the *Report*, Compliments from the Pretender and his Wife to one *Hawkesby*. No Man, I say, will apply these, or many other Names of Persons of Honour mentioned in them, to the Persons themselves, or imagine those Letters were really wrote by their Privity or Consent. By the same Rule of Justice, and by a Parity of Reason, my Lord Bishop's, Name may be presum'd to have been made use of, without his Privity or Consent; and if there is any certain Rule or Position in Law, it is this, That all Presumption ought to be in favour of Innocency.

And to shew the little Intimacy there was between his Lordship and Mr. *Kelly*, (if *Rig* means his Lordship, as they suppose, or that Letter *E.* 64. was from *Kelly*, as they also suppose) it will be sufficient to remind your Lordships of one part of it, where the Writer says,—'That *Rig* and one *Skin* had been together; 'but the Result of their Meeting he knew no'thing of. *Rig.* had fixed his Suspicion some'where, tho I cannot find out the Place; but 'you will hear it from *Skin*, to whom, it's probable,

'bable, he may have communicated his Senti-'ments that way.' That is, my Lords, if I underſtand the Meaning of thoſe Words, that *Kelly*, the ſuppoſed Secretary on all theſe Occaſions, knew nothing of the Matters, or at leaſt much leſs than *Skin*, whom *Kelly* had but juſt before introduc'd into *Rig*'s Acquaintance.

There is another Letter which has likewiſe been read, *E.* 47. (if it is to be underſtood to be Mr. *Kelly*'s, as they ſuppoſe, and *Rig* is to mean his Lordſhip; tho we are far from admitting the one or the other) which we deſire to make uſe of, and amounts to a full and direct Confeſſion, that the Writer (whoever he is) had nothing in his Power or Knowledge to charge him with. I have the more Countenance, my Lords, to repeat the Words of this Letter, becauſe that Honourable Committee have let it paſs without Exception, *Fol.* 59. of the *Report*: Wherein the Writer vows, 'He never heard of 'the Cant Names of *Jones* and *Illington*, or who 'was meant by them: That ſome Perſons in 'whoſe Power it was to do for him, had ſhewed 'no Concern at all for his Misfortunes; that it 'was well he had no Secrets to reveal, ſince 'ſuch Uſage might provoke a paſſionate Man.' And all the World is ſince convinced he had not, ſince no Perſon ſeemed to be apprehenſive that he could do them any Miſchief. My Lords, I ſay, if this Letter is to be underſtood as from that Gentleman, we think we are intitled to have the Benefit of his open and candid Declaration.

But however, my Lords, if we ſhould not be allowed to make this Uſe of it, yet (if my Inſtructions are true) Mr. *Kelly* fully aſſerted this himſelf at your Lordſhips Bar; and even without it, we ſhall be able to make appear moſt plainly, in the Courſe of our Evidence, that *Kelly* did not, and could not write theſe Three Letters from his Lordſhip's Mouth, or by his Lordſhip's Direction.

The Date of all Three is 20 *April*; when this Reverend Prelate (as has been already mentioned to your Lordſhips) was deprived of the Uſe of both Hand and Foot: had for a great while been confined to his Room, under the greateſt Weakneſs and Diſorder, when his Lady lay in the next Room, on her Death-bed.

Theſe, my Lords, and other remarkable Circumſtances in his Family, which diſtinguiſh this particular Period of Time, as on the one hand, they have given the Writer of theſe fictitious Letters ſome Advantage towards fixing them on the Biſhop; ſo, on the other hand, they afford his Lordſhip a like Advantage (in the moſt providential Manner, I may ſay) towards clearing himſelf from the Imputation of them. Becauſe his Servants then attending him, are able to recollect what paſſed on that Occaſion, and to be very poſitive and particular in their Evidence concerning it.

His Lordſhip happened then to have Three Men-Servants actually attending on him, and ſome one of theſe always, both Day and Night, either preſent with him in the Room, or waiting in the Paſſage at his Chamber-Door; and the Weather being warm, and the Room cloſe, the Door was generally wide open: It was then this Reverend Prelate's Misfortune, that he was not able, without their Help, to ſtir, or even to lift up what he eat or drank to his Mouth. Beſides theſe, there were Two Women-Servants, which conſtantly attended his Lady in her Room, which is next adjoining, and came frequently to him (once or twice an Hour) every Day with Accounts how ſhe did, the Biſhop himſelf being diſabled (for ſeveral Days before her Death) to go out of his Room.

And all theſe five Servants will depoſe, That for 14 or 15 Days before his Lady's Death, no Stranger whatever viſited his Lordſhip, much leſs ſtayed there any Time with him. This (my Lords) the Women-Servants will affirm, as far as their frequent ſeeing of him gave them Opportunity to make theſe Obſervations. His Coachman (tho now Witneſs againſt him) has conſtantly affirmed the ſame thing, both below as well as before your Lordſhips. But the three Men (one of which was always in the Room Day and Night, as I before obſerved) can be moſt full and peremptory in their Teſtimony. So that the Biſhop could not poſſibly dictate theſe Letters, either to Mr. *Kelly*, or to any Body elſe, without the Privity and Obſervation of ſome of them.

This being a Negative, it is impoſſible to be more fully proved in any Caſe; and nothing but the remarkable Circumſtances that happened at that time, to which the Writer of thoſe Letters unluckily pinned them down, could have help'd us to ſo ſtrong and undeniable a Proof of it.

Whether Mr. *Kelly* was ever acquainted or viſited his Lordſhip (indeed I am not inſtructed) their Evidence [31], I am ſure, has proved nothing like it, nor is it material, much leſs criminal. But as to the particular time (12 *April*) when Mr. *Kelly* is ſuppoſed to have told Mrs. *Barnes*, and ſhe is ſuppoſed to have told Mrs. *Levet*, that his Lordſhip ſent his Coach for *Kelly*, we ſhall expreſly prove the contrary: and beſides that it is only Hearſay of Mrs. *Levet* from Mrs. *Barnes* who denies it, and his Lordſhip's Diſability at that time to receive Company; I ſay (my Lords) beſides theſe Circumſtances, it is remarkable that the Coachman, and the Baker (who it ſeems was directed to keep a Diary of every Body that came, and of all that happened in his Lordſhip's Family) ſay not one word of this remarkable Incident, in either of their Depoſitions. The Coachman has denied that he ever fetch'd Mr. *Kelly* in his Lordſhip's Coach ſince he lived with his Lordſhip, or ever was at *Kelly's* Lodgings, or that he ever ſaw him or Mr. *Carte* in his Lifetime; and ſurely their Silence (if there were nothing elſe in the Caſe) is ſufficient to infer, that he was not there at that time: And all Mrs. *Kay* and *Malone* ſwear is no more, than that they don't remember *Kelly* lay at Mrs. *Barnes*'s that *Thurſday* or *Friday* (the firſt only ſpeaks in her printed Depoſition of a *Thurſday* or *Friday* about the middle of *April*.) And how is it poſſible they ſhould remember the time ſo exactly, for neither of them belonged immediately to *Kelly*, but were only Servants to Mrs. *Barnes*, who had other Lodgers in her Houſe? They did not even make theſe Affidavits till the 6th of *February* laſt; and 'tis no eaſy Matter to remember ſuch an inconſiderable Circumſtance of a Lodger (ten Months together) unleſs they

[31] D. 47. 8. 9. E. 6. *b. c.*

likewise had been instructed before-hand to keep Diaries of Mr. *Kelly*'s Motions.

The Third General Charge against my Lord Bishop, is [32] the receiving of Letters from Abroad relating to this Conspiracy.

Two Instances only of this Kind have been [33] produced. The first from *Motfield* (interpreted *Mar*) 11th of *May*, addressed to *Illington*.

The other from *Digby* (supposed to be *Dillon*) 14th of *July*, addressed to Mrs. *Weston*. Neither of which (do they pretend to say) came to his Lordship's Hands, or if they had, that there is one criminal Word contained in them, and consequently could not be (as I before proved) a treasonable Correspondence, within the Letter or Intent of any Law.

That of *Motfield*'s is a mere Letter of Friendship, and (if from Lord *Mar*, as they suppose) is to a Person with whom he never had either Friendship or Acquaintance; but really seems designed for no other Purpose but to fix upon his Lordship the Letter directed to *Musgrave* of the 20th of *April*, (for the same reason interpreted *Mar*) the Receipt of which is there acknowledged; and in his words of Condolence there is something, (which, 'tis said, points out his Lordship's Character and Function) tho in my humble Apprehension, no more applicable to his Lordship, either as a Bishop or a Clergyman, than to any other Person; especially if it be considered (as it really is) the Style of a Letter of Compliment. But if the Letter itself, to which this is pretended to be an Answer, should prove to be a mere Fiction, the Answer to it (tho it were Criminal) must fall with it, as a part of the same Contrivance.

And as to the Letter from *Digby* to *Weston*, tho that Hon. Committee seem to lay some Stress upon it, by printing it at length in their Report, yet there is nothing in it that can affect any Man criminally, but his Lordship not at all; because the Passage in it, relating to his Health, and the Concerns of his Family, cannot possibly be applied to him. It implies, that he was then in a very ill State of Health (*July* 25.) and his Family in great Disorder; whereas his Lordship (I can speak it, my Lords, upon my own Knowledge, as well as the Testimony of several Clergy of his Diocese, and others) was then perfectly well, and able to transact all the ordinary Business of his Diocese and Deanery, and had been so for above two Months, having myself the Honour at that time to be concerned with his Lordship in a very tedious and intricate Enquiry; and the Disorder in his Family (if it means the Death of his Lady, for that or nothing is meant by it) had been over a much longer space of Time.

Nor is it probable that such a Mistake should be made by the Person (whom the Name of *Digby* is supposed to denote) if what the Report *p.* 39. and the Appendix D. 32 and 29. informs us, be true, that two Letters had some time before been written to *Digby*, or his Secretary; the one (*July* 4) assuring, *Weston* was never better in his Life, the other (14 *July*) affirming he was then perfectly well. But it is still more improbable, if your Lordships will consider what that Hon. Committee have justly observed, in the very same Leaf, that the Professions of these two Correspondents were so foreign and different, as to lay no sort of Foundation for Intimacy or Intercourse between them: and the natural and only Conclusion (we think) from hence, is, that the Letters on this Head, either from this or the other side of the Water, cannot be genuine; and that no fair or regular Correspondent could be guilty of such gross Mistakes.

And of both these Letters from *Motfield* and *Digby*, your Lordships have (I doubt not) observed, that there is no pretence of Proof concerning the Hands in which they are written; which surely would have been more requisite, than the Application of feigned Names, to ascertain them. Otherwise any one who was acquainted with such Names might write Letters from the other Side, as coming from the Persons designed by those Names, which they themselves were ignorant of.

And as the Receipt of these Letters by his Lordship has not been proved, so there is not any Insinuation or Pretence that he ever answered them, tho they both bear Date long before his Lordship's Commitment.

This part of the Scheme therefore for charging his Lordship with a foreign Correspondence under fictitious Names, was not so artfully contrived as the former; and seems, by so many grosser Mistakes, to have proceeded from some Body that had a much worse Intelligence concerning his Lordship's Affairs.

I shall here beg leave to take Notice of the Letter taken from one of his Lordship's Servants in the *Tower*, on which the learned Counsel have laid such great Stress, because there were no Professions of his Innocency in it. If there had been, I suppose they would not have been much regarded. Why therefore should it be any Argument against him, because there is no such thing? Matters are at a very low Ebb, when such Trifles are relied on. But there is another Reason. The Letter I suppose to have been intended for some near or intimate Friends, and to such Persons there was no need of making such a Profession. They knew (whoever they were) and were before sufficiently persuaded of his Lordship's Innocency, and that it was impossible he should be guilty of what is laid to his Charge. And by what has already appeared to your Lordships, I may say, this Reverend Prelate had no need of making such an Apology, and that the Persuasions of his Friends were not ill-grounded.

The Fourth Head, to which the Charge against his Lordship may be reduced, is the Coincidence of Circumstances, Times, and feigned Names in the intercepted Correspondence, to induce your Lordships Belief of the before mentioned Hearsays and supposed Facts, that his Lordship, and he only, is meant by that Correspondence.

And the chief Observation about the Coincidence of Times and Circumstances relates to the three Letters of *April* 20. his Lordship's Illness, and the Death of his Lady, and the Present of

[32] *Rep.* 41. *Appen.* D. 24. [33] *Rep* 51. *Append.* D. 35.

the

the Dog, about the ſame time. All which have already been accounted for, either as Truths publickly known, turned by ignorant or malicious Correſpondents to ill Purpoſes, or as abſolute Falſities, as will appear to your Lordſhips by our Evidence.

1. As to the Article of Times, of his Lordſhip's coming and going, it muſt be own'd, the Penmen of theſe Letters are ſometimes right; but they are as often wrong, and the Miſtakes are of more Conſequence to deſtroy what is inferred from them, than the real Agreements, in point of Time, are, or can be, to eſtabliſh it. There is no doubt, but the Correſpondents on this Side (whoever they were, and whether out of Malice or Vanity) apprized themſelves as well as they could of his Lordſhip's Motions, in order to give a colour of Probability to what they ſaid of him; and yet it happens, that out of ſeven Inſtances occurring in theſe Letters, and referred to in the Report, three of them (if not four) are plain and groſs Miſtakes: two only are true in all their Circumſtances; and of the other two, it may be doubted whether they anſwer the Truth in every reſpect, or not.

Firſt, As to the two doubtful Inſtances, one is 49 *pag. Rep.* D. 29. where *June* 14. *G. W.* writes to *Quitwell*, Mr. *Weſton* is in the Country, I ſaw him two Days ago. If theſe Words mean, that he ſaw him two Days ago in the Country, (which is the moſt obvious Senſe of them) then the Aſſertion is falſe; for his Lordſhip came to Town *June* 12. as appeared yeſterday by the Coachman's Book: but if they mean, I ſaw him two Days ago in Town, then the Aſſertion may be true.

The other Inſtance is *Report* 51, 52. D. 14. ſomebody writes *July* 26. to *Maiſonneuve*, that *Rig* and *Skin* had been lately together, and that *Rig* went into the Country the Day after. Now by Depoſitions D. 48. it appears, the Biſhop went out of Town *July* 21. they muſt have met therefore on the 20th, which don't well anſwer the Word *lately*, which one would think imported 6 or 7 Days more. And therefore theſe two Inſtances we ſet aſide, as neither plainly true nor plainly falſe. The three next are manifeſt Miſtakes.

In *Hatfield*'s Letter to *Muſgrave May* 7. it's ſaid, [34] Mr. *Jones* is come to Town only for a Day, and yet (if *Jones* means the Biſhop) he had been in Town two Days, and ſtay'd in Town three days longer; for he came 5*th May*, and returned 10*th May*, as appears by *Lawſon* and *Wood*'s Examination.

So in a Letter of *J. H.* to *Dixwell*, *June* 12. it's ſaid, *Rig* (ſuppoſed to mean the Biſhop) is I hear in the Country; whereas his Lordſhip was at *Weſtminſter June* 18 and 19, as appears by the Coachman's Books.

In a Letter to *Maiſonneuve*, *July* 19. F. 59. *Rig* is again ſaid to be in the Country, whereas his Lordſhip was at *Weſtminſter* that very Day, and continued there till the 21*ſt*, as appears by the ſame printed Depoſitions.

And the Miſtakes in theſe three Inſtances are the more remarkable, becauſe they all affirm his Lordſhip to be in the Country, when he poſitively was not; whereas it was ten to one, but that even mere Gueſſes had been true, at a Time of Year that every one almoſt is in the Country, and his Lordſhip was really ten Days in the Country, to one that he was in Town, during the whole Summer.

But, *My Lords*, I muſt with ſome Regret take notice, that none of theſe Miſtakes are acknowledged in the Report of that Honourable Committee, tho all the Letters and Paſſages are tranſcribed in it, particularly that of the 7th of *May*, E. 42. Theſe Words are inſerted in the Report, page 41. [*Mr.* Jones *is come to Town*] but the following Words [*only for a Day*] are omitted; and yet the Section concludes, *that it agrees with the Enquiry made at that Time*; which indeed it does (as far as it is there quoted) tho not with the Appen. *E.* 42.

What Enquiry of this kind was then made, and with what Views, we cannot ſay, unleſs we may ſuppoſe it to be made by his Neighbour *Lawſon*. If it was, 'tis ſtrange that he could not depoſe from his own Knowledge and Obſervations in *May*, but only as to what he had heard and was told by *Wood*, his Lordſhip's Coachman, ſo lately as the 19th of *February* laſt. I would reconcile this if it be poſſible: and the moſt natural Inference I can draw from it is, that *Lawſon* (or whoever that Inquirer was) had pretended to take ſome Account of his own at the Time mentioned by the Committee, which, upon Compariſon with that of the Coachman's, he found to be manifeſtly falſe and erroneous, and therefore would not produce or depend upon that: but we hope his Teſtimony can receive no Advantage from ſuch a Conduct. And upon the whole it appears, that tho more Induſtry has been employed on the Article of Enquiry, yet as many Miſtakes have been made in it, as in any other.

And as for the Coachman's Book, after all it cannot be entirely relied on; becauſe the Entries made in his Book can only relate (as we apprehend) to the Charges of Turnpikes and Ferryings, or ſuch other Matters for which he was accountable. He had no reaſon to take Notice in ſuch an Account, when his Lordſhip was in the Coach, when *Not*; and your Lordſhips have heard, cannot be poſitive on that Head. And therefore how exact ſoever his Accounts may be, in reſpect to thoſe little Diſburſments, they can add no Weight to the Obſervation drawn from them by that Honourable Committee; and tho great Streſs has been laid on them, (with Submiſſion to your Lordſhips) they amount to no more, than *that ſome Perſons on this ſide the Water, writing to ſome on the other ſide, are ſuppoſed to mention his Lordſhip, ſometimes as in Town, or in the Country:* and from thence 'tis inferr'd, that they had frequent Acceſs to him, and conſequently the Matter of their Correſpondence is imputed to him.

Had theſe Correſpondents been exact, *my Lords*, in all their Accounts of his Motions, ſurely no ſuch Concluſions could have been reaſonably made: but as they are oftner wrong than right, it follows, they were not ſo well acquainted with his Lordſhip or his Circumſtances, as (to ſerve their evil Purpoſes) they have pretended to be.

Having thus ſpoken as to the Circumſtances of Times, (which are thrown in to induce a Belief, that his Lordſhip was meant by that Correſpon-

[34] *D.* 47, 8. *E.* 49.

dence) I shall next offer something as to the Cant Names: And tho it has been already observ'd to your Lordships in various Instances, that the Names of *Jones*, *Illington*, and *Weston*, could not possibly belong to him; yet give me leave (*my Lords*) to say further, that *Jones* is not only a very common Name (for in one Society, I think, I remember no less than sixteen of the Name at once) but that Name is manifestly applied to very different Persons, even in the Papers contained in the Appendix. In *Plunket's* Cypher *Jones* denotes the *Germans*: Twelve or Fourteen times it is supposed to denote the Duke of *Norfolk*, in three other Places to denote Sir *W. Ellis*; and even in the Letters imputed to *Kelly*, there are [85] Passages (besides those already mentioned to your Lordships) which cannot with any Reason or Probability be applied to his Lordship: For instance, *D.* 23. *Jones* and *Illington* are within the Compass of two Lines plainly distinguished, as two different Persons, and therefore both cannot be apply'd to his Lordship. And in the same Letter as well as a preceding Letter, *D.* 13. *Jones* is mentioned as having undertaken to do something for a Boy at *Eaton*; where it is well known his Lordship has no Influence of Acquaintance, and if he had interested himself there on any such Account, it would easily have been discovered. And this, *my Lords*, is one strong Instance, to shew the Ignorance of the Writer, even in some of his Lordship's most notorious Circumstances.

A great deal of Pains has likewise been taken, by the help of divers Suppositions and Reasonings, to prove that *Rig* denotes his Lordship. However, I shall take Notice but of one, in the Letter to *Gerrard*, which is said to be Sir *J. D'Obryan*, Report 49. *E.* 47. where something is said of *Rig*, highly improper, and absolutely false, if to be understood of the Bishop. An Account is said to be given of the Difficulty *Kelly* had to get Bail, and it is added — *Your old Friend* Rig *indeed offered all that could be expected of the Poor Man.* (If my Instructions are true) *D'Obryan* is a Name his Lordship never heard of before, nor had the least Concern in procuring *Kelly's* Bail, nor knows to this Day who they are; the only Words applicable to him in this Passage, are those of Poor Man; and his Lordship permits me to say, that he is really such, poor both in Body and Purse, and as poor as his Enemies almost can make him: and tho he may have Reason (if your Lordships should pass this Bill with all the Severities intended by it) to be heartily sorry he is so, and that he has neglected those Opportunities of enriching himself, which others would have laid hold of; yet he gives me leave, *my Lords*, to say, he is not ashamed of that Poverty, because free from all unjust Acquisitions, and unworthy Compliances. But that he was a poor Man at that Time, *i. e.* unable to procure Bail, (which is the Sense that Writer means it in) cannot with any Decency or Justice be applied to one of his Lordship's Interest and Station, if he had concerned himself in it.

Give me leave (*my Lords*) to take Notice of another Mistake of that Honourable Committee in the very same Letter; I mean, a Passage cited from it which is not in it, to prove that *Rig* and his Lordship are the same Persons; which I should have omitted, but that it breaks at once the Chain of Reasoning there made use of. The Words are, *how far this late Affair may affect him* (Rig) *I cannot tell*, and *E.* 47. is cited for them. Now *E.* 47. gives an Account of *Kelly's* Examination promiscuously with other Matters, and was written *June* 11th; but the Letter where the Words really are, is *E.* 49. of the 18th of *June* (near a Month after *Kelly's* Examination.) Nor is there a Word in that about the Dog; but it might be proper to confound these two Letters, and connect these two Particulars, in order to make out, that *Rig* and his Lordship are the same, tho they have really no Relation one to the other.

We might add, my Lords, many gross Errors in the Application of Names: but if your Lordships are satisfied with the Justice of those already mentioned, (as I hope your Lordships are) there will be no need to regard the rest; for tho they have some little Coincidences of Time, yet they are dashed with so many Inconsistencies, and so many Falsities, that no fair Correspondent could be guilty of. But there is one which of all others bears hardest upon this Reverend Prelate, the most Criminal in the Matter of it, and from which he is most deeply concerned to clear himself; *i. e.* the Letter of *April* 20th, which has been over and over affirmed by that Honourable Committee, as well as by the Counsel for the Bill, to be a Letter to the Pretender. If that be so, and had been proved by any Degree of Evidence, to have been dictated by his Lordship, we should have been utterly at a Loss what to have said, in a Case that would have been so fully within the Letter of the Law. Part of it, my Lords, we have already shewn to have been charged on his Lordship without the least Proof or shadow of Evidence, the other Part of the Charge we hope now to prove equally groundless and false.

That the Letter address'd to *Jackson* was not to the Pretender (whomever else it may mean) we think, appears clearly from the Words of it, *our Circumstance on this Side*; a Phrase not only used by all Writers, but is the constant usual Style throughout all the Papers in the Appendix, in contradistinction to *France*, which is the other Side, but never to *Italy*, as the Case must be here, if *Jackson* means the Pretender. The Instances in the Appendix are almost infinite.

Another Reason, why we think the Name of *Lackson* cannot reasonably be supposed to denote the Pretender, is from E. 30. where there is mention of dividing *Clinton's* Money between *Medley* and *Jackson*, *i. e.* says the Rep. p. 54. between *Ormond* and the Pretender. But it is not to be imagined that a Letter written from one devoted to the Pretender's Interest, should place *Ormond* before him; this is so unlikely, that even the Committee, speaking in their own Persons at the bottom of this very Page, slide naturally into the other Way of placing the Words, the *Pretender* and *Ormond*. Besides this, my Lords, there are so many Familiarities [to mention but one, *all such pretending People*] in the Letter itself, that it could never come from any one (as I before said) devoted to that Interest, at least not to the Pretender himself, but to some Equal or rather to some Inferior. *Jackson* therefore must mean some-

[85] *Rep.* 48, 9. 59. 68.

body elſe, ſomebody in *France*, and not the Pretender in *Italy*; and on this ſuppoſition, every Word, and Phraſe of that Letter is better accounted for, than on any other.

The Committee of that Hon. Houſe below have been pleaſed alſo to obſerve, *p.* 45, 46. that *Jackſon* appears from other Letters to be the ſame as *Malcolm*, (which they ſay means the Pretender) and for this Reaſon, becauſe [*p.* 54. E. 30] *Clinton*'s Money is to be divided between *Medley* and *Jackſon*. And *pag.* 56. ſomebody hopes *Clinton* has ſent *Malcolm* half Money; which proves indeed, that either *Medley* or *Jackſon* means *Malcolm*, but which, may be ſtill a Queſtion, as much as it was before.

That *Malcolm* means the Pretender, 'tis proved, becauſe application is made to *Malcolm*, in a Letter from *Scotland*, for a Patent, and for Power to raiſe a Regiment *Rep.* pag. 45, 75. But with Submiſſion to that Honourable Committee, neither of theſe Inſtances prove that Aſſertion; ſince the moſt natural Way of applying in ſuch Caſes, is to Perſons employed under the Principal, and not immediately to the Fountain Head itſelf: and if the late Duke of *Ormond* was to have come over laſt Summer to head the *Scots*, and they daily ſent preſſing Meſſages to that Effect, (as Mr. *Stanhope* writes from *Madrid*, Rep. *p.* 75.) who more proper to be applied to by a *Scots Man* on both theſe Occaſions? *Malcolm* therefore (with ſubmiſſion to the Committee) more naturally means the late Duke of *Ormond*.

I may add to this, my Lords, that in the Cypher inſerted among the *Scotch* Papers, I. 14 *Davis* and *Lloyd* (not *Malcolm*) is ſaid to be the Name and Deſignation of the Pretender.

I hope we may be allowed to argue in this Manner, from one Cypher to another, becauſe the ſame Method has been made uſe of againſt us, upon this very Article, both by that Honourable Committee, and the Counſel for the Bill: for the only Colour there is for interpreting *Jackſon* to be the Pretender, is taken from *Plunket*'s Cypher, in which (as it is printed) *Jackſon* is ſet over againſt the Name of the Pretender, and from the Titling to the Draught of a Letter of *Plunket*'s to *Jackſon*, C. 41. and admitting this Letter to have been ſo entitled by himſelf, (which has not yet been proved) yet it does not follow, (as I obſerved) that becauſe a Letter addreſs'd to one at *Rome* by *Plunket* under the Name of *Jackſon* ſignified the Pretender, that another Letter directed to one of that Name in *France*, by a quite different Perſon, ſhould likewiſe neceſſarily ſignify the Pretender. This, my Lords, I beg leave to ſay, is no certain or natural Conſequence: but it is moſt certain, that that Draught (whomſoever it was intended to) was not written upon that Cypher which the Committee referr'd to, in order to have it thought to have been written for the Pretender; for there is but one only of the many Cant Names in the whole Letter, which is to be found in that Cypher. But if your Lordſhips will be pleas'd to conſider that Cypher a little farther, it will appear, that the very Perſons ſuppoſed to be concerned in dictating this Letter to *Jackſon*, were utterly ſtrangers to the Correſpondence; for it conſiſts of a hundred and fifty Names, and no Man can find above four that are in this Cypher, or in all that voluminous Correſpondence attributed to *Kelly*; nor any of thoſe four ever uſed in the Letters ſuppoſed to be writ to *Kelly*; but in thoſe only ſuppoſed to be written to him from abroad.

The Name of *Jackſon* is not once in all that Correſpondence applied to the Pretender: and tho there be a hundred proper Occaſions of mentioning him, it is always under ſome other Appellation. And *Plunket* himſelf, in his Examination C. 73. Sect. 14. (when he could not poſſibly know the Tendency of the Queſtion) not only ſays poſitively, that he never writ to any Perſon by the Name of *Jackſon*, and does not know who is meant by it, but it is alſo remarkable (my Lords) that in all the Letters ſaid to be written by him upon that Cypher (after it was formed) he never once ſtiles the Pretender *Jackſon*, but either *Joſeph* or *Jephſon*.

The firſt of theſe Letters is in *May* 1721, and therefore that Honourable Committee have with great Exactneſs placed this Cypher immediately before it, as ſuppoſing it about that Time framed; for all the preceding Letters are manifeſtly written upon another Cypher. Now this Letter of the 20th of *April*, ſuppoſed to be dictated by his Lordſhip, was written before that Cypher of *Plunket*'s was framed, and conſequently could not take a Name from a Cypher which then had no Exiſtence.

There is another Obſervation of that Honourable Committee, which I beg leave to take Notice of. They ſay, that the Cypher made uſe of in this Letter to *Jackſon*, is the ſame made uſe of in the Letters from the late Duke of *Ormond*'s Agents, and in Letters to *Dennis Kelly*; and yet the Pretender has ſome other Names in ſuch Letters, but in none of them ever once ſtiled *Jackſon*. How comes it then, my Lords, that he ſhould be ſtiled ſo once, in this one Letter, and never before, nor after, by that Writer or by any other?

We have been the longer, my Lords, in removing this Imputation, becauſe of all others it is the hardeſt and moſt unjuſt upon this Reverend Prelate; and upon the whole, we hope, it is fully and effectually done, (notwithſtanding the Difficulties we had of proving a Negative) and even from thoſe Lights and Materials the Committee themſelves have afforded us: and if we had had an Opportunity of inſpecting the Originals, we doubt not, we ſhould have been able to have proved much better, that *Jackſon* (to whom this Letter of the 20th of *April* was directed) could not poſſibly mean the Pretender.

And if that be the Caſe, as it certainly is, and it appears farther by the Evidence which we ſhall produce, that theſe three Letters of *April* 20. were not, and could not poſſibly be dictated by the Biſhop, the Foundation of the whole Charge is deſtroyed, and conſequently, all the Superſtructure muſt fall to the Ground. Nay, I will venture to affirm, that it is impoſſible for them to form any Scheme to prove the Biſhop wrote theſe Letters, but what is, and will be actually diſproved and falſified, by ſome Part of their own Evidence.

Having thus, my Lords, gone thro' every Part of the Charge, I muſt crave your Lordſhips Patience, yet to ſpeak to two Things, which have been much inſiſted on by the Counſel for the Bill. That when your Lordſhips proceed in *a Legiſlative Capacity, you are not to be guided by the Rules and Niceties of Law*, and therefore that we are not in this Caſe to expect an Evidence ſtrictly legal. The other thing was, *that at this time of Day circumſtantial Evidence* is ſufficient, in a

Charge

Charge of High-Treaſon, as the Caſe now before you is. This (my Lords) we have heard fully and often repeated, as it were to anticipate us in this Objection, which they themſelves know to be ſo juſtly founded.

I have ſo far acted in Complaiſance to them, as to argue chiefly on the Facts and Circumſtances themſelves, and under the very ſame Lights they have preſented them to us, and hope (my Lords) our Inferences from them have been more juſt, our Conſtruction more natural, and our Probabilities much greater than theirs; and even in that View (conſidered abſtractedly from what the Common Law, and the Common Juſtice of the Realm requires) I hope we have fully ſhewn to your Lordſhips Satisfaction, and to the Conviction of every reaſonable or impartial Perſon, that there are no Grounds for what is ſuggeſted in the Bill; and that all that hear me may juſtly wonder, how this Reverend Prelate comes to be charged (as he is in the Preamble of the Bill) with being deeply concerned in forming, directing, and carrying on a Conſpiracy; when it has not been proved, that he entred into any one Conſultation concerning any one Meaſure, gave any one Direction, that he has done any one criminal Act, written, dictated, or received any one criminal Letter: and if we ſhould wave inſiſting on an Evidence ſtrictly legal, or a Proof according to the known Rules of Law; give me leave to ſay, my Lords, becauſe it is true, there has not been a reaſonable Evidence.

But yet, my Lords, I ſhall always inſiſt, both as an *Engliſhman*, and as Counſel to this Reverend Prelate, that there ought to be a legal Evidence in theſe, as well as in any other Criminal Proceedings. If there is any Difference, it is in this only, that as there are certainly many greater Inconveniences to the Subject in this Method of Proceeding, there ought to be a ſtronger Proof, and a Conviction more ſtrictly legal. I will always hope, your Lordſhips will expect a Proof in ſuch heavy Charges, agreeable to the Laws of the Land, and the Rules and Reſolutions of other Judicatures. I am far from thinking your Lordſhips are circumſcribed by the Forms of inferior Courts, becauſe they are in their own Nature diſcretionary, and the Courts themſelves often vary and depart from them. But the fundamental Maxims of Law, the unalterable Meaſures of Juſtice, and the poſitive Directions of an Act of Parliament, are of another Nature; they are binding every where, to all Perſons and Authorities, (as long as they continue Laws) the King himſelf not excepted. I ſhould beg Pardon, for carrying my Aſſertion ſo far, but that I am taught by the Bill of Rights that the King himſelf is bound by the Law, that it is not in his Power to alter, ſuſpend, or diſpenſe with Laws. But if the Doctrine of the Counſel for the Bill is true, and every one at Liberty to follow the Dictates of his own Judgment, and what Rules he pleaſes; what Confuſions, Uncertainties, and Arbitrarineſs muſt that introduce in all Proceedings! Private Opinion will too often be a Pretence to exerciſe private Malice, Revenge, or Ambition.

I might appeal to every one that hears me, whether he has not at ſome Time or other, believed ſome things, as ſtrongly as he did at firſt this Reverend Prelate to be guilty of what was ſuggeſted againſt him, and has afterwards found himſelf miſtaken? What is more common than for Men that agree in the ſame Notions of Morality, to deduce different Concluſions and Applications from them? (even where Intereſt or Partiality do not intervene;) and therefore the Wiſdom of the Law of *England* has been, to determine general Notions of Juſtice and Right by particular Rules and Applications, in order to ſettle that Variety and Inconſtancy, which without ſome eſtabliſhed Rule muſt neceſſarily follow. Where then ſhall we go for true and proper Notions of Law or Equity, but to thoſe great Oracles and Fountains, my Lords the Judges? What better Guide or more certain Rule, can any one of your Lordſhips propoſe to himſelf, than the conſtant and uniform Judgment of thoſe, whom the Conſtitution of this Kingdom have made the proper Diſpenſers of Juſtice, and the Interpreters of Law?

'Tis your Lordſhips peculiar Advantage, to be continually aſſiſted by ſome of my Lords the Judges; and we hope in this Inſtance (if any Doubt can at laſt remain) your Lordſhips will hear their Opinion, with the ſame Deference and Candor as in former Caſes. Let it never be ſaid, my Lords, that you, who are the ſupreme Oyer of the Kingdom, whoſe Judgments and Reſolutions are Laws to other Courts, and ought to be an Example to all others, in the Juſtice and Equity of your Proceedings, that your Lordſhips will not regard the ſolemn Judgment of the Judges, or the Uſages of former Parliaments: and let it not be ſaid, that becauſe other Courts are bound by a Law, to require ſuch and ſuch Circumſtances to infer an Offence, or ſuch a Proof before they condemn a Man, that you (my Lords) will follow your own private Opinion, make what you pleaſe to be an Offence, without any Evidence at all, but upon mere Hearſays, Conjectures, and Suppoſitions. Who can read that melancholy Caſe without Concern, which my Lord *Coke* has in his 3d. *Inſtit.* of an Uncle that was condemned and executed for the ſuppoſed Death of his Niece, merely upon a Train of Preſumptions and circumſtantial Evidence; or *Harriſon's* Caſe within Memory, where the Father and Mother both ſuffered upon Preſumption for a ſuppoſed Murder? And with what Shame and Remorſe did that haſty Judge ſee himſelf convicted by the Perſon returning from beyond Sea? And every one almoſt remembers the Charge of Treaſon againſt this Reverend Prelate's Predeceſſor. If ſuch a Bill had been thought on, or much ſtronger Evidence had been received, it might have paſs'd before the Truth could have appeared. But happy was it for that innocent Prelate, that a quite contrary Method was taken, and his Accuſers brought Face to Face to him, by which he quickly diſcovered the Villany of thoſe Miſcreants. Private Opinion or Perſuaſion therefore is ſuch a Poſition, that every honeſt Man ought to diſclaim in theſe Caſes; and the greater the Crime is, in which he is to judge, the ſtronger Proof he ought to require: and when one adheres ſtrictly to Juſtice, and goes according to the *Allegata & Probata*, by the beſt Rules and Reaſons of Law; whatever Miſtakes, Miſinformations, or falſe Evidence may happen in the Caſe, he can never have Cauſe to repent, and neither the preſent Age nor Poſterity can blame him.

It was formerly a Queſtion, whether the *Star-Chamber* was bound by the Rules and Reſolutions

of other Courts: And the many Exceſſes, and extravagant Opinions in this Reſpect was the Reaſon that antient Court was laid aſide. And it has been as great a Queſtion, whether the Court of Chancery was to be guided by Rules and Precedents. But the better Opinion has always been, that a Judge in Equity ought to regard the Rules and Reſolutions that have been in like Caſes; unleſs he is reſolved to make Decrees totally arbitrary.

For tho Equity and Reaſon, in itſelf, is the ſame all the World over, and nothing can alter the proper and intrinſick Notions of it; yet, as the Matters about which it is converſant, are repreſented in different Circumſtances, and, like Streams of Water, will receive ſome little Tincture from the Soil thro' which it runs, and there is ſomething in every Man's Temper that will ſlide into his beſt formed Notions; it ſhews the Neceſſity of ſome fix'd and eſtabliſh'd Rules, at all Times, and in all Places of Judicature. And therefore, in that high Court of Equity, tho the Rigor of the Common Law is in ſome reſpects ſoftned, yet there is nothing more known, than that it is not to be impeach'd in any of its eſſential and fundamental Points.

I hope your Lordſhips will pardon me, if I mention an Authority or two of great Name, that expreſly ſay, the High Court of Parliament is likewiſe bound by the Rules of Law. Lord Chief Juſtice *Holt* ſays, The Authority of Parliament, is from the [16] Law; and as it is circumſcribed by Law, ſo it may be exceeded; and if they do exceed their legal Bounds and Authority, their Acts are wrongful, and cannot be juſtified any more than the Acts of private Men. I might add to this, the Opinions of *Vaughan*, *Hale*, and *Hobart*, to the ſame purpoſe; that the Rules of Law ought to guide in paſſing of Acts of Parliament, as well as in the ordinary Courſe of Judicature. But when I mention the Senſe of a living Authority, that has filled the higheſt Stations in the Law, and ſo great an Ornament to your Lordſhips Houſe, and whoſe Merits have been ſo lately diſtinguiſhed by new Honours, I need cite no more. It was in a Caſe, where the ſame Doctrine was advanced (that the Parliament was not bound to conform to the Rules and Proceedings of other Courts:) In anſwer to which, that noble Lord with great Truth obſerved, that thoſe Rules were not to be Patterns to them, only becauſe they were Rules of thoſe Courts, but becauſe they were Reaſon, and Reaſon approved of by long Experience, and they obtain there as Rules for that Cauſe; and I hope (ſays he) that is a Cauſe why the Houſe ſhould imitate them, as much as *Weſtminſter-Hall*; or elſe how can they be ſaid to go according to Reaſon, or Juſtice, when they go beſide, or tranſgreſs thoſe Rules?

Beſides theſe great Authorities, there have been Times, when Parliaments have thought themſelves bound by the common Rules and Proceedings of Law, and Parliaments that were very tender and ſenſible of their own Power, in other Reſpects. Not to mention ſeveral antient Acts of Reverſal, becauſe Judgments given in Parliament were not pronounced according to the known Laws; there is the Act for the Attainder of the Earl of *March*, becauſe he had been inſtrumental in procuring the Attainder of another Lord, under pretence of a Letter, which (the Record expreſly ſays) was no Evidence. And the Record for reverſing the Attainder of *Roger Mortimer*, 28 *E.* 3. Sir *Thomas Haxley*, &c. is expreſly declared to be, becauſe they were attainted contrary to the good Laws and Cuſtoms of the Realm. And not only the Lawyers and the Hiſtories of thoſe Times condemn them as groſly contrary to Law and Juſtice, but the Stat. 1 *E.* 6. *cap.* 12. is directly levelled at them. For it recites that thoſe Proceedings were terrible and extreme, introduced for particular Policies and Purpoſes, repeals ſeveral Statutes that had been enacted in the preceding Reigns; and that there might be no more ſuch for the future, reduces all Treaſons to the antient Standard of the 25 *E.* 3. and goes on and enacts, That no Perſon or Perſons (*i. e.* my Lords, as I humbly apprehend no manner of Perſons, in no manner of Place, Court, or Method) ſhall be convicted for any Offence of Treaſons, Petit Treaſons, Miſpriſions, for which the Offender ſhall in any wiſe ſuffer any Pains of Death, Impriſonment, Loſs of Goods, or the like, unleſs accuſed by the Teſtimony of two lawful and ſufficient Witneſſes. The Stat. 5 *E.* 6. *cap.* 11. goes further, and ſays, There ſhall not only be two Witneſſes, but thoſe two Witneſſes ſhall be produced in Perſon before the Party, and ſhall before his Face maintain and avow what they have to ſay. The Words of this Stat. as well as the former, are as general as they can be, without any Exception of Place or Proceeding.

But notwithſtanding theſe two Statutes, there was ſtill Occaſion for the Stat. 7 *W.* 3. to aſcertain Treaſons, and to regulate the Method of Trials. For there had been ſeveral tender complaiſant Laws introduced by the pretended Zeal of Miniſters, with a peculiar Eye to the Prince on the Throne; which tho others could not apprehend the Juſtice or Neceſſity of, yet on theſe Laws there had been many unreaſonable Penalties, undue and irregular Proſecutions, in the preceding Reigns, and which Sir *Jo. Hawles* remarks as one of the great and immediate Cauſes of the Revolution. And to ſhew the Reſentment of the Nation on theſe Proceedings, they were all reverſed by particular Acts of Parliament; and to prevent the ſame for the future, that glorious Statute was made of the 7 *W.* 3. *cap.* 3. That Perſons accuſed as Offenders ſhould be juſtly and equally try'd, and not debarr'd of all juſt and equal Means for the Defenſe of their Innocency. And whoever caſts his Eye over the preceding Trials, will find every Clauſe of that Statute as it were a particular Proviſion againſt the Miſchiefs that had been, and to prevent the like for the Time to come.

I do admit (my Lords) there is a Proviſo in the End of that Statute; (that it ſhall not extend to any Impeachments or Proceedings in Parliament) and therefore I don't mention it as a Rule to Parliamentary Proceedings in all Reſpects, as it is to inferior Courts. But ſurely the Reaſon and Juſtice of that Act ought to be a Guide, as far as it is conſiſtent with the Nature of your Lordſhips Proceedings. And inaſmuch as it was the Senſe of the whole Legiſlature, and the united Voice of the Nation at that Time, and on a dear-bought Experience, it is ſurely ſo far worthy of your

[16] *Saw.* Rep. 505.

Lordſhips

Lordſhips Imitation. It can never be conſiſtent with publick Wiſdom, to run again into the ſame Miſchief from which we are ſo happily reſcued, or to ſplit on the very ſame Rocks, on which many of your Lordſhips noble Anceſtors have periſh'd.

And it can never be (with Submiſſion to your Lordſhips better Judgments) a natural or a reaſonable Conſtruction of that Proviſo, to enlarge the Proceedings of Parliament, or to give a greater Latitude than ever they had before. And to remind your Lordſhips how the Uſage of Parliament was preceding this Statute, I need mention but two or three Inſtances out of many. Lord *Delamere*'s Caſe in King *James*'s Time, 1685, where there was one poſitive Witneſs and a ſtrong circumſtantial Evidence; and yet your Lordſhips Predeceſſors thought that not ſufficient to find him guilty. The Lord *Stamford*'s Caſe in the very ſame Year, where there was alſo one Witneſs, and ſtrong Circumſtances, and he was in the like manner acquitted. In the Caſe of the Earl of *Pemb.*" 1677. for Blaſphemy and Abuſe of the Sacrament, your Lordſhips Predeceſſors declared, That the ſingle Teſtimony of a Commoner, tho on Oath, was no ſufficient Evidence againſt a Peer denying the Fact upon his Honour; and upon that addreſs'd his Majeſty that he might be releaſed from his Impriſonment.

And, as I humbly apprehend, your Lordſhips have thought fit to admit ſome of the Regulations of that Act into your Proceedings, ſuch of them (as I before ſaid) as are agreeable and conſiſtent with the Nature of your Proceedings. Your Lordſhips have been pleaſed to allow Counſel to a Priſoner in Treaſon, to ſpeak to Matters of Fact as well as Law: You allow a Copy of the Charge againſt him; you require the Witneſs for him to be upon Oath, as well as againſt him; neither will your Lordſhips admit Evidence of a Fact not in the Charge. And ſurely (my Lords) there is as much Reaſon, and as much Equity to require (as that Statute requires in the Courts below) the Teſtimony of two lawful and ſufficient Witneſſes. Nay, my Lords, I hope the Reaſon is much ſtronger, becauſe (altho your Lordſhips ſhould conſider your ſelves as unreſtrained by the Stat. 7 *Will.*) yet it is poſitively requir'd by both the Statutes of *Ed.* 6. which are general and without Exception, (as I before obſerv'd) and becauſe it is agreeable to the Uſage of Parliament (as I have likewiſe ſhewn) from that Time even down to the Stat. 7 *Will.* And if your Lordſhips are not enlarged by the Statute of King *William*, and the Statutes of *Edw.* 6. are ſtill Laws, give me leave (my Lords) to ſay, it can never be juſt or lawful to take away any Man's Life or Liberty on leſs Evidence than what thoſe Statutes require, in any Place, or by any Method whatſoever. Becauſe I am taught by Caſuiſts, that every juſt Law is a Rule of Conſcience, whether divine or human; and no Man can ſay, his Conſcience is void of Offence towards God or Man, unleſs he acts according to the Laws of the one Sort, as well as of the other.

And if your Lordſhips will give me leave to ſtep once more out of the Verge of my own Profeſſion, I will mention a Word out of the Civil Law conformable to this: That is a Law (my Lords) in ſome Degree receiv'd by all Nations, as a Scheme of the greateſt Equity and Juſtice. The Number of Witneſſes by that [17] Law, ought to be two at leaſt, to make a full Proof, and free from all Exceptions, both as to their Perſon and to their Depoſition. The Teſtimony of a ſingle Witneſs is of no Validity, unleſs where other Circumſtances concur; and it was not the Manner of the *Romans* to condemn any Man, before that he, which is accuſed, have his Accuſers Face to Face. And this (my Lords) is not only the dead Letter of the *Code* and the *Dig.* but the learned *Groenw.* in his Notes upon theſe Laws, ſays, It is the general Policy, and obtains at this Day in moſt Parts of the World. I do own that there are many Caſes that happen with us in the Courts below, where the Teſtimony of two Witneſſes is not required; but then, my Lords, it is, when the Trial is by Jury, that is, when twelve Men, coming from the Party's own Neighbourhood, and conſequently muſt be ſuppoſed to know ſomething of the Fact upon their own Knowledge, find a Verdict upon their Oaths. But I need not ſay, that even in a Trial by Jury, if it is a Caſe of High-Treaſon, like this now before your Lordſhips, there muſt be two Witneſſes, and nothing leſs can warrant the Verdict. And ſurely, my Lords, it is a Practice founded on Reaſon; not becauſe this or that Law, or this or that Court requires it, but becauſe 'tis abſolutely neceſſary for the Diſcovery of Truth, and for the forming of a right Judgment, whether what is ſwore be true or falſe. One Witneſs may miſtake, or be perjured, and yet happen to be conſiſtent with himſelf; but when there are two ſeparately examined, the Truth is much more eaſily found out: And tho a Criminal may now and then eſcape for want of ſuch a Proof, yet that would be a far leſs Evil, than to truſt ſo much, in Caſes ſo Penal, to Circumſtances and Preſumption, and to the Malice and Miſtakes of one Perſon.

But if, notwithſtanding the Opinion of the greateſt Lawyers both *Engliſh* and Foreign, your own uniform Uſage and Reſolution, and the Reaſon of the Thing itſelf, your Lordſhips are reſolved, in this one Inſtance, to follow every one his own private and particular Conſcience; let every one hearken to that ſtill Voice within him with an honeſt Attention, unto thoſe ſecret Whiſperings, with Temper and Moderation. Let no Man be ſway'd by Hopes, over-rul'd by Fears, or tranſported by Zeal beyond the Bounds of Juſtice, and thro' this Reverend Prelate's Side give a Wound to himſelf or Poſterity, which may never be cured. Conſider, my Lords, if not for his, yet for your own Sakes, the Circumſtances, the Probabilities, and Evidence on both Sides, with an unbiaſs'd Conſcience, and by the Meaſures of Law and Juſtice. For tho ſome Proceedings may ſeem convenient to certain Times and Occaſions, yet unleſs they agree with the Law, with Reaſon, and with Juſtice, no Man ought to think he has any Power to conſent.

There is a noble Inſtance on Record of the Lord *Digby*, and worthy of every one's Imitation. He had been, my Lords, one of the moſt violent Managers in the Impeachment of the Lord *Strafford*; and yet when that Proceeding was waved, and a Bill of Attainder brought in, he ſpoke as violently againſt it: Tho he was ſtill of Opinion (he ſaid) that that Lord was the ſame dangerous Miniſter, and great Apoſtate to the Com-

[17] *Dig.* 22. 5. 12. *Cod.* 4. 20. 9.

monwealth, who muſt not expect to be pardoned in this World, till he was diſpatched to another; yet he had rather loſe his Hand than put it to that Diſpatch. He put them in mind of the Difference between Proſecutors and Judges, and how unbecoming that Fervor was in them, now they were Judges, which perhaps might be commendable in them as Proſecutors: That when he gave his Conſent to the Accuſation, he was aſſured, his Crimes would have been fully and legally proved, which if they had, he cou'd have condemn'd him with Innocency, as he had proſecuted him with Earneſtneſs; but as the Caſe then appear'd, no Man could ſatisfy his Conſcience in the doing of it. The Parliament, 'tis true, had a Judicial and a Legiſlative Capacity; the Meaſure of the one ought to be legally juſt, the other political and prudential: but theſe two Capacities were not to be confounded in Judgment; they were not to piece up (ſays he) the Want of Legality by Matters of Convenience, to the Ruin of a Man, by a Law made *ex poſteriori*.

What can I ſay more? For it muſt appear to your Lordſhips by this Time, that this Proceeding is contrary to the fundamental Laws of the Kingdom, contrary to Publick Wiſdom, and unjuſt in itſelf: That the Reaſons and Suggeſtions upon which it is grounded have not been proved with any Colour of legal Evidence, or with any Degree of Proof or Probability, which ought to ſatisfy the Conſcience of an honeſt, reaſonable Man. But if the Matters, which I have humbly laid before your Lordſhips, have not all the Weight, which I hope they have; or if I have omitted any Thing that is material or neceſſary for this Reverend Prelate's Defenſe, Your Lordſhips, I hope as Judges, and (conſequently in ſome meaſure of Counſel for the Priſoner) will, from your own Obſervation, ſupply it. Or if I have laid them before your Lordſhips in an improper Light, or a leſs effectual Manner than others might have done; yet the Caſe itſelf will ſpeak better and more ſtrongly than any Words or Expreſſions of mine can do. It is the Cauſe, the Fortune, and the Liberty of a moſt Reverend and Learned Prelate, who is to be ſtrip'd and torn from thoſe Dignities and Preferments which his own high Merits juſtly called him to, and which he has ever ſince adorned with the greateſt Luſtre. Upon what ſlender and inſufficient Grounds, Your Lordſhips have already heard; and I was going to ſay, without Precedent: but I muſt own there have been Inſtances of Deprivation, ſome in the Beginning of Queen *Elizabeth*'s Reign, and ſome others ſince the Revolution. But yet they were upon a general Law, then in being, and an Incapacity voluntarily incurr'd by thoſe Prelates, after the full Knowledge and Publication of thoſe Laws, by refuſing to give that Security to the Government, which at thoſe Times was abſolutely neceſſary. And tho they were peremptory in the laſt Degree, and their Example might have produced worſe Conſequences than it did; yet their Puniſhment went no further. But this is a particular Law, to be introduced for this particular Prelate, ſubſequent to the ſuppoſed Offence, and which is not thought fit to be enacted as a Law for any other Perſon hereafter; and I wiſh, my Lords, I could ſay, this Act went no further. But this Reverend Prelate is likewiſe to be deprived, not of his Life indeed, but of all the Conveniences and Comforts of it, of the Commerce of his Friends and Relations, and of all that is valuable to an *Engliſhman*. He is to be doom'd to the Curſe of *Cain*, and to be turn'd out of his native Country, full of Age and Infirmities, to the Cruelty of Strangers and Foreigners, and even beyond the reach of his Majeſty's moſt extenſive Goodneſs.

But if your Lordſhips ſhould paſs this Bill, he will ſtill have, I doubt not, the Peace of his own Mind, and this comfortable Reflection, which no Man can take from him; That he ſhares the Fate of the greateſt and moſt honeſt Stateſman of the laſt Century: tho in this Inſtance alſo 'tis his Lordſhip's Misfortune to be very much diſtinguiſh'd. For he, tho innocent, was afraid of the Violence of the Times, and withdrew from Proſecution. But this Reverend Prelate has been all along forthcoming, and, as it were, fearful of nothing, and conſcious of nothing but his own Innocence, has ſought in all Places to be brought to Trial. That noble Lord's Crimes (or at leaſt his Accuſation) were going to be proved in a proper Parliamentary Manner by Numbers of Perſons. But this Reverend Prelate is to be involved by Implications, Inferences, Conſtructions, and the Conjectures of Decypherers, in Crimes, which he is here ready to deny, and of which no Man accuſes him.

I would not be underſtood, my Lords, by any Thing I have offered in relation to the particular Penalties, as if I thought any one Suggeſtion of the Bill had been duly proved, ſo as to deſerve this or that Part of the Penalties; tho I muſt ſay, they are all ſo extraordinary in their Nature, as to deſerve your Lordſhips Attention. And I doubt not, but your Lordſhips in your Goodneſs will conſider what is already paſſed, the Length and Cloſeneſs of the Impriſonment, which this Reverend Prelate has already ſuffer'd as a ſuppoſed Criminal. Priſons before Conviction are only for the ſafe Cuſtody of a Man, and not for Puniſhment; but his Impriſonment has not been ſo: which (if my Inſtructions are true) has been attended with ſuch unheard of Barbarities, and ſuch diſtinguiſhing Severities, as are a Shame and Reproach to every civiliz'd Nation. The Caſe of *Colledge* every one has thought hard and barbarous; but 'tis this Reverend Prelate's Misfortune to be diſtinguiſhed in this alſo, as well as in every Thing elſe: For that Caſe was before the Law allowed Counſel or Sollicitors to aſſiſt a Priſoner in his Defenſe, but now they are allowed by Law, and were actually and duly aſſigned to my Lord Biſhop; and yet part of his Defenſe, and part of his Evidence torn and taken from him. So that, all theſe Things conſidered, his Lordſhip cannot eſcape without being a very great Sufferer, tho your Lordſhips ſhould utterly reject this Bill.

Your Lordſhips will alſo conſider the Infirmities of Body, under which that great and noble Mind even now labours before you; which have render'd him almoſt uncapable of attending his Defenſe. Your Lordſhips will alſo conſider the Grief and Vexation it muſt be to appear as a Criminal before this Honourable Houſe, where he has ſo long ſat as a Judge, and under the Suſpicion of thoſe Crimes which are laid to his Charge; and how grievous it is for one of his Lordſhip's Character and Function, to be tax'd with Breaches of

of his Duty to God and Man, of Scandal to Religion, of Designs of overthrowing Church and State, in favour of Popery; who happens to be the only Clergyman in *England*, that ever thought it worth his while to draw his Pen in Defense of *Martin Luther*, the great Instrument of our Reformation from Popery; and who has, upon all other Occasions, appear'd the most strenuous Assertor of it. I might add much more of his Lordship's personal Merits, and of those high Abilities so eminently conspicuous in him; but that I know it is some kind of Violence to his Lordship to hear even thus much mention'd.

Yet suffer me to say, That if these Suggestions should be carried into a Law, without any Degree of Evidence or Probability, but rather (as your Lordships will immediately hear) against the strongest Evidence and Probabilities that are possible of the contrary: I say, if this Bill should pass on such Circumstances, whatever the present Age may think, his Case will be a standing Mark of Reproach to it, and he will be the Wonder and the Pity of all succeeding Generations.

I shall add to your Lordships Trouble but one Word more, in behalf of myself: That your Lordships will pardon any Warmth of Temper, any unguarded Word or Expression that I may have been guilty of in the Course of this long Defense, in a Case, which every *Englishman* naturally considers as his own, and therefore will, in some measure, warm the most even Temper. And that this Learned (and whom I will now call Innocent) Prelate, will accept those little Services I have been able to perform, and will pardon the many Failings, which I may already have been guilty of, in his necessary and most just Defense.

After the Bishop's Counsel had done speaking, the Bishop produc'd several Witnesses to be examin'd, and on *Saturday May* 11. Sir *Constantine Phipps* made a short Recapitulation of the Evidence, as follows.

My Lords,

WE have done with our Evidence; and hope we have fully answer'd every Part of the Charge contain'd in the Bill, and apprehend there is no one Circumstance left unanswer'd. Particularly, that we have totally destroy'd the Credit of *Neynoe*'s *Hearsay* Evidence: For when the *Improbabilities*, *Inconsistencies*, and *Contradictions* of his Examinations are consider'd, and the *Testimony* of the *Witnesses* is duly weighed; no Person can give the *least Credit* to what *He* hath said, without offering the greatest Violence imaginable to his Reason.

And it is wonderful, that the Counsel for the Bill should insist he should be credited in *any Thing*: When we have *proved*, he had the Confidence to declare, that a *Right Honourable Person* had *endeavour'd to persuade* Him to *accuse* Persons of Quality of Things He *knew nothing of*.

Hath he not said that, when he was to be examin'd, *That Right Honourable Person* had him first *in private*, and told Him, *what Questions* would be *ask'd* Him, and *what Answers* He should *give?* Did he not say, that the very same Gentleman gave Him *five Questions*, or *Enquiries*, and told Him *what he should reply* to each of them? Hath He not said, that refusing to give Evidence, He was *threatned* with *Newgate*; and that *Thereupon* He gave Them *Informations* against *my Lord Bishop* and *Others?* Nay, had He not the Impudence to say, that the *same Right Honourable Person* offer'd Him 2000 *l.* 500 *l. per annum*, and a *Place*, to accuse the *protesting Lords*, the Earl of *Orrery*, and *This Reverend Prelate?* And that being ask'd whether He *knew any Thing of the Plot*, He swore *No*, nor *Any body* else: But that he knew of *two other Plots*, viz. *One* of Mr. *Walpole* against the *Protesting Lords*; the *Other* of *Himself* upon Mr. *Walpole*, to get 2000 *l.* of Him. Nay, it is *proved* He declared that the *same Gentleman* press'd Him *so hard* to *accuse some Persons*, that He had it once in his Mind to take up That *Right Honourable Person*'s Sword, and *run him thro'* with it; and so make an End of the *Plot*.

These are Things which have been *proved* upon *Neynoe*: And all these Things being consider'd, I believe the Counsel for the Bill will readily agree with me, that *no Credit* ought to be given to one Word *He* has said: And if *His* Evidence be laid aside, the greatest Part of the *Charge* against my Lord Bishop *falls to the Ground*.

My Lords, The Evidence Mr. *Lewis* gave was very material. For he shew'd your Lordships, that *Brockett*, who was of the Post-Office, was so skilful in *counterfeiting Hands and Seals*; that he wrote the Superscription of a Letter, and took the Impression of a Seal, and seal'd it again; and did it so well, and gave it such a Lustre, that Mr. *Lewis* could not distinguish it from the Original.

The *Engravers* likewise said, they could take off the Impressions of Seals so well, that they could not be distinguish'd: Nay, tho the Wax were broken, yet if no Part of the Wax were lost, it might be done.

Your Lordships observe how the Engravers themselves were mistaken in relation to some Impressions, which were produced to them: And You farther observe, that the Seal in question was a *Cicero*'s Head, which all the Engravers agree to be a very *common* one; and they had many of them: So that no Objection can be made against my Lord on account of That Seal. Nay, one of the Engravers said, it appear'd to him that the *Seals* of the *two* Letters were not *the same*. As to the *Dog*; there is Mr. *Crawford*'s Certificate, and *Birmingham*'s *Affidavit*.

As to Mrs. *Barnes*'s Evidence; she hath found out now, That there were *Two Dogs*, tho nobody else ever heard of Two. She said, the First was for the Bishop of *Rochester*. Now it is plain, the *First* was sent in *March*; and it was *His Leg that was broken*: And *Birmingham* swears, and Mr. *Kelly* solemnly affirms, that it was for Mrs. *Barnes*, and not for the *Bishop*.

As to the *Three Letters* of the 20th of *April*, we have proved it impossible that the Bishop should write, or dictate, those Letters to Mr. *Kelly*. And your Lordships take Notice, how the *Butler* came to observe those Letters could not be written by the Bishop; and the Servants, tho under Confinement, and not permitted to see any Body, agree in their Evidence. There is *Gordon*'s Affidavit that he never had such a Packquet: And *James Talbot* was here in Town the 29th of *April*.

Thus, your Lordships observe that a *Bill* of the most *extraordinary Nature* that ever was *seen*, hath been supported by the most *extraordinary Evidence*, that ever was *heard*: And we hope, we have set the *dark Passages*, of which the *Charge* is compounded, in such a Light, that every One may

may plainly ſee the Right Reverend Prelate is *not guilty* of *any One Offence* charged againſt him.

Mr. *Wynne* ſpoke next.

My Lords,

I Shall beg your Patience to cloſe our Defence with an Obſervation or two on the Evidence that has been given by my Lord Biſhop: and I need take up the leſs of your Lordſhips Time, becauſe our Witneſſes have fully anſwered all I opened, and in many Things have exceeded my Inſtructions.

And for your Lordſhips clearer Apprehenſion of ſo many various and perplex'd Facts, I ſhall juſt recapitulate what I humbly conceive to have been the Subſtance of the Charge againſt my Lord Biſhop, and, as briefly as I can, ſtate the Evidence, which we have produced in order to falſify and diſprove it.

The firſt and chief Accuſation againſt his Lordſhip, was founded on the Informations of *Philip Neynoe*, and therefore the firſt Part of our Proof was as to his Credit. Your Lordſhips, I doubt not, remember the Purport of his Information read againſt us, and the many groſs Abſurdities and Inconſiſtencies in his other Informations read by us; and likewiſe how fully they have been all diſproved, and the Credit of them entirely blaſted, even from *Neynoe*'s own Confeſſion, ſeveral Times repeated, and confirmed by three unexceptionable Witneſſes.

Your Lordſhips have fully heard of the Terrors and Apprehenſions he was continually under; becauſe (as he himſelf expreſs'd it) he had given falſe Information againſt this Reverend Prelate, and ſo many other innocent Perſons. Your Lordſhips have heard the Inducements he had to give thoſe Informations, and how often he had declared his Intentions to eſcape, in order to avoid the Puniſhment which he apprehended moſt juſtly due to him, becauſe he could not make out the Truth of them.

Two of thoſe Witneſſes (*Bingly* and *Skeene*) are ſtill in Cuſtody, and deſtitute almoſt of all the Neceſſaries of Life: I ſay, my Lords, they are ſtill in cloſe and ſtrict Cuſtody, and conſequently there could have been no Opportunity to lead or inſtruct them in what they ſhould ſay, or ſo much as to be apprized before-hand (which ſurely would have been a reaſonable Liberty) whether they could ſay any thing material or not; and we are only beholden to thoſe Lights which the Report of that Honourable Committee has afforded us: And all three of theſe Witneſſes utterly unknown to my Lord Biſhop, both in Perſon and Reputation, as well as his Lordſhip is unknown to them. They have not converſed together for ſeveral Months, but yet are perfectly conſiſtent with themſelves, and entirely ſupported and confirmed by each other. And all three declare, they had very early told, and frequently repeated this Account of *Neynoe* to their Fellow-Priſoners and Acquaintance, as long as they were permitted to have Acceſs to them. Mr. *Skeene* being ask'd in relation to the Diſcourſe between him and Captain *Pancier*, as in the printed Depoſition of *Pancier*, *App. D.* 1. has denied on his Oath every Word of it. He ſays indeed, that Captain *Pancier* us'd all his Endeavours by Treats and Entertainments to induce him to ſuppor this Informations; but that he never gave him, nor could give him Grounds to ſay any ſuch Thing of him.

We have ſhewn your Lordſhips, that Mr. *Stewart* in particular was ſo far from patching up, or contriving Evidence (as was objected to him by the Counſel for the Bill) after he had ſeen the Report and Appendix, that he had given this whole Account to ſeveral Perſons long before. For he ſays, the Things which *Neynoe* told him were ſo ſurprizing, that he could not ſtifle them in his own Breaſt. Tho your Lordſhips, I doubt not, obſerved with what Difficulty and Modeſty he was brought to ſpeak out in this publick Manner, where his Evidence ſeem'd to reflect on a great and Honourable Perſon.

Two of theſe Perſons have likewiſe been produced to your Lordſhips. To one of whom (Mr. *Gordon*) he told theſe Matters ſome Days even before *Neynoe*'s Death; and to Mr. *Kynaſton* ſome conſiderable Time before the Meeting of the Parliament: and we could have called others to the ſame purpoſe, but that we were unwilling to give your Lordſhips further Trouble in a Matter which already had, as we thought, the fulleſt, the moſt ſatisfactory, and conſiſtent Evidence that could be.

The ſecond Head of Accuſation againſt this Reverend Prelate, was upon account of the three Letters of the 20th of *April*. The two firſt we before obſerved to your Lordſhips not to be criminal, if really deſign'd for and addreſſed to the Perſons ſuppoſed. The third we have likewiſe ſhewn by various Circumſtances and Reaſonings, could not poſſibly be addreſs'd to the Pretender, whoever wrote it, or whomſoever elſe it might be wrote to.

And the Evidence offer'd to prove them to have been dictated or wrote by my Lord Biſhop, was firſt by the Subſcription of the common Name of *Jones*, which they would have to denote his Lordſhip. As to this, I doubt not, your Lordſhips remember, that even in the Cyphers and Letters that have been read, the Name of *Jones* is manifeſtly applied (as the Committee themſelves have obſerv'd) to many different Perſons; ſometimes to one, and ſometimes to another, as the Circumſtances there mentioned ſeem'd to give Occaſion; but cannot once in any Place, with Reaſon or Juſtice be applied to my Lord Biſhop.

The next Proof that has been offer'd to your Lordſhips, to prove theſe Letters to have been dictated or wrote by the Biſhop's Privity, is, from the ill State of Health, the Death of his Lady, and the Preſent of a Dog; Circumſtances, which they ſay, are applicable to the Biſhop, and to him only.

That his Lordſhip did not, nor could poſſibly write or dictate theſe three Letters, we have laid before your Lordſhips ſuch a Proof, as the like hardly ever was before: and 'tis impoſſible, in my humble Apprehenſion, for a Negative to be more fully proved in any Caſe. Your Lordſhips have heard the great Weakneſs and Inability of this Reverend Prelate at that very Time for all manner of Buſineſs and Converſation. No leſs than ſix, if not ſeven of his Servants, have ſpoken fully and poſitively to it, That his Lordſhip was not able, without their Help, to ſtir, turn in his Bed, or even to perform the common and ordinary Offices of Life. One would think, my Lords, ſuch melancholy Circumſtances, in themſelves, ſufficient to guard any Man from Suſpicion.

But the Witneſſes have gone much further; for they have told your Lordſhips, that no Stranger approached the Biſhop's Room all that Time; nor had any one been for a conſiderable Time before and after the 20th of *April* under his Roof. Even ſome of thoſe Perſons that uſually were with my Lord Biſhop at other times (as his Son, his Chaplain, and his Son's Tutor) happened then all to be abſent at the Election of *Weſtminſter* School.

One of thoſe Servants, who happens to be a Priſoner with his Lordſhip in the *Tower*, being aſked, whether my Lord Biſhop had not put him in mind of theſe Circumſtances, told your Lordſhips, that it was entirely his own Recollection, by caſually taking up the Report, after my Lord Biſhop was gone to Bed, and dipping on that Part of it, in which his Lordſhip is charged with having writ theſe three Letters. Upon which, the next Day (he ſaid) talking to his Fellow-Servant, and he agreeing to the very ſame Circumſtances, they acquainted the Biſhop with what they had read, and how they could, from their own Knowledge and Remembrance, falſify and diſprove that Circumſtance.

I muſt likewiſe crave leave to obſerve to your Lordſhips, that four or five of theſe Servants that have ſpoke to theſe particular Facts and Times, are ſtill in Cuſtody, under ſeparate Meſſengers, without any Opportunity to converſe together, and were hardly to be found by my Lord Biſhop, when he had need of their Evidence; and yet every one of them have been perfectly conſiſtent with themſelves, and one with the other, and all equally poſitive.

The Biſhop's Coachman, your Lordſhips, I doubt not, remember, tho now under another Influence, and called as Witneſs againſt his Maſter, confirmed what they ſaid, and was as poſitive and peremptory in his Teſtimony concerning this Matter, as far as the Nature of his Employment gave him an Opportunity to make ſuch Obſervations. And upon the whole, I may now, with more Reaſon, and with greater Confidence, repeat my former Aſſertion, that it is impoſſible for them even to deviſe or frame any Scheme to prove his Lordſhip to have wrote, or dictated theſe three Letters, but what will be actually diſproved and falſified by ſome Part of the Evidence.

Another Reaſon, by which 'tis proved that his Lordſhip wrote theſe three Letters, was, from the Subſcription of the Number 1378, to the Letter addreſſed to *Jackſon*. Which Number Mr. *Willes* (a Decypherer) ſays, denotes the proper Name or Title of a Perſon beginning with the Letter *R*. The little Time we have had to enquire into this Aſſertion, and your Lordſhips not permitting ſome Queſtions, put by us to the Decypherer, to be anſwered, won't enable us flatly to diſprove it. But with Submiſſion to your Lordſhips, it ſeems impoſſible to affirm even thus much, with any degree of Certainty, and it muſt be (as I before obſerved to your Lordſhips) Matter of Conjecture only; and it appears manifeſtly to your Lordſhips, by ſeveral Paſſages occurring up and down in this Correſpondence, not yet decyphered, that either the Art is not ſo infallible, or that Mr. *Willes* is not ſo great an Artiſt as he pretends to be.

But, my Lords, admitting ſuch a Number in this Cypher does really denote a Perſon's Name, or Title, beginning with the Letter *R*. what a ſtrange and uncertain Proof is that, to fix a Charge of High-Treaſon on the Biſhop, when there are other Perſons, Names, and Titles, found like his, and many others which begin with the very ſame Letter; and this not to be admitted as Evidence in a minute or inconſiderable Circumſtance, but in the very Giſt of the ſuppoſed Offence, in the principal Foundation of the Charge, in the only Letter that is criminal, and which is to magnify and improve the reſt into High-Treaſon?

Another way of proving theſe Letters to have been dictated by the Biſhop, was, becauſe another, ſuppoſed to be an Anſwer to this, mentions the Preſent of a Dog. I need not here repeat what Mr. *Kelly* himſelf has conſtantly ſaid in his Examination, becauſe your Lordſhips, I doubt not, remember what Mrs. *Barnes* ſaid; that Mr. *Kelly* indeed ſometimes told her of another Dog that was for the Biſhop, but that ſhe always apprehended that Dog, which ſhe had in her Poſſeſſion, was deſigned for her, and never heard of any other Dog that did come from *France:* She owns, that ſhe never received any one Meſſage from the Biſhop about it, but ſtill kept it, when it was recovered, as her own, as long as it lived; and tho his Lordſhip never had, nor loved a Dog in his Life, yet it would have been natural, and good Manners to the Perſon that ſent it, eſpecially if ſo conſiderable a Perſon as is ſuppoſed, to have made now and then ſome little Enquiry about it, if my Lord Biſhop had really known any thing of the Dog.

But we have ſhewn your Lordſhips by the ſolemn Atteſtation of Mr. *Birmingham*, the *French* Surgeon, that he was the Perſon who gave this Dog (in *March* 22.) to Mr. *Kelly*, for Madam *Barnes*, of whom he had received Civilities in *London*, and for no other Perſon, nor with any other Intent. He likewiſe ſays, that he never received any ſuch thing as a Dog, or Meſſage from Lord *Marr*, (as alledged in the Report) never had any the leaſt Thought of the Biſhop of *Rocheſter*, or his Lady, much leſs of making either the one or the other (to both of which he was utterly unknown) any ſuch Preſent.

Your Lordſhips obſerve this to have been a ſolemn notarial Act upon Oath, of a Perſon not only reputed, but atteſted likewiſe by the Lord of the Seigneury, to have been a legal Notary, and to have exercis'd his Office as ſuch for ſome time. That the Teſtimony of ſuch a Perſon beyond Sea is a good and unexceptionable Proof in every Caſe, I need not ſay; or that it has been often allow'd here, where no other is to be had, nor any other [38] Method to have the Benefit of a Man's Teſtimony that is beyond Sea. And our Witneſs has told your Lordſhips that he has frequently tranſlated ſuch Inſtruments: That he believes it to be the Notary's Hand-writing, and the publick Seal of his Office. I need not, my Lords, have ſaid thus much; for in all Events it muſt ſurely have been of more Weight in your Lordſhips Judgments, than the Extract of an Information given by a Perſon, infamous in his Character, abſurd and inconſiſtent in all he ſaid, and without being ſigned or ſworn to, even by that Perſon.

[38] 2 *Rolls Rep.* 346. *Law of Evid.* 3.

But yet this Affidavit of Mr. *Birmingham* has the more Credit, becauſe his Majeſty's own Reſident at *Paris* (Mr. *Crawford*) has been pleas'd to examine him about this Matter, (being employ'd by him in his Profeſſion as a Surgeon) and he has confirm'd the ſame Account to him, which has been likewiſe tranſmitted, and read to your Lordſhips.

Another way of proving my Lord Biſhop to have been concerned in theſe Letters, was from the Hand-writing, which is ſuppos'd to have been *Kelly*'s, and he is ſuppoſed to have been his Lordſhip's Secretary in theſe Matters. But both theſe Allegations, we think, with Submiſſion to your Lordſhips, are ſtill utterly deſtitute of any proper or ſatisfactory Proof.

I before obſerv'd to your Lordſhips, that the firſt time the Clerks of the Poſt-Office have made any Depoſition about the Similitude of the Hand-writing, was four and eight Months after they had ſeen the Original Letters; which is a little of the lateſt ſo exactly to remember all the little Strokes and Turnings of a Pen, by which the Identity or Diverſity of a Hand can only be made out. That *Malone*, the Footman of Mrs. *Barnes*, was never called upon for his Teſtimony till *January* laſt, that is, nine Months after he had ſeen any of *Kelly*'s Writing, and conſequently not then very able (if ever he was) to form a Judgment of it.

I have already obſerved to your Lordſhips, that this was the firſt, and the only Inſtance, that any Evidence of the Similitude of Hands was ever admitted, but where the Papers pretended to be in the ſame Hand were produced and compared in Court; which is ſo far from being the preſent Caſe, that the Clerks of the Poſt-Office never had any Opportunity of comparing the Original of the 20th of *Auguſt*, with any one of the three Originals of the 20th of *April*, or with any one of the intermediate Letters which they affirm to have been in the ſame Hand: ſo that they are made the abſolute and ultimate Judges of this Matter, without any Poſſibility on our Side of detecting any caſual or wilful Miſtake.

And I would not again repeat an Obſervation I have before made to your Lordſhips, that a great Part of theſe Letters are in Figures, and how much more difficult it is to diſtinguiſh the Hand of one writing in Figures, from Words and Syllables in length; becauſe we have ſhewn your Lordſhips, by three poſitive Witneſſes (well acquainted with Mr. *Kelly*'s Writing, one of them above 20 Years, and his School-fellow) that the only original Letter of the 20th of *Auguſt*, ſtop'd at the Poſt-Office, as a Sample to the reſt, (and which is the only Foundation upon which thoſe Clerks have affirmed theſe three Letters to have been *Kelly*'s Writing) really and in fact, was not his, nor like it. This, my Lords, we have fully proved by three Witneſſes; and as a Demonſtration of what they ſaid, they ſhew'd your Lordſhips, among a Variety of Papers produced to them at your Bar, that they could at once diſtinguiſh which was *Kelly*'s Hand, which was any thing like it, and which was not.

We have likewiſe produced to your Lordſhips, the ſolemn Atteſtation, on Oath, of [39] *Alexander Gordon* Junior, the Son, Banker at *Boulogne*, that no ſuch Packet of Letters ever came to his Hands, as mentioned by the Counſel for the Bill; and conſequently he could not deliver any ſuch to *Talbot*, (who, they ſay, called for them at *Boulogne*.) He farther depoſes, That he never had any Buſineſs or Intercourſe with *Kelly* or *Johnſon*, nor ever had acquaintance with any Perſon ſo called, in his whole Life.

And we have proved to your Lordſhips, that *James Talbot*, the tall black Man, [40] deſcribed in the Letter printed in the Appendix, and who is ſuppoſed to have been the Perſon that called upon *Alexander Gordon* at *Boulogne* for this Packet, was ſo far from doing it, at the Time ſuppoſed, that he was at *London* that very Day, as appears by the unexceptionable Teſtimony of *Edward Crofton*, his Shoemaker, and by the Entries of his Shop-book, to whom he accidentally paid a Bill upon that very Day, at his Houſe in *London*.

We have likewiſe ſhewn your Lordſhips by two Witneſſes, Mrs. *Kilborn*, and her Maid *Anne Ellis*, that Mr. *Kelly* was at her Houſe in *London*, on the 20th of *April*, (the very Day upon which my Lord Biſhop is ſuppoſed to have dictated theſe Letters to him) and by a great Variety of Evidence, impoſſible to eſcape any one's Memory, that my Lord Biſhop was ill in Bed, at *Bromley* in *Kent*: and *Quod non datur actio indiſtans*, is an Axiom of Reaſon as well as of Philoſophy.

And I muſt humbly ſubmit it to your Lordſhips, that it has not yet, in the leaſt, appeared by any Shadow of Evidence, that Mr. *Kelly* ever was employed by my Lord Biſhop to carry on a Correſpondence; that he wrote any one Letter for the Biſhop, upon that, or upon any other Occaſion whatſoever.

That Paſſage in the Letter to *Weſton*, that ſeems to give countenance to ſuch a Suppoſition, the learned Counſel for the Bill told us yeſterday they had waved, and were angry that we ſhould offer to diſprove that which they had not proved. But, with Submiſſion to your Lordſhips, tho they have been pleaſed to wave that Part of the Charge againſt my Lord Biſhop, yet as it makes no ſmall or inconſiderable Appearance in the Report of that Honourable Houſe, and will be ſo handed down to Poſterity; we thought it proper to give an Anſwer to it; and, we hope, it has been to your Lordſhips Satisfaction and ſtill in your Memory.

The next thing was the Letter to *Dubois*, and I confeſs myſelf at ſome Loſs to know for what Purpoſe that was read in Evidence to your Lordſhips; for the Counſel for the Bill have not, as yet, made any particular and direct Uſe or Application of that Piece of Evidence, and therefore I ſhall ſubmit it to your Lordſhips upon the Obſervations I before made on it.

There was indeed ſome of your Lordſhips Time ſpent in comparing the Seal of that Letter, with that which happen'd to be taken on my Lord Biſhop's Servant at the *Tower*: if it was intended as any Proof, I cannot at preſent judge; however, we thought it proper to follow them in the Courſe and Manner of their Proof, and your Lordſhips yeſterday have fully heard the Danger and Uncertainty of admitting ſuch a Proof. Firſt, you have had ſome Account from Mr. *Eraſmus Lewis*

[39] *Rep. Pag.* 42. 45. *Append.* E. 26.

[40] *Append.* E. 26.

of

of the known Practice of one *Brockett*, who was able to counterfeit any Man's Hand or Seal, in ſuch a manner that even the Perſon (whoſe Hand or Seal it was) ſhould not be able to diſtinguiſh it from his own.

Then we produced to your Lordſhips two Seal-gravers, who fully atteſted the ſame thing. Mr. *Atkins* ſaid, That he himſelf could make ſuch an Impreſſion, ſo as not to be diſtinguiſh'd by an Artiſt, and give it the very ſame Luſtre. That he could even take an Impreſſion from a broken Seal, and tho there would at firſt neceſſarily be ſome little Flaw in it, yet he ſaid he could mend it, and then make ſuch an Impreſſion from it, that even an Artiſt could not diſcover it from the Original.

Mr. *Johnſon*, another eminent Seal-graver, likewiſe told your Lordſhips, that he could do the ſame thing: In particular, That he had once ſuch an Impreſſion taken in Paſte by one Mr. *Wiſembergh*, and from that he made another Impreſſion, ſo perfect and exact, that Mr. *Wiſembergh* himſelf could not diſtinguiſh one from the other: But as to the Seals of theſe two Letters, he doubted very much whether they were made by the ſame Seal or not; and from ſome little Strokes in the Head, that were very viſible to any one, tho not ſo eaſy to be expreſſed, he rather inclin'd to believe, that they could not be made from one and the ſame Seal.

And when your Lordſhips were pleaſed to enquire of them, How ſuch a thing was practicable? They did not cover themſelves (as their Decypherer did) by ſaying, It would diſcover the Secrets of their Art, but frankly told your Lordſhips the very Manner and Method of doing it.

Their own Seal-graver, Mr. *Chriſtian*, owned, That this might be done, altho he had never done it: And in the Experiment made on Mr. *Raulus*, their other Seal-graver, he was once plainly in the wrong, as well as once in the right. And it manifeſtly appears from every one of their Teſtimonies, that this Practice of taking Impreſſions is very eaſy. And, as one of my Noble Lords informed the Houſe, his Footman could do it as well as any of them; and, as your Lordſhips yeſterday obſerved, even to deceive Mr. *Raulus* himſelf, who, they ſay, is ſo great an Artiſt. And therefore, my Lords, it is a moſt dangerous ſort of Proof, and too uncertain at the beſt, to receive any judicial Countenance in a criminal Matter.

So that I muſt humbly inſiſt, that this Part of the Charge againſt my Lord Biſhop has not been proved any better than the former; and that when your Lordſhips do conſider the Evidence that has been given on the one Side as well as on the other, as to this particular Charge, we hope you will be of Opinion, that there is no juſt or reaſonable Ground to preſume, that theſe Three Letters were wrote by Mr. *Kelly*, and much leſs that they were dictated by my Lord Biſhop.

The next general Charge againſt this Reverend Prelate, was, the Receiving of two Letters from abroad, in relation to this Conſpiracy. The Counſel indeed for the Bill have waved the Letter ſigned *Digby*, addreſs'd to *Weſton*, and (as I apprehended from them laſt Night) did not now pretend to prove any Thing concerning the Biſhop, under the Name of *Weſton*.

Neither have they as yet pretended to prove, that the other Letter from *Motfield* to *Illington* ever came to his Lordſhip's Hands, or in whoſe Hand-writing it was wrote; tho if it were the Lord *Marr*'s (as it is ſuppoſed) many of your Lordſhips muſt have been well acquainted with it. Nor has it been yet ſaid, that my Lord Biſhop ever returned any Anſwer to it.

And as we have now proved (and fully too, we apprehend) the Letters of the 20th of *April*, to which this is ſuppoſed to have been an Anſwer, to be a mere Fiction, or Impoſition upon the Biſhop; this, which is deſigned as an Anſwer to it, muſt likewiſe fall to the Ground, as Part of the ſame Contrivance.

The next and laſt general Charge ariſes from the Coincidencies of Times and Names in the intercepted Correſpondence, the more readily to induce your Lordſhips Belief, that my Lord Biſhop was really meant by that Correſpondence.

Some of them I accounted for before, as Truths publickly known, but turned by ignorant and malicious Correſpondents to ill Purpoſes, or elſe as abſolute Falſities, and manifeſt Miſtakes.

We have ſhown your Lordſhips by various Reaſons, that the fictitious Names ſuppoſed to denote my Lord Biſhop, cannot be applicable to him, with any Colour, Truth, or Decency; that there is a great Doubt to be made, whether many others of thoſe fictitious Names were really intended for the Perſons ſuppoſed to be denoted by them: and eſpecially, that *Jackſon*, to whom the Letter of the 20th of *April* is addreſſed, we have proved by various Arguments, and even from thoſe Lights the Committee have afforded us, could not poſſibly mean the Pretender, whomſoever elſe it may mean; and conſequently that that Letter (if it were wrote by *Kelly*, and dictated by the Biſhop) cannot be High-Treaſon.

And as to the Articles of Times, and the Accounts of my Lord Biſhop's coming and going, it muſt be owned, they are ſometimes right, but as often wrong.

There is no doubt, but the Correſpondents on this Side the Water, whoever they were, whether out of Malice or Vanity, or out of any other Inducement, appriz'd themſelves as well as they could, of the Biſhop's Motions to and fro, in order to give the better Colour or Probability to what they ſaid of him. But yet it has happen'd, unluckily to them, as your Lordſhips have heard, that out of Six or Seven Inſtances occurring in theſe Letters, Two only are true; Two of them may be doubted whether true or falſe, becauſe ambiguouſly expreſſed; but Three of them are groſs Miſtakes, as appears even by the Accounts of their own Witneſſes.

And the Miſtakes are the more remarkable, becauſe they all affirm the Biſhop to have been in the Country, when he poſitively was not: whereas it was ten to one, but that the mere Gueſſes of a Stranger, at that time of the Year, had been true; and the rather, becauſe his Lordſhip was really in the Country ten Days to one that he was in Town, all laſt Summer.

There is another Thing remains for me yet to ſpeak to, and that is the Intimacy of my Lord Biſhop with Mr. *Kelly*; which was likewiſe thrown in to ſwell the Number of Circumſtances, and as another weighty Argument to induce your Lordſhips Belief of the foregoing Matters.

But has any thing appeared to your Lordſhips like it, even upon their own Evidence? Firſt, a Chairman is brought to tell your Lordſhips that he carry'd Mr. *Kelly* to the Deanery Three or Four Times about four Years ago, but the Biſhop was not once at home. And a Porter ſays, he carry'd Two Letters from *Kelly* to the Biſhop; one of them about *Chriſtmas* laſt was Twelvemonth, and the other Letter ſome time before that; but received no Anſwer in Writing, nor Meſſage, but only his Service to Mr. *Kelly*. But there is one extraordinary Circumſtance, which ſhows him, I confeſs, to be a very willing Evidence, tho not ſo very likely and credible; that is, that this Porter, dirty as he muſt be in the midſt of Winter, deliver'd his Meſſage to the Biſhop in his Bed-Chamber.

And *Malone*, the Perſon that uſually attended Mr. *Kelly*, and went on his Errands, was aſked to the ſame Purpoſe; and one might have expected that he ſhould have given ſome Account of it, and had been often employed on Errands to and from the Deanery: But I ſubmit it to your Lordſhips Memory whether he did not ſay, that he never was at the Deanery in his Life-time, nor did know to this Day where it ſtood.

Mrs. *Kilborn*, with whom Mr. *Kelly* had lodged a conſiderable Time, ſays, ſhe remembers a Meſſage once came to *Kelly* from the Biſhop; but poſitively denies that my Lord Biſhop's Coach ever came to fetch Mr. *Kelly* at her Houſe, as that Honourable Committee have been pleaſed to affirm in their Report. And I appeal to your Lordſhips Memory, whether Mrs. *Barnes*, whom the Counſel for the Bill think ſo credible a Witneſs in ſome other reſpects, and with whom it muſt be confeſs'd *Kelly* frequently lodged, was not equally poſitive in this Matter, and that ſhe did not believe there could be any Friendſhip or Intercourſe between the Biſhop and Mr. *Kelly* without her knowing of it.

Thus the ſuppoſed Intimacy and great Acquaintance between my Lord Biſhop and Mr. *Kelly* ſtand upon their own Evidence. And I beſeech your Lordſhips to conſider, what ſort or degree of Proof all this can poſſibly amount to. But we have ſhown your Lordſhips the direct contrary, by no leſs than ten Witneſſes, Servants to my Lord Biſhop, ſome or other of which were always with him, whether he was in Town or in the Country, and every one of them has lived with his Lordſhip above two Years; and they ſay, as it were with one Voice, that they don't remember any ſuch Perſon or Name as *Kelly* or *Johnſon* coming to the Houſe; as they muſt have remember'd him, they ſay, if he had been frequent in his Viſits or Meſſages: and ſome of them ſay, they uſually wrote down the Names of thoſe that did come; and the Coachman in particular, who has liv'd four Years with his Lordſhip, and appears now as Evidence againſt the Biſhop, and therefore cannot be ſuppos'd partial to him in his Teſtimony, is yet as poſitive and peremptory, that he never ſaw Mr. *Kelly*, or *Johnſon*, at his Maſter's Houſe, in all his Time. And being carry'd to the *Tower* by a Meſſenger, to ſee if he could recollect his Face, then frankly own'd, he had never ſeen his Face before. And being aſk'd how he could pretend to know all Perſons that came to the Houſe, whoſe Buſineſs was at the Stables? He told your Lordſhips, that he was as often in the Houſe, us'd to wait at Table when Company was there; and that let him come which way he would, he ſhould have ſeen him coming or going, or have heard of him in the Family, if he was a Perſon that had frequented his Maſter's Houſe.

Some of the other Servants likewiſe ſpoke as fully to theſe Circumſtances.

We have likewiſe ſhewn your Lordſhips by Mr. *Pope*, who has been for theſe two or three laſt Years, the moſt conſtant Companion of his Lordſhip's Hours; two or three Days, he ſays, almoſt in every Week, and an Hour or two almoſt in every of thoſe Days: That his Lordſhip generally ſat in one Room, which I think was his Bed-Chamber; that he was admitted to him at all Hours, and into all Companies, and never found the Diſcourſe change at his coming in: That his Lordſhip never in the leaſt diſcover'd any Thoughts or Intentions like thoſe now charged upon him; but had heard occaſionally many Things drop from the Biſhop, of a Tendency directly contrary. And to this we might have called many others, if it were neceſſary.

We were likewiſe ready to lay before your Lordſhips, ſeveral laborious and intricate Searches, ſeveral Publick Buildings, and Controverſies in Matters of Literature with different Perſons, which my Lord Biſhop was engaged in laſt Summer; and would have been a full Employment for ſome Mens whole Lives: But your Lordſhips did not think it neceſſary; being (as we hope) fully ſatisfied and convinced of my Lord Biſhop's Innocency, by that Variety of Proof which we had before made.

There are, my Lords, ſome other Obſervations that might be made: but have been, I doubt not, already much better taken notice of by the Learned Gentleman that ſpoke before me: And I think this is the Subſtance and Purport of the Evidence that has been hitherto offer'd on both Sides.

What the Iſſue or Succeſs of this long Hearing may be, I know not; That is in your Lordſhips Pleaſure only to determine; to Acquit, or to Condemn: But I hope you will ſay, We find in him no Fault at all.

The Proof which has been againſt the Biſhop, (if it can deſerve that Name) has neither been ſuch as is reaſonable in itſelf, nor agreeable to the known Rules and Proceedings of Law; but chiefly by Probabilities, Circumſtances, Conjectures and Suppoſitions: Whereas we have encounter'd and diſprov'd even them, by far greater Probabilities, much ſtronger Circumſtances, and alſo by ſuch Evidence, as would be convincing and ſufficient in any Court of Law or Equity within the Kingdom.

And, upon the whole, I hope I may venture to affirm, That there does not now remain the leaſt Suſpicion of the Charge brought againſt the Biſhop; not even a Suſpicion of a Suſpicion of High-Treaſon; not one probable Probability, or one preſumptive Preſumption: I mean, That there is not now remaining before your Lordſhips, the leaſt Degree of Probability, or the very loweſt ſort of Preſumption that is known in Law: And therefore, ſhall humbly conclude with the ſame Prayer Sir *Conſtantine Phipps* has made before me, That your Lordſhips will reject this Bill.

The

The Biſhop then ſpoke in his own Defenſe, as follows:

My Lords,

I Have been under a very long and cloſe Confinement, and have been treated with ſuch Severity, and ſo great Indignity, as I believe no Priſoner in the *Tower* of my Age, and Function, and Rank, ever was. By which Means, what Strength and Uſe of my Limbs I had when I was firſt committed in *Auguſt* laſt, is now ſo far declined, that I am very unfit to make my Defenſe againſt a Bill of ſuch an extraordinary Nature.

The great Weakneſs of Body and Mind under which I labour, ſuch Uſage, ſuch Hardſhips, ſuch Inſults, as I have undergone, might have broken a more reſolute Spirit and much ſtronger Conſtitution than falls to my Share.

Your Lordſhips were pleaſed to permit me to appear before the Houſe of Commons, if I thought fit, leſt my Silence ſhould be turned to my Diſadvantage; as, in fact, the Counſel for the Bill have done their utmoſt towards it.

I ſhould not have thought to decline any Occaſion of juſtifying myſelf; but I crave leave to tell your Lordſhips ſome Reaſons why I did not appear there, and make uſe of the Leave your Lordſhips gave me.

After ſeven Months of cloſe Impriſonment, I was not a little ſurprized when I heard, that on the 11th of *March*, by the Houſe of Commons, it was thus reſolved, 'That it appears to this 'Houſe, that *Francis* Lord Biſhop of *Rocheſter*, 'was principally concerned in forming, di'recting, and carrying on a deteſtable Conſpi'racy, &c.'

Upon duly weighing which Reſolution, and the Copy of the Bill, I found not any thing charged in the Bill, but what was fully contain'd and previouſly reſolved in this Vote; and therefore whatſoever ſhould have been offered on my behalf to that Houſe, would have been an expreſs Contradiction to it. And what Hopes I could have of Succeſs in ſuch an Attempt, I need not ſay: What they ſent me was the Preamble of the Bill only, which they could not alter, conſiſtent with what they had reſolved.

The Bill itſelf was to inflict Pains and Penalties, which followed; but there was no room to object againſt any of thoſe which they had not then declared; they have ſince been added, and ſent up to your Lordſhips in like manner, without any Oath made, or any criminal Act proved againſt me by any living Witneſs. And is a Perſon thus ſentenced below, to be deprived of all his Preferments, and his very Function, and to be a perpetual Exile, and to be render'd incapable of any Office and Employment? To be one whom no Man muſt correſpond with by Letters, Meſſages, or otherwiſe? And, my Lords, one who is a Biſhop of the Church of *England*, and a Lord of Parliament?

It is the firſt Inſtance wherein a Member of this Houſe hath been ſo treated and prejudged, and (as I have once before ſaid to your Lordſhips) I pray God it may be the laſt, and that ſuch Precedents in this Kingdom may not be multiplied in After-Times.

My Counſel have amply done their Part, by arguing the Points of Law, by explaining and enforcing the Evidence, and ſhewing the little Colour, Appearance and Shadow of Proofs againſt me, (permit me to call them ſo) by anſwering what hath been offer'd againſt me, and by ſetting out the Conſequence which ſuch a Bill, founded and carry'd on in ſuch a manner, and which enacts ſuch ſevere Penalties, muſt and will be attended with.

Yet it becomes me to ſay ſomething for myſelf, leſt my Silence be conſtrued Conſciouſneſs of Guilt, or, at leaſt, an Unwillingneſs to enter into Matters of ſo dark and perplex'd, ſo nice and tender a Nature; as if I was not able, or did not care to clear and explain myſelf, and rather choſe to leave it to the Management of others: I thank God, I am under no ſuch Reſtraint, and can ſpeak to your Lordſhips on this Subject with great freedom and plainneſs.

But before I proceed, I beg leave that I may repreſent to your Lordſhips ſome particular Hardſhips under which I have laboured.

The firſt is, reading Extracts of anonymous Letters, without ſuffering any other Parts of the ſame Letters, tho relating to the ſame Subject, to be read. ——Another is, ——Excuſing the Decypherers from anſwering Queſtions aſked by me, and which I thought neceſſary for my Defenſe, leſt they ſhould reveal their Art. ——The next is, not ſuffering me to be anſwered by the Clerks of the Poſt-Office, leſt the Secrets of that Office ſhould be diſcovered. Another was, not ſuffering a Perſon, who had been at leaſt ten Years out of the Secretary's Office, to anſwer any Queſtions, which came to his Knowledge by being ſome Years in that Office.

Another is, reading Examinations neither dated, ſigned, nor ſworn to.

Another is, reading Letters ſuppoſed to be Criminal, writ in another Man's Hand, and ſuppoſed to be dictated by me, without offering any Proof that I either dictated them, or was privy to them.

Another is, not allowing me Copies of the Decypher'd Letters, tho petition'd for, till the Trial was ſo far advanced, and I ſo employed and weakned by it, that I had not ſufficient time to conſider them. Another is, not allowing me to read out of the Collection of Papers before the Houſe any part of them, in order to diſcharge myſelf, but what hath been read by Clerks.—— And all this in a Proceeding where the Counſel for the Bill profeſs they have no legal Evidence, and that they are not to be confined to the Rules of any Court of Law or Equity; tho as often as it is for their Service, they conſtantly ſhelter themſelves under it.

My Lords, theſe are the Hardſhips which I previouſly mention, and humbly lay before your Lordſhips.

By your Lordſhips Leave, I proceed now to make that Defenſe, as well as I am able to make it in the Condition of Health I am now in; humbly praying your Lordſhips, if I find myſelf in any degree ſinking under it, that you will indulge me, and allow me a little time to go on.

The general Charge of the Bill is, That I have been deeply concerned in forming, directing, and carrying on a wicked and deteſtable Conſpiracy, and was a principal Actor therein.

The Charge is divided into two Heads:

Firſt, That I traiterouſly conſulted and correſponded with divers Perſons to raiſe an Inſurrection, &c. in this Kingdom, to procure foreign Forces to invade it, &c.

Secondly, That I traiterouſly correſponded with the ſame intent with Perſons employed, *&c.* But neither part of this Charge hath been made good by the Counſel for the Bill, nor have they proved, nor attempted to prove me at one Conſultation; nor is there any thing tends towards ſuch a Proof, except the exploded Story of the *Burford* Club, and two or three Hearſay Informations which were mentioned of my Lord *Strafford*, Lord *North* and *Grey*, Lord *Orrery*, and Sir *Henry Goring*, ſaid to be concerned in the Management of this Affair. I have met all theſe Lords, I own it, but at different Times; and upon the beſt Recollection I can make, I never was in all my Life with any three of them at once, unleſs perhaps about ſome general Matters depending in Parliament. The Earl of *Strafford* hath viſited me, and I have, when in Health, dined with him once at his Houſe. At my Lord *North*'s Table I have not eat: Tho I have great Honour for him, yet I never had any Intimacy with him, eſpecially ſince the Affair of the Dormitory, wherein he appeared ſo againſt me, that I certainly had loſt the Cauſe, had not his Affairs call'd him to *Holland*.

Lawſon had ſworn, that this Lord did often viſit me at *Bromley*; but in truth he never was there above twice or thrice in all his life-time.

I have not been once theſe two Years with Lord *Orrery* on any Buſineſs whatſoever; we twice dined together at the Houſe of a Perſon, whoſe Name if I ſhould mention, your Lordſhips would not think there was any harm at all in dining there. Sir *Henry Goring* I never ſaw in all my life, till he ſaw me at St. *James*'s, and he was but once at *Bromley*; and the Occaſion of his coming to me, was his placing four Sons at *Weſtminſter*-School, and intending to breed up ſome of them to the Goſpel: The laſt Time I ſaw Sir *Harry Goring*, was about twelve Months ago, when I promiſed to bring down one of his Sons to be upon the Foundation; and I ſhall be ſorry if I can't be as good as my Word.

Your Lordſhips will excuſe me for being ſo particular, when you conſider how dangerous the Charge is, and how fit it is to clear the Perſons charged, from ſuch miſchievous Correſpondence; eſpecially ſince it is with theſe, and theſe only, that I have been ſpeaking of, and it is inſinuated that I have held Conſultations with, to forward the Conſpiracy.

The firſt is an Intent, and indeed a Conſpiracy, without a Conſultation. But how hath that too been made good? Your Lordſhips will obſerve, that there is not one Overt-Act, or Circumſtance of Time or Place, mentioned, proved, or alledged. I have not therefore conſulted or conſpired at Home.

The next, and the only material Part of the Charge, is, correſponding abroad with the Pretender, *&c.*

A high and heinous Accuſation, ſtrongly aſſerted, much inſiſted upon; but how maintained, is the Queſtion.

The true State of this part of my Charge, as well and as fully as I can recollect, is this, (I will not in any degree diſſemble before you:) 1ſt, That I did the 20th of *April*, 1722. dictate three Letters to Mr. *Dillon*, the late Lord *Marr*, and to the *Pretender* himſelf, under the feigned Names of *Chivers*, *Muſgrave*, and *Jackſon*; to which Letters the Names of *Jones*, *Illington*, and 1378, were, by my Direction, ſubſcribed.

Secondly, That afterwards two Letters, in anſwer to theſe two ſent to *Marr* and *Dillon*, one dated *May* the 11th, and the other *July* the 25th, under the feigned Names of *Motfield* and *Digby*, were intercepted.

Thirdly, That there is certain intercepted Correſpondence between the Pretender's Agents abroad and *Kelly* here, carry'd on by him; and that I was at the Head of it, and am anſwerable for what it contains.

This is the Subſtance of my Charge; all other particular Circumſtances are made uſe of, as they thought would give Light and Strength to one or other of thoſe Articles.

As to the firſt of theſe Points, *that I did dictate theſe Letters.*

That it could not be poſſible that I dictated theſe Letters, hath been made out to your Lordſhips by ſuch a Concurrence of Evidence, ſo clear, ſo full, and legal, as I perſuade myſelf can have left no Doubt remaining upon any candid and indifferent Perſon: A plain Matter of Fact, ſupported by ſuch Teſtimony, cannot be overthrown by little Gueſſes and conſequential Surmiſes.

My Lords, I was under the known Difficulty of proving a Negative, which in many Caſes is not to be done; but it ſo happens in this Caſe, that peculiar Circumſtances attend it as to the point of Time. My being diſabled in my Chamber, and attended before and after that time by ſome of my Servants, and receiving frequent Meſſages from others: The agreeing Teſtimony of my Servants, that no Stranger came near me about that time, and for ſome time before and after; and the full Evidence of the School at *Weſtminſter*, hath enabled my ſeveral Servants to recollect the Time, and to furniſh ſuch a Proof of my Innocence in this matter, as is not to be miſtaken, and ſhews the Clearneſs of the Impoſſibility of it.

The Clerks of the Poſt-Office ſwear, they believe theſe three Letters to have been in the Hand-writing of Mr. *Kelly*, my ſuppoſed Amanuenſis. Your Lordſhips will remember, that their Oaths were at four Months diſtance from the time of ſeeing thoſe Letters; during the whole Series of which time, it never hath appeared that they have compared one Original with another, and the only Original, as a Specimen, hath been proved, at your Lordſhips Bar, not to be the Hand-writing of Mr. *Kelly*: And be pleaſed to remember, the very Suppoſition of Mr. *Kelly*'s being my Secretary, or any ways intimate with me, hath been fully ſworn to be falſe.

If it be ſaid, who then writ theſe Letters, and with what View were they writ? The Anſwer to this is obvious: My being here at your Lordſhips Bar ſufficiently explains it. It is enough to prove that I did not write or dictate them, and I have proved it abundantly. Let but any momentous Part of the Charge againſt me be made out with half the Evidence, and I will ſubmit without any Diſpute. Eight or nine ſuch Witneſſes would have borne down the Evidence of one or two that had ſworn: But where there is none on

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the one Side, but all on the other Side who appear, and that give direct poſitive Evidence, can your Lordſhips deliberate a Moment for the Reaſon of giving your Judgment, which in doubtful Caſes ought always to lean to the doubtful Side? And ſo taking this Point as it ſtands, there is an End of the whole matter; for all other Inſinuations, feigned Names, and obſcure Paſſages in Letters, depending upon this, muſt fall together.

As to the other Part of the Accuſation, where it is ſaid the Letter to *Jackſon* was a Letter to the *Pretender*, I have nothing to do with it; he that writ the Letter, when known, will beſt be able, and moſt concerned, to diſprove it.

Since this Objection carries a very odd Sound, I ſhall briefly ſhew your Lordſhips how that ſtands. *Jackſon*, in a Cypher of *Plunket*'s, is ſaid to denote the *Pretender:* That Cypher conſiſts of one hundred and fifty Names, of which not one is uſed in any of the Letters attributed to Mr. *Kelly*; three or four of theſe Names are uſed by Perſons ſuppoſed to have writ to Mr. *Kelly* from abroad, but not one of them is uſed by him; nor doth *Jackſon* ever, in his part of the Correſpondence, ſtand for the *Pretender*, but he is always under other Appellations: Nay, *Plunket* himſelf, in all his Letters writ in decyphered Names, never ſtiles the Pretender *Jackſon*, but either *Joſeph* or *Jephſon*.——Why ſhould a Name, uſed in *Kelly*'s Correſpondence, be explained by *Plunket*'s Cypher, when *Kelly* appears to be no ways acquainted with him, and *Plunket* himſelf did never dictate to him? I forbear Repetition; I only add, that at this Rate, there is nothing that may not be proved.

The Letter to *Dubois* there is little ſaid of, becauſe there is no uſe made of it; it is charged in the Report as a Letter which I had received from abroad. The Tables are now turned, and I myſelf deſigned to have ſent this Letter to a feigned Correſpondent, but kept it among my Papers under my Seal: For what end? the Letter itſelf is an errant Deluſion: Why, to furniſh Proof, which is much wanted, of my receiving Letters that were directed *Jones* and *Illington*; and it is very ſtrange, that I, who am repreſented as being ſo very cautious, ſhould be ſo negligent in this, and preſerve ſomething that is of no uſe, and yet might hurt me ſo much, when diſcover'd.

It is abſurd to think, that I ſhould by that means mention the Name of my Correſpondent, and mention the Name of *Johnſon*, which the Committee of the Lower Houſe obſerve was conſtantly with me.

I know not what farther can be ſaid for this Matter, till the Counſel have further explain'd it, and ſhew'd what uſe they make of this Letter, which hath given your Lordſhips ſo much Trouble, and which I own I do not comprehend.

Here is ſtill a fifth Letter, which I have acknowledg'd to be my Hand; that which was taken on my Servant. Mr. *Reeves* hath made ſome uncharitable Obſervations upon it, which, for ought I know, may be allow'd as the Form of Law in the Ordinary Courts; but, I am ſure, in a Court of Equity, the moſt favourable Conſtruction ought to take Place. I have taken Minutes of his Obſervations, and I think they are theſe: He obſerves that the Biſhop doth not in his Letter inſiſt on his Innocence in general, but conſiders only what Evidence doth affect him.

It comes out, at laſt, for whom my Letter was deſigned, and I think That an Anſwer to Mr. *Reeves*'s firſt Obſervation, and I ſhall explain it no further. He obſerves next, tho I clear myſelf from the Knowledge of *Layer*, *Neynoe*, *&c.* there I ſay nothing of *Kelly*.

The Gentleman I deſigned the Letter for, knows it was in anſwer to one wrote to me about *Layer*, and will ſwear it himſelf, if there was room for it.

The third Obſervation is, where ſpeaking of myſelf, I ſay, 'If I cannot ward the Blow, I 'muſt be a Priſoner ſome Years without Remedy:' from which he is pleas'd to infer, not in that good-natur'd way he generally did, my Meaning muſt be, that I was conſcious of Guilt.

I apprehended an Impeachment would have been lodged and never proſecuted, as in the Caſe of my Lord *Danby* and the Earl of *Oxford*; and then I ſhould have lain without Trial, and without Bread.

The ſecond Article of my Charge, is the two Letters from *Marr* and *Dillon*, under the feigned Names of *Motfield* and *Digby*, which were intercepted.

One of theſe they have dropt.

That I received them, is not pretended; both Letters, tho without a criminal Expreſſion or Word of Buſineſs in either of them, would yet have affected me in ſome degree, if received by me, and I was the Perſon as is ſuppoſed to have writ the Letters to which they are Anſwers. That I uſed to have any Correſpondence, is that proved? Is not one and the ſame neceſſary in order to aſcertain the Charge?

Any Man that pleaſes may write to me, and take thoſe Names upon him; I am not to anſwer for that, unleſs I have appeared to receive them, and kept up the Correſpondence.

The Letter from *Motfield*, dated the 11th of *May*, cannot be reaſonably thought to have been wrote with any other View than that of being intercepted, and of fixing upon me the Letter of *April* 20th.

This Letter is committed to the common Poſt-Office, and ſent upon this Errand; one may doubt who writ it, but one cannot doubt with what Deſign it was writ: your Lordſhips Wiſdom will ſee thro' thoſe malicious Diſguiſes, and not make me account for Letters which have been banded to and fro, between unknown Correſpondents, on a Deſign to raiſe a Suſpicion of a third Perſon, altogether a Stranger to what is writ. And here I deſire that the Obſervation made by one of my Counſel may not be forgot; that is, All the intercepted Letters from abroad, mention Perſons that lay hid under ſecret Names, and are diſcover'd by doing of ſuch Deeds, and by ſuch Circumſtances as will faſten thoſe Names upon them: Tho the Committee were not at a Gueſs, yet they were often at a Loſs.

In my Caſe the fictitious Names applied to me are often attended with ſuch Deſcriptions and Circumſtances, as very naturally lead thoſe that offer theſe Letters to fix them on me. The Writers of them uſe all their Art not to diſguiſe, but to open the thing, and ſeem to be in pain leſt they ſhould not be well enough underſtood.

This being contrary to the Method of Reſerves in all other Caſes, ſmells ſtrong of a malicious Deſign.

The Letter of *July* 25th, from *Digby* to *Weſton*, is not well contrived as it ſhould have been; yet I am to be underſtood by it, becauſe of the Circumſtances I was then under, which the Writer was appriſed of.

Theſe are the only two Inſtances of Letters ſuppoſed to be writ from abroad: They are not conſiſtent: Shall they affect me in ſo high a manner?

It remains to be conſidered in the third place, whether there was a ſupported Correſpondence between the Pretender and his Agents, and Mr. *Kelly* here? Whether I was at the Head of it, and am juſtly to anſwer for it? Mr. *Kelly*, I hear, hath owned at your Bar, and declared, which I alſo declare, I never knew a Line of any Letter he writ to Foreign Parts.

I meddle not with what concerns him any further than when it may affect me.

The chief Part is the Preſent of the Dog; the Account of that is in a Letter to *Hatfield*, dated *May* 5. not ſigned; in which are theſe Words, *The little Dog was ſent ten Days ago, and ordered to be delivered to you*: but there is no Intimation in this, or any other Letter from abroad, that this Preſent was intended for me.

In two Letters from hence, by whom writ it doth not appear, ſomebody is meant under the different Names of Mr. *Jones* and Mr. *Illington*, in ſuch manner as deſigned for the ſame Perſon; but the Circumſtances are neither applicable to my ſelf or my Wife, or me particularly. The Letter dated *May* 7th, from *Hatfield* to *Muſgrave*, being five Days after the Burial of my Wife, cannot mean her; and being but five days after, it can as little mean me: So that the Writer of this Letter muſt either have known nothing of my Family-Affairs, or if he did, muſt diſſemble his Knowledge of them, to raiſe a Suſpicion; and in either Caſe what he ſays is not to be regarded. The Surgeon and Mr. *Kelly* only knew any thing of this matter, and they can beſt clear it.

Mrs. *Barnes*, ſhe varies, and ſometimes the Dog is for me, and ſometimes for her.

As for myſelf, I never asked for, received, or ſaw this Preſent, nor know any thing of it, but from common Fame; nor have I, to this Day, had any Meſſage or Letter whatſoever concerning it. The End of this Deſign ſeems to be, to point me out by the Name of *Jones*, and *Illington*, ſubſcribed to the Letters of *April* 20th, by uſing them again in relation to this Preſent.

And perhaps they are not much in the wrong to think, that *one intercepted Dog* ſhould be of as much uſe as *Ten intercepted Letters*. Both Contrivances then muſt have ſucceeded, had I not been able to prove that thoſe Letters were not writ with my Order or Knowledge; and therefore the Uſe of thoſe Names, in ſubſequent Letters, is a Continuance of the Fraud, and this obviouſly runs thro' the whole of the Correſpondence: For whereever the Name of *Jones* and *Illington* are, they are uſed in applying them to me, becauſe they are the ſame.

Theſe Points have not only been deny'd, but diſprov'd with all Manner of Credence and Clearneſs.

My Counſel have ſhew'd, that all theſe ſuſpicious Correſpondencies are to the laſt Degree abſurd to apply to me, and no one would apply them: That I could not order the Letters of the 20th of *April*, to which the Names of *Jones*, &c. are ſubſcrib'd, I think is plain, and then the Evidence falls or depends upon it.

As to the Journeys to and from *Bromley*, where the Priſoner *Kelly* had frequent Acceſs to me, and therefore I might probably dictate thoſe Letters, the Counſel for the Bill have not open'd themſelves on that Head; but your Lordſhips have heard it made out, and becauſe it is material I ſhall repeat it.

(Here *Wood*'s Examination was read.)

By all theſe Accounts, nothing could have been eaſier for the Perſons themſelves to manage here, than getting an Account of my Neighbours, in order to render the Contrivance more plauſible.

That Mr. *Kelly* is no Stranger to me I own; but that he is in any Degree intimate with me, or frequently ſaw me, I deny. And what Evidence is there from them to the contrary; or how is this ſolemn Denial at your Bar contradicted?

The Chairman ſays, He carry'd him twice or thrice to the Deanery, three or four Years ago; and this *Brown*, the Chairman, he ſwears, he carry'd me once in three or four Years Time. I believe he may. The Porter he ſays, that he brought a Letter and ſome Stockings from *Kelly* to me. The Foundation of this Story is true, for Mr. *Kelly* uſed to furniſh me with *Beaver* Stockings, and Gloves: not but that the Circumſtance of the Porter coming up to my Bed-chamber at that dirty Time of the Year, is very extraordinary; and even this Evidence owns, he was never ſent by me to him.

Now, on the other Side, there is the Evidence of almoſt all my Servants, who have, upon Oath, atteſted, that they do not know either the Name or the Face of Mr. *Kelly*, which could not poſſibly be, did he uſe frequently to reſort to me. Such a ſlight Acquaintance as I had with him, could not be any Temptation to enter into Secrets with him, of ſuch a dangerous Conſequence as theſe are, which the Report inſinuates to have paſs'd between us: However, Suſpicion is not now the Buſineſs. They that prove ſome Things may be allow'd to ſuppoſe more; they that prove nothing, have no Right to indulge their Suſpicions and Conjectures to the Ruin of any Man: Twenty Probabilities, allow'd to be ſuch, are not equal to any one Matter of Fact, well atteſted; it may ſtrengthen the Fact, but cannot ſupport it. They cannot be Evidence themſelves, becauſe one Probability may be ſet againſt another.

I uſe this Diſtinction between Evidence in Law, and reaſonable Evidence, becauſe the Counſel for the Bill have aſſerted ſomething like it.

I own I always thought the Publick Law of the State, the Publick Reaſon of the State; and whatever it is in another Country, yet in this Country, no Evidence can be reaſonable that is not legal. But I ask, What ſort of Evidence, either in Reaſon or Law, is brought againſt me? How am I prov'd to conſult and correſpond, to raiſe an Inſurrection againſt his Majeſty and his Kingdom, and to procure a foreign Force to invade the ſame in favour of the Pretender?

How am I prov'd, in the ſecond Place, to have correſponded with the ſame Pretender, and with Perſons employ'd by him? Is one Article of theſe Charges made out againſt me with any

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Colour of Reaſon? Suppoſitions without Proof, Suppoſitions diſprov'd, and ſhew'd to be vain, and unjuſt.

If the Proof in theſe Caſes wants Strength, can the Hearſay of *Neynoe* ſupply the want of Proof, and render it valid, ſince *Neynoe* pretends, for aught that appears, not to have known any thing of me? He only heard *Kelly* ſay ſo, and Mr. *Kelly* denies it; and there is, I think, no Reaſon why ſuch a dead Evidence ſhould affect me, or *Kelly* himſelf, much leſs me thro' him. Was *Neynoe* alive, and *Kelly* dead, and incapable of contradicting what *Neynoe* ſaid, I believe what *Neynoe* ſaid would not be of any Weight; beſides, what *Neynoe* dead ſays, and *Kelly* now alive denies, ought not to have any Force.

Concerning Hearſay Evidence in general, and concerning the due Regard to it, I humbly deſire your Lordſhips, that a Paſſage may be read out of Sir *John Fenwick*'s Bill of Attainder. (The wholePreamble read.)

My Lords, I humby deſir'd to have this read, becauſe I thought it would take away a Diſtinction between Legal and Parliamentary Evidence; that what was not Legal might be Parliamentary. I believe here is a Condemnation of him by Parliament; therefore, I think, the Condemnation of him muſt be by Parliamentary Evidence. It is recited in this Act, as one of the Inducements that mov'd the King, Lords, and Commons to paſs that Act, that Sir *John Fenwick* had contriv'd and fram'd ſeveral Papers, *&c.* only by Hearſay.

Shall that be accepted in this Parliament for Evidence, which is declar'd the only Motive of attainting a Man in another? If it was judg'd hard in Sir *John Fenwick*'s Caſe to charge a Man by Hearſay, can the being thus charg'd be any Proof againſt me? Sure the Houſe of Commons in 96, that brought that in, would have ſo thought, nor would thoſe of your Lordſhips conſented here, or elſewhere, to have paſs'd it.

As for thoſe that did not conſent, I will venture to ſay, I am exceedingly puzzled to know why they did not oppoſe Sir *John Fenwick*, but favour'd his Caſe, and are yet againſt me. Is the Guilt objected to me, if prov'd, in any Meaſure like his? Or is there any Compariſon between the Proof againſt him and me?

As to the Paper and Information given in by *Neynoe*, and printed in the Appendix, it is plain he was drawn in to have ſworn backward or forward, to have affirm'd or deny'd any thing. He knew a certain Lord of the Council, that gave me Notice of my being taken up ſome Days before it happen'd. He knew what Uſe and Purpoſe the Proteſts of your Lordſhips were chiefly deſign'd for and calculated; and it appears by his Paper that was taken in his Pocket after his Death, that he had undertaken to give a poſitive Account, and deſign'd either to ask or receive ſuch a Sum of Money.

'Tis ſaid he was the late Earl *Mariſhall*'s Bedfellow for ſeveral Months, and had drawn up Heads for Memorials to be deliver'd to the Regent; but he had kept no Copies of theſe Heads, or foul Draughts which would have ſhewn whether they were given in to promote it, or diſcover it; in either caſe the Evidence of being then employ'd, would have been of Service: but they have not been able to produce a Line of ſuch Heads or Memorials, yet the Report of the Houſe of Commons, upon the Baſis of theſe Memorials, builds the whole Fabrick. He knew that I went under the Names of *Jones* and *Illington*, and undoubtedly he knew Mr. *Dubois*: If the Scheme of writing that Letter myſelf had been ſeen, he would have found out a Reaſon for the Correſpondence; and 500 *l.* would have made him affirm, That he carry'd the Letter himſelf. He knew the Pretender's particular Opinion of me, or of any Body elſe, and that he rely'd on Advices from me: How did he know that? He told him ſo. Who told him? It is not ſuppos'd Mr. *Kelly* had it from himſelf, but from Perſons of high Eſtate, and that were near the Pretender.

Let me ſpeak, my Lords, as always I hope I ſhall, with that Modeſty as becomes Juſtice, but yet with Freedom, to you.

Hath nothing been open'd to you concerning this Man's Character, and his ſecret Tranſactions? Is it poſſible to believe this Pretender to Secrecy could have had, or ſhall he ſtill have any Degree of Weight, that threw away his Life, rather than venture to ſtand to the Truth of what he ſaid before his Death, and then he could have been contradicted, or Pangs of Conſcience might have made him unſay what he had ſaid? But a dead Man can retract nothing; what he hath writ, he hath writ: The Accuſation muſt ſtand juſt as it did, ſo far as it concerns him; and we are depriv'd of the Advantage, which Truth and Remorſe once extorted, and would have again extorted from him. However, I would have been glad to have had all that ever this Wretch ſaid; and would hope that by comparing of the ſeveral Stories, which he ſeveral Times told, ſome Light might have been gain'd, which is now wanted: —— Particularly by the Knowledge of what he ſaid freely and voluntarily, when he was in good humour, and before his rough Uſage, on his Return from *Rome*, had frighted him; but I think we have the Evidence only of a few of the laſt Days of his Life, all the preceding Time is blank. He underwent frequent Examinations, but they were not, it ſeems, ſo maturely weighed and digeſted as to be thought worth the committing to writing: but he is gone to his Place, and hath anſwer'd for what he hath ſaid at another Tribunal. I deſire not to diſturb his Aſhes, farther than what is neceſſary for my Defenſe.

Your Lordſhips will obſerve firſt, the Inconſiſtency of ſome Part of the Charge. Secondly, the Improbability of it. The Report takes Notice of three ſeveral Periods, or Stages of Time, when, by Conſequence of ſome Informations from the Regent, the Deſign did not take Place: The firſt was, during the Election; the 2d was, the King's going to *Hanover*; and the third was, the breaking up of the Camp. There is not the leaſt Hint as to the laſt of theſe three Deſigns, in any of the Papers; tho in the Recital of the Bill it is mention'd as the third Part of the Plot, and the moſt deteſtable Part of the Deſign, to lay violent Hands on his Majeſty and his Royal Highneſs.

There is not the leaſt Colour of Proof, as to the firſt Part of the Conſpiracy, which was to take place at the Election; their only Reaſon for that, is from a Paſſage, where it is ſaid, that the preſent Opportunity is elaps'd, that is, the Opportunity of the Election.

I ſhall recite the Paſſage, as it lies in the intercepted Letter, and make ſome Reflections on it: *Notwithſtanding the Opportunity is elaps'd*, (ſays the Writer to *Jackſon*) *I agree with you, another may offer before the End of the Year, tho not perhaps every Way ſo favourable.*

The Committee ſuppoſe this Letter to be from *Kelly*, and dictated by me; and they ſuppoſe the Words to refer to the time of the Election, and from thoſe Suppoſitions infer that I knew ſomething of it. On the contrary, I ſhall, on the two firſt Suppoſitions ſhew the Impoſſibility of it; if this was a Letter from me, or from any other Perſon, dictated by me to the Pretender, I muſt write as in Anſwer to ſome Letter ſent from them to me, in repeating the Expreſſion; and his Opinion in the Letter muſt have been founded on Intelligence before receiv'd: This Intelligence, conſidering the Diſtance between *London* and *Rome*, muſt have been communicated two Months, if not longer, before the Date of this Letter; if we go back two Months, and talk of *the Election being elaps'd*, it was not begun; conſequently that Opportunity in the Letter could not poſſibly mean the *Time of the Election*; and if ſo, it is impoſſible that it ſhould be a Letter to the Pretender, that can conſiſt with the Charge of the Perſon's writing in *April* 1720.

If it be a Letter writ in good Earneſt, it appears they had given over all Thoughts at that Time: *I agree with you*, ſays he, *another may offer before the End of the Year:* and yet he finds ſome Words in a Letter writ ten Days after, wherein, under the Name of *Jones*, I am made to be deeply concern'd in a Conſpiracy.

How can this be conſiſtent, if I writ and directed that Letter, and was engag'd in the ſecond Part of the Conſpiracy?

Both cannot be true, both may be falſe; and I hope I have ſatisfy'd your Lordſhips, that as I did not dictate the one, ſo I was no ways concern'd in the other.

Can any one believe, that under the ſad Circumſtance of being afflicted by the Death of my Wife, I ſhould be concern'd in an Affair of this dangerous Nature? Was that a Time to provide for a Stranger? And for a Man, unleſs under the Power of Prejudice, to believe ſuch an Improbability, or that I had ſuch a Conjecture? I forbear former Inſtances.

I ſhall now conſider the Improbability, as well as Inconſiſtency of the Charge brought againſt me without poſitive Proof. You will allow me to anſwer the Indictment in the ſame Manner as it is laid.

Is it probable that if I were engag'd in any ſuch Deſign, no Footſteps ſhould be ſeen of any Correſpondence I had with the late Duke of *Ormond*, to whom, of all Perſons abroad, I was beſt known, and to whom I had the greateſt Regard, and ſtill have all the Regard that is conſiſtent with my Duty to my King and Country?

Is it probable that I would chooſe rather to engage in ſuch Deſign with Mr. *Dillon*, a Military Man I never ſaw, and with the Earl of *Marr*, whom I never convers'd with except when he was Secretary of State?

Did I not know, what all the World thinks, that he had left the Pretender ſeveral Years, and had a Penſion abroad? Is this a Seaſon for me to enter into Conferences with him about reſtoring the Pretender; and do this not by Meſſages but by Letters, not ſent by Meſſengers but by the common Poſt? That by thus writing to him by the Poſt, I ſhould adviſe him after the ſame manner to write to me, and by theſe Means furniſh Opportunities towards detecting the Perſons, and bringing myſelf into Danger? How doth that conſiſt with the Caution and Secrecy which are ſaid to belong to me? Muſt not I have been raſh to have laid myſelf open in ſuch a Manner? This is an inconſiſtent Scheme, the other a bold Aſſertion. Is it probable, when attending the ſick Bed of my Wife, and expecting her Death, not daily but hourly, that I ſhould enter into Negotiations of this kind?

There was no need of Diſpatching any of thoſe three Letters, merely to excuſe my not writing: The Circumſtances of my Family had been a ſufficient Apology, and more effectual.

Is it probable, that when I was carrying on publick Buildings of various kinds at *Weſtminſter*, and *Bromley*, conſulting all the Books from the *Weſtminſter* Foundation, engaging in a Correſpondence with learned Men, about ſettling an Important Point of Divinity; that at that very Time, I ſhould be carrying on a Conſpiracy? Thoſe that entertain ſuch Thoughts without Reaſon, may alſo condemn me without Argument.

Is it probable, that I ſhould meet, and conſult, in order to carry on and forward this Correſpondence with no Body, and no where?

That I, who always liv'd at Home, and except at Dinner-Time, never ſtirr'd out of my Chamber; receiv'd all Perſons that viſited me, and was deny'd to none, ſhould have an Opportunity to be ſo engag'd? And if I had, that none of my Domeſticks and Friends ſhould ever obſerve any Appearance of any ſuch Thing? No Evidence among my Papers, tho they were all ſeiz'd at both my Houſes, and confining all my Servants, but one now, for about 10 or 11 Weeks, ſearching him twice in the Tower, and ſearching myſelf, nothing of Conſequence appears, nor is there any one living Witneſs that charges me with any thing that is really true.

Is it probable, that I ſhould form and direct a Conſpiracy, and carry it on with any Succeſs, that am not us'd to Arms, which I am no more acquainted with, than with the Perſons employ'd on thoſe Occaſions? My Way of Life hath not led me to converſe with ſuch Men and ſuch Matters, except on the Occaſion of meeting in Parliament; but in a Council of War I never was. Have I yet in any Inſtance of my Life meddled remarkably out of my own Sphere, in Affairs foreign to my Buſineſs or Character? I might have been thought to have been too active in my proper Station and Buſineſs; but I was never charg'd with War, nor any ways inform'd in the Art of it.

Is it juſt, that Perſons concern'd in the Military Way, ſhould be puniſh'd without any Proof?

And muſt I, whoſe Way of Life is ſet at the greateſt Diſtance from ſuch Perſons, and from the very Suſpicion of being concern'd with them, ſuffer all the Pains and Penalties, ſhort of Death, which the Parliament can inflict, for a ſuppos'd I know not what, and what I don't to this Day apprehend?

Here

Here is a Plot of a Year or two standing, to subvert the Government with an arm'd Force, an Invasion from Abroad, an Insurrection at Home; just when ripe for Execution it is discover'd: and 12 Months after the Contrivance of this Scheme, no Consultation appears, no Men Corresponding together, no Provision of Money, Arms, or Officers ——not a Man in Arms —— And yet the poor Bishop has done all this.

Layer and *Plunket* carry on a Treasonable Correspondence: They go to *Rome* and receive Directions from the Pretender himself, to promote his Cause——It does no where appear that the Bishop has the least Share in, or is any way privy to, their Practices—And yet the Bishop has done all, He is *principally concern'd in forming, directing, and carrying on this Detestable Conspiracy.*

What could tempt me to step thus out of my Way? Was it Ambition, and a Desire of climbing into a higher Station in the Church? There is not a Man in my Office farther remov'd from this than I am; I have a hundred Times said, and sincerely resolv'd, I would have been nothing more than I was, at a Time when I little thought of being any thing before; and I could give an Instance of this Kind if I thought proper.

Was Money my Aim? I always despis'd it, too much perhaps, considering what occasion I am now like to have for it: for out of a poor Bishoprick of 500 *l. per Annum*, I have laid out no less than Two Thousand Pounds, towards Repairs of the Church and Episcopal Palace; nor did I take one Shilling for Dilapidations. The rest of my little Income has been spent as is necessary, as I am a Bishop. Nor do I repent of those Expences now, (tho since my long Confinement I have not receiv'd the least Part of the Income of my Deanery) not doubting in the least, but that God who hath liberally provided for me hitherto, will still do it, and on his good Providence I securely rely.

Was I influenc'd by any Dislike of the Establish'd Religion, and secretly inclin'd towards a Church of greater Pomp and Power? I have, my Lords, ever since I knew what Popery was, oppos'd it; and the better I knew it, the more I dislik'd it.

I begun my Study in Divinity, when the Popish Controversy grew hot about that immortal Book of *Tillotson*'s, when he undertook the Defense of the Protestant Cause in general; and as such I esteem'd him above all.

You will pardon me, my Lords, if I mention one thing.

Thirty Years ago, I writ in Defense of *Martin Luther*, and have preach'd, and writ to that Purpose from my Infancy; and whatever happens to me, I will suffer any thing, and will, by God's Grace, burn at the Stake, rather than depart from any material Point of the Protestant Religion, as profess'd in the Church of *England*.

Once more: Can I be suppos'd to favour Arbitrary Power? The whole Tenor of my Life hath been otherwise: I was always a Friend of the Liberty of the Subject, and to the best of my Power constantly maintain'd it: I may have been thought mistaken in the Measures I took to support it.

It matters not by what Party I was called, so my Actions are uniform.

To return to the Point: The Charge brought against me in the Manner it is brought, is improbable: If I could be guilty of it, I must have acted under a Spirit of Infatuation; yet I have never been thought an Idiot or a Madman.

My Lords, as to the Pains and Penalties contain'd in this Bill, they are great and grievous, beyond Example in their Nature and Direction.

I am here, my Lords, and have been expecting an immediate Trial. I have, my Lords, declin'd no Impeachment. The Correspondence with the Earl of *Clarendon*, was made *Treason*, but with me it is only *Felony*. He was allow'd the Conversation of his Children, by the expres Words of the Act: Mine are not so much as to write, so as to be sent to me.

What is most particular in my Case I will repeat distinctly, that my Reverend Brethren may hear it. I am render'd incapable of using or exercising any Office, Function, Authority, or Power Ecclesiastical, not only in his Majesty's Dominions, but any where else. Very hard! That such Spiritual Power as is not deriv'd from Men, but God himself, should be taken from me!

And I am not only *deprived of all Offices, Dignities, and Benefices Ecclesiastical*, and for ever *banish'd the Realm*, but likewise precluded from the Benefit of Royal Clemency, and *made utterly incapable of any Pardon by his Majesty, his Heirs and Successors.*

My Lords, I insist on my Innocence, that I am not guilty; and if I am not prov'd so, your Lordships will thus judge; if otherwise, I persuade myself I shall find some Degree of Mercy.

You will not strip a Man of his Substance, and then send him where he cannot subsist; you will not send him among Strangers, and then hinder others from performing Humanity to him; you will not give him less time to order his Affairs and depart the Kingdom, than the Bill hath taken in passing thro' both Houses.

The Great Man, I last mention'd, carry'd a great Fortune with him into foreign Parts, and had the Languages; was well acquainted abroad: The Reverse of all this is my Case; I indeed am like him in nothing but his Innocency, and his Punishment. It is in no Man's Power to make us differ in the one, but it is in your Lordships Power to make us differ widely in the other, and I hope your Lordships will do it.

But to sum up the Arguments: It hath been frequently observ'd, that the higher the Crimes are, the fuller the Proofs ought to be. Here is a Charge of High-Treason brought against me, with no Evidence at all.

My Lords, pardon me, what is not Evidence at Law, can never be made so by any Power on Earth: for the Law that requir'd the Evidence, is as much the Law of the Land, as that which declares the Crime.

It is equally unjust to declare any Proof legal, because of my Prosecution: As extraordinary would it be, to declare the Acts themselves, *ex post facto.*

Never was there a Charge of so high a Nature, and so weakly prov'd.

A Person dead, so that there is not an Opportunity to falsify him by contradicting him, a Charge not supported by any one Evidence, nor by any one Proof of any Thing that hath been writ or receiv'd by me, nor even by any one criminal Word prov'd to have been spoken by me: but by intercepted Letters and Correspondence, in which appears not the least Certainty.

Some of thoſe Letters, ſhown to Perſons, with a Deſign to faſten ſomething on them; others writ in Cyphers, and fictitious Names, throwing out dark and abſtruſe Hints of what Perſons went by thoſe Names, ſometimes true and ſometimes doubtful, and often falſe, who continue all the while Strangers to the whole Tranſaction, and never make the Diſcovery, till they feel and find it advancing itſelf towards them: My Lords, this is my Caſe, in ſhort.

I have a hard Task to prove my Innocency: Shall I ſtand convicted before your Lordſhips on ſuch an Evidence as this? The Hearſay of an Hearſay; a Party dead, and that deny'd what he ſaid; by ſtrange and obſcure Paſſages, and fictitious Names in Letters, by the Conjecture of Decypherers, without any Opportunity given me of examining and looking into the Decyphering; by the Depoſitions of Poſt-Office Clerks about the Similitude of Hands; their Depoſitions made at diſtant Times, and without comparing any one of the Originals, by a ſtrange Interpretation of them: for nothing more, I am perſuaded, can be made of the Arguments, than what is call'd the intercepted Correſpondence.

Shall I, my Lords, be depriv'd of all that is dear to me, and in the Circumſtances I am in, ſcarce able to bear up, and by ſuch an Evidence as would not be admitted in any other Cauſe or any other Court; and would hardly affect a *Jew* in the Inquiſition of *Spain?*

And ſhall it be receiv'd againſt a Biſhop of this Church, and a Member of this Houſe? God forbid. Give me leave to make mention of a Text in Holy Writ: *Againſt an Elder receive not an Accuſation, but before two or three Witneſſes.* It is not ſaid, Condemn him not upon an Accuſation, *&c.* but receive it not: I am ſomething more than an Elder; and ſhall an Accuſation againſt me be countenanced, without any one Inſtance of Proof to ſupport it?

This is not directly Matter of Eccleſiaſtical Conſtitution: There you read, one Witneſs ſhould not riſe up againſt an Elder; but here, at the Mouth of two Witneſſes, or three Witneſſes, ſhall the Matter be eſtabliſh'd: And as this Rule was tranſlated into the State of the Church, People always thought fit to allow it.

Shall I be the firſt Biſhop in this Church, condemn'd upon Conjecture, on fictitious Names and obſcure Paſſages in Letters, inſtead of two or three Witneſſes?

Will not others endeavour to make the ſame Precedent, and deſire the ſame Influence of it to ſucceeding Ages; and even concur in ſuch an Act, in order to render me incapable of uſing or exerciſing any Power or Authority, *&c.* Is this good Divinity, or good Policy?

As to the Juſtice of the Legiſlature, in ſome Reſpects it hath a greater Power than the Sovereign Legiſlator of the Univerſe: For he can do nothing unjuſt. But tho there are no Limits to be ſet to a Parliament, yet they are generally thought to reſtrain themſelves, to guide their Proceedings in Criminal Caſes, according to the known Law.

The Parliament may order a Criminal to be tortur'd: Who can ſay they cannot? But they never did, nor never will, I hope; becauſe Torture, tho uſed in other Countries, is not known here.

Is it not torturing, to inflict Pains and Penalties on Perſons only ſuſpected of Guilt, not plainly prov'd guilty? Is it not much unlike it. The Parliament may, if they pleaſe, as well upon Bills of perpetual Impriſonment, as upon Bills of perpetual Exile, reſerve to the Crown a Power to determine the one as well as the other. They have reſerv'd it in the former Caſe, but have not reſerv'd it here in the other. The Law knows nothing of ſuch abſolute perpetual Impriſonments.

The Parliament may, in like manner condemn a Man on a Charge of Accumulated and Conſtructive Treaſon. They did ſo in the Caſe of the great Lord *Strafford*, and that by Accumulated and Conſtructive Proof of ſuch Treaſon; that is, by Proofs ſo interpreted, as plainly to communicate Light and Strength to each other, and ſo to have all the Force, without the Formality of Evidence. Was ſuch Proof ever admitted by any one to deprive his Fellow-Subject of his Fortune, of his Eſtate, his Friends, and Country, and ſend him in his old Age, without Language or Hope, without Employment to get the Neceſſaries of Life, to ſtarve? I ſay again, God forbid.

My Ruin is not of that Moment to any Number of Men, to make it worth their while to violate, or even to ſeem to violate their Conſtitution in any Degree, which they ought to preſerve againſt any Attempts whatſoever.

But where once ſuch extraordinary Steps as theſe are taken, and we depart from the fixed Rules and Forms of Juſtice, and try untrodden Paths, no Man knows where this ſhall ſtop.

Tho I am worthy of no regard, tho whatſoever is done to me may, for that Reaſon, be look'd upon to be juſt; yet your Lordſhips will have ſome regard to your own laſting Intereſt, and that of Poſterity.

This is a Proceeding with which the Conſtitution is not acquainted; which, under the Pretence of ſupporting it, will at laſt effectually deſtroy it.

For God's ſake lay aſide theſe extraordinary Proceedings; ſet not up theſe new and dangerous Precedents; I, for my part, will voluntarily and chearfully go into perpetual Baniſhment, and pleaſe myſelf that I am, in ſome meaſure, the Occaſion of putting a Stop to ſuch Precedents, and doing ſome Good to my Country, and will live, where-ever I am, praying for its Proſperity; and do, with the Word of Father *Paul* to the State of *Venice*, ſay *Eſto perpetuo:* It is not my departing from it I am concern'd for; let me depart, and let my Country be fix'd upon the immovable Foundation of Law and Juſtice, and ſtand for ever.

I have, my Lords, taken up much of your Lordſhips Time, yet I muſt beg your Attention a little longer.

Some part of my Charge hath been diſproved by direct and full Evidence, particularly that of writing the Letters of the 20th of *April*, or that I knew who wrote them; which I utterly deny that I ever did, or as yet do know. Other Parts of the Charge there are, which are not capable of ſuch Diſproof, nor indeed require it; there I reſt. But my Lords, there is a Way allow'd of vindicating myſelf, it is generally Negative; that is, by proteſting and declaring my Innocence to your Lordſhips, in the moſt deliberate, ſerious, and ſolemn Manner; and appealing to God, the Searcher of Hearts, as to the Truth of what I ſay, as I do it in what follows. I am charg'd in

the Report with directing a Correſpondence to Mr. *Kelly*; but I ſolemnly deny that I ever, directly or indirectly, ſaw a ſingle Line of any of their Letters till I met with them in Print. Nor was the Contents of any of them communicated to me. I do in the next place deny, that I was ever privy to any Memorial to be drawn up to be deliver'd to the Regent. Nor was I ever acquainted with any Attempt to be made on the King's going to *Hannover*, or at the Time of the Election. Nor did I hear the leaſt Rumour of Plot to take place after the breaking up of the Camp, till ſome Time after Mr. *Layer*'s Commitment. I do with the ſame Solemnity declare, that I never collected, remitted, receiv'd, or aſk'd any Money of any Man, to facilitate theſe Deſigns; nor was I ever acquainted with, or had any Remittances whatſoever, from any of thoſe Perſons. I never drew any Declaration, Minutes, or Paper, in the Name of the Pretender, as is expreſly charg'd upon me. And I never knew of any Commiſſion iſſu'd, Preparation of Arms, Officers, or Soldiers, or the Methods taken to procure any, in order to raiſe an Inſurrection in theſe Kingdoms. All this I declare to be true, and will ſo declare to the laſt Gaſp of my Breath.

And I am ſure, the further your Lordſhips examine into this Affair, the more you will be convinc'd of my Innocency. Theſe contain all the Capital Articles of which I am accuſed, in the Report of the Houſe of Commons.

Had the Charge been as fully prov'd as aſcertain'd, it had been vain to make Proteſtations of my Innocency, tho never ſo ſolemn.

But as the Charge is only ſupported by the ſlighteſt Probabilities, and which cannot be diſprov'd in any Inſtance, without proving a Negative; allow the ſolemn Aſſeverations of a Man in behalf of his own Innocence to have their due Weight, and I ask no more, than that may have as much Influence with your Lordſhips as they have Truth.

If on any Account there ſhall ſtill be thought by your Lordſhips to be any ſeeming Strength in the Proofs againſt me: If by your Lordſhips Judgments, ſpringing from unknown Motives, I ſhall be thought to be guilty; if for any Reaſons, or Neceſſity of State, of the Wiſdom and Juſtice of which I am no competent Judge; if your Lordſhips ſhall proceed to paſs this Bill againſt me, God's Will be done: *Naked came I out of my Mother's Womb, and Naked ſhall I return; and whether he gives or takes away, bleſſed be the Name of the Lord.*

May 13. was appointed for the Reply of the Counſel for the Bill, who were Mr. *Reeve*, and Mr. *Wearg*: Mr. *Reeve* ſpake as follows.

May it pleaſe your Lordſhips,

TO permit me to offer ſomething, by way of Reply to the Arguments that have been made uſe of, and the Evidence that hath been given, in Behalf of the Biſhop of *Rocheſter*.

My Lords, I ſhall not trouble your Lordſhips with entering far into the Arguments ſo much inſiſted on by the other Side, concerning the Power of the Parliament to paſs Bills of Attainder.

They have been ſpoken of by the Counſel of the other Side, as inconſiſtent with our Conſtitution; Bills of Pains and Penalties, and Bills of Attainder, have been treated by them as unknown to our Conſtitution, unleſs in a few Inſtances, which afterwards have been condemned.

And yet they have mentioned the Caſe of Sir *John Fenwick*, which is a Precedent of a Perſon attainted without legal Evidence, tho he were forth-coming and ameſnable to Juſtice, and his Attainder remains ſtill unreverſed. And as to Bills of Pains and Penalties, they ſhould, before they inveigh'd ſo much againſt them, have conſider'd, that two ſuch Bills have now already paſſed your Lordſhips Houſe; and the Bills againſt *Counter*, *Bernardi*, and others, and againſt the late South-Sea Directors, are Precedents of Bills of this Kind.

They have mention'd many Inſtances, where Perſons have been proſecuted according to the known Rules of Law, and the Parliament did not think fit to interpoſe. And doubtleſs, my Lords, generally ſpeaking, where Evidence is to be had and to be produced, and the Perſons are forth-coming, it is right to proceed according to the known Rules of Law, in the ordinary Courts of Juſtice.

But where Conſpirators are carrying on their Deſigns with Art, and contriving to ſhelter themſelves from thoſe known Rules of Law; we apprehend, my Lords, the ordinary Proſecutions at Law will be no Argument againſt the Legiſlature's making uſe of their Authority, when the Circumſtances of the Caſe, the Preſervation of the publick Peace, and the Safety of the Conſtitution, require it.

But I beg leave to mention one Inſtance, in which they are miſtaken: They have ſaid, that in the Caſe of the Regicides (that horrid and deteſtable Treaſon!) they were all proſecuted according to the ordinary Courſe of Law; but if they had look'd into the Acts of Parliament, they would have found, that ſome of them were puniſh'd by Bills of Pains and Penalties. The Lord *Monſon* and others, who ſat as Judges in the pretended High Court of Juſtice, were reſerv'd by two Acts of Parliament that paſs'd, to have Pains and Penalties inflicted upon them; and tho there was Evidence in that Caſe to have attainted them according to the ordinary Courſe of Law, the Parliament did proceed to puniſh them by Pains and Penalties, and they were not try'd according to the ordinary Courſe of Law.

This I beg leave to obſerve to your Lordſhips, in relation to the Power and Uſage of Parliaments, in paſſing Bills of this Kind.

My Lords, in the next place I beg leave to take Notice, that the Obſervations that have been made, and the Evidence that hath been given by them, as to Facts mention'd in the *Report* and *Appendix*, concerning which we have given no Evidence at all, ought to be laid out of this Caſe, as foreign to the Matter before your Lordſhips. The Matters we have given in Evidence, it was proper for them to anſwer; but they have gone into the *Report* and *Appendix*, in order to diſprove Facts mention'd there, tho we gave no Evidence concerning them; and we humbly apprehend, it is not neceſſary for us to follow them as to thoſe Facts; for if we maintain the Charge we have given, it doth not concern us to make good every Article in the *Report* and *Appendix*, relating to this Reverend Prelate now before your Lordſhips.

My Lords, we muſt admit the Evidence produced to charge the Reverend Prelate at your Lordſhips

Lordſhips Bar, is not all of it Evidence ſtrictly legal againſt him, if he was to be try'd according to the ordinary Courſe of Juſtice in *Weſtminſter-Hall*. But, my Lords, we humbly apprehend you are not tied to the Rules of *Weſtminſter-Hall*; for if your Lordſhips are ſatisfied that the Facts proved, laying them all together, do conclude the Reverend Prelate at the Bar guilty, notwithſtanding they do not amount to Evidence according to the ordinary Rules of *Weſtminſter-Hall*, your Lordſhips will be of Opinion, that it is fit he ſhould be puniſh'd.

My Lords, the Evidence that hath been given by us, as to Facts committed by the Biſhop of *Rocheſter*, hath been chiefly from three Letters, dated the 20th of *April*, 1722; each of theſe was written in the Hand of Mr. *Kelly*, and dictated by my Lord Biſhop of *Rocheſter*.

My Lords, theſe Letters are writ, ſome Part in Cyphers, and ſome Part not; they are ſign'd by the Names of *T. Jones*, *T. Illington*, and the Figures 1378. My Lords, if theſe three Letters are proved, to your Lordſhips Satisfaction, to be the Letters of my Lord Biſhop of *Rocheſter*, we humbly apprehend they do prove all the Allegations in the Bill, which my Lord Biſhop of *Rocheſter* hath been pleaſed to call upon us to ſhew that he hath been guilty of. They do contain, as we ſay, and as plainly appears from the Letters themſelves, Matters relating to conſulting and conſpiring to invite a foreign Force into this Kingdom for an Invaſion, and to promote an Inſurrection. And if the Name of *Jackſon* is the Name by which the Pretender is ſignified, that Letter will prove the other Part of the Bill, that the Biſhop of *Rocheſter* hath held Correſpondence with the Pretender himſelf.

My Lords, I beg leave to obſerve upon the Word *Jackſon*: It hath been inſiſted upon, that tho it is contain'd in *Plunket*'s Cypher, yet *Jackſon* may ſignify in Mr. *Plunket*'s Cypher one thing, and in theſe Letters another; and theſe Letters are contrived in Figures, and not thoſe Cant Words and Names, as in Mr. *Plunket*'s; but ſo far they go, to admit that in *Plunket*'s Cypher the Name of *Jackſon* ſtands for the Pretender.

My Lord Biſhop of *Rocheſter* was pleaſed to obſerve, that in all the Correſpondence between Mr. *Kelly* and the Perſons with whom he correſponded abroad, there is no Name contain'd in Mr. *Plunket*'s Cypher, which *Kelly* hath made uſe of in any of his Letters, but this.

My Lords, it appears to your Lordſhips, that in the Correſpondence between Mr. *Kelly* and the Perſons abroad, ſeveral other Names, mention'd in *Plunket*'s Cypher, have been uſed: and it is not material, whether theſe Names are contain'd in the Letters writ by *Kelly* himſelf, or in thoſe of his Correſpondents writing to him. When his Correſpondents write to him, in anſwer to his Letters, they uſe ſeveral other of the Names which are contain'd in *Plunket*'s Cypher; which, my Lords, we humbly apprehend is the ſame Thing as to this Purpoſe, as if they were uſed in Mr. *Kelly*'s Letters; for he muſt be preſumed to know the Meaning of thoſe fictitious Names, when they are contain'd in Letters that come in anſwer to Letters from him, in the Correſpondence which he carries on; and we humbly apprehend, my Lords, that is as ſtrong an Evidence, as if they had been contain'd in the Letters writ by *Kelly* himſelf. Therefore, my Lords, I beg leave to take notice of ſeveral Names that are in Mr. *Plunket*'s Cypher, and uſed by Mr. *Kelly*'s Correſpondents, in their Letters to him.

There is the Name of *Xoland*, which ſtands for *Wogan*; the Name of *Lane*, which ſtands for Lord *Marr*; the Name of *Cane*, which ſtands for *Dillon*; and the Name of *Howell*, for *Glaſcock*. My Lords, all theſe Names are in Mr. *Plunket*'s Cypher, and made uſe of in the Letters that paſs'd between Mr. *Kelly* and his Correſpondents.

My Lords, I ſhall beg leave to ſubmit it to your Lordſhips, when, among Perſons concerned in carrying on the ſame Conſpiracy, Cyphers are made uſe of, and in the Cyphers of ſome of the Conſpirators, the Names comprized in Letters writ by others of the Conſpirators are contain'd, whether it is not a reaſonable Evidence, that thoſe fictitious Names contain'd in the Cyphers of one of the Conſpirators, and made uſe of in the Letters of the other, ſignify the ſame Perſons; unleſs there is ſomething to diſtinguiſh the Caſe, and ſhew that the ſame Names are made uſe of to denote ſeveral Perſons.

My Lords, we humbly ſubmit it to your Lordſhips, that it is plain from the Evidence we have given, that theſe three Letters are writ by the ſame Hand; and by the Circumſtances in the Letters, they appear to be dictated by one and the very ſame Perſon. Therefore, my Lords, the Enquiry will be, who is the Perſon deſcribed by the Names of *T. Jones*, *T. Illington*, and the Figures 1378: for if we have proved the Biſhop of *Rocheſter* to be denoted in this Correſpondence by the Names *Jones* and *Illington*, and that theſe Letters were written by *Kelly*, and dictated by *Jones* and *Illington*, then the Biſhop of *Rocheſter* is the Perſon by whom theſe Letters were dictated.

This will appear to your Lordſhips from other Facts contained in Letters intercepted in this Correſpondence; Facts that, all of them together, can relate to no Perſon but the Biſhop of *Rocheſter*.

The Circumſtances of the Biſhop and his Family, are exactly deſcribed in the three Letters of the 20th of *April*; and thoſe Circumſtances plainly ſhew, that all the three Letters were dictated by the ſame Perſon, and that the Figures 1378 denote the ſame Perſon that *Jones* and *Illington* do.

My Lords, there are ſeveral other Facts contain'd in the intercepted Letters, that denote *Jones* and *Illington* to be the Biſhop of *Rocheſter*. One of them is, the Fact relating to a Dog ſent over to Mr. *Kelly*, which appears, by the Evidence given, to have been deſign'd for the Biſhop of *Rocheſter*: Therefore in the Letter mark'd *E.* 32. (that is, a Letter to Mr. *Kelly* by the Name of *Hatfield*, and directed to Mr. *Hatfield*, under Mr. *Anthony Saunders*'s Cover, which is one of the Perſons deſcribed in the Liſt of Directions taken in *Kelly*'s Pocket-Book) the Letter mentions *the little Dog was ſent ten Days ago, and order'd to be deliver'd to you.* &c.—My Lords, afterwards Mr. *Kelly* by a Letter dated the 30th of *April* 1722, *E.* 35. (it is a Letter from *J.H.* one of Mr. *Kelly*'s Names, to *Howell*, and which have been proved to be Mr. *Kelly*'s Hand-writing) ſays, *I received the Preſent ſent by the young Lady, but in ſuch a bad Condition, that I am afraid he will never do well; for he had a Leg broken in his Journey, which is ſtill very*

very bad with him; however, I will take all the Care imaginable of him, and inform Mr. Jones *ſoon of it, to whom, I know, any thing from that Quarter will be very acceptable.*

My Lords, it appears by this Letter of Mr. *Kelly*'s, that this Dog, that is there mention'd, was not a Dog for Mr. *Kelly* himſelf, but for Mr. *Jones*; a Dog for a Perſon denoted and underſtood by the fictitious Name of *Jones*: So that if the Evidence that hath been given of this Dog being deſign'd for the Biſhop of *Rocheſter*, is true; then it follows that Mr. *Jones*, mention'd in this Letter of *Kelly*'s, denotes the Biſhop of *Rocheſter*.

There is another Letter relating to this Dog, *E.* 42: there is mention'd the Concern Mrs. *Illington* was in for poor *Harlequin*; *Mrs.* Illington *is in great Tribulation for poor* Harlequin, *who is in a bad Way, having ſlipped his Leg again before it was thoroughly well; however, his Obligations to the Lady are as great as if he had come ſafe, which he deſires you to let her know.*

My Lords, this ſhews that *Jones* and *Illington* are the ſame Perſons. It appears by the former Letter, that the Preſent was for Mr. *Jones*, and he ſhould ſoon know of it; this Letter ſays, that *Mrs.* Illington *is in great Tribulation*, &c. *However* his *Obligations to the Lady are as great*, &c. Tho in the firſt Part of the Letter it is Mrs. *Illington*, in the latter Part it is *HIS Obligations to the Lady are as great as if he had come ſafe, which HE deſires you to let her know.* That ſhews, that the Perſon in the former Letter, deſcribed by the Name of *Jones*, is in this Letter deſcribed by *Illington*, and conſequently *Jones* and *Illington* are the ſame Perſon.

My Lords, the next Circumſtance obſervable in theſe Letters, the intercepted Correſpondence between Mr. *Kelly* and his Friends abroad, is the Letter dated the 30th of *April* 1722, *E.* 35. which ſays, *Mrs.* Jones *died laſt Week, and when the Days of Mourning are over, he will, I hope, be fit for Buſineſs.*

My Lords, it hath been given in Evidence, that the Biſhop's Lady, his own Witneſſes as well as ours, have given an Account, that the Biſhop's Lady died the 26th of *April*: This Letter is dated the 30th of the ſame *April*, conſequently this ſuits exactly with the Biſhop's Circumſtances as to his Lady being dead.

My Lords, that *Jones* and *Illington* are the ſame, appears likewiſe by the Anſwer given to this Letter, dated the 20th of *May*, 1722, *E.* 43. which ſays, *Mrs.* Chivers *gives you her kind Service, and prays you will condole in his Name on the Death of Mrs.* Illington. My Lords, this Letter is in anſwer to that of the 30th of *April*, for it begins, *Yours of the 30th of* April, *which ſhould have come by laſt Poſt, is come to hand*; and this Letter condoles on the Death of Mrs. *Illington*, whereas the Letter of the 30th of *April* gave an Account that Mrs. *Jones* was dead. So that *Jones* and *Illington* appear by theſe Letters to denote the ſame Perſon.

My Lords, theſe are Letters writ by Correſpondents, concern'd, one with another, in carrying on this Conſpiracy. It hath been objected, on the behalf of my Lord Biſhop of *Rocheſter*, that he is not concern'd in writing of theſe Letters, nor did any of them come to his Hands, nor were they writ by his Directions, but that they paſſed between Mr. *Kelly* and his Correſpondents abroad.

Your Lordſhips, we hope, will be of Opinion, in a Correſpondence of this Nature, (unleſs they ſhew ſomething to induce your Lordſhips to believe, that there hath been a malicious Deſign in the Parties between whom theſe Letters paſs'd, to denote the Biſhop of *Rocheſter*, in order to charge him) that theſe are Facts, which amount to a certain Proof who the Perſon is, that uſed to go by the Names of *Jones* and *Illington*.

Your Lordſhips obſerve how the Matter ſtands: Mr. *Jones* and *Illington* is a Perſon deſcribed, by the Letters of the 20th of *April*, to be in great Pain himſelf, to be in melancholy Circumſtances in other Reſpects: He appears by the Evidence at that Time to have been ill of the Gout, his Lady appears to have been ill, and dying; Mrs. *Jones* and Mr. *Illington* is a Perſon to whom a Dog was ſent, and it appears by the Evidence, that this Dog was deſign'd for the Biſhop of *Rocheſter*. Mrs. *Jones*, in one Letter 'tis ſaid, died laſt Week; and in another Letter they condole the Death of Mrs. *Illington*: and it appears the Biſhop's Lady died the Week before the 30th of *April*.

My Lords, there are other Circumſtances, which I ſhould mention, in relation to the Times when the Biſhop was in *London*, and when in the Country; which, we apprehend, is an additional Proof who was meant by the Names of *Jones* and *Illington*. Therefore in Letter *E.* 41. *a. Kelly* ſays, *Mr.* Illington *is now in Town, and preſents his kind Service to you; he is glad to hear you received his Letters by* Crow, *and wiſhes his next may be more to your Satisfaction.*

This Letter is dated the 7th of *May*; there it is ſaid, Mr. *Jones* is now in Town: It appears, by the Examination of *Wood* the Coachman, that on the 7th of *May* my Lord Biſhop of *Rocheſter* was in Town.

There is another Letter dated the 7th of *May* 1722, directed to *Muſgrave*, E. 42. which I beg leave to make ſome Obſervations on. There it is ſaid, *I had the Favour of yours, which I communicated to Mr.* Jones, *who is come to Town only for a Day.*

My Lords, this Letter ſhews, that the Perſon denoted by the Name of *Jones* was come to Town. But they object, that this Letter cannot be apply'd to denote the Biſhop of *Rocheſter*, becauſe it appears by the Depoſition of *Wood*, that the Biſhop of *Rocheſter* ſtaid in Town till the 10th of *May*; ſo conſequently he did not come to Town only for a Day, and conſequently can't be the Perſon meant in that Letter.

My Lords, as to that it appears, that the Fact concerning Mr. *Jones*, applying it to the Biſhop of *Rocheſter*, of his being come to Town, is true; as to the Biſhop's being come to Town *only* for a Day, that is not Matter of Fact, but of the Apprehenſion of the Writer; He apprehended he was only come to Town for a Day, but he might be miſtaken in that; but the Fact of his being come to Town is true, the Apprehenſion of the Writer that he came only for a Day, is falſe. But we muſt ſubmit it to your Lordſhips; the Apprehenſion of the Writer is not ſufficient to avoid the Truth of the Fact contain'd in that Letter, when we have proved that my Lord Biſhop of *Rocheſter* was in Town on the Day when Mr. *Jones* is mention'd to have been in Town in that Letter.

Another Letter dated *Thurſday* the 10th of *May* 1722, *E.* 44. ſays, Illington *is gone to the Country,*

Country, and ſent me Word he would be in Town on Tueſday *Night, when he hath deſired to ſee me at a particular Hour, by which I conclude it may be about Buſineſs*; and the *Tueſday* following that *Tueſday* happen'd to be the 15th of *May*. Another Letter *E.* 45. and dated the 14th of *May*, 1722, ſays, *Mr.* Jones *is ſtill in the Country, but he hath ſent me Word he will be in Town to-morrow.* My Lords, upon the Examination of the Coachman *Wood*, it doth appear, that the Biſhop of *Rochеſter* was out of Town the 10th of *May*, out of Town the 14th of *May*, but that he came to Town the 15th of *May*, which is the Day mention'd in theſe Letters that he had promiſed to come to Town: So that here are additional Circumſtances, all agreeing to prove that the Biſhop of *Rocheſter* was denoted by the Names of *Jones* and *Illington*. My Lords, we muſt ſubmit it, that this is not probable conjectural Evidence only, as has been objected.

Theſe Letters contain Facts, and the Conſequence from them is, that *Jones* and *Illington* is the Biſhop of *Rocheſter*, in whom all theſe Facts agree. It is almoſt morally impoſſible, that all theſe Facts ſhould agree in the Caſe of any other Perſon, as they do in the Caſe of the Biſhop of *Rocheſter*.

It hath been argued, as to the Letters of the 20th of *April*; Was he the only Perſon that was in Pain and melancholy Circumſtances at that Time? A great many might be ſo. They go thro' the Particulars of his being in Town and in the Country; a great many Perſons might be in Town and in the Country on thoſe Days beſides him. It is true, it might be ſo. Was there no body whoſe Lady died the Week before the 30th of *April*, but the Biſhop of *Rocheſter*? Certainly, there are a great many to whom that Circumſtance may be applied. But, my Lords, taking the Circumſtances together, they cannot *all* of them concur in the Caſe of any other Perſon, as they do in the Caſe of my Lord Biſhop of *Rocheſter*.

It may not be improper here to take Notice of ſome other of the intercepted Letters, that have been given in Evidence to your Lordſhips, which mention the Names of *Jones* and *Illington*.

In Mr. *Kelly*'s Letters, giving an Account of his being taken up, and his Examination before the Council, he takes Notice of his being examined concerning the Perſons that were meant by ſeveral fictitious Names, and, among the reſt, *Jones* and *Illington*, who, he ſays, *are chiefly ſtruck at*. This is to give an Intimation to his Correſpondents abroad, that there had been a Diſcovery, that the fictitious Names, concerning which he had been examined, were made uſe of in their Correſpondence.

My Lords, he comes afterwards and writes a Letter, after ſuch Time as he was bail'd (he was taken the 19th of *May*, and bail'd the 7th of *June*) wherein he ſays, *it is abſolutely neceſſary now, that there ſhould be a new Book of Accounts*; ſays he, *they muſt uſe no more their preſent Book of Accounts, ſince thoſe, who have got Part, may have got the Whole.*

My Lords, we humbly ſubmit it, that he having given an Account of his being examined concerning thoſe ſeveral fictitious Names, after when he comes and ſays it is abſolutely neceſſary to have a new Book of Accounts, it is a plain owning of *Kelly* by this Letter, that the Names inquired after were the Names made uſe of in the Correſpondence, and therefore he ſays, it is neceſſary to have a new Book of Accounts; that is, other Cyphers and fictitious Names, by which to carry on their Correſpondence: He owns they have got Part, and fears they may have got the Whole.

From that Time the Names of *Jones* and *Illington* are no more met with in the Correſpondence that follows. We have gone no farther in our Evidence to fix any other Names to mean the Biſhop of *Rocheſter*, but only the Names of *Jones* and *Illington*. But there are other Names, which, in the Letters that follow, probably are deſign'd to mean the Biſhop of *Rocheſter*; but they will be out of the Caſe, becauſe we have given no Evidence concerning them: and the plain Reaſon why *Jones* and *Illington* are not made uſe of any longer, is, becauſe it appears on the Examination of Mr. *Kelly*, that thoſe Names were mentioned: therefore they were afraid, by making uſe of thoſe Names, the Correſpondence might be diſcover'd, and it might prejudice the Perſons who went by thoſe fictitious Names.

My Lords, this is the Subſtance of the Letters, writ to and from Mr. *Kelly* and his Correſpondents, concerning the Perſon that goes by the Names of *Jones* and *Illington*.

Tho my Lord Biſhop of *Rocheſter* inſiſts, that he is not proved to be the Perſon concern'd in writing theſe Letters, and that he had no Notice of them, and therefore they ought not to be look'd upon as Evidence againſt him; my Lords, we ſubmit it to your Lordſhips, in a Correſpondence of this Nature, when we purſue Facts and Circumſtances that are ſtated and ariſe from the intercepted Letters, which when they come to be apply'd together, are a plain Indication of the Perſon that is meant by them; when theſe Circumſtances and Facts can fit none but the Biſhop of *Rocheſter*; we hope, tho it is not legal Evidence in *Weſtminſter-Hall*, yet it is ſatisfactory Evidence to induce your Lordſhips to believe and be convinced, that no Perſon can be denoted by theſe Names but the Biſhop of *Rocheſter*.

My Lords, this is a Matter that the Biſhop of *Rocheſter* could not, with all his Care, be aware of; he takes Care that the Letters of the 20th of *April* are in Cyphers, and not writ with his own Hand; fictitious Names are made uſe of, and he thinks he ſhall be ſheltered by this Means from being found out to be the Perſon. The other Facts could not be ſuppoſed would come out to explain the Perſon.

But, my Lords, very often there is a Providence in detecting Things of this Nature; and where the greateſt Caution and Care is uſed, Circumſtances (that human Prudence could not guard againſt) are ſo ſtrong and convincing, that they diſcover ſuch ſecret Correſpondence, and plainly prove who is the Perſon carrying it on.

Some Texts of Scripture have been cited on the other Side, my Lords, I beg leave to uſe one on this Occaſion; and that is, *Curſe not the King, no, not in thy Thought, for a Bird of the Air ſhall carry the Voice, and that which hath Wings ſhall tell the Matter.*

In theſe treaſonable Conſpiracies and Correſpondences againſt the King and Government, (notwithſtanding they are carried on ſo ſecretly, that

that the Conſpirators think nothing can diſcover them) there happen ſometimes, thro' Providence, ſuch Circumſtances which the Perſons cannot be aware of, that bring thoſe things of Darkneſs to Light: and we hope this may be an Example, that may deter any Perſon from going in the moſt ſecret and concealed Way to engage in any thing of this Nature.

My Lords, there is a Matter I ſhall beg leave to mention to your Lordſhips, becauſe my Lord Biſhop hath inſinuated as if I made hard and harſh Application of the Letter taken upon his Servant. My Lords, he ſays that the Conſtruction I put upon that Letter was not a natural but an ill-natur'd Explication. The Letter mentions an Impeachment, and ſays the Biſhop in the Letter, *if the Impeachment cannot be ſtopt, I am Priſoner for ſome Years without Remedy.*

My Lords, I did obſerve to your Lordſhips on that Expreſſion in the Letter, that it ſeem'd to import a Senſe of my Lord Biſhop's Guilt, becauſe he ſaid he was unavoidably a Priſoner for ſome Years. My Lord Biſhop ſays, this is by no means a natural but a forc'd and ill-natur'd Explication; for in that Place he meant no more than if an Impeachment were lodged, it would not be proſecuted, but made uſe of only that he might be detained a Priſoner for ſome Years.

My Lords, I muſt ſubmit to your Lordſhips, which is the moſt genuine and natural Interpretation, that which I put upon the Words, or that which my Lord Biſhop of *Rocheſter* doth; which ſo highly reflects on the Honour and Juſtice of your Lordſhips and the Houſe of Commons.

My Lords, I ſhall beg leave in the next Place to take Notice of the Evidence that hath been given on the behalf of my Lord Biſhop of *Rocheſter*, and to conſider, whether that is ſufficient Evidence to ſatisfy your Lordſhips of his Innocence.

My Lords, we did read the Examination of Mr. *Neynoe*, one of his Examinations, and the laſt that was taken; they on the other Side called for three other Examinations, of which the laſt Examination, which we read, was an Abſtract; they read them all, and, my Lords, the Examination which we read, was conſiſtent with three other Examinations, with relation to my Lord Biſhop of *Rocheſter*: and I muſt own that the Charge, in the Examination of *Neynoe*, upon my Lord Biſhop of *Rocheſter*, is only Hearſay from *Kelly*; *that Mr.* Kelly *did tell* Neynoe, *that the Biſhop of* Rocheſter *held Correſpondence with the Pretender and his Agents*; and that *he was employed by the Biſhop in writing for him, and carrying on the ſaid Correſpondences*: So far, my Lords, it is Hearſay, what Mr. *Kelly* told *Neynoe*. Now, as to Mr. *Kelly* himſelf, it did affect him, by charging that he had confeſs'd to *Neynoe*, that he did carry on ſuch a Correſpondence: but as to my Lord Biſhop, it cannot affect him but as Hearſay; and we muſt agree that if there was nothing elſe in the Caſe but this, all the Arguments made uſe of againſt ſuch Evidence would be of great Weight.

My Lords, I can't ſay that this Charge from *Neynoe*'s Examination is of Weight to charge the Biſhop of *Rocheſter*, ſo as to condemn him. My Lords, they have urged that if this Charge is not to be believed, all comes to nothing: This, ſay they, is the Foundation, and if *Neynoe*'s Examination is not ſufficient to affect the Biſhop of *Rocheſter*, then all the ſubſequent Evidence falls to the Ground.

My Lords, I beg leave to obſerve firſt, that if we had not *Neynoe*'s Examination, the Proof againſt my Lord Biſhop of *Rocheſter* is as ſtrong without it as with it; it is certainly Evidence of the Conſpiracy in general, but as to the Biſhop it is only a Circumſtance, to ſhew that another Man had ſaid of the Biſhop of *Rocheſter*, that he was carrying on a Correſpondence with the Pretender, *&c.*

But, my Lords, taking the Examination of *Neynoe* out of the Caſe, and conſidering the other Facts mention'd and prov'd to your Lordſhips, there is no Occaſion of *Neynoe*'s Examination; whether *Neynoe*'s Examination be falſe or true, is not material: There is ſufficient to prove the Biſhop of *Rocheſter* guilty, for they can't deſtroy the other Facts and Circumſtances; and as long as they ſubſiſt, they prove the Biſhop of *Rocheſter* to be the Perſon concerned in carrying on this Correſpondence.

My Lords, I beg leave to obſerve in *Neynoe*'s Examination, there is ſomething more than Hearſay, there is a Fact in it, and we are able to ſupport that Fact by other Evidence. *Neynoe* ſays, that he hath gone ſeveral Times with *Kelly* to the Biſhop of *Rocheſter*'s, and hath ſtaid a conſiderable Time for him. My Lords, we ſhall prove by another Witneſs, that *Neynoe* about that Time came ſeveral Times to a Houſe, where he ſaid he waited for a Friend of his that was gone to the Biſhop of *Rocheſter*'s, and he ſtaid and waited for him three or four Times, for an Hour, and an Hour and an half together. This will confirm what *Neynoe* ſaid in that reſpect to be true.

They ſay there are ſeveral Improbabilities contained in *Neynoe*'s Examination, and Inconſiſtencies; as to the Improbabilities, ſome of them are mentioned as if there was great Weight in them. That ſo much inſiſted on by my Lord Biſhop himſelf, is, that *Neynoe* ſays, he was employed to write Memorials, and the laſt he wrote was in *December*, and that was to deſire the Regent of *France* to furniſh a Body of 5000 Men, to come and invade theſe Kingdoms: The Obſervation made by the Biſhop of *Rocheſter* is, Where are theſe Memorials? Why did he not keep Copies of them? For he was at that Time concerned in a Deſign to ſerve himſelf one way or other; if he deſigned to betray thoſe Perſons he correſponded with, it would have been of Service to have kept thoſe Memorials, to have delivered them to the Government: If, on the other ſide, he had kept to his Friends, it would have been proper to have kept them, in order to create a Confidence in him, and to ſhew the Part he had in the Conſpiracy. Theſe Obſervations can have no Weight, when your Lordſhips come to conſider this was in *December*, and there was never any Application by him to make any Diſcovery of this Conſpiracy till *July* following. As to the Service it might be to keep them with reſpect to his Party, my Lords, we humbly apprehend that, conſidering him as a Man engaged in a Correſpondence of this kind, a Memorial of this Nature drawn up by him can be of no Uſe, but to detect himſelf and injure his Party, if he happens to be taken up, and ſuch a Memorial found upon him; therefore it was neceſſary to deſtroy it.

My Lords, there is another thing mentioned with relation to *Watſon*, and the Improbability of his being the Earl *Mareſchal*; but *Neynoe* does not ſay that he was the Earl *Mareſchal*, but ſays, there was one *Henry Watſon*, which he took to be a fictitious Name, and does not know who he really was, but he took him to be the Earl *Mareſchal*, and he gave him the Heads to draw up theſe Memorials.

My Lords, we apprehend it is not material, who *Watſon* was; he is a Perſon that employed *Neynoe* to write theſe Memorials, and he might be the Earl *Mareſchal*: *Neynoe* ſays he took him to be ſo. Say they, if it was the Earl *Mareſchal*, why ſhould he lie ſeveral Nights with *Neynoe*? this, ſay they, is very improbable. If it was him, he was to conceal himſelf, and take the fitteſt Place for that Purpoſe; therefore converſing with *Neynoe*, and not owning himſelf who he was, is not improbable. It is probable he would not diſcover himſelf to every Perſon; and tho *Neynoe* was a Perſon engaged in the Conſpiracy, if *Neynoe* did not know him to be the Earl *Mareſchal*, it might not be proper for him to diſcover himſelf to *Neynoe*.

My Lords, I think theſe are the principal Things objected; there are ſome other little Matters, but I think dwelling on ſuch Objections as theſe, is but miſpending your Lordſhips Time.

My Lords, that which we humbly inſiſt upon is, whether *Neynoe*'s Examination is an Examination to be credited or not credited? We agree it is only Hearſay, as to the Biſhop of *Rocheſter*, and if we had not other Matter, it would not be ſufficient; ſo that we humbly apprehend it's being true or falſe won't affect this Caſe. If your Lordſhips are of Opinion 'tis falſe, there is ſufficient Evidence againſt the Biſhop of *Rocheſter* without it.

My Lords, in the next Place they have produced in Evidence ſeveral Perſons that come and give your Lordſhips an Account of *Neynoe*'s Confeſſions to them. There is one Mr. *Bingley*, Mr. *Steward* and Mr. *Skeene*, and two other Perſons, that give an Account of what Mr. *Skeene* and *Steward* had told them Mr. *Neynoe* had ſaid.

Bingley by his Evidence would have it believed, that *Neynoe* had told him, he was employed by ſome Perſon in Power, to fix ſeveral things upon ſeveral Perſons that they were innocent of; that he had ſaid ſeveral things that were falſe, and had impoſed upon a great Man he had made Application to, and had got great Sums of Money out of him.

My Lords, I don't know how far they would carry this; for by what hath been inſiſted upon by my Lord Biſhop of *Rocheſter*, and his Counſel, it ſhould ſeem as if they were labouring to ſhew from theſe Perſons, that they have call'd to be examin'd, that all the Letters relating to this Correſpondence, the Letters of the 20th of *April*, and ſubſequent Letters, that relate to the particular Facts, that denote *Jones* and *Illington* to be my Lord Biſhop of *Rocheſter*, were contrived between *Neynoe* and ſome other Perſons, in order to charge my Lord Biſhop of *Rocheſter* with being concern'd in this Conſpiracy. This ſeems to be what they are labouring at by this Evidence.

My Lords, as to *Neynoe*'s being a Perſon employ'd in writing theſe Letters of the 20th of *April*, or any ſubſequent Letters, in Manner as is ſuggeſted, we ſhall ſhew your Lordſhips that it's impoſſible to be true; we ſhall ſhew that the Letters of the 20th of *April*, and all the other Letters that mention the Facts which denote the Biſhop of *Rocheſter*, were all intercepted and in the Hands of the Government, before ſuch Time as it was known among the Miniſtry that there was ſuch a Perſon as *Neynoe*: For *Neynoe* made Application to the Honourable Perſon mentioned by their Witneſſes, ſubſequent to all this Correſpondence, when theſe Letters were in the Hands of the Government, as a Perſon that could make Diſcoveries to the Government. Therefore that Inſinuation muſt vaniſh, that *Neynoe* was employ'd to forge Letters, which contain Facts under the Names of *Jones* and *Illington*, to charge the Biſhop of *Rocheſter*; and that even thoſe Letters of the 20th of *April* were forged by him.

My Lords, we ſhall go into the Character of Mr. *Bingley*, who hath, at your Lordſhips Bar, owned, that he hath been whipt, pilloried, and impriſoned: and as he hath taken his Degrees, as he owned at your Lordſhips Bar, conſequently he hath taken the Oaths.

As to the Character of Mr. *Skeene*, he hath likewiſe been produced as a Witneſs, and he carries his Evidence farther than the Evidence of Mr. *Bingley*; for whereas Mr. *Bingley* ſays, that *Neynoe* confeſſed he had impoſed upon that Honourable Perſon, and had mention'd things that were falſe, yet he could not ſay that after the Time of his Examinations, after *Neynoe* was brought from *Dover* to Town, he had confeſs'd to him that what he had ſaid on thoſe Examinations was falſe: But *Skeene* ſays, that after his Examinations he own'd that they were falſe. The laſt Examination was the 27th of *September*, and he was drown'd that Night; but as to the Examinations before the 27th of *September*, and out of which that is collected, Mr. *Skeene* ſays, *Neynoe* ſaid to him, that they were falſe.

My Lords, as to Mr. *Skeene*, we ſhall ſhew what ſort of a Man he is, a Man attainted of High-Treaſon; and tho he is pardoned, as to his having his Life and Liberty given him, he is in all reſpects an attainted Perſon: He was tried and condemned in the County of *Surry*, for being concerned in the *Preſton* Rebellion, and conſequently a Man of no Credit. And as to what he and *Steward* ſwear, relating to a Converſation with *Neynoe*, when in Cuſtody, we ſhall ſhew they never were together after the firſt Night, when they ſupp'd together. He was aſked, whether it was the firſt Night that he had this Converſation with *Neynoe*, and he did not pretend he had any Converſation of this Nature with *Neynoe* the firſt Night; and if it was not the firſt Night, we ſhall ſhew it could not be afterwards, for *Neynoe* was kept in a Room by himſelf, *Skeene* and *Steward* by themſelves in a Room underneath; and therefore this ſeems to be a Story contrived between *Skeene* and *Steward*.

We ſhall ſhew it could not be poſſible for them to converſe together, for *Skeene* and *Steward* were locked up in their Room; *Neynoe* was lock'd up in his Room ſeparate and apart from theirs; ſo that they could never have Correſpondence with him, nor come near him.

Another thing is ſworn by one of them, about a Meſſage ſent to him by *Neynoe*, and a Paper,

while they were in Cuſtody of the Meſſenger; and he ſays, this Paper was brought to him by the Meſſenger's Maid from *Neynoe*, and that this Paper contain'd a Juſtification of my Lord *Orrery*, expreſſing that he knew nothing of my Lord *Orrery*, but what he had ſaid of him was utterly falſe; that the Meſſenger finding he had ſome Paper, he, to conceal this Paper, burnt it. But that the Maid came to him with ſuch a Meſſage or Paper is falſe; the Maid never did, nor did the Meſſenger know of the Paper, as we ſhall prove to your Lordſhips.

My Lords, when we have proved this, we humbly apprehend we have taken off any Credit that could be given to what theſe People have ſaid, if they have ſaid any thing material. My Lords, before I leave this Head, I beg leave to obſerve another thing as to *Skeene*. He, upon his Examination concerning a Diſcourſe with *Pancier*, denies it intirely; but ſays, that what *Pancier* hath inform'd in relation to him, is falſe. We ſhall call *Pancier*, who will inform your Lordſhips, that *Skeene* hath own'd that he was privy to this Conſpiracy, and knew who were concern'd in it.

I own there are ſeveral noble Perſons named to be concern'd; that there is no Reaſon to ſay, from what *Skeene* may have ſaid of them, that they are guilty: But ſuch as he may have uſed the Names of great Perſons deſignedly, to keep up the Spirit of their Party, by telling them ſuch and ſuch Perſons were concerned: and if there is no other Evidence but what ſuch a Perſon hath ſaid, the noble Perſons mentioned will not be affected by it.

My Lords, there is another Head I ſhall beg leave to mention, and what they have inſiſted upon under this Suppoſition; that they would have it taken that there was a Deſign to forge Letters, in order to charge my Lord Biſhop of *Rocheſter*, and ſeveral other Perſons. Say they, it was eaſy to get Information of ſuch Circumſtances relating to the Biſhop and his Family, as are mentioned in the intercepted Letters, and then to write ſuch Letters, with a Deſign falſly to charge the Biſhop with having been concerned in carrying on a treaſonable Correſpondence. Your Lordſhips will pleaſe to conſider who this Charge muſt fall upon, of forging the Letters of the 20th of *April*, or the Letters that ſhew *Jones* and *Illington* to be the Biſhop of *Rocheſter*.

My Lords, we have proved them all to be Mr. *Kelly*'s own Hand-writing, or Letters that have come in Anſwer to them. They have objected we have not given ſufficient Proof of *Kelly*'s Hand: Say they, it is proved by Clerks of the Poſt-Office, who never had compared one original Letter with another, but at laſt they ſtop an original Letter, dated the 20th of *Auguſt*, after the Correſpondence had been carried on ſeveral Months; and then come and ſwear that the original Letters, that were forwarded, were of the ſame Hand-writing with that of the 20th of *Auguſt*. Can this be looked upon as ſufficient Proof? But we ſubmit it, their Evidence is much ſtronger than if they had only compared one Letter with another; for they not only had theſe Letters come every Week, but they were employ'd every time theſe Letters came, to copy them; ſo that the Hand-writing of theſe Letters muſt, by the conſtant ſtopping of theſe Letters, and their copying of them, be ſo imprinted on their Memory, that they are much better Judges of the Hand than if they had two of theſe Letters to have only compared them together: And the Hand-writing was ſo well known to them, that they could, as they have inform'd your Lordſhips, when any of theſe Letters came, diſtinguiſh them by the Hand-writing of the Superſcriptions, before they had open'd them, and they never were miſtaken. And this, we humbly apprehend, is as ſatisfactory an Evidence as can be given, that theſe Letters were the Hand-writing of Mr. *Kelly*, provided the Letter of the 20th of *Auguſt*, which I ſhall take Notice of by and by, is ſufficiently proved to be of his Hand-writing.

Taking it then, my Lords, that theſe Letters are the Hand-writing of Mr. *Kelly*, and of his Correſpondents in anſwer to them, I don't find that my Lord Biſhop of *Rocheſter* hath charged Mr. *Kelly* with having any Malice to him. And if he had no Malice to the Biſhop of *Rocheſter*, what ſhould induce him to write thoſe Letters, on purpoſe to charge the Biſhop of *Rocheſter* with being concerned in this Conſpiracy?

My Lords, we humbly apprehend the Pretence of theſe Letters being forg'd, muſt inſinuate, that *Kelly*, a vile Fellow, intending to charge the Biſhop of *Rocheſter* with being concern'd in this Conſpiracy, and make him liable to forfeit every thing that was dear to him, hath contrived Letters containing Circumſtances, in order to fix him to be the Perſon denoted by the Names of *Jones* and *Illington*; he hath written Letters, and by Combination received others in anſwer to them, for this Purpoſe; and by theſe wicked and malicious Practices, hath furniſhed this Evidence againſt the Biſhop, who is an innocent Man.

My Lords, this is the Subſtance of the Defenſe on this Head; and whether your Lordſhips will believe this, we muſt ſubmit to your Lordſhips. Your Lordſhips have had *Kelly* before you, and by his Behaviour have had no Reaſon to think that he had any Malice againſt my Lord Biſhop of *Rocheſter*, or any Deſign or Intention to prejudice him.

My Lords, the next Part of the Evidence I ſhall beg leave to obſerve, is a Part very conſiderable, and is ſo far from being a Defenſe, that the Defenſe attempted, hath confirm'd and ſtrengthen'd the Evidence againſt my Lord Biſhop of *Rocheſter*; that is, with relation to the Letter taken among my Lord Biſhop's Papers, directed to *Dubois*; a Letter, which, they obſerve, don't contain any Treaſon, or is of any treaſonable Import; but it ſeems to be a Letter of Indifference, and I believe, as ſuch, it was not taken care to be deſtroy'd, as it would have been, had there been any Apprehenſion that Uſe would have been made of it, as now, againſt the Biſhop of *Rocheſter*.

My Lords, the Uſe we make of it is, to ſhew that Mr. *Johnſon*, or Mr. *Kelly*, was a Perſon employed by my Lord Biſhop of *Rocheſter* in writing Letters for him. My Lords, your Lordſhips will obſerve by the Letter, he ſays, *I have heard nothing from you ſince the Letter I had about two Months ago by Mr.* Johnſon, *to which I immediately in his Hand returned my Anſwer.*

My Lords, if this is the Biſhop of *Rocheſter*'s Letter, either in his own Hand, or his Letter writ by another Perſon, it plainly proves what we infer from it, that *Johnſon*, *i. e. Kelly*, writ for

the Biſhop. Your Lordſhips will obſerve, it is a Letter writ in a Hand which no Man writes, a ſtiff Hand almoſt like Print; and it is plain that it is writ to diſguiſe the Hand of the Writer, whoever he was. At the latter End of the Letter, when the Perſon that writ it comes to be tired and off of his Guard, there are ſeveral Letters which compared with the Writing of my Lord Biſhop of *Rocheſter*, and what is own'd to be his, appear to be his writing. In the Date of the Letter, which is *December*, the D you frequently find in the Biſhop's Hand-writing; your Lordſhips obſerve the Letter E that frequently occurs in the Biſhop's writing; and your Lordſhips by comparing that with the Letter produced, will find that they exactly agree.

Whether or no your Lordſhips won't think it, on thoſe Circumſtances, to be the writing of my Lord Biſhop of *Rocheſter* in a diſguiſed Hand, we muſt ſubmit to your Lordſhips. But, my Lords, ſuppoſe it was not his Hand-writing, here is Evidence that it was his Letter; and that is evident, becauſe it is under his Seal, it is ſealed with his own Seal, a Seal that he had in his Cuſtody, and made Uſe of no longer ago than the 26th of *February* laſt: I think that is the Day a Letter was taken from his Servant. That we humbly apprehend, my Lords, will plainly ſhew it is the Biſhop's Letter, becauſe it was ſealed with his Seal, and the ſame Seal is made Uſe of by the Biſhop, on the Letter that was taken upon his Servant in *February* laſt.

My Lords, this Matter hath been controverted by my Lord Biſhop. He hath call'd Engravers, who believe Seals may be counterfeited, and Impreſſions may be taken off the Wax, and another Impreſſion made, ſo as to make it difficult to know which is which. They were a little looſe in anſwering the Queſtion, Whether or no, if the Seal, from whence the Impreſſion was to be taken, was broken in the Middle, it could be done. But one ſaid, the Seal might be mended, and it might paſs unobſerved, but I find it is extremely difficult. But they did ſay, Seals may be ſo counterfeited, that it may be difficult to diſcover one from the other. My Lords, this is to inſinuate, that after ſuch Time as the Letter was taken upon my Lord Biſhop's Servant, the Perſon in whoſe Cuſtody this other Letter of *Dubois* was (which is proved to have been taken the 24th of *Aug.* amongſt the Biſhop's Papers) hath cauſed an Impreſſion to be taken off the Seal with which the Letter to *Dubois* was ſeal'd, (the Wax broken in two as it was) in order to fix it upon the Letter that was taken upon my Lord Biſhop's Servant, ſo as to prove the Letter to *Dubois* to be the Biſhop's Letter. Who is this to be fixed upon? *Neynoe* was gone; I don't know, unleſs upon the Committee of the Houſe of Commons: for the Biſhop's Letter was taken on his Servant the 26th of *February*, the Committee of the Houſe of Commons made their Report on the 1ſt of *March*, and the Letter to *Dubois* had long before the 26th of *February* been in Cuſtody of that Committee. And yet while this Letter is in Cuſtody of a Committee of the Houſe of Commons, they will have it, here, is an Impreſſion taken off a broken Seal, and put on this other Letter, in order to ſhew that theſe are Letters of the ſame Perſon. Who can believe this to be the Caſe?

An Obſervation hath been made, that truly the Committee of the Houſe of Commons have not made any Obſervation of this Kind, with relation to this Letter to *Dubois*, that it is the Biſhop's Letter: which is true; for they had not this Matter relating to the Identity of the Seals, under their Conſideration; but this is a new Diſcovery made ſince: And therefore, my Lords, they apprehended that this was a Letter directed to the Biſhop by the Name of *Dubois*, it being found amongſt his Papers; and nothing to the contrary did appear, till after they had made their Report.

My Lords, there are other Things your Lordſhips would have expected to have had an Account of, in Anſwer to this Evidence. Here is a Letter found among my Lord Biſhop's Papers; conſequently ſo far we apprehend that this Evidence is a legal Evidence againſt the Biſhop, as being a Letter found in his Cuſtody; this Letter is directed to *Dubois*, and mentions the Hand of *Johnſon*. Doth my Lord Biſhop of *Rocheſter* give any Account who *Dubois* is? who this *Johnſon* is? how this Letter came there? No, my Lords, none at all. Doth his Lordſhip give you any Account of the Seal? and hath his Lordſhip ſaid that the Seal, that ſealed the Letter taken on his Servant, he hath not? or that the Letter was not ſealed with his Seal, or that he did not ſeal it himſelf? His Lordſhip did not ſay one Word to that Purpoſe, or make any Denial of the Matter, nor give your Lordſhips any Account who *Dubois* and *Johnſon* were; nothing at all, but hath left it to your Lordſhips on that Foot: That the Letter to *Dubois* had an Impreſſion taken off, after it was in the Cuſtody of the Committee of the Houſe of Commons, and that Impreſſion made uſe of on the other Letter: and that this is another Part of the Contrivance, in order to charge my Lord Biſhop of *Rocheſter* with being concern'd in this Conſpiracy.

My Lords, as to the Seal's being the ſame on the two Letters, we humbly apprehend, the Evidence given on the other Side hath ſtrengthened ours. We have produced two Engravers, one of them they own to be the top Engraver of *England*, Mr. *Chriſtian*; he gave your Lordſhips an Account, that he verily believed theſe two Impreſſions to be taken off from the ſame Seal. Mr. *Rollus* ſaid the ſame thing, and that he had uſed the Art long, and could judge. They made no Endeavours on the other Side to try the Skill of Mr. *Chriſtian:* but as to Mr. *Rollus*, they hoped they ſhould be able to puzzle him; and therefore have produced ſix ſeveral Impreſſions made on Wax by Seals to try his Art; and after he had look'd upon them, he gives you ſuch an Account, that I believe your Lordſhips are ſatisfied that he is a Man of Skill and Art, and that, if theſe Impreſſions had been taken off, as they would inſinuate they were, he muſt have diſcover'd it.

My Lords, here is an Artiſt brought to make this Experiment on *Rollus*, to try his Skill; yet notwithſtanding all the Art hath been made uſe of in the Caſe, that could be, the Man was able not only to diſtinguiſh how many Seals the Impreſſions were made with, but alſo to give an Account that they were caſt Seals, and not grav'd Seals, that made thoſe Impreſſions.

This,

This, my Lords, will have ſuch a Weight with your Lordſhips, that we hope your Lordſhips will believe his Evidence is true; and if it is true, what Anſwer hath been given it, your Lordſhips have heard. Whether therefore any ſatisfactory Anſwer hath been given, to an Evidence ſo ſtrong and convincing of *Johnſon*'s being employ'd in writing Letters for the Biſhop of *Rocheſter*, we muſt ſubmit to your Lordſhips.

My Lords, the next Evidence they went upon was in relation to the Dog. Say they, we will ſhew that this Dog was not for the Biſhop of *Rocheſter*, or any other Perſon but Mrs. *Barnes*. As to that, my Lords, I beg leave to remind your Lordſhips of the Evidence given by Mrs. *Barnes*, that Mr. *Kelly* told her it was for the Biſhop of *Rocheſter*. It is a little improbable, if the Dog had been for Mrs. *Barnes*, that he ſhould come and deliver it to her, and tell her 'tis for the Biſhop of *Rocheſter*. But it appears by Mrs. *Barnes*, that another Dog was deſigned for her, and that this Dog was for the Biſhop of *Rocheſter*. They have read in Evidence a Certificate, ſign'd by Mr. *Birmingham*, and likewiſe an Affidavit, that there was in the Month of *March* a Dog deliver'd to *Kelly* in *France* for Mrs. *Barnes*. That, my Lords, muſt be another Dog, and not this, which we ſay was for the Biſhop of *Rocheſter*; for this was not deliver'd to Mr. *Kelly* in *France*, but was ſent over to him after he was in *England*, as appears by the Letters; and after he had receiv'd it, he writes, that *he would inform Mr.* Jones *ſoon of it, to whom any thing from that Quarter would be very acceptable.* So that, my Lords, if there was another Dog, and by Mr. *Kelly* deſign'd for Mrs. *Barnes*, we humbly apprehend it cannot be applied to this; for this Dog was deſign'd for Mr. *Jones*, and Mrs. *Barnes* ſays, that is the Biſhop of *Rocheſter*.

My Lords, the next Evidence given by them is in relation to the Letters of the 20th of *April*. They have endeavour'd to prove that, as to my Lord Biſhop of *Rocheſter*, it is impoſſible that theſe Letters could be written or dictated by him. He came to Town the 11th, and went to *Bromley* again the 12th of *April*; he had a Fit of the Gout ſoon after; had Servants that conſtantly attended him, more than one; and theſe Servants give an Account, that no Perſon whatſoever came near him, or could be employ'd by him to write thoſe Letters.

My Lords, I beg leave to obſerve, *firſt*, That as to the applying their Evidence to the Writing of thoſe Letters on the 20th of *April*, it is very poſſible that the Letters were writ on another Day than when they bear Date: Therefore if they prove, that it was impoſſible that theſe Letters ſhould be writ or dictated by the Biſhop of *Rocheſter* on the Day they bear Date, yet they might be writ on another Day, and it is very probable they were.

Your Lordſhips will obſerve, that theſe Letters are in Cyphers; and, I believe, where a Perſon dictates a Letter to another, he doth not reduce the Letter into Cyphers as it is dictated, but he firſt writes it out in Words at length, and afterwards puts it into Cyphers, and when it is proper to ſend it, then is the Time to date it; and if it be left with the Perſon that puts it into Cyphers to ſend, as probably it was in this Caſe, it is left to him to date it when he pleaſeth: So that if they ſhould have ſhewn, that upon the 20th of *April* the Biſhop was incapable of dictating or writing, it is no concluſive Anſwer to the Charge againſt the Biſhop as to theſe Letters.

Your Lordſhips will pleaſe to obſerve, that upon the 11th of *April* the Biſhop of *Rocheſter* came to Town, on the 12th he went into the Country; notwithſtanding what they have attempted to prove as to the Times that *Kelly* was in Town, and the Biſhop was in the Country, yet upon the 11th and 12th they were both in Town; for *Kelly* came to Town from *France* the 11th, and the Biſhop came to Town the 11th from *Bromley*.

When the Servants came to be examin'd, what time of the Day the Biſhop came to Town on the 11th, they could not give any Account of that: When they were aſked, what time of Day it was when he went out of Town on the 12th, they could give no Account of that.

There hath been no Account given to your Lordſhips who was with the Biſhop of *Rocheſter* the 11th and 12th when he was in Town, or where my Lord Biſhop was at that Time: So that, my Lords, it is poſſible, from theſe Circumſtances, that theſe Letters might be writ when the Biſhop was in Town, and *Kelly* was in Town.

But ſuppoſe it ſhould not be ſo; the Queſtion is, whether they could not be writ at *Bromley*. On the 12th of *April* Mr. *Kelly* was at Mrs. *Barnes*'s, he did not lie at home that Night; on the 13th he did not lie at home; on the 14th he came, and went to his old Lodgings at Mrs. *Kilbourne*'s. Theſe two Nights, it doth not appear where he was; he might have been at *Bromley*, it is but an Hour's Ride. As to the Servants, ſay they, they ſhould have remember'd his ſetting up his Horſe;—He might ſet up his Horſe at an Inn, and go privately to my Lord Biſhop.

Notwithſtanding my Lord Biſhop was ill, and tho he ſhould have proved to your Lordſhips Satisfaction, that after he was ſo, he did not, nor could admit of Company, yet we ſubmit it to your Lordſhips that it is no Anſwer; for he was not very bad till he had been in the Country two or three Days, and theſe Letters might be dictated or written in thoſe two or three Days before he was ſo ill.

My Lords, I beg leave to obſerve, what the Servants have ſworn. Here is *Grant*, that is my Lord's Butler, he ſays, that my Lord Biſhop went the 12th of *April* to *Bromley*, and he attended him there till the 21ſt, and on the 21ſt he was ſent to Town upon ſome Matters relating to the *Weſtminſter*-Election; and another Servant about him gives an Account, that two or three Days after my Lord Biſhop came down, he was taken ſo ill in his Hands and Feet, as not to be able to help himſelf.——Theſe are two or three Days beyond the Time that *Kelly* was out of his Lodging, which was the 12th and 13th, (and theſe two or three Days muſt be the 14th and 15th) it may be my Lord Biſhop was ſo diſabled indeed as he ſays; he ſays he is almoſt certain that no Stranger was with the Biſhop; but he ſays the Apothecary or the Miniſter might be with him in his Illneſs, tho he did not ſee them himſelf. If it is poſſible for the Apothecary or the Miniſter to be with him, and he not ſee them, why is it not as poſſible that Mr. *Kelly* might be there, and he not ſee him there?

The next Witneſs that is called only ſpeaks to the 18th and 19th; when *Grant* came to the Elec-

tion, another Servant was ſent for, and he went, and he ſays my Lord Biſhop was very ill. *Samuel Smale* gives an Account of my Lord Biſhop's Illneſs, and his attending him.

My Lords, they have brought all the Servants of the Houſe, the very Stable-Boy, to prove that my Lord Biſhop could not ſee any body without their Knowledge; even the Nurſe that attended his Lady when ſhe was dying. The Servants that were waiting upon his Lady ſwear, That it was impoſſible any body could come to my Lord Biſhop, and they not know it; and they are as poſitive, in relation to any body's coming to my Lord Biſhop, as the Servants that immediately attended him.

But, my Lords, there is a Matter, which we ſhall offer in Evidence, that entirely deſtroys this Evidence of my Lord Biſhop's being ſo ill, that he could not move Hand or Foot, and of his not being in a Capacity of dictating Letters: that he did actually ſend a Letter the 21ſt of *April* to a Perſon in Town; and this very *Grant*, that hath given this Account to your Lordſhips, brought up the Letter to Town on the 21ſt of *April*. We have this to give your Lordſhips in Evidence; then what is the Evidence of all thoſe Servants, who ſwear that it is impoſſible theſe Letters ſhould be writ on the 20th of *April*, and that no body was admitted to come to him in order to write theſe Letters.

My Lords, as to the Evidence that hath been given, in relation to *Kelly*'s Hand-writing, they have called Witneſſes to diſprove the Evidence on our Side, who, looking upon the Letter of the 20th of *Auguſt*, ſwear they do not believe it to be *Kelly*'s Hand-writing. Our Witneſſes do believe it; their Witneſſes do not believe it to be his Hand-writing, and ſay that it is not like it.

There are ſeveral Letters ſhown them, tho in a leſs Hand, that are agreed to be *Kelly*'s Hand-writing; and your Lordſhips may judge, by looking on them, whether they are not of the ſame Hand with the Letter of the 20th of *Auguſt*; tho the Character is ſomething leſs, we humbly apprehend they will appear ſo to be. Beſides, there are thoſe Circumſtances relating to the Hand-writing of Mr. *Kelly*, that put it beyond all Diſpute that it is his Hand, and that is the Anſwers he hath received to thoſe Letters which we charge to be written by him. We have traced him from Place to Place, where the Letters that came in anſwer to his Letters, were directed; to Mr. *Andrews* at the *Dog* and *Duck*, there *Kelly* employ'd a Perſon to take them up, and they were deliver'd to him; and at *Burton*'s Coffee-houſe *Kelly* took up the Letters that were directed thither, in anſwer to thoſe Letters that were of his Hand-writing: So there is not only the Evidence of Witneſſes, that knew his Hand, and believe it to be his Hand, but here is the Anſwers to them actually taken up by *Kelly* himſelf: and that we humbly apprehend is ſo ſtrong an Evidence, joined with the other, that, when one or two Witneſſes come and ſay they do not believe it to be his Hand-writing, their Teſtimony ſhall not overthrow it.

My Lords, there is another Piece of Evidence given by them, relating to the Letters of the 20th of *April*, which were incloſed in a Packet ſent to *Boulogne*; the Packet is directed to Mr. *Alexander Gordon* Banker, at *Boulogne*: they have produced a Certificate from *Boulogne* upon Oath, wherein it is ſaid, that he is no Banker, and denies that he received any Packet from *Kelly*, or that he knew him: This is a Certificate, and prov'd by a Perſon who believes it to be ſo. Your Lordſhips will pleaſe to obſerve what this Paper is, and that it is brought here by a Perſon that knows nothing of its being ſworn, but ſays, he is uſed to Tranſactions of this kind, and he believes it to be a Certificate from *Boulogne*.

My Lords, we ſhall produce a Gentleman, who was at *Boulogne* at the Time that the printed Report and Appendix of the Houſe of Commons came there, and he was at Mr. *Gordon*'s Houſe, when they were diſcourſing about this Matter; and what they then ſaid, we humbly ſubmit will be believed; for what they then ſaid was ſpoken as of an indifferent Thing, and they did not then ſee it could be of any conſequence to diſguiſe the Truth. Mr. *William Gordon* the Father ſaid, that he was at *Paris* when this Packet is ſuppoſed to have come: but Mr. *Alexander Gordon* the Son own'd that he was at home, and that this Packet came to him, but, ſaid he, what was in it I know not, but I delivered it as is mentioned in the *Appendix*.

My Lords, there is another Piece of Evidence they have given, with relation to *James Talbot*, to whom the Packet was delivered at *Boulogne*. Here is a Witneſs produced to prove that he was in Town the 29th of *April* 1722. and he could not be miſtaken, becauſe he had paid him Money, and he had entred it in his Book. The Evidence goes no farther than to prove, that one *James Talbot*, that was a tall black Man, was then in Town; but it doth not appear that this was the Perſon mentioned to have taken this Packet at *Boulogne*, and carry'd it to *Paris*: So that their Proof, as to this Matter, is inſufficient.

But we ſhall ſhew your Lordſhips, from an Account we have here from Mr. *Crawford*, his Majeſty's Reſident at *Paris*, that this *James Talbot* came to *Paris* that very Day, as he is mentioned to have brought thoſe Letters to *Paris*, and was actually there at that time: and that we humbly apprehend will be a full Anſwer to them, and take away any ground of Suppoſition, that the Evidence they have given concerning *James Talbot*, can be apply'd to that *James Talbot* who received the Packet at *Boulogne*.

As to the Evidence relating to Mr. *Kelly*'s being in Town the 20th of *April*, we humbly apprehend from what hath been ſaid, it is not material whether he was there or not; but they have not proved it, for Mrs. *Kilbourne* and her Maid, the two Witneſſes produced by them for this Purpoſe, ſay that he came to Mrs. *Kilbourne*'s Houſe the latter end of *April*, they believe the 20th, but they are not poſitive as to the Day. If he had been at Mrs. *Kilbourne*'s the 20th of *April*, it is no Anſwer at all to our Evidence, and the ſtrong Circumſtances there are to induce a Belief, that the Letters might be dated at another time than really they were written.

My Lords, another Evidence is Mr. *Pope*, a Gentleman of Learning, with whom my Lord Biſhop of *Rocheſter* uſed to converſe; and he gives you an Account that he knew nothing of this Conſpiracy, that the Biſhop never open'd his Mouth to him about it, nor acquainted him with it; that he

was frequently with him, and their Diſcourſe was only about Matters of Literature.

No doubt my Lord Biſhop hath converſed with Perſons on different Subjects, to whom he would communicate nothing of an Affair of this Nature.

My Lords, upon the whole Matter we muſt ſubmit it to your Lordſhips, whether we have not made out the Charge againſt my Lord Biſhop of *Rocheſter*, to your Lordſhips Satisfaction, if not by legal Evidence, yet by Evidence that will ſatisfy and convince any Perſon that will conſider it.

My Lords, a great deal of Regard is due to the Character and Function of the Reverend Prelate at the Bar: but if my Lord Biſhop of *Rocheſter* hath departed from his Character and Function, and hath gone and engaged in a traiterous Conſpiracy, and been guilty of Treaſon towards his King, and Perjury towards his God, we humbly apprehend, if this be proved, that his Character and Function are ſo far from being a Mitigation, that they are a great Aggravation of his Crime. We ſhall ſubmit it to your Lordſhips, to do what your Lordſhips think is conſiſtent with Juſtice and Equity.

Mr. *Wearg* ſpoke next.

My Lords,

IT muſt be admitted, that the Revered Prelate at the Bar, has made his Defenſe with the utmoſt force and beauty of Eloquence.

Was I capable of anſwering it in the like manner, which I own I am not, yet I ſhould not think myſelf at liberty to do it, under the preſent Circumſtances.

For, tho it may be excuſable, in a Perſon upon his Defenſe, to make uſe of that powerful Inſtrument of Error and Deceit, which always impoſes upon the Reaſon, and miſguides the Judgment in proportion as it affects the Paſſions; yet, I can't think the ſame Methods juſtifiable in a Perſon employ'd to carry on the Proſecution.

I ſhall therefore examine the Force of what has been offer'd on behalf of the Reverend Prelate, ſtripp'd of the Ornaments and Colours of Rhetorick.

I ſhall, in the firſt place, conſider that Catalogue of Hardſhips, which his Lordſhip has complain'd of.

1. The firſt Complaint was that of Severities and Indignities offer'd him during his Confinement: but the Subject of this Complaint not ariſing from any of the Proceedings before your Lordſhips, I can give it no other anſwer, than by ſaying, that I am very credibly inform'd 'tis a Complaint without foundation.

2. Reading Extracts of Letters was the next Hardſhip complain'd of by his Lordſhip, and repreſented as if they were read as Evidence againſt him; when it was declared by the Counſel for the Bill, that they were only read upon the general part of the Bill, and did not affect his Lordſhip.

3. The third Hardſhip was, excuſing the Decypherers from anſwering ſuch Queſtions propoſed by his Lordſhip, as tended to a Diſcovery of their Art; that is, in other words, refuſing to do an Act which muſt prejudice another Perſon, and could be of no ſervice to his Lordſhip: for the Truth of what they teſtified, depended upon the Skill and Integrity of the Decypherers, and not upon the Method of coming at that Skill, which they could not diſcloſe in ſo publick a manner, without doing a manifeſt Prejudice to themſelves, which no Witneſs is ever compell'd to do.

4. The next Hardſhip is of the like nature, the not ſuffering the Clerks of the Poſt-Office to be examin'd, as to the Method and Authority by which they open'd Letters, by which they might have been ſubjected to the ſevere Penalties of the Statute 9 *Annæ*, if they had not exactly purſued the Methods preſcribed by that Statute. But his Lordſhip's Innocence could not poſſibly have been manifeſted by it; for are the Letters leſs criminal, if the Perſon who ſtopped them did not punctually purſue the Directions of that Statute? It would be thought a ſtrange Defenſe in a common Offender, if inſtead of proving his Innocence at his Trial, he ſhould object that he was taken without a proper Warrant; which, if true, don't make him the leſs criminal.

5. The fifth Hardſhip was refuſing to let Mr. *Lewis* declare any thing that came to his Knowledge by his being employ'd in the Secretaries Office ſome Years ago. This Hardſhip could be added only to fill up the Catalogue of Complaints, ſince, notwithſtanding your Lordſhips Order, Mr. *Lewis* did declare what he was call'd for, tho he afterwards own'd, that he came to the Knowledge of it by being employ'd in that Office.

6. The ſixth Hardſhip was in reading an Examination not dated, ſign'd, or ſworn. But I apprehend the Counſel for the Bill have more reaſon to complain of Hardſhips of this ſort, in reading Papers on behalf of his Lordſhip, as Examinations ſign'd and ſworn, without ever proving that they were ſign'd or ſworn to, or that any ſuch Perſons were ever examin'd; whereas the Examination hinted at in the Biſhop's Complaint, was read as an Examination, or rather Confeſſion of a Perſon ſince dead, not ſign'd nor ſworn to, and fairly left to your Lordſhips, to have ſuch Weight as the nature of the Evidence deſerved.

7. The next Hardſhip, *viz.* that of reading Letters wrote by another Perſon, without Proof that they were wrote with the Prelate's Privity, is begging the Queſtion upon the whole Proceeding. For whether there was Proof of their being wrote with his Privity or not, is the Subject of the preſent Inquiry.

8, 9. The two laſt Hardſhips complain'd of, ſeem to be calculated for Perſons without Doors, who are Strangers to what paſs'd at your Lordſhips Bar, That he was denied a Copy of the Letters in Cypher until the Trial was ſo far advanced that he could not make the proper uſe of thoſe Copies. Will any one who reads this Complaint in his Lordſhip's Speech imagine, that after he had a Copy of thoſe Letters, he had twice as much time for his Decypherers to peruſe them as he himſelf deſired?

Or will a Perſon who ſhall read the next Complaint in his Lordſhip's Speech, That he was refuſed to read any of the Papers contain'd in the Trunk that had not been read by the Counſel for the Bill, ever be perſuaded that his Lordſhip read the three firſt Examinations of *Neynoe*, that had not been read by the Counſel, the Papers taken in *Neynoe*'s Pocket, the Certificate of the Surgeon return'd by Mr. *Crawford*, neither of which had been read by the Counſel for the Bill; That his Lordſhip was expreſly told, he was at liberty to read

read any Paper in the Trunk he ſhould think neceſſary to his Defenſe; and was only refuſed reading one Paper, becauſe he own'd it was for no other purpoſe, but to raiſe an Objection to a Matter which had not been inſiſted on by the Counſel for the Bill, that he might anſwer the Objection which he himſelf ſhould raiſe?

Theſe things will ſeem incredible to one who ſhall read this Catalogue of Complaints in his Lordſhip's Speech; and yet theſe are ſome of thoſe Complaints, which with the Aſſiſtance of a warm and maſterly Style, drew Tears from ſome of your Lordſhips Eyes: ——

But when ſtripp'd of that falſe Beauty, and examined by the ſure and unerring Rules of Reaſon, appear to be without Foundation; and to have been made without that ſtrict Regard to Truth, which, I preſume by ſome Part of his Lordſhip's Speech, he would be thought always to have.

From theſe Complaints his Lordſhip proceeds to ſupport ſome of the Objections taken by his Counſel to the Bill.

And one of the firſt Objections is of the ſame nature with ſome of the Hardſhips that have been complain'd of; that is, it might be an Objection, did it not want the Foundation of Truth.

The Objection I mean is, that it is a Bill *ex poſt facto:* Your Lordſhips have heard a great deal ſaid upon the Hardſhips of Bills *ex poſt facto*.

We have been call'd upon to ſhew againſt what Law he has offended: it has been ſaid, If he has not offended againſt any Law, will you make a Law in his Caſe, which will not be a Law in the Caſe of any other Man? This is a ſurprizing Objection.

The Notion I always had of a Law *ex poſt facto* was, where a Fact was made criminal by a Law, which was not ſo at the time that Fact was committed.

But is that the preſent Caſe? Was it no Offence, before this Bill was brought in, to correſpond with the Pretender and his Agents, in order to ſubvert our Conſtitution?

Are we to be call'd upon to ſhew againſt what Law this is an Offence?

Or to have a Complaint made, that in puniſhing a Man for ſuch an Offence, you are making a Law in his Caſe, that will not be a Law in the Caſe of any other Perſon?

I hope it will be a Law in the Caſe of every Man that equally deſerves it.

But his Lordſhip is ſenſible of this Anſwer, and therefore gives it a very artful Turn, by applying it, not to the Fact, but to the Evidence. His Lordſhip ſeems to argue, that accumulative Evidence is as unreaſonable as accumulative Treaſon; and objects that Proofs which communicate Light and Strength to each other, have only the Formality, without the Force of Evidence.

This Objection is deſtructive of all Proof that is not Mathematical; for all other Proof muſt neceſſarily be what he calls accumulative.

That is, it conſiſts of a variety of Facts and Circumſtances laid together, ſufficient to induce a Belief, which any of them ſingly would not do. This is the very Principle upon which the Trial of every Matter of Fact, not capable of a Demonſtration, does and muſt proceed.

Your Lordſhips in the next place have heard a ſtring of Objections, that have been repeated againſt each of the Bills.

That a Subject of *England* ought to be tried according to the Laws of *England* and *Magna Charta:*

To be convicted by legal Evidence:

And that Diſtinction between Legal and Parliamentary Evidence is abſurd.

All theſe Poſitions I agree to;

But at the ſame time I muſt affirm, that this is a Trial agreeable to the Laws of *England* and *Magna Charta*; and that a Proceeding of this Nature is as neceſſary a part of our Conſtitution, as the Eſtabliſhment of the ordinary Courts in *Weſtminſter-Hall.*

The difference between Parliamentary and Legal Evidence, taken in the general Senſe of the word Legal, is improper.

And I affirm, the Evidence which has been offered in ſupport of this Bill, is legal Evidence.

What is legal Evidence, depends upon the Nature of the Inquiry, and the Judicature before which the Inquiry is made.

Depoſitions in writing are not legal Evidence in a Court of Law, bnt they are legal Evidence in a Court of Equity.

Upon an Indictment for Felony, or any other Miſdemeanour, one ſingle poſitive Witneſs, or Circumſtances only without any poſitive Witneſs to the Fact, is legal Evidence.

But upon an Indictment for Treaſon, the Law requiring two Witneſſes in the Courts below, one Witneſs, or Circumſtances, is not legal Evidence.

In Parliamentary Enquiries, which are excepted out of that Act and not reſtrained by any other, every thing is legal Evidence which may properly tend to a Diſcovery of the Truth.

I can't think myſelf at liberty at this time of day, to mention what fell from the other ſide againſt the Power of the Parliament in general, and the rather becauſe the next Objection which they relied upon was introduced with an admiſſion of that Power.

But they ſay it ought never to be exerciſed but in Caſes of Neceſſity; and inſtance particularly in the Bill againſt the *South-Sea* Directors, as a Caſe of that Nature. Is there any Compariſon between the Offence of thoſe Men, and of one who has endeavoured to ſubvert our whole Conſtitution, to deſtroy our Religion, our Liberty, and every thing that is valuable?

When we reflect that theſe Endeavours have been conſtantly carrying on ever ſince the happy Eſtabliſhment of the Proteſtant Succeſſion;

That the many Diſcoveries of their Plots, the many Examples of publick Juſtice, have had no other Effect, than to make them more ſubtle and cunning how to avoid the common Forms of the Law:

Theſe Reflections ſhew the Neceſſity of ſuch a Proceeding, to convince the World, according to your Lordſhips Report, that as Artifice and Diſguiſe don't leſſen the Danger to the Publick, nor mitigate the Guilt of the Offender, ſo neither ought they to protect him from Puniſhment.

The next Objection was addreſſed chiefly to one part of your Lordſhips, who were told that no civil Power upon Earth could deprive a Biſhop of the Exerciſe of his holy Function, but that muſt be done by another Judicature; and there-

fore it was obſerv'd by one of the Counſel, that wherever Iſſue is join'd in the Common Law Courts, whether Biſhop or no, the Court where ſuch Iſſue is depending, muſt write to the Metropolitan to try it, according to the Law of the Church.

Whether an Act of Parliament can deprive a Biſhop, ſo as to make the Acts done by him afterwards invalid, is a Controverſy not proper at this time; but it will be admitted on all hands, that an Act of Parliament may reſtrain a Biſhop from the Exerciſe of his Function within any part of this Kingdom, ſo as to make the Exerciſe of it Criminal in him, or in any that aſſiſts him. And I believe if this Bill ſhould paſs into a Law, and there ſhould be a queſtion whether his Lordſhip was afterwards Biſhop of *Rocheſter*, the Courts of Law, upon producing the Act of Parliament, would hardly think it neceſſary to trouble the Metropolitan.

His Lordſhip has been pleaſed to ſay, that this is the firſt Inſtance where a Member of this Houſe has been judged in another.

I wonder that his Lordſhip, who is ſo great a Maſter of our *Engliſh* Conſtitution, ſhould have forgot the Caſe of one of his Predeceſſors in the See of *Rocheſter*, in the Reign of *Henry* VIII. againſt whom a Bill was brought in the Houſe of Commons, inflicting ſevere Pains and Penalties, which paſſed in that Houſe, and afterwards received the Approbation of this, and the Royal Aſſent.

They have cloſed their Objections to the Bill, with a very pathetick Admonition againſt the Conſequences of it.

They ſay the wiſeſt Man can't foreſee, nor the moſt innocent Man declare himſelf ſafe from the Conſequences of this Bill.

That a wiſe Man ſhould not be able to foreſee what will happen hereafter, is not very ſtrange;

But he muſt be a very wiſe Man indeed, in my poor Opinion, who can foreſee any danger to Innocence from the Proceedings upon this Bill. Your Lordſhips have attended with the utmoſt Patience, for ſeven Days together, to the Proofs for and againſt this Bill; and have given the Perſon accuſed all the Opportunities, afforded him all the Aſſiſtance poſſible, to make out his Innocence.

And whoever ſhall uſe this Precedent as a handle for Oppreſſion and Injuſtice, would certainly be guilty of the ſame Oppreſſion and Injuſtice without this Precedent.

The next Part of their Defenſe, conſiſted in Obſervations upon the Evidence for the Bill.

They raiſe great Triumph from *Neynoe*'s Examination, which they would repreſent as the Foundation of the whole Charge, or offered as ſuch by the Counſel for the Bill.

But if it was, they have been ſo far from weakening, that they have added ſtrength to that Foundation.

As to the Inconſiſtencies in it, they are not *Neynoe*'s, but *Kelly*'s. As to the Tale they have told, that at the very time when he was deluding a great Man with Confeſſions, either to get Money out of him, or to find an opportunity of making his Eſcape, he ſhould declare to *Skeene* and to *Steward* that what he had confeſſed was falſe; I ſay, as this is improbable in itſelf, ſo it appears by our Evidence to be a mere Fiction of their own, without any poſſibility of being true.

It appears to be an Attempt, by a parcel of deſperate People engaged in the ſame Intereſt, to weaken *Neynoe*'s Evidence, whom they looked upon as a Betrayer of their Cauſe and Party.

From the Evidence of *Neynoe* they proceed to the other Evidence.

And here they tell your Lordſhips that we have ſupported the Bill by Innuendo's, Arbitrary and Invidious Interpretations; that when a Woman is named, it means a Man; that two different Names ſignify the ſame Perſon; that Books of Account, and mercantile Terms, by a new kind of Metaphor, are taken in an ill Senſe: and all this aſſiſted with the Whimſies and Conjectures of Decypherers.

Theſe are pretty ſounding Expreſſions; but, when conſider'd, are nothing but Sound.

Is it an arbitrary Interpretation, when a Letter ſays, I ſaw Mrs. *Illington*, *He* is in great Tribulation for poor *Harlequin*, but *his* Obligations are the ſame, which *he* deſires may be made known, to apply this to a Man? When two Letters are wrote by the ſame Perſon, but ſign'd by different Names, to apply thoſe two Names to that Perſon?

When Letters give a Caution not to write any more, till new Books of Account can be ſettled and ſent over by ſafe Hands;

Becauſe thoſe who have got part may by the ſame means have got the whole:

To expreſs a doubt whether they have been betray'd by falſe Friends, or an open Enemy:

To talk of having Wine, but wanting Barrels; of the abſence of the King and Court, as affording a proper opportunity of ſending over and ſelling their Wine:

A Man muſt have laid aſide his Reaſon, that can think this the Language of Perſons really dealing in a mercantile way: 'Tis the plain and common Cant of a treaſonable Correſpondence.

They next object to the unreaſonableneſs of applying the Circumſtances which relate to *Jones* and *Illington*, to the Biſhop of *Rocheſter*.

Was no body elſe beſides the Biſhop out of Town? Was he the only Man that had the Gout, or who loſt his Lady at that time?

Were theſe Queſtions to be asked ſingly, they might be anſwer'd, that there were other Perſons in the like Circumſtances.

But then the Anſwers would be nothing to the Purpoſe.

The only Queſtion applicable to the preſent Caſe would be, Is there no other Perſon who was in Town on the ſeventh of *May*, out of Town on the tenth and fourteenth, in Town on the fifteenth; whoſe Wife died the Week before the thirtieth of *April*, he himſelf then ill of the Gout; to whom a Dog was ſent from *France* of the name of *Harlequin*, that broke its Leg, and was brought to Mrs. *Barnes*, by Mr. *Kelly*, in order to be cured?

Theſe are the Circumſtances of *Jones* and *Illington*, and they are every one prov'd true of the Biſhop of *Rocheſter*; and I believe your Lordſhips can hardly think they are ſo of any other Perſon.

They ſaid they ſhould falſify ſeveral of theſe Facts; but they have only ſaid it.

In the Papers they have produc'd from the Surgeon concerning the Dog, he contradicts himſelf.

In the firſt he ſays, he gave Mr. *Kelly* a Dog for his own uſe, to diſpoſe of as he pleaſed;

In the ſecond he ſays, he gave it for Mrs. *Barnes*:

But Mrs. *Barnes* tells you, that the Dog deſign'd for the Biſhop was in her Cuſtody, when the other given by the Surgeon was expected over.

Their Attempt to diſprove the Circumſtances of being in Town, has met with as little Succeſs.

In a Letter of the ſeventh of *May*, 'tis ſaid Mr. *Illington* is come to Town for a day only:

We ſhewed that the Biſhop was in Town upon that day; they anſwer us by ſaying, he ſtay'd in Town two Days after.

Does this diſprove his being in Town upon the ſeventh? or does it weaken the Proof of his being then in Town, becauſe he alter'd his mind, and ſtaid two Days longer than perhaps he at firſt intended?

This is the only Attempt they made to diſprove any of the Circumſtances relating to Mr. *Jones* and *Illington*. As to the other Inſtances which they pretend to diſprove, they relate to *Weſton* and *Rig*, and were not mention'd by the Counſel for the Bill.

They next object to the Method of proving the Similitude of Hands, and obſerve that the original Letter prov'd to be Mr. *Kelly*'s, and the three Letters applied to the Biſhop of *Rocheſter*, are dated at four Months diſtance; and how is it poſſible, that the Clerks of the Poſt-Office ſhould be able to ſwear upon their Memories that they are of the ſame Hand-writing?

This is not a fair Repreſentation of the Evidence: For the Clerks told your Lordſhips that there was not any one Poſt, during all that time, which did not bring ſome Letter in the ſame Hand, all which they copied, and had by that means contracted a perfect Idea of the Hand; ſo that they did not ſwear from Memory, but from a Knowledge gain'd by Experience, and many conſtant repeated Obſervations upon the ſame Hand.

There have been ſome other Objections made, that are ſcarce worth taking notice of.

'Tis ſaid Mrs. *Illington* is in great Tribulation for poor *Harlequin*, which *Kelly* could never ſay of the Biſhop of *Rocheſter*.

Surely there is nothing in this;

'Tis an Expreſſion that might be uſed of a Man of the graveſt Character in a Letter of this ſort, to the Author of ſuch a Preſent.

Mrs. *Illington* is mentioned eleven Days after the Biſhop's Lady was dead. This is the Inſtance where 'tis ſaid Mrs. *Illington* is in great Tribulation for poor *Harlequin*, but *his* Obligation is the ſame, which *he* deſires may be made known.

That *Jones* is mentioned in other Cyphers for other Perſons, as in one for the Duke of *Norfolk*, in *Plunket*'s for a different Perſon.

But does it therefore follow that in *Kelly*'s he can't mean the Biſhop of *Rocheſter*?

It certainly does not.

And they ſeem to be convinced that the Biſhop is too well deſcribed in this Correſpondence, under the Names of *Jones* and *Illington*, to doubt whether he is meant by them.

And therefore they endeavour to give it another Turn, by ſaying this may be a malicious Contrivance of ſome Perſons, who have inform'd themſelves of his Lordſhip's Motions, and the Circumſtances of himſelf and Family: And to make this the more probable, they ſay that *Jones* and *Illington* are the only Perſons mentioned in this Correſpondence of Mr. *Kelly*'s, with Circumſtances of this Nature.

One would not imagine the Perſons who made this Objection, had ſo often heard the Letters read.

E. 41. 'Tis ſaid Hore *is laid up with his old Diſtemper*, Hobbert *is pretty well recovered.*

E. 45. *Mr.* Hore *is laid up, and ſo is* Jemiſon *with the Gout.*

E. 49. *Rep.* is ſaid to be in the Country.

E. 59. *Ho.* and *Den.* are ſaid to be gone into the Country.

E. 62. Nic. W. *is now in Town, he is well as to Health.*

E. 64. *Trotter* is ſaid to be out of Town the next Morning.

E. 69. *Den.* is ſaid to come to Town, *Rep.* and *Ho.* to be in the Country.

E. 73. C. Saunders *is well, and with a Friend in the Country.*

Theſe are all Inſtances where the ſame Circumſtances are mentioned of other Perſons, that are mentioned of *Jones* and *Illington*.

If *Jones* and *Illington* are oftneſt mentioned, it is becauſe he was the principal Perſon in this Correſpondence.

But this malicious Contrivance muſt be carry'd on by Mr. *Kelly*: for

It has been proved that the Letters were wrote in his Hand, that the Anſwers were addreſſed according to his Directions;

That he received the Letters ſo directed.

I believe your Lordſhips have no Suſpicion that Mr. *Kelly* bore an Ill-Will towards the Biſhop:

I am ſure there has been no Proof of it, nor of any malicious Contrivance againſt him.

But, my Lords, this is the common trite Excuſe of every petty Offender.

Your Lordſhips can ſcarce read a Trial, where the Defendant don't complain that it is all a malicious Contrivance of his Enemies.

I heard this very thing warmly inſiſted upon a few Terms ago, at another Bar, and with as much Proof, by a Perſon concern'd in a Part of this Conſpiracy, who has ſince been attainted and own'd his Guilt.

But we have gone ſtill further, we have ſhewn that *Kelly* was an Acquaintance of the Biſhop of *Rocheſter*'s.

Which is indeed acknowledged, without any ſatisfactory Account given, for what Purpoſe his Lordſhip ſhould contract an Acquaintance with a young Fellow that has deſerted his Orders, and is a profeſs'd Nonjuror.

Your Lordſhips, I preſume, from the Behaviour of Mr. *Kelly*, can hardly be perſuaded that he had no other Employment under the Biſhop than to furniſh him with Beaver-Stockings, which the Biſhop owns to have received from him as a Preſent.

But we have proved by the ſtrongeſt Evidence that can be, by a Letter under his Lordſhip's Seal, and I may venture to ſay (from the Obſervations that have been made from the Letter itſelf) under his Hand, that *Johnſon*, i. e. *Kelly*, is the Perſon in whoſe Hand the Biſhop returns his Anſwers. No Account is given of this Letter, by whom it was wrote, nor to whom, nor how it came among his Lordſhip's Papers.

All that is ſaid in anſwer to it is, that 'tis poſſible Seals may be counterfeited, or there may be

be ſeveral Impreſſions of the ſame Seals: but is there any Proof of this?

It appears that the Impreſſion on the firſt Letter was broke when ſeized; that it was in the Hands of the Committee of the Houſe of Commons before the ſecond Letter was taken; which makes it impoſſible to imagine an Impreſſion ſhould be taken off the firſt to put upon the ſecond.

But his Lordſhip is pleaſed to aſk, Is it agreeable to the Cunning with which he is charged, to keep ſuch a Letter by him on purpoſe, as it were, to furniſh his Adverſaries with Evidence?

No, my Lords, neither do I imagine his Lordſhip knew he had it by him.

It was found amongſt his Papers, and, no doubt of it, was left there accidentally; and 'tis by ſuch little Accidents that the moſt cunning Men are detected: there is no Danger of their committing greater Overſights.

His Lordſhip is pleaſed to obſerve, that at firſt the Houſe of Commons repreſented this Letter as a Letter wrote to him; but now 'tis diſcovered to be wrote by him: It is ſo, and very plainly, and his Lordſhip may thank himſelf for the Diſcovery; and the not diſcovering it ſooner is ſurely no Objection to the Truth of it when diſcovered.

It may be urged, and has been inſinuated, that if Mr. *Johnſon* is the Perſon in whoſe hand the Biſhop returns his Anſwers, yet how does it appear that theſe particular Letters which are applied to the Biſhop, were wrote by his Directions?

If it appears that *Johnſon* is the Perſon in whoſe Hand he writes, and that theſe Letters are of the Hand-writing of *Johnſon*, ſigned by that Name, which denotes the Biſhop in the Correſpondence, this will be thought a reaſonable Proof that they were wrote with his Privity.

But they ſaid they ſhould prove it impoſſible that theſe three Letters ſhould be wrote with the Privity of the Biſhop; for they bear Date the 20th of *April*, whereas the Biſhop came to Town the 11th, went to *Bromley* the 12th, and within two or three Days after was taken ſo ill with the Gout, that he had neither the uſe of his Hands or Feet, and had a Servant always attending him, who will prove that no Stranger came near him all that time.

If this had been made out, it would not be a Proof that the Letters were not dictated by him; for both *Kelly* and the Biſhop were in Town upon the 11th and 12th, and the Biſhop was not confined at *Bromley* upon the 13th and 14th, when Mr. *Kelly* was out of Town, and probably at *Bromley*. And tho the Letters bear Date upon the 20th of *April*, yet 'tis not to be imagined, that they were wrote upon that Day; for it requires a good deal of time to reduce three Letters into Cyphers; and the Method generally uſed, where Letters are to be ſent in Cyphers, is, to write them in common Hand firſt, and then reduce them to Cyphers after: ſo that it's probable the Subſtance of theſe Letters was dictated many Days before they were perfected and ſent.

But the Evidence given by the Biſhop's Servants is not to be regarded.

The firſt Servant, when he had ſworn what he thought was material for the Biſhop, being preſs'd by a noble Lord with a Queſtion relating to the Letter directed to *Dubois*, refuſed to give any Anſwer, till the Biſhop publickly gave him Leave; tho he was ſworn to ſpeak the whole Truth: which ſhews too great an Attachment to his Maſter's Intereſt, to deſerve much Credit.

He and the ſecond Witneſs did admit, that the Apothecary, or the Miniſter of the Pariſh, might be with the Biſhop without their Knowledge; and if ſo, why not Mr. *Kelly*, whoſe Viſits required more Secrecy than either of the others?

And I muſt here obſerve, that what the Reverend Prelate inſiſted upon, to add Credit to the Evidence of theſe Witneſſes, is the greateſt Objection to their Teſtimony imaginable.

They tell your Lordſhips, that tho they were with the Biſhop in the Tower, yet he never once ſpoke to them concerning the Matter they had given in Evidence, till they themſelves recollected it upon reading the Report; and finding that the Biſhop was charged with being the Author of three Letters, dated the 20th of *April*, they immediately recollect that the Biſhop was ill at that time, and they conſtantly about him. This ſeems to be a Story ſcarce credible;

That the Biſhop himſelf, who was ſo nearly concerned, ſhould not, upon reading the Report, recollect the Circumſtances he was under at the time when thoſe Letters bore Date, if the Truth was as they would repreſent it; but that the Servants ſhould firſt recollect this, and ſuggeſt it to their Maſter.

Or if the Biſhop did recollect it, 'tis ſtrange he ſhould not mention it to thoſe Servants, who were preſent with him in the Tower, and the only Perſons, who, as they ſay, were capable of clearing his Innocence.

This had been very natural, and proper under his Circumſtances: and his not ſpeaking to them firſt, could hardly proceed from an unreaſonable Scruple, leſt he ſhould be ſuſpected of laying a byaſs upon them; ſince his Lordſhip has, after he knew they were to be Witneſſes, given each of them a Place under him as Dean of *Weſtminſter*.

The reſt of the Servants that were called, tho they contradict the firſt, by admitting that two other Gentlemen were at the Biſhop's at *Bromley*, during the Time in queſtion; yet they plainly ſhew a greater Regard for their Maſter's Intereſt, than for Truth: for tho one of them was but the Helper in the Stable, and another the Nurſe that attended his Lady in her Illneſs, yet they take upon them to ſwear, that they verily believe no Stranger could be with their Maſter in private, but they ſhould have known of it, and that they never knew of Mr. *Kelly*'s being there.

Every body's Obſervation muſt ſuggeſt to them that ſuch a Belief muſt be without Foundation.

The next Arguments uſed on behalf of the Reverend Prelate at the Bar, were raiſed from his unambitious reſigned Temper of Mind, and from the Style of the Letters laid to his Charge, That it's not probable he ſhould uſe ſo indecent an Expreſſion of Perſons he was concern'd with, as to call them *pretending unſupported People*.

What Weight there is in theſe Arguments, I muſt ſubmit to your Lordſhips, who are much better acquainted with his Temper and Style than I can pretend to be.

The laſt thing preſſed by the Reverend Prelate, is a ſolemn Proteſtation, I cannot ſay of Innocence,

cence, becauſe it ſeems to me to be conceived in ſuch Terms as not to contradict any part of the Charge inſiſted upon by the Counſel for the Bill:

It is chiefly calculated to anſwer ſome particular Circumſtances of Times, without any Denial of the general Charge, or the leaſt Declaration of Affection or Loyalty towards his preſent Majeſty.

But if his Proteſtations amounted to a direct and poſitive Denial of the Chrrge, they ought not to have any Weight with your Lordſhips, ſince this is a Defenſe equally in the Power of the moſt Guilty as well as the Innocent: a little Proof is better than many Proteſtations.

And I can't help obſerving upon this Head, and I hope his Lordſhip won't impute this Obſervation to Ill-Nature, but a Senſe of my Duty, which obliges me to make all proper Obſervations, That it appears his Lordſhip has not always that ſtrict Regard to Truth, which he ought to have, by the Papers taken upon his Servant at the Tower.

The Nature of the Puniſhment has been much talked of in the Courſe of theſe Proceedings, and great Lamentations made upon it, but ſurely without any Reaſon.

For this Argument ſuppoſes the Party guilty of the Charge, or elſe it's ridiculous to object to the Severity of the Puniſhment.

And I may venture to affirm, this is the mildeſt Puniſhment that ever was inflicted for ſuch an Offence.

His Life is not touched; his Liberty nor Property affected; he is only expelled the Society whoſe Government he diſapproves, and has endeavoured to ſubvert; and is deprived of the publick Employment which that Government had intruſted him with: The Enjoyment of his Life, his private Eſtate, and his Liberty, under any other Government that may be more agreeable, is allowed him.

This is ſcarce to be called a Puniſhment, being nothing more than what was abſolutely neceſſary for the publick Security.

The Commons of *Great Britain* have done their Part towards providing this Security, and I don't doubt but it will meet with the Concurrence of your Lordſhips.

The Counſel having done, the Lords in a grand Committee went thro' the Bill, and about ten of the Clock at Night, adjourned to *Wedneſday*, *May* 15.

Their Lordſhips being then ſat, the aforeſaid Bill was read the third time, and a Motion being made, that the Bill ſhould paſs, it occaſion'd a long Debate, in which the Biſhop of *Salisbury* ſpoke as follows.

My Lords,

AS I have ſometimes troubled your Lordſhips with what I had to ſay in other Debates, I believe it will be expected that I ſhould ſay ſomething in a Caſe ſo extraordinary as this is; and wherein a Brother Biſhop is ſo nearly concerned. I beg leave to begin with taking Notice of ſome Things that were peculiarly addreſs'd to this Bench, both by the Reverend Prelate, and his Counſel, from the Bar.

The firſt is, That we would conſider how agreeable it may be to the Canons and Diſcipline of the Church, in this extraordinary Manner to deprive a Biſhop of all his Preferments; and to prohibit him the Uſe and Exerciſe of his Function for his Life.

As to this Objection, whatever Influence it may have abroad among ignorant People, when the Speeches come to be printed; yet, as to your Lordſhips, who know our Conſtitution ſo well, I cannot imagine that it can have any Weight or Influence at all. And indeed when I conſider all the Acts of Parliament relating to the Supremacy, that have been made for near two hundred Years; when I conſider the Articles of our Church, our Canons, and the Subſcriptions that the Biſhop himſelf muſt have made, and muſt have required from others, in the Exerciſe of his Function as a Biſhop; when, I ſay, I conſider all theſe things, it is matter of Wonder to me, that ſuch an Objection ſhould be made, either by a Biſhop of the Church of *England*, or by a Lawyer of the Kingdom of *England*.

I do not indeed recollect above one Inſtance of a particular Act of Parliament made to deprive a Biſhop; which is, that of *Fiſher*, Biſhop of *Rocheſter*; who was ſo deprived in the Time of *Henry* VIII. But, as to general Acts of Parliament, whereby both Biſhops and Preſbyters have been depriv'd of their Preferments, we have a good Number. Thus, in the Beginning of Queen *Elizabeth*'s Reign, almoſt all the Biſhops of *England* were ſo depriv'd: And at the Revolution, many were ſo; and all might have been ſo, if they had not comply'd with the Terms of the Act of Parliament: And at the Reſtoration, many hundreds of Preſbyters were depriv'd in the ſame manner. And I conceive that it cannot well be doubted, but that the ſame Authority which can make Laws by which the whole Bench may be depriv'd, may exert itſelf in a particular Caſe, if they have juſt Reaſons for it.

As to the Trial of Biſhops for any Crimes they ſhall be guilty of, we are to conſider the different Nature of the Crimes of which they are accuſed; and the Trial by Law muſt be accordingly. If the Crime be of an Eccleſiaſtical Nature, ſuch as Eccleſiaſtical Courts can take Cognizance of, as Simony, Hereſy, and the like; the Trial regularly muſt be by the Arch-Biſhop of the Province, taking to his Aſſiſtance ſome of his Suffragan Biſhops. But even in this Caſe, if either the Arch-Biſhop ſhall, upon Complaint, neglect to try him; or, if upon Trial he ſhall acquit and abſolve him; the Accuſer may appeal to the King in Chancery: Which Court may appoint a Commiſſion of Delegates, who may, by the Authority of the Crown, judge him, deprive him of his Biſhoprick, prohibit him the Uſe of his Function for his Life (if the Crime deſerve it) tho he were before acquitted by the Arch-Biſhop. But if the Crime be of a Civil Nature, ſuch as Treaſon (which is the Caſe now before us) the Eccleſiaſtical Authority has nothing at all to do with it; and ſhould any Eccleſiaſtical Judge attempt to meddle with it, he would be judg'd to attempt againſt the King's Crown and Dignity, and quickly have his Proceedings ſtop'd, by a Prohibition out of the Temporal Courts. And I would beg leave to obſerve further, that were this Biſhop to be try'd in the common Courſe of Law, for the Crimes whereof he is accuſed in this Bill, it muſt be either by your Lordſhips, as a Member of this Houſe; or by the Judges

and a Jury in *Weſtminſter-Hall*. I would not at preſent ſay which, becauſe it would lead me out of the way: But in this Caſe, if either your Lordſhips, or the Judges below, ſhould paſs Sentence upon him for the Treaſon of which he is here accuſed, that Sentence would, *ipſo facto*, deprive him of the Biſhoprick: It would alſo make him liable to loſe his Life; but it would not, *ipſo facto*, take it away, as it would his Biſhoprick: He might notwithſtanding that Sentence live many Years; but from the moment of it, would be no more Biſhop of *Rocheſter*.

Theſe Things, I humbly conceive, are abundantly ſufficient to anſwer this firſt Difficulty; and therefore I ſhall add no more but this one Obſervation: That the Way that is now taken to deprive him, is the only Way that I know of, wherein the Biſhops can have any Part in the Sentence of Deprivation.

The next Thing that was ſuggeſted from the Bar, particularly to this Bench, was, That we ſhould conſider well what we are doing, and have a care that we do not, by concurring in this Bill, make our Titles to our Biſhopricks precarious.

As to this Admonition, the Anſwer is very eaſy, That it becomes us, as we have the Honour to have Seats in Parliament, to take care to do Juſtice; as, on the one ſide, to the Priſoner, ſo on the other ſide, to our King and Country; and to truſt in God, that in ſo doing we ſhall neither hurt ourſelves, nor our Succeſſors. But, ſo far as juſt Judges may look to Events, the Argument ſeems to me to lie the other way: For, if for want of doing Juſtice againſt Traitors to King *George*, the Pretender ſhould happen to prevail, (which God avert) the Title of Proteſtant Biſhops is like to be very precarious indeed.

As to the Power of Parliament to paſs Bills of this kind, the Parliament always had it, has frequently exercis'd it, and always muſt have it: it being eſſential to the very Being of the Supreme Power. The Lives and Liberties of every Man in *England* are ſubject to it: and tho the Exerciſe of this Power may be dangerous to Perſons who will venture upon treaſonable Practices, truſting to their Cunning and Artifice to ſkreen them from the Law; yet I have that Confidence in the Integrity and Juſtice of the Crown, and two Houſes of Parliament, that, ſo long as this Example is followed, of giving a full and fair Hearing to the Perſons accuſed, innocent Men cannot eaſily ſuffer; or, in all Events, that if Corruption or Faction ſhould ever ſo far prevail, that there ſhould be Danger to innocent Perſons, it will be much eaſier to corrupt Witneſſes or Juries, or to find other Methods to deſtroy them, than it will be to prevail upon a Parliament to do it: As I am perſuaded that, in this particular Caſe, had there been any Corruption, ſome other Method would have been found out, more effectually to come at the Perſon concerned than this is like to do.

The laſt Particular that the Biſhop peculiarly addreſs'd to this Bench, was, That we would conſider the Words of St. *Paul* to *Timothy*; *Againſt an Elder receive not an Accuſation, but before two or three Witneſſes*, 1 Tim. 5. 19. The Senſe of which Words his Lordſhip underſtood to be, That an Accuſation ſhould not be ſo much as *received* againſt an Elder or Preſbyter, and much leſs againſt a Biſhop, but upon the Oaths of two or three Witneſſes.

In Anſwer to this, I beg leave to obſerve, that our Tranſlation renders the Words, not, *upon the Oaths*; but, *before* two or three Witneſſes: which ſeems to import a very different Senſe from that his Lordſhip puts upon them. But, not to enter into any critical Examination of the Truth of our Tranſlation, or what the real Senſe of the Words is, I would only make theſe two ſhort Obſervations: Firſt, that the Senſe the Biſhop puts upon them, that an Accuſation againſt a Preſbyter or Biſhop, muſt not be ſo much as receiv'd into Court, but upon the Oaths of two or more Witneſſes, is not practiſed in the Church of *England*; and, I believe, never was practiſed in any Chriſtian Church whatever.

The ſecond Obſervation I would make, is, That whatever be the Senſe of theſe Words, it regards only the Conduct of a Biſhop towards his Preſbyters; but certainly was never intended to give a Law to the Supreme Power of a Kingdom, in its Proceedings in Caſes of High-Treaſon, againſt any Subject whatſoever.

But the Biſhop urges further, that the *Jewiſh* Law did require at leaſt two or more Witneſſes in all Judicial Proceedings; and from thence infers, that it ought to be ſo amongſt us.

In Anſwer to this it may be reply'd, That this is a Part of the Judicial Law of the *Jews*, which was not given to us, and therefore doth not oblige us any more than the reſt of that Law doth; except where the Reaſon of the thing lays an Obligation upon us. But indeed, I am of Opinion, that that Law doth oblige us, ſo far as it was intended to oblige them, and ſo far as it can be adapted to the infinite Variety of Caſes that muſt happen in Judicial Matters. That Law is very ſhort, and therefore muſt leave many Queſtions that may be made about it undetermined: I ſhall at preſent take notice of theſe two only, which may be material to our preſent Diſpute; the firſt is, Whether the Meaning of it be, that all Controverſies and Accuſations whatever, muſt be determined by Witneſſes and no other way? or, Whether upon Suppoſition that the Matter be to be determined ſolely by Witneſſes, and no Light can be brought to it any other way; that then the Witneſſes muſt be at leaſt two? The ſecond is, Whether thoſe Witneſſes muſt ſwear directly to the Fact; for Inſtance, that they ſaw ſuch a Man murder another, or the like; or whether it may not be ſufficient, that they ſwear to ſuch Circumſtances, as infer a ſtrong and violent Preſumption, that ſuch a Fact was committed by ſuch a Perſon?

Theſe things are left undetermined in that ſhort Law of the *Jews*; but, I humbly conceive, are ſufficiently determined by the Nature of the thing, and by the Laws of all Nations, and particularly of our own. It is true indeed, that in Caſes of High-Treaſon, we have from Political Conſiderations determined, that there muſt be two poſitive Witneſſes, to ſome one or more Overt-Acts of the ſame Treaſon: but, as to all other Crimes, that equally affect the Lives and Eſtates of all the Subjects of *England*, this is not the Caſe; and Men may by Law loſe their Lives when there is not ſo much as one poſitive Witneſs to the Fact.

I beg leave to explain this in the Words of my Lord Chief Juſtice *Coke*; '*When a* * 1 Inſtit. fol. 6. '*Trial is by Witneſſes*, * *regularly the* '*Affirmative ought to be proved by two or* '*three Witneſſes*; *but when the Trial is by Verdict of* '*twelve Men, there the Judgment is not given upon* '*Witneſſes, or other kind of Evidences, but upon the* '*Verdict*; *and upon ſuch Evidence as is given to the* '*Jury, they give their Verdict*; *and many times Ju-* '*ries, together with other matter, are much induced* '*by Preſumptions.*' And indeed, if no Man could be convicted of Murder, or Robbery, or other Crimes of that Nature, but by two poſitive Witneſſes that ſaw the Fact done; nothing would be eaſier or ſafer than the Commiſſion of thoſe Crimes; and no Man could have any Security, either for his Perſon or his Eſtate: And therefore, if in Caſes of High-Treaſon our Law requires poſitive Witneſſes, it is not from any moral Neceſſity, or Point of Conſcience; but from political Reaſons, which muſt, and always will be, ſubject to the Judgment of Parliament.

Having now done with what was from the Bar peculiarly applied to this Bench, and having, I hope, given a very plain Anſwer to it, I now beg your Lordſhips leave to proceed more directly to the Bill itſelf. And here, two things are neceſſary to be conſidered, in order to convince your Lordſhips, that it is a Bill fit to be paſſed: The firſt is, the Lawfulneſs of it; the ſecond is, the Prudence or Expediency of it.

As to the Lawfulneſs of it, it will be neceſſary alſo to conſider two things; firſt, Whether your manner of Proceeding in this Bill be Lawful: ſecondly, Whether the Biſhop be really Guilty of the Crimes charg'd upon him.

As to the manner of Proceeding, many things have been objected: That it is by way of Bill, and not a Trial in the Courſe of Law; That Evidence has been admitted, that would not have been admitted in any of our Courts; That theſe Things are contrary to the Liberty of the Subject; That every Subject has a Right to the Laws of his Country; and That he has an Injury done him, if he be denied the Benefit of them. This I take to be the Sum of what has been objected againſt the Juſtice of your Proceedings in this Bill.

In Anſwer to theſe Objections, I beg leave to conſider, firſt, wherein the Liberty of *England* conſiſts; which is a Point commonly pretty much miſtaken. Many People are apt to imagine, that the Difference betwixt us, and ſome of our neighbouring Countries, is, that they are under Abſolute Power, and we are not; whereas in truth all Countries, that are Supreme within themſelves, have equally an Abſolute Power; and in the Nature of the thing it cannot poſſibly be otherwiſe: No Government can ſubſiſt, if there be not a Power in it to change, to abrogate, to ſuſpend, or diſpenſe with its Laws, as Neceſſity or Conveniency ſhall require; which is what we call Abſolute Power: and therefore, the Difference betwixt one Government and another, does not lie in this, that one has ſuch a Power and the other has not; but lies merely in the Difference of the Hands in which this Power is placed. Where this is placed in one Hand, in the King, we call that an Abſolute Monarchy: Where this is not ſolely in the King, but only as he acts in conjunction with the States of the Kingdom, that we call a Limited Monarchy; and the People that live under ſuch Government, are alled a Free People; becauſe they live under Set Laws, which could not at firſt be made, nor can afterwards be altered or diſpens'd with, but by their own Conſent. However, there is ſtill in ſuch Countries, a Power equally above all their Laws, as there is in the moſt abſolute Monarchy in the World.

What I have ſaid upon this firſt Head, will in a great meaſure explain a ſecond Queſtion: What that Right is, which the Subjects of this Country have to its Laws; which is, in ſhort, a Right to claim the Benefit of them againſt the Crown, or any Court acting under the Crown, till the States of the Kingdom (which are virtually every Man in the Kingdom) think fit to conſent to the Alteration of 'em. The King is indeed Supreme, but his Power is only according to the Laws in being: By them he is bound to act, and if any of his Officers act contrary to 'em, what they do is null and void; and they are puniſhable for it; and the Subjects have a Claim of Right againſt them. But if the King and his People think fit to come to a new Agreement to alter any ſuch Law, there's an end of all Claim of Right in the Subject: the Claim is taken away by their own Conſent; for, as I ſaid before, every Man in the Kingdom virtually conſents to what is done by an Act of Parliament.

And there is an abſolute Neceſſity that there ſhould be ſuch a Power as this in every Country; for the State of human Affairs is ſo changeable, that it does not admit of any Set of unalterable Laws. What is good at one time, may be deſtructive at another; and what is generally good, may, under particular Circumſtances, require a Diſpenſation by a proper Authority. And here, give me leave to obſerve to your Lordſhips, the Difference there is betwixt the eternal Laws of Juſtice and Righteouſneſs, and all poſitive Laws whatever. That as to the firſt, we are made for them, and the nearer we do in all things conform to them, the more noble, and lovely, and excellent Creatures we are: but as to poſitive Laws, they are all made for us; and the more they conform to us, the more they obviate all our Wants and Difficulties, the more they anſwer to all our Neceſſities, the better they are.

As to what is complain'd of, that your Lordſhips have admitted Evidence to be read, that would not have been admitted in the Courts below: I conceive, that acting in the Capacity you now do, you have a full Power to do it, and have not broken any of the general Rules of Juſtice by it. You have let in all the Light that you thought might be proper to give you a full Knowledge of the Matter; and in the Capacity you now act, I cannot but humbly be of Opinion, it was your Duty to do ſo: but in forming of your Judgments, I take for granted, that your Lordſhips will diſtinguiſh, and lay no more Weight upon any thing than it deſerves.

As to the Rules of receiving Evidence in *Weſtminſter-Hall*, I conceive, that they are no part of natural Juſtice, but only artificial Rules fram'd for Conveniency; and bind no Courts, but as they have agreed to them, and ſo are become the Cuſtoms of the Court. That theſe Rules are no part of natural Juſtice appears from hence, that even among ourſelves they are different in different Courts: That thoſe uſed in our Courts, are very different

different from thoſe uſed in other Countries: That they differ here, according to the different Cauſes or Crimes that are to be tried. Nay, they are ſo far from being fundamental Parts of Juſtice, that they muſt require a good deal of Time and Art to form them. And I am perſuaded, that was a Perſon of good natural Senſe, who knows nothing of the Law, aſked his Opinion; he would be apt to think it to be a Part of natural Juſtice, that every Perſon that proſecuted a Cauſe in any Court, ſhould be at Liberty to produce before that Court, whatever he thought material to his Cauſe. And there is no doubt, but that this was the original Way of Proceeding: but that in proceſs of Time, when Courts came to have a good deal of Buſineſs, and they found by Experience, that this Way of laying every thing before 'em, tended to lengthen Cauſes, (which was eſpecially inconvenient where Juries are concerned, who muſt end a Cauſe before they part) theſe Rules were gradually found out; which, tho they may be, for the Reaſons above ſpecified, generally convenient, yet may ſometimes hinder Juſtice, by not ſuffering all the Light to come into Court, that may be material in the Cauſe.

Having ſaid thus much concerning the Juſtice of your Method of Proceeding, I now come to conſider the ſecond and the main Point of Juſtice to be regarded in this Bill; which is, Whether the Biſhop be Guilty, or not, of the treaſonable Practices charg'd upon him in it. And in this I ſhall be the ſhorter, becauſe your Lordſhips have heard the Evidence on both Sides, and all that has been ſaid from the Bar by both Sides upon it; and becauſe, there are many Noble Lords in the Houſe, much abler to lay things of this Nature diſtinctly and clearly before your Lordſhips, than I am.

The Cauſe of *Kelly* is ſo connected with that of the Biſhop, that I muſt beg leave to ſpeak a few Words to the one, before I proceed to the other. As to *Kelly*, I would obſerve in the firſt Place, that one ſtrong Preſumption of his Guilt is, that when he was firſt taken up, he reſiſted the Officers; that he ſeized his Sword, and ſome Papers that had been taken away from him; and was reſolute to burn thoſe Papers, tho with the apparent Hazard of his own Life, and being guilty of the Murder of one of the Officers that had ſeized him.

In the next Place, it is prov'd before your Lordſhips, that after he was taken up, the People at his Lodgings burn'd the reſt of his Papers; a plain Evidence, that they who knew his manner of Life and Converſation, ſuſpected that he was Guilty. And this is agreeable to what *Neynoe* told the Chancellor of the *Exchequer*; that there was at that time, a general burning of Papers.

Thirdly, Another Preſumption of his Guilt, is, that when he was taken up the ſecond time, he offered ſeveral Sums of Money to the People of the Houſe where he was in Cuſtody, to ſuffer him to eſcape, as appears from their Oaths at the Bar. Theſe things I mention, not as full Proofs of his Guilt, but as ſtrong Preſumptions, that make every thing elſe that is ſworn againſt him very credible.

The chief Evidences of his Guilt, are, a great Number of intercepted Letters, both from him, and to him, containing treaſonable Matters. Thoſe from him, are by ſeveral Witneſſes prov'd to be his Hand-writing, particularly by the Officers of the *Poſt-Office*, who took them and tranſcribed them. And as to thoſe to him, ſeveral Witneſſes have prov'd, that he gave Orders at ſeveral Publick-Houſes to take them in, when they came from the Poſt; that he himſelf received them from thence, opened, and read them: And it is alſo farther proved, that Anſwers were returned to them in his own Hand-writing. Theſe things all together, I take to be ſuch plain and ſtrong Evidences of his Guilt, that I ſhall trouble your Lordſhips no farther about him.

As to the Perſon concerned in this Bill, tho it be a great Trouble to me, to think that any Biſhop of this Church ſhould be guilty of ſo foul a Crime, as that objected to him; yet I cannot but be of Opinion, that if he be really guilty, the Intereſt of our Church, as well as Juſtice to our King and Country, do require, that he ſhould be convicted and puniſhed. And indeed, I cannot but be humbly of Opinion, that whoever believes *Kelly* to be guilty, muſt believe the Biſhop to be guilty too.

I ſhall not inſiſt upon what is commonly called Hear-ſay Evidence, tho there be a great deal of it againſt the Biſhop; only muſt obſerve, that the Conduct of a Proteſtant Biſhop muſt have been very odd and unaccountable, if he be innocent, that ſo many Jacobites (as have done in this Caſe) ſhould declare, that they not only eſteemed him to be in the Plot, but to be the chief Conductor of it. It is, however, fit to ſay ſomething as to the Caſe of *Neynoe*; becauſe the Biſhop and his Counſel have taken up ſo much of your Lordſhips Time, and produced ſo many Witneſſes to prove him a Knave. I did indeed myſelf always think him to be a Knave, and that nothing that he ſaid was to be believed, merely upon his Authority: But on the other ſide, the Teſtimony of the greateſt Knave in the World, may be taken againſt himſelf: and they themſelves have proved, that he was a Jacobite, and thoroughly in that Intereſt, even when he was making ſome Diſcoveries againſt them; and therefore, what he ſays, in that reſpect, bears ſome Weight; as being againſt Perſons whom he favoured, and would hurt as little as poſſible. Some other Things that he had ſaid are alſo confirmed by concurrent Circumſtances, and other Diſcoveries; and theſe may have their Weight, tho he were never ſo great a Knave. One of the Things that he ſaid in his Confeſſion, was, that he frequently went with *Kelly* to the Biſhop of *Rocheſter*'s, and left him there (as *Kelly* told him) to write his Letters. This is confirmed by a credible Witneſs at your Bar, who ſwears, that *Neynoe* uſed to be frequently at his Houſe, and told him, at leaſt three or four times, that he waited there for a ſenſible, ingenious Gentleman, that was gone about Buſineſs to the Biſhop of *Rocheſter*: He did not indeed tell him his Name; but the thing ſeems to me to look ſtronger than if he had; becauſe it would have looked more like a Piece of Art and Contrivance, to have told the Name of a Man, whom he knew to be gone to the Biſhop about a criminal Correſpondence. I would only beg leave to take notice to your Lordſhips of one thing more relating to *Neynoe*: the Biſhop's Witneſſes have fully proved, that *Neynoe* told them, that the Chancellor of the *Exchequer* had given him ſeveral Sums of Money, to endeavour to get out of *Kelly*, the Explication of the Cant Names that were uſed in the Correſpondence;

dence; and that he had promis'd him much greater Sums, if he would go to *France*, and get it out of *Dillon* and the Jacobites there: The Inference from which I take to be very plain, that the Court did not then know, who the Perſons were, that were deſigned by thoſe Cant Names; and that they did believe that *Kelly* did know, and that *Dillon* and the Jacobites in *France* knew too: which effectually and fully confutes that Suggeſtion of the Biſhop, of which he did not bring the leaſt Proof, that the Plot was a Contrivance of Perſons in Power.

The next Thing I would beg leave to take notice of, relating to the Biſhop, is a Letter (taken among his Papers) from a Lady of great Quality; of which the Biſhop, tho it was objected to him by the Counſel for the Bill, has taken no notice; which I conceive he would and ought to have done, had it been poſſible to give any fair Account of it. The Lady * in that Letter tells him, *that ſhe ſent ſomething that ſhe had received, ſhe could not tell for whom; but let it be for whom it would, ſhe thought He might be truſted, and that it could not be put into better Hands.* A ſtrong Suſpicion this, conſidering all Circumſtances, that here was a Correſpondence by Cant Names, which the Lady did not certainly know, but believed the Biſhop might; or however, that he was in all Events a Perſon to be truſted.

* *The Dutcheſs of* Ormond.

Another very ſuſpicious Circumſtance againſt the Biſhop, is, the Letters from Captain *Halſtead*, and what has been proved at your Bar, that this ſame Captain *Halſtead*, a little before he went in his Ship to fetch over the Duke of *Ormond*, waited upon the Biſhop, and ſtay'd with him an Hour. This Thing indeed directly proves nothing; but all things conſidered, is very ſuſpicious: and the more ſo, becauſe the Biſhop has given no Account, either of his Acquaintance with him in general, or of the particular Reaſon of that Viſit, at a time that leaves ſo much ground to ſuſpect the worſt.

The next Particular that deſerves your Lordſhips Conſideration, is, the Letter to *Dubois*, found among the Biſhop's Papers when he was taken up, and found now to be ſealed with the ſame Seal with that Letter taken upon the Biſhop's Servant, which he confeſſeth to be his own Hand-writing. It is not indeed proved, that the Letter to *Dubois* is the Hand-writing of the Biſhop: but any body that reads it, will eaſily be perſuaded, that it is not the natural and ordinary Way of Writing of any Perſon, but a diſguiſed Hand like a Print; except only ſome few Letters which eſcaped the Care of the Writer, and are very like thoſe of the Biſhop. But after a long Examination, which has taken up a great deal of your Lordſhips Time, it appears plainly, that the Seals are the ſame, and that the one could not be counterfeited from the other; becauſe, the firſt Letter was originally taken with the Seal broken, and was in the Poſſeſſion of the Houſe of Commons when the ſecond Letter was taken upon the Biſhop's Servant. It appears plainly by this Letter to *Dubois*, that the Perſon who wrote it was in a ſecret and dangerous Correſpondence; that he was an Acquaintaince of Mr. *Johnſon*, or *Kelly*; that he received Letters by his Hand, and wrote an Anſwer in his Hand. How far all theſe Circumſtances, taken together, prove the Biſhop to be the Author of this Letter, I muſt ſubmit to your Lordſhips Judgment: for my part, I think they do; eſpecially conſidering, that the Biſhop has given no Account of it, which he ought to do by Law, of a Letter of this Nature, plainly proved upon Oath to have been in his Poſſeſſion.

I now beg leave to proceed to that which is the principal Charge againſt the Biſhop, the dictating to Mr. *Kelly* the Three Letters of the 20th of *April*; ſign'd, one, by the Name of *Jones*; another by the Name of *Illington*; the third by the Figures 1378; which the Decypherers explain by the Letter *R*. The firſt, directed to Mr. *Chivers*, or *Dillon*; the ſecond to Mr. *Muſgrave*, or Lord *Marr*; the third, to Mr. *Jackſon*, or the *Pretender*.

It may be proper, before I take notice of the Proofs which ſhew that the Biſhop did really dictate theſe Letters, to take notice of an Objection with reſpect to the Time: The Letters are dated the 20th of *April*, and the Biſhop has produced five or ſix of his Servants, who ſwear, that about that Time he was ſo very ill, that he could not write himſelf; and that he did not ſee any Perſon to whom he could dictate theſe Letters. Now in anſwer to this, it may be replied: That it does not appear, that all the Servants which the Biſhop then had, were produced before your Lordſhips; and you cannot but be ſenſible, that treaſonable Practices are commonly carried on in a very ſecret Way: and it appears, that the Biſhop's Correſpondence with *Kelly* has been ſo carried on; for tho there is plain Evidence, that they were frequently together, and that they were acquainted is confeſs'd, both by the Biſhop and *Kelly*; yet, ſcarce any one of the Servants produc'd, would confeſs, that ever they had ſeen *Kelly*, or ſo much as ever heard of the Name of *Johnſon*, which was the Name by which he went. In the next place, none of theſe Witneſſes prove, that the Biſhop was ſo bad that he could ſee no Company, till about the 16th or 17th of *April*; and it's very probable, that the Letters muſt have been dictated ſo long, if not longer, before the 20th on which they are dated; becauſe *Kelly* was to tranſcribe and put 'em into Cypher, which is a Work of Time and Care; and perhaps after all, they might be deſignedly poſt-dated, that the Biſhop finding himſelf going into a great Fit of the Gout, might have all that to plead which your Lordſhips have heard, if the Matter ſhould ever be called in queſtion.

Upon all theſe Conſiderations, I cannot but think it very clear, that the Biſhop might have dictated theſe Letters: We are now therefore to examine whether he did or no.

The firſt Thing that brought any Light into this Matter, was the ſmall Accident of a Dog being ſent from *France*, which, by the intercepted Letters appeared to be ſent to one that went by the Names of *Jones* and *Illington*. When Mrs. *Barnes* was examined before the Council, upon *Kelly*'s being taken up, it appears plainly ſhe was upon the Reſerve, and would confeſs nothing that ſhe thought might tend any way to hurt *Kelly*: but being aſk'd about this little Dog, who it was for, ſhe readily anſwered, that *Kelly* had told her it was for the Biſhop of *Rocheſter*; which ſhe has ſince confirm'd by Oath at the Bar of this Houſe. This little Accident, not ſuſpected at the time of the Diſcovery to be of

any Consequence, has given Occasion since, to look into so many Circumstances, as plainly bring the matter home to the Bishop. And indeed, if all the Particulars in the intercepted Letters be compared, with those things that are in Proof with respect to the Bishop, I believe your Lordships will be of Opinion, that they cannot all belong to any one Person in the World besides himself. In the first place, since it's proved that *Kelly* wrote these Letters, the Person who dictated 'em must have been an Acquaintance of *Kelly*'s; it is confess'd on all hands that the Bishop was so. In the next place, it is implyed in one of the intercepted Letters, that the Person that went by the Name of *Jones* and *Illington*, was a Clergyman; so far still agrees to the Bishop. Again further: this Person is mention'd in all the intercepted Letters, as a Person of great Consequence and Credit, upon whose advice the Party very much depend: And indeed the very Air and Manner of writing the three Letters, plainly shew, that the Person who wrote 'em, thought himself so; this also agrees with all the other Discoveries about the Bishop. Were there no other Particulars but these, it will be hard to imagine that they could well belong to any other Person. But if we consider further, that this *Jones* or *Illington* came to Town such a Day of the Month, went out of Town such another Day of the Month, came back again to Town such another Day, was himself sick at such a time, that his Wife was sick at such another time, and that she died at such a time; all which are in Evidence with respect to the Bishop: if we do, I say, consider all these Circumstances together, it will plainly appear, that they can belong to no other Man in the World but the Bishop.

After this, I humbly apprehend nothing need be said; however I beg leave just to mention something relating to the Letter that was taken upon the Bishop's Servant; by the whole Air of which Letter, it looks as coming from a Person who did not esteem himself to be innocent, but who thought, that nothing could be Legally prov'd against him: and therefore there is not one Word of his Innocence in it, which is the first Thought that must naturally have come into the Head of any one that really was so. He writes wholly with the Air of a Man that had been used to Intrigues; speaks of the Concern that his Friends should have for him and the *Cause*; discourses largely about the Kind of Evidence that was against him; takes notice in particular what cannot affect him: *If* (says he) *the Narrative* * *relates chiefly to* Neynoe's, Sample's, and Layer's *Affairs, so far it cannot affect me; for I never heard of the Names of either of the Three, till after this Plot broke out.* It is plain by these Words, that he did not then know what was in the Narrative against him; but he is very sure, that neither *Neynoe* nor *Sample*, nor *Layer* could affect him. Could an innocent Man have thus distinguished, and could not they have affected him as much as any Body else, if he really was innocent? Nothing can affect such a Person but Forgery, and that may come from any Quarter: but in the whole Letter he does not express the least Suspicion of Forgery; and yet, as I said before, this is the first thought that must naturally have come into the Head of an innocent Person, because nothing but Forgery could do him any harm. I would only just beg leave to hint at this one thing more; That as he says, that these three Persons could not affect him, because he never knew 'em; so accordingly they have not affected him, or said any thing of their own Knowledge about him; which is one good Evidence, that what is said against him is not forged but real.

* i.e. *Report.*

I am afraid that I have troubled your Lordships too long, tho with a very imperfect Representation of the Justice of this Bill; and therefore shall be shorter upon the next Head, which is the Expediency or Prudence of it.

Had there been what we call Legal Evidence against the Party concerned, your Lordships, I take for granted, would not easily have gone to this extraordinary Method of Proceeding: for tho it cannot be doubted but that the Parliament have this Power, whenever they think proper to make use of it; yet, I do agree with other noble Lords, that it is a Power not fit to be used, but where and when the Publick Good requires we should use it, which I humbly conceive is the Case at present. A most dangerous Plot against the Government has been discover'd: a great number of Letters and Papers relating to it have been laid before the two Houses of Parliament: these have been printed and published by Order of both Houses: The Eyes, not only of our own Country, but of all *Europe*, are upon us, to see what we will do. Tho the Evidence of a Plot in general, be as clear as the Light; and the Evidence against several particular Persons very plain; yet, as our Laws are, it is not what we call Legal Evidence: The Parties concern'd will make no Confession, and we have not the Methods used in all other Countries, to extort Confession from them. What then? Shall we see our *King* and *Country* in Danger, and do nothing for them? Shall Conspirators go on with total Impunity, only because they are obstinate, and artificially screen themselves behind the Law? I doubt, my Lords, that if this prove the Case, we shall appear ridiculous in the Eyes of all the World: That our Friends and Enemies both at Home and Abroad will think, that we have no Zeal for the Preservation of our King and Government; and if once they do think so, your Lordships cannot but be all sensible, how this must encourage our Enemies and discourage our Friends, and bring us into that contemptible State, in which no Government was ever long supported.

But a noble Lord has been pleased to observe, that the best way to serve the Government, is to do Popular things, and by that to procure the Love of the People. I perfectly agree in this with the noble Lord, and cannot but be humbly of Opinion, that this Government has done so, as far as it has been able: Our Religion has been preserv'd; Justice has been equally administred to all sorts of People; none of our Rights or Liberties have been invaded; we have liv'd at Peace at home, while many other Countries have suffer'd all the Miseries of War: these are, or I am sure should be esteem'd, Popular things; and if some other things, which might have not been for the Good of the People, have not been done, it has been the Fault of those that complain most, and not of the Government. And if there be Discontents now in the Kingdom, it's plain that the Foundation of 'em was laid long ago, by the Ene-

mies to our preſent Happy Settlement: For I am perſuaded, that the Diſcontents were higher and greater within four Months after the King came to *England*, and ſhewed themſelves much more, in a number of Rebellious Riots and Tumults, than any thing that appears at preſent; and yet nothing then could be objected to the Government, but that ſome Perſons were not preferred, who both before and ſince have made it too plain that they were not fit to be truſted.

But as it is the Duty of thoſe in Power, to do all the Popular things they can; ſo I muſt beg leave to obſerve, that it is the Duty of all the Subjects (and the greater they are the more it is their Duty) to put the beſt Interpretation upon the Actions of the Government, that things will bear; not to miſrepreſent; not to put falſe Colours upon things; and much more not to invent Lyes and Slanders, and diſperſe 'em up and down the Kingdom, in order to alienate the Affections of the People: Theſe things have been done, and done with great Care and Diligence, and by ſome too, who would take it very ill to be called Jacobites. Theſe are the chief Cauſes of the Diſaffection among us, and indeed of all the real Grievances we labour under. Is the King forc'd to put the Nation to Charges, to keep up a greater Number of Forces than otherwiſe would be needful? It is intirely owing to this Cauſe. Are our Debts not paid? Is our Credit not ſo good as we would be glad to have it? Let this artificial Raiſing of Diſcontents once ceaſe, and theſe things will quickly mend of themſelves. Indeed, were this a time for it, I think it might plainly be proved, that the Debts we labour under had never been contracted, but for this abſurd diſcontented Humour: Nay, it is to this, that we intirely owe the Danger we are in from this very Plot; for it's plain from all the Intelligence we have about it, that it was carried on upon the Confidence, that all diſcontented Perſons were Jacobites: and tho the Conſpirators did in this greately deceive themſelves: yet it's certain that they built their Hopes upon this Foundation.

But it's further ſaid by the ſame noble Lord, that this extraordinary way of Proceedings will not procure Friends to the King; but will rather anger and provoke, and ſo hurt his Intereſt inſtead of helping it.

To this I anſwer, that I do indeed ſuſpect, that many People will be angry; as I hear that the Jacobites thro' the Kingdom are: A plain Evidence this, that they do not think that the Friends of King *George* are worrying one another; for they would not be angry at that. Thoſe that moſt deſire to deſtroy our Liberties, are become, upon this Occaſion, the great Patrons of Liberty; as indeed they have been in a great meaſure ever ſince the Revolution, when any thing has been propoſed for the Support of the Government. No ſooner were their Schemes of Arbitrary Power in the Time of King *James* overturn'd, and a new Government ſettled which they did not like; but they, in order to deſtroy it, ſet themſelves againſt every thing that was neceſſary for it's Defenſe, under the Colour of Liberty; that is, they deſired to have their own Hands as looſe as poſſible, to hurt it; and the Hands of the Government as much tied up as poſſible, that it ſhould not be able, either to hurt them, or defend itſelf. Thus at preſent, they clamour againſt the Additional Forces, tho eſtabliſh'd by Parliament; and againſt all Methods, either to diſcover or puniſh the Conſpiracy. And they Judge right in this for their Cauſe; becauſe, if they could have carried theſe Points to their mind, they might then be more free in carrying on their Plots, and with leſs Danger put them in Execution. For theſe Reaſons I take it for granted, that all theſe People will be angry; but I cannot but humbly be of Opinion, that it is much better they ſhould be angry with us for defending ourſelves, than that they ſhould firſt ſneer at us, as Fools for neglecting our Defenſe; and then be able more eaſily to undo us.

As to others, that poſſibly may be diſpleaſ'd at what we are now doing, I would hope, that a little Time and conſideration will ſet 'em right, and convince them, that it is not only juſt, but (all things conſidered) neceſſary to be done; becauſe, if the Parliament do, upon this occaſion, ſhew their Zeal in the Defenſe of the Government, it will animate and give Courage to the Friends of it both at home and abroad. Foreign Powers will be apt to court the Friendſhip of a Prince, at the Head of a mighty Kingdom; if they ſee, that he and his Poſterity are like to continue there: All the Affairs of the Kingdom, which reſpect them, will be manag'd with more Eaſe, with more Honour, and with leſs Expence; and they will be inclin'd, not to foment but to diſcover Plots, if they came to their Knowledge. But on the contrary, if we give 'em any Reaſon to ſuſpect, that we look another way, they will quickly do ſo too, and ſtrive which ſhall be forwardeſt to help the Pretender to involve us in Blood and Ruin. And as to the Subjects at home, I would only obſerve, that all Mankind are apt to ſhew moſt Zeal for a Government, when they think it ſafe, and like to ſtand, and be able to protect them: But to ſuſpect the contrary is a moſt dangerous Temptation to the Fidelity of Subjects, as has been ſeen by the Experience of all Ages. And therefore I hope, that your Lordſhips will, by your Unanimity and Zeal in this matter effectually convince the World, that the Danger does and ſhall lie in oppoſing, and not in defending the preſent Government.

I hope that what I have now been ſaying, has convinc'd your Lordſhips, both of the Juſtice and Prudence of this Bill; give me leave to obſerve, that your Moderation has been very great too, both in giving ſo full and fair a Hearing, and in making the Penalties ſo much leſs than the Crimes deſerve.

It is now above a Year ſince the Plot was firſt diſcovered; a Plot of a moſt deſperate Nature, to ſeize the Perſons of the King and Prince, and to bring in a Popiſh Pretender upon us. The Execution of which, was to be begun by ſeizing the *Tower*, and attacking the City of *London* on all ſides; and was thence to ſpread itſelf into all parts of the Kingdom. Lord! what confuſion; what Murders; what Plundering; what burnings muſt this have caus'd? Whatever had been the Iſſue, the very Attempt muſt probably have occaſion'd the Sacking and Burning of this great City: The utter Loſs at once of all publick Credit: the Murder of Infinite Numbers of People: The Aſtoniſhment, and Amazement, and Undoing

Undoing of almost all, but of those vile Wretches who would have had the Plundering of all sides. If it had gone on, how many of the Noble Lords that I now see, would have been before this in their Graves? But I forbear going any further in this Tragical Representation, and desire only to observe, That tho it has been discovered above a Year, how very little of it we yet know: and I do appeal to your Lordships Consideration, who know the State of the World very well, whether there be any Country in it, either Bond or Free, which, had they discover'd but a fifth part of what we know of a Plot of this nature, would not in a Week's time have found means to get to the Bottom of it. However, my Lords, I still commend your Moderation; and do hope, that we shall never find Reason to repent of it, and that this little which is now doing, will be a Warning to Conspirators, not to provoke further the Patience of an injured Nation.

I doubt not but upon this and all other Occasions, your Lordships will be ready to stand by a wise, and a good, and a merciful Prince; and that you will, according to your Oaths, defend him, against all Treasons, and Traitorous Conspiracies whatsoever.

And in the last place, give me leave as a Christian and a Protestant Bishop to hope, you will do your best, that a Popish Pretender may never be set at the Head of this Protestant Church: One, who must think himself bound in Conscience to destroy it; and instead of that pure Religion which we now enjoy, bring in horrible Superstition and Idolatry, Nonsense and Tyranny; attended with all the sad Calamities, which Popish Princes always have brought, and always must bring upon Protestant Countries.

After whom the Duke of *Wharton* spake as follows.

SOME Words which have fallen from the Reverend Prelate, who spoke last, have made it, in some measure, necessary for me to trouble your Lordships with the Reasons that induced me to differ with him in Opinion, and to give my Negative to the Bill now depending before us.

If I don't misunderstand his Lordship (and if I should mistake his Meaning, I hope he will set me right) he was pleased to say, That Persons without Doors would be apt to cast different Reflections on the particular Behaviour of every Lord this Day: That those who were for the passing of this Bill, would be accused of Malice and Partiality; and those who were of contrary Sentiments, would be branded with Disaffection to the present Happy Establishment.

For my Part, I am far from thinking, that Considerations of this Nature will have the least Weight with any of your Lordships; and am very certain, that every one, who gives his Vote on this important Occasion, has attended, with the greatest Care, to the Evidence that has been given at your Bar, which is the Foundation of this Day's Debate.

The Proofs that have been brought to support the Charge, and the Bishop's Defense, are to be thorowly considered; and when your Lordships proceed according to the Rules of Justice, you will not fear, nor value, any Consequences which may attend the discharging of your Duty.

So far I will venture to affirm, That the best Way to shew our Zeal to his Majesty, and the present Government, is, To act in all Cases, both in our Judicial and Legislative Capacities, with that Honour and Impartiality, as ought to flourish in this great Council of the Nation.

I could have wished the Noble Lords who have given their Reasons for the passing this extraordinary Law, would have entred into the particular Circumstances of this Case, and considered it singly on its own Merits: But instead of speaking on that Head, I cannot but take Notice, That they have wandered from that (which ought to have been their only Consideration) into Learned Discourses on Bills of this Nature in general.

I shall not trouble this House with any Arguments against Attainders. Many Lords, of greater Weight and Abilities than myself, have already spoke fully to this Point in the preceding Debates.

I shall only so far agree with the Reverend Prelate, who spoke before me, That it is proper, that such a Power of punishing by Bill, should be vested in the Legislature, to be exercised on extraordinary Emergencies: But then I must add, If ever that Power is abused: if ever it is employed to destroy innocent Persons, it is evident, That the Lives, Liberties, and Fortunes of every Subject in *Britain* are in the utmost Danger, and liable to be sacrificed to the Fury of a Party.

It has been admitted, That every Bill of Pains and Penalties is to stand upon its own Bottom; and that the passing of one Act of this Nature, is not to be brought as a Precedent for the supporting of another, unless there be convincing Evidence to inforce each Case. And therefore the proper Consideration now before us, is, Whether the Evidence offer'd against the Unfortunate Prelate, is sufficient to induce your Lordships to believe him Guilty of the heavy Crimes of which he stands accused?

My Lords, I shall take the Liberty of considering the whole Proofs that have been brought on this Occasion, both by way of Charge, Defense, Reply, and Rejoinder; and tho I own myself very unequal to this Task, yet, since no other Lord, who could do it much better, has undertaken it, I think it my Duty as a Peer, and as an *Englishman*, to lay it before your Lordships in the best Manner I am able.

The Method I shall observe for the more clear Stating of the Case, shall be to lay every Particular Branch of Evidence before you, and to distinguish the several Parts of the Accusation, and consider them separately, to avoid Confusion, and to be the more exact in what I have to offer.

I hope, I shall have your Lordships Indulgence for taking up so much of your Time as this will require: But I assure you, I shall endeavour to be as brief as the Nature of the Thing will admit, and will intrude on your Patience as little as possible.

I must also desire your Lordships will pardon me, if I repeat several Arguments that have been used by the Counsel at the Bar; and if I even mention some Things which fell from me in the Debate on Mr. *Kelly*'s Bill, whose Case is very much interwoven with the present; so that it is almost impossible to avoid it.

Before I go any further, I cannot but ſay, That were theſe Crimes plainly proved againſt the Biſhop of *Rocheſter*, his Sacred Function and Station in the Church would be Aggravations of his Guilt: But, as this is certain on the one hand, ſo on the other, your Lordſhips will require very clear Demonſtration, before you can think it poſſible for a Biſhop of the Proteſtant Church (who has ſignalized himſelf in Defenſe of the Reformation, and the only one of that Bench where he had lately the Honour of ſitting, that ever wrote in favour of *Martin Luther*) to ingage in a Conſpiracy for introducing Popery and Arbitrary Power amongſt us.

My Lords, the Counſel for the Bill opened the Charge with acquainting the Houſe, That it was only to be ſupported by producing of decyphered Letters, full of fictitious Names and Cant Words: They were ſo very fair as to confeſs, they had not one living Witneſs that could charge the Biſhop with any thing, nor even ſo much as a Letter under his own Hand; therefore, on the firſt View, this Manner of condemning, on ſuch kind of Evidence, ought to require our utmoſt Caution, leſt we ſhould eſtabliſh a Method, which our Enemies may hereafter take to deſtroy the greateſt and moſt innocent Subject in the Kingdom.

Mr. *Wearg* cited two Caſes, which he would willingly have us receive as Precedents, to juſtify the admitting of circumſtantial Evidence: The one was, the Caſe of *Aſhton*, who was condemned on Circumſtances only. But, my Lords, this was before the Treaſon-Act was paſſed, which requires Two Poſitive Witneſſes; and nothing could induce the Legiſlature to paſs that Law, but a thorough Conviction of the Danger that might attend the admitting of any Proofs which were not poſitive or certain.

The ſecond Caſe he cited, was that of *Harriſon* for the Murder of Dr. *Clench*; and the Learned Gentleman tells you, that it was the pulling out of a Handkerchief that led to the Diſcovery of that Murder. It is very certain, Circumſtances may lead to the Diſcovery of Evidence; but muſt be well ſupported before they can be converted into convincing Proofs.

The firſt Piece of Evidence that was offered at the Bar, was the Extracts of Letters from abroad, which this Houſe ſeems, in ſome meaſure, to have declared to be immaterial, when they did not ſo much as deſire to ſee Copies of the whole Letters, nor the Originals; and even admitted one to be read which was Anonymous. But it will not be improper to obſerve, that thro' this whole Correſpondence the Biſhop of *Rocheſter* is not named. And therefore I cannot ſee why they took up our Time with reading Papers quite foreign from this Caſe; eſpecially ſince every Body allows there has been a Conſpiracy, which is the only Fact to be gathered from this Correſpondence.

The next Point which was attempted to be proved, was, That Captain *Halſtead* went to fetch the late Duke of *Ormond*, and was at the Deanery with the Biſhop before he imbark'd. There are alſo Two Letters found in the Biſhop's Cloſe-Stool, from this Gentleman to his Lordſhip, which were read, and are only Appointments for Viſits, but mention nothing of this Deſign; and, I think, there was a Coachman, that proved *Halſtead* was an Hour with him ſome Days before he left *London*.

This, my Lords, was opened as a Matter of great Importance: But your Lordſhips muſt remember, that the ſuppoſed Deſign of *Halſtead*'s bringing the late Duke of *Ormond* into *England*, is only proved by Hearſay. One of the Crew belonging to the Ship in which he went, has depoſed, That it was the Common Report at *Bilboa*, that *Halſtead* came there on that Errand.

How far Common Fame is to prevail, I ſubmit: But if this Hearſay were true, is every Perſon who was an Hour with this Gentleman before his Departure, ſuppoſed to be privy to this Project? And what a ſtrain'd Conſtruction is it to inſinuate, the Biſhop of *Rocheſter* knew of his Intention, becauſe he received a Viſit from *Halſtead*, who was a Tenant under his Biſhoprick? And this is the more extraordinary, ſince it has not been ſo much as pretended that any Correſpondence has paſſed between the Reverend Prelate and the late Duke.

They then produced Letters directed to one *Dumvill*, which were decyphered. And Mr. *Willes* was examined to prove, that they were rightly and juſtly explained.

My Lords, It very well deſerves your Lordſhips Conſideration, how far this kind of Evidence is to be admitted: It has appeared to your Lordſhips by the Oath of Mr. *Willes* himſelf, that it is an Art which depends upon Conjecture; for this Gentleman has confeſſed, that every Man is liable to a Miſtake in this, as well as in other Sciences. He tells you, that he and his Brother Decypherer varied in One or Two Inſtances: He allows, that the *Chaſms*, which they were forc'd to leave in thoſe Letters, might alter the Senſe of them. And, therefore I cannot but think, that an Accuſation grounded on ſuch Proofs, is uncertain and precarious.

The Perſon who is the Decypherer is not to be confuted, and what he ſays muſt be taken for granted, becauſe the Key cannot be produced with Safety to the Publick; and, conſequently (if his Conjectures be admitted to be Evidence) our Lives and Fortunes muſt depend on the Skill and Honeſty of Decypherers, who may with Safety impoſe on the Legiſlature, when there are not Means of contradicting them for want of ſeeing their Key.

My Lords, in the Caſe of *Coleman*, the Key was printed, as has been well obſerved by the Counſel at the Bar; and I am very much ſurprized, that Gentlemen of ſuch Abilities and Integrity, as the Members of the Secret Committee (who, in another Place, were ſo exact as to print the *French* Originals with the tranſlated Letters, that the World might ſee how juſt and candid the Proſecutors of the Plot were) did not, for the Satisfaction of the Publick, permit us to ſee the Key in Print, on the Truth of which depends ſuch a Chain of Conſequences.

I own myſelf intirely ignorant of this Art: But, as I ſhould be very far from condemning a Man on my own Conjecture, I ſhould much leſs do it on the Conjectures of others.

The greateſt Certainty Humane Reaſon knows, is, a Mathematical Demonſtration; and were I brought to your Lordſhips Bar, to be try'd upon a Propoſition of Sir *Iſaac Newton*'s, which he upon Oath ſhould ſwear to be true, I would appeal to your Lordſhips, whether I ſhould not be unjuſtly

unjustly condemned, unless he produced his Demonstration, that I might have the Liberty of enquiring into the Truth of it, from Men of equal Skill?

I cannot think any Man will allow Evidence of this Nature to be good: But if in this Case relating to the decyphered Letters to *Dumvill*, your Lordships should admit it, there is nothing mentioned in them that can affect the Bishop, neither is he at all nam'd in them, but they are only brought to prove the Conspiracy in general.

The Examinations of Mr. *Neynoe* are the next Points that are laid before your Lordships: And, indeed, I must do the Gentlemen at the Bar the Justice of saying, That they forbore mentioning any thing of them, when they open'd the Charge.

They were so sensible that such Proofs could not have the least Weight to affect the Bishop, that tho in the Case of Mr. *Kelly* they were produced against him, as very material to support that Bill, yet they did not think proper to name them against the Bishop; which, I am thorowly persuaded, is owing to what appeared at your Bar by the Examination of Mr. *Bingley*, and the universal Opinion which every Person seemed to have of the Villany of Mr. *Neynoe*'s Transactions.

My Lords, These Examinations were never signed by the Person, neither was he ever examin'd to them upon Oath: So that were they of Consequence, and he a Person of Credit, they could not be admitted to affect any Person whatsoever, in any Court of Justice or Equity. Idon't mean, That they could not be read according to the strict Rules of *Westminster-Hall*; which is admitted on all Sides they could not: but I dare affirm, that no Credit can be given to 'em on any Account whatsoever.

The Person was closely confin'd, and consequently in the Hands of the Government; so that he was at that Time under the greatest Apprehensions, which might, in some measure, prevent him from speaking Truth, with that Sincerity and Candour of which every Person ought to be Master, when he is examin'd on Matters of such nice Nature.

Tho these Papers were intirely given up by the Counsel for the Bill, yet the Extract of them was read, and they are the visible Foundation of this Charge; and if they are insignificant, the whole Accusation falls to the Ground: For the whole Proof of the Bishop's Dictating to Mr. *Kelly*, depends on Mr. *Neynoe*'s bare Affirmation.

The whole of what *Neynoe* says, or is supposed to say, is, That Mr. *Kelly* told him he wrote the Bishop's Letters for him: Mr. *Kelly* denies it, and Mr. *Neynoe* was so conscious that he had been guilty of many Crimes, that he endeavour'd to withdraw from Justice, and the Providence of God, it is said, intercepted him.

My Lords, If you will consider the Improbabilities of this Evidence, altho it were upon Oath, and signed by him, it cannot be supported. He tells you, That he was intrusted to draw up Memorials to the Regent: yet none of those have been produced: and yet it is apparent the Copies of them might, with Ease, have been obtained, if he had been as thorowly pressed to deliver them, as he was to declare he wrote them.

These Memorials, he says, were wrote by the Order of Mr. *Henry Watson*, whom he takes to be the late Earl *Marishall*: And I am certain your Lordships did not think that Fact material, when you came to a Resolution, That the Bishop of *Rochester* should not be at Liberty to ask, if Enquiry was made of the said *Neynoe*, or if he gave any Satisfaction to the Lords of the Council, touching that important Fact of *Watson*'s, whom he took to be Earl *Marishall*, lying with him several Nights.

It was very well observed by a Learned Gentleman at the Bar, That no body can believe the late Earl *Marishal* would have reposed so great a Confidence in a Person, who was intirely a Stranger to him, and of such little Note; and the *Jacobite* Party must be in a low Condition, when they make use of such a Creature to write Papers of that Importance.

There is so much Improbability in this and other Points, and so much Contradiction in several Parts of his Examinations, that they appear to me, and must to all reasonable Men, as the Dictates of Fear, and not agreeable to Truth.

He mentions, That the Reverend Prelate (for such I still may call him) had some Favours offer'd him by the Court; but that cannot be true, and must be added to the rest of these Absurdities.

But, my Lords, what in my Opinion clears up all these Matters, and makes it impossible for me to give the least Credit to this, or any other Part of the Charge, are, The several Testimonies of *Bingley*, *Skeene*, and *Stewart*.

I must observe to your Lordships, That the two first Persons, *Bingley*, and *Skeene*, are actually now in separate Custodies; and consequently could have no Communication one with another. The Third is at Liberty; but his Testimony is so thorowly supported by Mr. *Gordon* and Mr. *Kynaston*, that no Doubt can arise as to the Veracity of it.

These Gentlemen, who are in the Hands of the Government, are under Hopes and Fears; and therefore, it is certain, when they speak a Language, which, perhaps, may be disagreeable to those on whom they at present chiefly depend, it must be the Spirit of Truth that prevails.

Mr. *Bingley* was before us in the Case of *Kelly*, and was also examin'd at the Bar of the House of Commons, tho not upon Oath; and tho he has been more severely treated, as he told your Lordships, and more strictly confined since his first Examination, yet he has persisted in his Story: And tho he was so long at your Bar, and so many Questions put to him, yet he never varied in any one Circumstance, but appeared consistent thro' the whole Course of his Behaviour.

I shall not detain your Lordships with recapitulating his whole Evidence, for I did it very fully on a former Occasion. But your Lordships will remember, he told you, *Neynoe* abounded in Money, which *Neynoe* said (after he was apprehended at *Deal*) *an Honourable Person* (and on this Occasion, I hope, I may name him) Mr. *Walpole gave him*: and more particularly, he mentions 50 *l.* which *Neynoe* said he received the Night before he went to *France*.

Bingley told your Lordships, *That* Neynoe *had assured him, he used to meet this Honourable Person in the Stable-Yard at* Chelsea: And, my Lords, the Errand on which he was going to *France*, was,

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To diſcover ſome Secrets relating to Cyphers, which he would have ingaged *Bingley* to have done for him; and particularly, to get them, if poſſible, out of Mr. *Kelly*; *Which*, he ſaid, *could he obtain, would be of great Advantage to him.*

That *Neynoe* had declared to him, *He would be even with Mr.* Kelly, *before he was aware of it*, or Words to that Effect: and that Mr. *Kelly* always ſeem'd averſe to any Acquaintance with Mr. *Neynoe*, of whom he entertained a mean Opinion.

That *Neynoe*'s Father refuſed him Money, which makes it highly probable that his Poverty was the Occaſion of his Villany: and that when he was taken at *Deal*, he had declared to him, *Mr.* Walpole *expected to find the Plot about him; and ſince Mr.* Walpole *could not, he muſt make one for him.*

Neynoe told *Bingley*, *That this Honourable Perſon had vowed Deſtruction to the Biſhop of* Rocheſter, *by ſaying, He would pull down the Pride of this Haughty Prelate*; which is ſufficient to convince your Lordſhips how little Regard ought to be had to the Hearſay Evidence of ſo falſe a Wretch.

Mr. *Bingley* ſays, That Part of this Account he had given to the Lords of the Council: and I could have wiſhed, that his Examination (as well as ſome others to the ſame purpoſe, which were taken about the ſame time) had been laid before the Parliament.

Mr. *Skeene*, who is alſo in Cuſtody, has depoſed, That he lay in the ſame Houſe with *Neynoe*, and had ſome Converſations with him.

That *Neynoe* had told him, *What he had ſaid of the Biſhop of* Rocheſter *was intirely falſe.* And,

That Mr. Walpole *had offer'd him a conſiderable Annuity to turn Evidence; and had given him Inſtructions before he was called in to the Lords, what Queſtions would be asked him, and what Anſwers he ſhould make, and threaten'd him with* Newgate *if he would not comply.*

Skeene ſays further, That Neynoe *ſwore* (and I hope the Reverend Bench will in ſuch a Caſe, permit me to repeat the Words) *by God, there were two Plots; One of Mr.* Walpole's, *againſt the proteſting Lords, and one of his, to bite Mr.* Walpole *of Money*: And this ſeems to be the only Time that ever Mr. *Neynoe* averr'd any thing upon Oath.

To convince the World, what a Creature this *Neynoe* was, he tells *Skeene* further, *That once at Lord* Townſhend's *Office, he had a great Inclination to have ſtabb'd the Chancellor of the Exchequer.* He tells you, That *Neynoe* had wrote a Paper to declare, *That all he had ſaid of Lord* Orrery *was falſe.*

My Lords, The next witneſs was Mr. *Stewart*, who was unfortunately in Cuſtody when *Neynoe* was brought to Town from *Deal.*

Stewart ſays, That he ſlept the ſecond Night with *Neynoe*: That *Neynoe* had told him *what he had ſaid of the Biſhop, was falſe; and that Mr.* Walpole *had offered him a great Sum of Money, if he would ſwear to what he ſaid, and turn Evidence, which he declared he could not do.*

That Mr. Walpole *had taken him into another Room before he was examined, and told him what Queſtions he would probably be asked, and what Anſwers he ſhould give.*

He ſays, That *Neynoe* told him alſo, *That he had like to have kill'd Mr.* Walpole, *and ſo put an End to the Plot: and that Mr.* Walpole *had given him a Paper of Directions, which he was to anſwer, in order to be a Witneſs againſt the Proteſting Lords.*

As a Confirmation of his Teſtimony, *Stewart* ſays, He told this to Mr. *Gordon* before Mr. *Neynoe* was drowned, and to Mr. *Kynaſton* before the Meeting of the Parliament.

Mr. *Gordon* confirms this Part of his Evidence, and aſſures your Lordſhips, that he had heard it from *Stewart* before the Death of *Neynoe*. And Mr. *Kynaſton*, a Gentleman of an undoubted Character, lately a Member of Parliament for *Shrewſbury*, has aſſured your Lordſhips, That he was acquainted with *Stewart*'s Account of *Neynoe* before the Meeting of the Parliament: and adds this Circumſtance, That when in the *Appendix* he ſaw thoſe ſix Queſtions printed, he ſhew'd them to *Stewart*, who ſeem'd rejoyced, and ſaid, *You ſee, Sir, what I told you is true.*

Such concurring Teſtimonies from Perſons kept ſo ſeparate, and who are ſpeaking againſt their own private Intereſt, muſt have the greateſt Weight, and muſt at leaſt prevent any rational and impartial Perſon from giving the leaſt Credit to the bare Hearſay of this *Philip Neynoe.*

If any doubt could remain, as to the Validity of this Teſtimony, it is ſufficiently confirm'd by the Perſons brought to diſprove it.

The Chancellor of the Exchequer himſelf does not pretend to deny that *Neynoe* told theſe Things, but only adds other Circumſtances to convince you of *Neynoe*'s Villany, and aſſures you, That at the Time he was receiving Favours from him, he was thorowly convinc'd he intended to cheat him; which was the Occaſion of his being apprehended.

He own'd the Tranſactions between them before *Neynoe* went to *France*, and particularly the Money mention'd by *Bingley*; which are Proofs that *Neynoe* muſt have diſcloſed theſe Secrets ſince they could not come from Mr. *Walpole*, and He and *Neynoe* only were privy to it.

Mr. *Walpole* has ſhewn your Lordſhips the foul Draught of the Queſtions mention'd by *Stewart*; and when he denies that Part of *Neynoe*'s Declaration relating to the Inſtructions given him before the Examinations, he owns, he was twice alone with him; once the firſt Night of his being brought to Town, and the ſecond time, when he gave him the Paper of Directions, which might be Foundation enough for *Neynoe* to frame ſo notorious a Falſhood.

The Witneſſes brought by the Counſel for the Bill, to the Character of Mr. *Bingley*, ſeem rather to confirm it than otherwiſe; and all agree, they never heard any thing againſt his Morality.—— They indeed have ſaid, he bore the Character of a *Jacobite*; and ſuffered for having diſperſed a Libel: But Mr. Baron *Gilbert*, who was his Judge when that Puniſhment was inflicted on him, has told your Lordſhips, That his private Life was not vilified at his Trial, and that neither Perjury or Forgery was ever laid to his Door.

Tho the Puniſhment he ſuffered was the Pillory, yet it is the Crime, and not the Puniſhment, that makes the Ignominy; and for this I can appeal to the Learned Judges.

In order to deſtroy the Evidence of Mr. *Skeene*, they produced one *Pancier*, who tells you, That *Skeene* had revealed many Secrets to him relating to the Plot; and particularly of a Military Cheſt, which

which was collected to carry on these supposed Designs, and support the *Jacobites*.—But I presume every body who heard the two Persons at the Bar, could not but remark the Steddiness with which Mr. *Skeene* denied these Asseverations, and the Confusion with which the other affirmed them.

Mr. *Pancier* seem'd to drop something which intirely destroys any Credit that could be given to him, by saying, That he had owned to Mr. *Skeene*, that he was a Friend to this Administration; and yet has sworn, That after such a Declaration, *Skeene* had still persisted in his Story, and revealed some Part of this Intelligence to him. How far this is probable, your Lodships are the best Judges.

Mr. *Pancier* goes further, and tells you, That Part of this Conversation happened in St. *James*'s Park, in the Presence of one *Dufour*. This *Dufour* was in the Hands of the Government; and I can't conceive why we have never seen him or his Depositions, when it would have been so easy to have brought this corroborating Witness to Mr. *Pancier*'s Testimony.

I can't but think, That the not producing this Man's Evidence, is a strong Circumstance to convince your Lordships he did not agree in the same Story with Mr. *Pancier*.

They also produced *Skeene*'s Attainder for the *Preston Rebellion*: But there have been many Acts of Grace since, so that he is capable of being an Evidence; and there has nothing appeared to traduce his Character as a Man of Morals.

In order to shew your Lordships, that *Neynoe* could not possibly make these Confessions to Mr. *Skeene* and Mr. *Stewart*, the Counsel for the Bill maintain, That they will prove *Neynoe* and the Prisoners were not together after the first Night.

This, my Lords, would be very material; but I think it appears, by the Proofs brought to support this Assertion, that they frequently have conversed one with another.

The first Witness they call'd, was Mr. *Crawford* the Messenger, in whose House the Prisoners were in Custody; and, my Lords, I can't but say, it seems very odd, they should bring a Man to swear he had done his Duty: He has told your Lordships, That Lord *Townshend* had given him Orders, that *Neynoe* should be close confined; and if, after that, it should appear, that he had neglected such Directions, there is no question, but that he instantly, and deservedly, would have been removed out of his Imployment.

This Messenger, in this Situation, tells you, That after the first Night they never convers'd, to the best of his Knowledge: That Mr. *Skeene* call'd *Neynoe* a Rogue of an Informer; and spoke in very hard Terms of him; which I indeed think it appears the Fellow well deserv'd.

Crawford says, That Mr. *Neynoe* had some Paper, two Sheets of which he found missing. He likewise swears, That Mr. *Stewart* lay upon the Stairs; and owns, he had at that time two Servant-maids.

Mrs. *Crawford*, his Mother, swears, That, to the best of her Knowledge, the Prisoners were never together: That she kept the Keys of the Rooms herself, but used to send up the Maid, *Hannah Wright*, with the Dinner.——Your Lordships will observe, that both this Woman and her Son swear to the best of their Knowledge only, and are far from positive Witnesses.

Hannah Wright, when she was first call'd, spoke in the same Language with them, tho she afterwards recollected herself better.

When the Bishop came to rejoin, *Francis Wood*, *Thomas Wood*, and Mr. *Russel* severally say, That this *Hannah Wright* had declared to them, That she used to let the Prisoners converse together whenever she had an Opportunity, which was when Mr. *Crawford* and his Mother were out of the way; and that she used to stand upon the Stairs, and give Notice when any Person came, that they might retire into their several Rooms. And the other Maid, whose Name is *Christian*, has deposed, That *Hannah* gave the Key of *Neynoe*'s Room to *Stewart*, and several times desired *Stewart* to go up to him, and that they were together an Hour or more. And when *Hannah* was call'd a second Time, she own'd she was turn'd away for Suspicion of having help'd *Neynoe* in his Escape; That she has left *Skeene*'s Door open, who lay near *Neynoe*; and that there was a large Hole in *Neynoe*'s Door, thro' which they might converse.

She said, That *Neynoe* gave her a Paper, which she was to convey for him; but that it was taken out of her Bosom, and burnt by one of the Prisoners.

When Mr. *Stewart* said, That he sat upon *Neynoe*'s Bed the second Night, and lay in the Garret where there was a Partition, but a Communication between 'em, *Hannah* said, She could not be positive to that, but believes it true.

Mr. *Crawford*, when he was call'd to that Point, according to his usual Custom, denies it to the best of his Knowledge.

Your Lordships will now judge, whether the greatest Credit is to be given to the Belief of a Messenger and his Mother, who are swearing that they did their Duty; or to the positive Oaths of *Skeene*, *Stewart*, *Gordon*, *Kynaston*, *Francis Wood*, *Thomas Wood*, *Russel* and *Christian*, confirm'd by the Confession of *Hannah Wright*, when she came to be cross-examined and confronted.

This, my Lords, concludes what has appear'd at the Bar, relating to Mr. *Neynoe* and his Transactions; and I am pretty certain, every impartial Body must agree with me, That so far from giving the least Credit to what he says, there have appeared such Circumstances in the Transactions which are now come to Light, that must make the greatest Caution necessary, before we believe any other Part of the Charge.

Your Lordships will take notice, That Mr. *Crawford* confesses Mr. *Neynoe* had the Use of Paper, and found two Sheets missing; and *Hannah Wright* owns she had a Paper from him, which was burnt by one of the Prisoners. This, my Lords, undoubtedly was the Paper relating to Lord *Orrery*, mentioned by *Skeene* in his Evidence.

My Lords, I am now coming to the great and only Foundation remaining to support this Bill, *viz.* *Neynoe*'s Examination: for if his Hearsay is not to be believed, which is the Proof that was offered to shew that Mr. *Kelly* was the Bishop's Secretary, and used to write for him; and particularly, That the Bishop dictated Three Letters, which were wrote in *Kelly*'s Hand, and transmitted to *France* under Cover to Monsieur *Gordon le Fils*;

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Then, as every Body muſt agree, the Biſhop ought to be acquitted; and when hereafter, this great Affair comes to be canvaſs'd by Poſterity, it will ſtand or fall as this Fact ſhall be ſtrongly made appear,

They firſt read *Plunket*'s Cypher, and Mr. *Vanneske* atteſts it to be his Hand-writing.

When this Piece of Evidence was offer'd, People were at a loſs to know what they intended to make of it, and little thought, that they ſhould be drove to make uſe of *Jackſon*, ſtanding for the *Pretender* in that Cypher, to ſhew that the Letter directed to *Jackſon* (one of the three before-mention'd, affirm'd to be dictated by the Biſhop of *Rocheſter* to Mr. *Kelly*) was to the *Pretender*. I ſhall take notice of this extraordinary Proceeding when I come to conſider thoſe Letters: I ſhall only ſay now, That were Mr. *Plunket*'s Correſpondence to be regarded, the Plot is of a very deep Nature; for he has had the Impudence to inſinuate the moſt ridiculous Aſperſions againſt the greateſt Men amongſt us.

Three of his Letters were read out of Cypher, in Two of which Mr. *Johnſon* is named, that is Mr. *Kelly*; but neither Mr. *Kelly*, or the Biſhop of *Rocheſter* are allowed Places in his Cypher, and conſequently were not in an Aſſociation with him. *Johnſon* is only ſpoke of by *Plunket*, when he is mentioning Domeſtick News, and in no other than might be in every News-Letter that went by the General Poſt.

My Lords, in order to ſhew that the Three Letters ſent under Cover to Mr. *Gordon de Fils*, were Mr. *Kelly*'s Hand-writing, which they very juſtly thought was neceſſary to be made appear before they proved that the Biſhop was concerned in them; they produced a Letter of the 20th of *Auguſt*, which a Clerk of the Poſt-Office ſwears was ſtopt at the General Poſt-Office.

To convince us this Letter is Mr. *Kelly*'s Writing, *Hutchins* the Meſſenger ſays, To the beſt of his Knowledge it is Mr. *Kelly*'s Hand; and at the ſame time owns, he never ſaw him write till after his Commitment, and then he ſtood by him while he wrote two Letters, one to Lord *Townſhend*, the other to Mr. *Delafaye*: Thoſe Letters were produced at the Bar, and therefore every Lord in the Houſe is as good a Judge of the Similitude as the Meſſenger, who has lately been reſtored into Favour, on what Account I cannot tell.

If Mr. *Kelly*, during his Confinement, counterfeited and diſguiſed his Hand, then the Meſſenger's Evidence can't be of any Weight; and if he wrote as uſual, then every Perſon is equally capable of framing an Opinion of it, who ſees the Three Letters.

The next Witneſs is *Malone*, who ſwears, he has ſeen him direct Letters, but can't tell how long ſince he ſaw him write, nor how often.

The Perſons who contradict this Evidence are ſo poſitive, ſo clear, and ſo concurring in their Teſtimony, that no Doubt can riſe upon it.

Mr. *Bingley*, when he was ſhewn this Letter, ſwears it is not like his Hand-writing.

Mr. *Brown*, a Peruke-maker, well vers'd and acquainted with his Writing, when he was ſhewn the Letter of the 20th of *Auguſt*, and the Date of it hid, by the Counſel for the Bill (ſo that he could not know what Paper it was before him) ſwears, it is not his Hand-writing: When the Letter to *Delafaye* was produced, he declared, That was his Hand-writing: When another Paper was ſhewn, (I think it was the Marriage Articles) he ſaid, That was more like his Hand-writing than that of the 20th of *Auguſt*, but he did not believe it was wrote by him; and when they queſtion'd him upon the Letter to Lord *Townſhend*, he ſwore it was Mr. *Kelly*'s Hand-writing.

Mr. *Pickering*, who had Occaſion to know Mr. *Kelly*'s Hand, having lent him ſome Money, and received ſeveral Notes and Letters from him during that Tranſaction, does agree with Mr. *Brown* in every particular and moſt minute Circumſtance; which is a clear and evident Proof, that this Letter of the 20th of *Auguſt* was not wrote by Mr. *Kelly*.

The Difference which they tell your Lordſhips they obſerve, between the Cut of the Letters in that of the 20th of *Auguſt*, and the others, is, That one is longer and ſtraiter, the other wider and ſhorter: which is obvious to any body that will look on both, and is a Confirmation of their Veracity.

The Proſecutors of the Plot might have prov'd this better, and not have been driven to the Teſtimony of a Meſſenger to ſupport this great Foundation of their Charge. It is notorious what Search they have made for Evidence of all kinds; and as Mr. *Kelly* was educated in a College, they might eaſily have found credible Witneſſes to that Point, if thoſe Letters had been wrote by him.

In the Caſe of Similitude of Hands, when it has been the moſt clearly and poſitively proved, as on the Trial of Colonel *Sidney*, it has been eſteemed to be cruel, that a Man ſhould be convicted on ſuch kind of Evidence; and the Attainder of that unfortunate Gentleman was reverſed for that Reaſon.

In *Sidney*'s Trial, his Bankers ſwore, They uſed to pay Bills drawn by him in the Hand-writing they were ſhewn, and no Perſons could contradict them; and yet the Sentence againſt him was a great Blemiſh to that Reign. The Great Lord Chief Juſtice *Holt*, in the Caſe of *Crosby*, refus'd to admit it; and the Lord Chief Baron *Bury*, on *Francia*'s Trial, follow'd that Example.

At preſent, give me leave to ſay, There is no Evidence that it is Mr. *Kelly*'s Hand, and there is poſitive Proof that it is not.—— Therefore, we who live under ſo equitable, juſt, and happy a Government, can never convict a Man, in theſe Days of Liberty, on ſuch inſufficient Conjectures.

They next produced the Three Letters, which, they would inſinuate, were wrote by *Kelly*, and dictated by the Biſhop, which were mentioned by me before, and which were ſworn by the Clerks of the Poſt-Office to have been ſtopt going to *France*.

The Biſhop deſired to examine them relating to theſe Letters being detain'd, and would fain have known who took them out of the Mail: this he thought was proper for him to demand, ſince he ſeem'd to inſinuate, That he queſtion'd their ever having been in the Poſt-Office. But your Lordſhips would not ſuffer any Enquiry to be made on this Head, and voted it inconſiſtent with the Publick Safety, and unneceſſary for the Defence of the Priſoner, to permit any further

Queſtions

Questions to be ask'd in relation to this important Affair.

These honest Gentlemen, the Clerks of the Post-Office, have deposed further, That the Papers produced, are true Copies of the Originals detain'd by them; tho, at the same time, they confess, they never examin'd them after they had copied them.

They positively swore further, That the Originals were of the same Hand with the Letter of the 20th of *August*, tho they affirm this barely upon Memory, never having mark'd any Letter in order to know it again: and one of them declared upon Oath, That he did not believe there could be such an Imitation of *Kelly*'s Hand as could deceive him; tho the whole House agrees, That Hands may be counterfeited so as to deceive the Men that wrote them.

They own, they never compared two original Letters between the 20th of *April*, and 24th of *August* tho they might have stopt a Letter one Post, without Prejudice to the Government, in order to be more certain in their Evidence.

Thus, my Lords, should this Bill pass, this great Man must fall by the Dependance this House must have on the Memory of these Clerks.

Mr. *Lewis*, who has long serv'd in the Secretary's Office, tells us, That frequently Letters and Seals used to be counterfeited; and, in a more particular manner, by one *Brocket*, who excelled so much in this Art, that he has cheated many Persons, and has so far deceived them, that they have not known his Copy from their own Originals.

When these Letters, thus attested, came to be read, they are in Cypher; so that it must again depend on the Honesty of a Decypherer, before they can possibly be made Treasonable.

Mr. *Willes* declares, They were truly decyphered according to the best of his Judgment and Skill; and more particularly, that the Number 1378, which is subscribed to the Third Letter directed to *Jackson*, stands for the Letter *R*. But when some Lords ask'd him a Question, which perhaps had he answered, might have proved him to be under a Mistake; he refuses to give an Answer, either in the Affirmative or Negative, for fear of revealing his Art. Your Lordships thought proper to prevent any further Cross-Examination of this Gentleman, by a Resolution.

Mr. *Willes* says, He shew'd these Letters decyphered to my Lord *Townshend*, before he communicated them to Mr. *Corbire*, who is a Clerk in the Secretary's Office, and then he says, That Mr. *Corbire* and he agreed.

Before these Letters can yet prejudice the Bishop, the Cant Names in them must be explain'd, according to the Key which the Prosecutors of the Plot have made; and in order to it we must believe that *Jackson* stands for the Pretender, because Mr. *Plunket* gave him that Title in his Cypher. Can there be a greater Absurdity, than to imagine a Person of the Bishop of *Rochester*'s Capacity, should borrow a Name of that Consequence, from so insignificant a Wretch as *Plunket*, who it does not appear ever saw him?

Indeed, the Counsel for the Bill did not read these Letters against the Bishop, since they had no Proof of his dictating them, and they were only read on Account of the general Conspiracy.

I must observe, It was a great Artifice of these learned Gentlemen, whenever there was a Piece of Evidence to which the Bishop objected, they constantly pretended, they produc'd it to the Plot in General; for they knew it could not be admitted against the Reverend Prelate: But yet when they came to sum up, they applied them to this Particular Case; which is not agreeable to that Candour that is necessary on such Occasions.

If your Lordships should be of Opinion, that *Kelly* wrote 'em; that they were stopp'd at the Post-Office; that they were duly copied; that they were truly decyphered, and the Cant Names explain'd; yet still this cannot affect the Bishop, unless it be fix'd upon him that he dictated them: Two of them were sign'd *Jones* and *Illington*, and to induce your Lordships to believe the Bishop was Guilty, as they affirm'd, they endeavour to prove those Names must denote him. And, in Order to it, they read some Letters, affirm'd in the same Manner, (as before mention'd) by the Clerks of the Post-Office, to be his Hand-Writing: But first they read a Cypher taken upon Mr. *Dennis Kelly*, and sworn by the Messenger *Hutchins* to be wrote by *George Kelly*.

I can observe nothing upon this Cypher, but that the Bishop of *Rochester* is not mention'd in it; which seems very extraordinary, and is not a Proof of the Reverend Prelate's being in a Conspiracy.

The Letters they read of Mr. *Kelly* are of no Moment, and are only calculated to fix the Names of *Jones* and *Illington* upon the Bishop.

They give an Account of his Lady's Death, the Bishop's own Illness, his going to and from *Bromley*; and in some of them, the Dog *Harlequin* is mentioned.

It seems repugnant to Reason, that in a Treasonable Correspondence of this Importance, a Gentleman should venture his Life to give an Account of the State of one Person's private Affair, and entertain his Friends Abroad with no other Business in such a Tract of Time.

In the Letters directed to Mr. *Andrews* at the *Dog and Duck*, which are proved to have been received by Mr. *Kelly*, *Jones* and *Illington* are not named; and those in which we find them, were such as pass'd thro' the Post-Office, and were attested like those under Cover to *Gordon le Fils*.

It is not likely, that in a Transaction of so secret a Nature, Mr. *Kelly* should take such Pains to give such a Description as might give the least room for a Suspicion that the Bishop was concerned; much less to have mentioned so many Particulars, as it may be suggested he has done, if there could be any Possibility of wresting the Meaning of *Jones* and *Illington*, and interpreting of them to mean the Bishop.

William Wood, the Bishop's Coachman, is brought to prove the particular Times of the Bishop's being in or out of Town, in order to shew, that they agree with the Times mentioned of *Jones* and *Illington* in the intercepted Correspondence; and he refreshes his Memory by a Book of *Memorandums*, which might have been destroyed, if it had been apprehended by the Bishop's Friends, that such Evidence could affect him.

What they next attempt, was to ſhew, That the Dog brought over by Mr. *Kelly* from *France*, and which Mrs. *Barnes* ſwears, that he once told her was for the Biſhop of *Rocheſter*, was a ſtrong Circumſtance to fix the Name of *Illington* on the Biſhop.

My Lords, Mrs. *Barnes*, who is under the Cuſtody of a Meſſenger, is the only Witneſs to this Point; and what ſhe ſays, is only Hearſay from *Kelly*: She owns that *Kelly* never told her ſo but once, and that was when ſhe thought to have kept it for herſelf: And indeed, it might be barely an Excuſe to prevent his parting with it, for he had promiſed to bring her ſuch a Preſent before he went to *France*.

She owns, that to her Knowledge, the Biſhop never ſaw the Dog, nor ſent any Meſſage about it; which ſeems to be very extraordinary, that if this Preſent was of ſuch great Conſequence, he ſhould not have had Curioſity enough, at leaſt, to ſee it: An Affidavit was read from *Birmingham*, a Surgeon in *Paris*, which ſays, That he gave this Dog to Mr. *Kelly*, for Mrs. *Barnes*.

Before I leave this Circumſtance of the Dog, it is proper to obſerve another great Improbability, which is, in a Letter wrote a few Days after the Death of the Biſhop's Lady, it is ſaid, Mrs. *Illington* was in great Tribulation for the Loſs of poor *Harlequin*; and can it be ſuppoſed, that at a Time when the Biſhop was in Affliction for the Death of his Wife, he ſhould indecently diſcover ſo much Grief for ſuch a Trifle?

I think this is ſufficient to convince any Perſon whatſoever, that this Correſpondence is of a very extraordinary Nature.

Mrs. *Barnes* has told your Lordſhips, That Mr. *Kelly* came from *France* the 11th of *April*.

My Lords, I am now come to the only Piece of Evidence that ſeems particularly levelled at the Biſhop; which is, The Proof that has been given of the dictating thoſe Letters: and unleſs this be clearly and plainly made appear, I cannot conceive that any Thing can be laid to this Prelate's Charge.

Unleſs it is evident, that the Biſhop did dictate as alledged, I cannot think any of your Lordſhips can vote him Guilty according to the Rules of Juſtice; for no Man is ſafe either in his Life, Liberty, or Fortune, if he may be deprived of either, on account of a Correſpondence in which it does not appear he was concerned. Tho your Lordſhips ſhould ſo far credit the precarious Evidence at your Bar, as to believe that *Jones* and *Illington* ſtood for the Biſhop of *Rocheſter*; yet unleſs it is plain that it was with his Privity, it is certainly impoſſible this Bill ſhould paſs: And if it ſhould, it will hereafter be in the Power of any two Men, one at Home, and one Abroad, to ruin the moſt innocent Perſon, by entring, without his Knowledge, into a Correſpondence of this Nature.

If the being named in Treaſonable Letters be a Crime, tho it does not appear it was with the Privity of ſuch Perſons, I will ſubmit to your Lordſhips, how far Men of the greateſt Zeal to the preſent Eſtabliſhment, are to be affected by Mr. *Plunket*'s Inſinuations.

No Man ought to ſuffer for the Suggeſtions of another Perſon, unleſs it appears he has given great Foundation for them. And in this Caſe, would it not be moſt extraordinary and moſt unjuſt, to puniſh this Reverend Prelate, for a Crime which there is no Proof he ever committed? I mean, the dictating of theſe Letters. And if, on the other hand, the unfortunate Circumſtances of his Affairs have furniſhed him with Means of ſhewing, beyond Contradiction, that he could not be concern'd in the Letters of the 20th of *April*; that for a conſiderable time he could not ſee Mr. *Kelly*; and that there never was an Intimacy between 'em: Then, my Lords, I hope, every Man who gives his Vote for the rejecting this Bill, has the ſtrongeſt Evidence of his Side to ſupport his Opinion; and need not be afraid or aſhamed to own it here, or any where elſe.

This Part of the Evidence being of great Conſequence, I muſt beg your Lordſhips Attention, whilſt I recapitulate the Heads of it, as clearly and diſtinctly as poſſibly I can.

The firſt Witneſs they call'd, was *Flower*, a Chairman, who ſwears, That he carried *Kelly* twice or thrice to the Deanery; but that the Biſhop was never at Home, and conſequently did not ſee him. His Partner ſwore, he had carried him, with *Flower*, one of thoſe Times.

The next Perſon produced, was a Porter, one *Vanlear*, who depoſed, That he went about *Chriſtmas* was Twelve-Months, twice, with Meſſages from *Kelly* to the Biſhop; the laſt of which Times, he carried ſome *Beaver* Stockings; that the Biſhop ſent for him up Stairs, gave his Service to Mr. *Johnſon*, and thank'd him for his Preſent.

Mrs. *Kilburne*, at whoſe Houſe Mr. *Kelly* lodged, ſays, That once a Servant came from the Biſhop, to know how Mr. *Johnſon* did, and was ſorry he could not have his Company at Dinner.

William Wood, the Biſhop's Coachman, ſays, he once ſtopp'd in *Bury-Street*; but does not know for what; and that the Biſhop ſent a Servant ſome where, who preſently returned. And,

Lloyd, who keeps the *Star and Garter* in *Palace-Yard*, has told us, That *Neynoe* once came to his Houſe, and told him, he ſtaid for an ingenious Gentleman, who was gone to the Biſhop of *Rocheſter*'s Houſe.

This, my Lords, is all the Proof they offered of this Intimacy; from which they would infer, that the Biſhop dictated theſe Letters, and is conſequently Guilty of the Crimes laid to his Charge.

If your Lordſhips conſider what was produced on the other ſide, I am ſure you muſt agree there is no Foundation for this Aſſertion.

Mrs. *Kilburne* denies, to the beſt of her Knowledge, that the Biſhop ever came to her Houſe, or that his Coach ever ſtopp'd there, or ever was ſent for *Kelly*.

That *Kelly* did not go out of Town, from the time he came from *France*, till he was taken up, the 19th of *May*, and never lay out of her Houſe one Night.

This, my Lords, was confirmed by her Maid *Anne Ellis*.

Mrs. *Barnes* ſays, She never heard of any Meſſage from the Biſhop to *Kelly*, nor ever had any Converſation with him about the Biſhop.

William Wood the Coachman, who liv'd with the Biſhop four Years, has declared, that the Biſhop of *Rocheſter* never ſent him with his Coach to *Bury-Street* to fetch any Perſon from thence, that there was no Stranger at *Bromley* for a Fort-

night

night before his Lady died, which was the 26th of *April*; that no-body could come in a Coach or on Horseback, but he must know it; that he never saw such a Person as Mr. *Kelly*, till he was shewed him at the *Tower*; and, that the Bishop went ill of the Gout to *Bromley* the 12th of *April*, and did not return to *London* till the 7th of *May*.

Malone, Mrs. *Barnes*'s Servant, says, That she never saw the Bishop, or any of his Servants, with Mr. *Kelly*.

Thomas Grant, who has been the Bishop's Servant nine Years, has declared, That the Bishop went to *Bromley* the 12th of *April* very ill of the Gout, and that no Stranger could come to him, from the time he went to *Bromley*, till after his Wife's Death; that one or other of the Servants always sat up with him; and that no Person could visit him, but they must know it; for they were either in the same Room, or the next Room to him: and that no Stranger, except Dr. *Aldridge* and the Apothecary, came near him. *Grant* says, That he was forc'd to go to Town to attend at the *Westminster* Election of Scholars on the 21st of *April*, but left *Beauchamp* there, who came down for that Purpose on the 18th.

Beauchamp and *Steen*, who were the two Servants that attended with *Grant*, swear the same thing.

Susannah Harvey, *Sarah Jones*, *Thomas Farnden*, *Elizabeth Higginson*, and all the Servants agree, that they never heard of any Person by the Name of *Kelly* or *Johnson*'s being with the Bishop. And, Mrs. *Inglish*, who took the Names of the Bishop's Visitors for many Years, does not remember, that she ever heard of such a Person as *Kelly* or *Johnson*. And I doubt not, but that every Lord must allow, that it is not possible to have a more clear, a more strong, or legal Proof to a Negative, than this is.

I must observe to your Lordships, that most of these Servants have been in strict Custody, and severely used, particularly *Farnden*, and yet your Lordships see how unanimous they are in their Evidence: and their Testimony is so positive, that I cannot conceive any Person can suggest there was the least Intimacy between this Reverend Prelate and Mr. *Kelly*; and much less, that he could be with him to write the Letters that are dated the 20th of *April*.

Mr. *Reeves* did, indeed, so far agree, as to be of opinion, that they might have been wrote the 11th of *April*, which was the Day *Kelly* came from *France*: But, my Lords, Mrs. *Barnes* has deposed, he went to Bed the Minute he came home, and lay there for a considerable time; besides, it is improbable that Letters wrote the 11th, should not be sent till the 19th. But if any further Argument was necessary to confute this absurd Supposition, the Earl of *Sunderland*'s Death is mentioned in the Letter to *Chivers*, and that Noble Lord died the 19th; at which Time it hath been prov'd, Mr. *Kelly* was not with the Bishop.

The Bishop of St. *Asaph* did at first peremptorily contradict one Part of Mr. *Grant*'s Evidence, by saying, he had received a Letter from the Bishop of *Rochester*, at the Time which *Grant* has sworn he was so ill of the Gout that he could not write.

His Lordship positively affirmed, That he received this Letter on *Saturday* the 21st of *April* in the Morning, and saw *Grant* in *London* between Twelve and Two: But when it was proved that *Grant* did not leave *Bromley* till the Evening of that Day, and that another Person officiated for him as Butler in the Deanery, by Reason of his Absence, then the Bishop seem'd to think himself under a Mistake, and allow'd it might have been some time before.

His Lordship own'd, He never received a Letter from the Bishop of *Rochester* before nor since, and therefore was a Stranger to his Hand.

I could have wished this Reverend Prelate had recollected himself more fully, before he had given his Testimony in a Matter of this great Importance to one of his Brethren.

There was another Witness examined, which was *Crofton* the Shoemaker, to prove, that *Talbot* (who was said to have received the three Letters directed to *Gordon le Fil*) was at that Time in *London*, when he was supposed to have been in *Boulogne*. *Crofton* swears he saw him in Town the 29th of *April*, and prov'd it by his Book.

There was another Person call'd, whose Name was *Donner*, that deposed, *Gordon* own'd to him the receiving of this Pacquet; but an Affidavit was produced from *Gordon*, in which he denies it. *Donner*'s Evidence is only Hearsay, the other is positive.

My Lords the Counsel for the Bill produced some Papers which were taken in the Bishop's Custody when he was apprehended, and endeavour to draw very ill-natur'd and forc'd Constructions from them.

The First was a Letter from the Dutchess of *Ormond*, in which she acquaints him, *That she had something to send him, which she could not trust to a better Hand*; or Words to that effect. And this they would pretend to insinuate, were some treasonable Papers.

I appeal to all Mankind, whether it is not very extraordinary to suppose, that the Bishop should be presumed to convey a Traiterous Correspondence thro' that Channel. Every Body knows the Friendship which was between the Reverend Prelate and that Family; and it is not surprizing that this unfortunate Lady should think him a proper Person to consult, and intrust with her own Affairs. Therefore I can't think, that these general Expressions can at all affect him.

The next they read, is a Paper found, or pretended to be found, at the Deanery, subscribed to *Dubois*, but without Date: In this the Person who writes it, says, He received a Letter by Mr. *Johnson*, to which he return'd an Answer in his Hand.

The Secret Committee, at first, apprehended that this was received by the Bishop; and thus it pass'd, till upon seizing a Letter wrote in the *Tower* by his Lordship, they found a Similitude in the Seals, which immediately inlightned them, and then it was presently said to have been wrote by the Bishop.

They then wanted to fix this to be the Bishop's own Hand-writing, and they could find no other Way of doing it, but pretending there was a Similitude between the *E*'s in this Letter, and those which the Bishop generally used. I believe it is the first time that ever such an Argument was brought to prove that the whole Letter has been

wrote by a Perſon: much leſs was it ever pretended to be offered to a Court of Juſtice againſt any Priſoner whatſoever: But, I believe, there is no Man acquainted with the Biſhop's Hand, but ſees it is not wrote by him.

They would alſo affirm, that when in this Letter the Biſhop is ſuppoſed to ſay, That he returned an Anſwer in Mr. *Johnſon's Hand*, it muſt be underſtood to be his *Hand-writing*: which, I muſt confeſs does not at all appear to be a neceſſary Concluſion; for he might deliver his Anſwer into Mr. *Johnſon's* Hand, which, I think, is more natural to ſuppoſe than the other.

Your Lordſhips muſt judge, how improbable it is, that the Biſhop ſhould keep ſuch a Letter by him, which he wrote himſelf; or that when ſuch Care is taken, as the Proſecutors of the Plot themſelves ſay, for preventing any Perſon's diſcovering the Intimacy between Mr. *Kelly* and him, ſuch a Secret ſhould be truſted in Writing, and even without a Cypher.—— The Two Seals which gave this Turn, are *Cicero's* Heads, which are very common, and are to be found every where. They are one broke, the other whole, which muſt make it very difficult to judge of them: and it is allow'd, that, at beſt, it is but precarious Evidence.

If Mr. *Neynoe* ſpeaks Truth, when he ſaid, The Biſhop had Notice of the Storm that threatned him, I am certain, that this Paper, if it could have been apprehended of Conſequence, would have been deſtroyed: But, I believe, it was impoſſible for him, or any body elſe, to think it ſhould meet with ſuch an Explanation.

The next Letter they produced, which they ſeem'd to think material, was that which was ſeiz'd on his Servant going to Mr. *Morrice*: In this he ſays, That the Evidence of *Plunket*, and thoſe People, could not affect him; but as he does not mention Mr. *Kelly*, they would have it preſumed, that this is a Proof, that *Kelly* could have ſaid ſomething of him. But, I think, this muſt appear to be a very ill-natur'd Aſſertion.

Your Lordſhips will conſider, he was then writing to his Son-in-Law; and therefore no great Accuracy was neceſſary.

In another Place he ſays, That if they impeach'd him, he ſhould remain in Priſon for ſome time; and this they would decypher to be an Implication of his Guilt.——But, in my poor Opinion, it is the Reverſe: He ſeems to ſay, That if the Commons ſhould be induced to ſend up an Impeachment againſt him, he was ſo ſatisfied of his own Innocence, and your Lordſhips Juſtice, that he thought the Confinement till his Trial, would be the only Misfortune that could attend him. The Example of the Earl of *Oxford* was recent in his Memory, and might juſtly create in him a Fear of undergoing a long Impriſonment.

It is objected, That he, in this Letter, makes no Proteſtations of his Innocence: But if you will conſider he writes to Mr. *Morrice*, I believe every body will agree, that ſuch Declarations were not neceſſary.

Mr. *Layer's* Attainder was read; but it does not appear, That the Biſhop had any Correſpondence with him; therefore I can't conceive why we were troubled with it.

My Lords, I have now gone thro' the whole Evidence that is brought to juſtify this extraordinary Proceeding, and muſt obſerve the Steps that have been taken to procure all the poſſible Means to work the Deſtruction of this Great Man.

You have ſeen his very Servants confined, who, it does not appear, were guilty of the leaſt Glimpſe of Treaſon.

Lawſon, a Baker of *Bromley*, who appeared at your Bar, has been employ'd to examine the Perſons in the Biſhop's Neighbourhood, in order to find the leaſt Particular that could amount to the Shadow of a Proof; and went ſo far, as to offer *Wood* the Coachman the Wages that were due to him, if he would have gone the Lengths that were required.

Mr. *Bingley* told us in the Caſe of *Kelly* (and as it has not been diſprov'd, it is to be taken for granted) that a Warrant was ſhewn by the Meſſenger, ſign'd by a Secretary of State, to carry him to *Newgate*, which he was told was unavoidable, unleſs he would own the Letter of the 20th of *Auguſt* to be Mr. *Kelly's* Hand-writing: But it appeared the next Day, to be nothing but in order to terrify him.

Mr. *Kelly* himſelf has told you Lordſhips, That Mr. *Delafaye* offer'd him his own Terms, if he would have turn'd Evidence: And this was done to deſtroy the Biſhop of *Rocheſter*; or, to ſpeak in the Language mentioned at your Bar, *To pull down the Pride of this Haughty Prelate.*

Your Lordſhips may remember, That Mr. *Wearg* objects to the Biſhop's Servants, becauſe two of them had Employments, as appears by his Lordſhip's own Letter: but, my Lords, when they were examined, they acquainted the Houſe, that it was upon reading of the *Report*, that they recollected the Biſhop's Circumſtances before the Death of his Wife. And if every Man who has a Place under the Biſhop, is not to be eſteemed a free Agent, when he is upon Oath, I hope it will be allowed, on the other hand, that thoſe who have Employments under the Government, ought not to be admitted; then all the Witneſſes that have been brought to ſupport the Bill, from the Decypherer to the Meſſenger, will be diſcredited, and the whole Proſecutionm uſt fall to the Ground.

My Lords, it has been a Hardſhip that has attended the Biſhop, that he has been forc'd to prove a Negative; and the Difficulty has been the ſtronger upon him, that your Lordſhips have not permitted Mr. *Kelly* to be examin'd, as was moved by a Learned Lord, in my Eye; and if the Gentleman had ſworn what he ſo ſolemnly affirmed at your Bar, relating to this Affair, I can't conceive we could have had the leaſt Debate.

The Noble Lords who appear the moſt zealous in this Proſecution, were thoſe who oppos'd the Examination of Mr *Kelly*; which in my poor Opinion, is a ſtrong Argument, That if he had been brought before us, he would have perſiſted in his Declarations of the Biſhop's Innocence.

The Reverend Prelate has deſired of any Lord in the Adminſtration, and even the Honourable Perſon who appear'd at your Bar, to declare, whether any one ſingle Perſon had charg'd him (on their own Knowledge) of being guilty of any treaſonable Practice. And it has appeared to the contrary: Therefore this whole Charge is found-

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ed upon the slight Circumstances and improbable *Innuendoes* before-mentioned.

Another Objection, which has raised, is, that Mr. *Kelly* made Resistance, when he was seiz'd, till he had burnt some of his Papers: But, my Lords, I don't see any Reason to lay this to the Charge of the Bishop.

Kelly is to answer for his own Actions, and is unfortunately like to suffer for 'em: A Person of his Age might have many Letters in his Custody, which he did not care should be seen, and yet of a different Nature from a Traiterous Correspondence.

After this Evidence is considered, I cannot think your Lordships will establish such a Precedent, which hereafter may be employ'd to ruin the greatest amongst you. And if ever hereafter Pains and Penalties are unjustly inflicted on any Person, Posterity will derive the Original of such Bills from the Proceedings of this Parliament; and what Opinion will be framed of us, should this be passed into a Law, I submit to every impartial Person.

It must be left to your Lordships Consideration, which will be of most fatal Consequence to the Publick, The leaving this Precedent (of Condemning on such kind of Evidence) like a Sword which your Enemies may take up when they please, or the Banishing the Bishop of *Rochester*, in the Evening of his Days, who alone could do, in his single Person, no Prejudice to the Constitution. If he were inclin'd to overturn it, as his Enemies suggest, he is in a better Situation Abroad, than at Home, to execute that Design, and direct the Counsels of the Disaffected. The Ruin of one Man will not heal the Wound, that the Passing of this Bill seems to make in the Government of this Kingdom.

It has been said in the Debate, That the Bishop ought to have made Protestations of his Zeal for his Majesty and his Family: But, I think he took the most ready Way of Performing his Duty, when he shew'd himself Innocent of the Crimes laid to his Charge.

If he had made use of any Expressions, which those Lords blame him for omitting, the same *good Nature* would have call'd it *Hypocrisy*; and those who are displeas'd with his *Silence*, would have accused him of *Insincerity*.

My Lords, this Bill seems as irregular in the Punishments it inflicts, as it is in its Foundation, and carries with it an unnatural Degree of Hardship.

It is Felony for his Children to correspond with him: And in this Circumstance, it is different from the only Bill that carries with it the least Resemblance of this; I mean, That for the Banishment of the Earl of *Clarendon*.

The Earl had flown from the Prosecution, and retired beyond Sea. The Charges against him were, principally, *for advising a Standard Army*; and another Article exhibited was, *That he had advised and procured divers of his Majesty's Subjects to be imprison'd against Law, in remote Islands, Garisons, and other Places, thereby to prevent them of the Benefit of the Law, and to produce Precedents for the Imprisoning any other of his Majesty's Subjects in like Manner.*

The 7th Article against him was, *That he had, in a short Time, gain'd to himself a greater Estate than can be imagin'd to be gain'd lawfully in so short a Time: And contrary to his Oath, he hath procured several Grants under the Great Seal from his Majesty, for himself, and his Relations, of several of his Majesty's Lands, Hereditaments and Leases, to the Disprofit of his Majesty.*

There need not have been any Witnesses of these Crimes, for they were apparent; and every body knew that he was *Prime Minister*: Yet Sir *Francis Goodier*, upon that Debate in the House of Commons, declared the Sentiments which I express'd at the beginning, *That he was not against Proceeding, but unsatisfied to do it without Witness, it being like swearing* in verba Magistri.

Another great Man, upon the same Question, and an Ancestor to a Noble Lord near me, said; *That if the Parliament set aside Law in this Case, we should be happy to see Law declaring the Power of Parliaments.*

The Punishment for Corresponding with the Earl was High-Treason, and then Two positive Witnesses were necessary to convict: But in this Case, one corrupt, terrified, and perjur'd Person may take away the Life of the most innocent Man.

There is another great Misfortune which this Bill brings upon the Bishop, which is, That he is incapable of receiving his Majesty's Pardon. This, my Lords, is an Entrenchment upon the Prerogative. And what must make it the more severe in this Case, is, That his Majesty's Inclinations to Mercy (which are the distinguishing Characters of his Life) are stop'd by this Law, which the unfortunate Prelate might have Hopes of receiving when he had merited it, by a dutiful Behaviour to the Country that had sent him to wander abroad in Exile, and by his future Conduct have confirm'd, if possible, the Evidence he has given of his Innocence.

My Lords, in the Case of the Earl of *Danby*, your Lordships have declared, That his Banishment should be no Precedent, nor drawn into Example for the Time to come, and have so enter'd it in your Journals.

It has been prov'd, That this Reverend Prelate was at the time that he was suspected to be acting in Treason, engaged in Studies of the most high Nature, which is a Circumstance that ought to have some Weight.

If this Bill pass into a Law, such Evidence is establish'd, and such a Method of Proceeding introduc'd, as must effectually render all that is dear to us precarious; and if ever, hereafter, we should see a wicked Administration, supported by a corrupt Majority in Parliament, this Step taken in these Times of Liberty, will be a sufficient Precedent to give a Colour of Justice to the Actions of those who should be wanton in Tyranny.

The Reverend Prelate, who spoke before me, mentions some Cases relating to Bills of Attainder, which in my poor Opinion, differ very much from our present Question.

The Attainder of Sir *John Fenwick* was only to supply the want of a Witness who had deposed against him upon Oath before the Grand-Jury, and who was spirited away by the Prisoner's Friends: But at present, your Lordships are to supply the Defect of Evidence, by condemning on improbable Conjecture. There was a

Noble

Noble Lord in this Houſe the other Day, I don't ſee him now, who made the greateſt Figure in Oppoſition to that Bill, I wiſh we could have his Aſſiſtance on this Occaſion.

My Lords, ſince that Reverend Prelate has quoted ſome Caſes, he will permit me to remind him what has been formerly ſaid upon Acts of Attainder; That ſuch Bills, like *Siſyphus*'s Stone, have frequently roll'd back upon thoſe that were the chief Promoters of them.

This prudential Argument ſhould reſtrain us from being too forward with them at this Time of Day.

The Act for the Attainder of the Earl of *March* paſs'd, becauſe he had been inſtrumental in procuring the Attainder of another Lord, under pretence of a Letter, which the Record ſays, was no Evidence.

The Lord *Cromwell* is another known Inſtance of this Obſervation: He was the firſt who adviſed this violent Proceeding in *Henry* the 8th's Time: and it is remarkable, that the Advice he gave to the Ruin of others, prov'd, not long after, fatal to himſelf.

I have now given your Lordſhips the Reaſons why I am againſt the Bill. I fear I have tired your Patience, and ſhall therefore conclude with the Words of the Great Man I before mentioned; I mean, Sir *Heneage Finch*, in the Caſe of the Earl of *Clarendon*—— 'We have an Accuſation up'on Hearſay, and if it is not made good, the 'blackeſt Scandal Hell can invent, lies at our 'Doors.'

The Reſult of this Debate was, that the Bill paſs'd the Houſe; it afterwards obtained the Royal Aſſent, and was as follows.

An Act to inflict Pains and Penalties on Francis *Lord Biſhop of* Rocheſter.

WHEREAS in the Years One thouſand ſeven hundred and twenty one, and One thouſand ſeven hundred and twenty two, a deteſtable and horrid Conſpiracy was formed and carried on by divers Traitors, for invading your Majeſty's Kingdoms with foreign Forces, for raiſing an Inſurrection and Rebellion againſt your Majeſty, for ſeizing the *Tower* and City of *London*, and for laying violent Hands upon your Majeſty's moſt ſacred Perſon, and upon his Royal Highneſs the Prince of *Wales*, in order to ſubvert our preſent happy Eſtabliſhment in Church and State, by placing a Popiſh Pretender on your Throne: And whereas for the better concealing and effecting the ſaid Conſpiracy, divers treaſonable Correſpondences were, within the Time aforeſaid, carried on by Letters written in Cyphers, cant Words, and fictitious Names; which Conſpiracy, had it not been diſappointed by the Goodneſs of Almighty God, would have deprived your Majeſty's Kingdoms of the Enjoyment of their Religion, Laws, and Liberties, involved them in Blood and Ruin, and ſubjected your People to the Bondage and Oppreſſion of *Romiſh* Superſtition and Arbitrary Power: For which execrable Treaſon *Chriſtopher Layer* hath been indicted, tried, convicted, and attainted. And whereas *Francis* Lord Biſhop of *Rocheſter*, notwithſtanding the many ſolemn Aſſurances by him given of his Faith and Allegiance to your Majeſty, by taking the Oaths by Law appointed to be taken, inſtead of the Oaths of Allegiance and Supremacy; which Oaths he had likewiſe taken at ſundry Times, during the reſpective Reigns of their late Majeſties King *William* and Queen *Mary*, and of her late Majeſty Queen *Anne*; and notwithſtanding he had frequently abjured the Pretender, hath, in direct Violation of his ſaid repeated Oaths and Obligations, and to the great ſcandal of Religion, and his Holy Function, been deeply concerned in forming, directing, and carrying on the ſaid wicked and deteſtable Conſpiracy, and hath been a principal Actor therein, by traiterouſly conſulting and correſponding with divers Perſons to raiſe an Inſurrection and Rebellion againſt your Majeſty within this Kingdom, and to procure a foreign Force to invade the ſame, in order to depoſe your Majeſty, and place the Pretender on your Throne; and by traiterouſly correſponding with the ſaid Pretender, and Perſons employed by him, knowing them to be ſo employed: Therefore to manifeſt our juſt Abhorrence of ſo wicked and abominable a Conſpiracy, and our Zeal and tender Regard for the Preſervation of your Majeſty's Perſon and Government, and of the Proteſtant Succeſſion in your Majeſty's Royal Family, the ſolid Foundations of our preſent Happineſs and future Hopes; and to the end that no Conſpirator may, by any ſubtil Contrivance or Practice whatſoever, eſcape Puniſhment, and that all others may by the Juſtice of Parliament be for ever hereafter deterred from engaging in any traiterous Conſpiracies or Attempts; We your Majeſty's moſt dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, do humbly beſeech your Majeſty, that it may be enacted; and be it enacted by the King's moſt excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, and by the Authority of the ſame, That the ſaid *Francis* Lord Biſhop of *Rocheſter*, from and after the firſt Day of *June*, in the Year of our Lord One thouſand ſeven hundred and twenty three, ſhall be, and is hereby, to all Intents and Purpoſes, deprived of all and ſingular his Offices, Dignities, Promotions, and Benefices Eccleſiaſtical whatſoever, and that the ſame, and every of them, ſhall from thenceforth be actually void, as if he were naturally dead; and that the ſaid *Francis* Lord Biſhop of *Rocheſter* ſhall from thenceforth for ever be diſabled, and rendred incapable of and from taking, holding, or enjoying any Office, Dignity, Promotion, Benefice, or Employment within this Realm, or any other his Majeſty's Dominions, and alſo of and from uſing or exerciſing any Office, Function, Authority, or Power Eccleſiaſtical or Spiritual whatſoever; and ſhall and do ſuffer perpetual Exile, and be for ever baniſhed this Realm, and all other his Majeſty's Dominions, and ſhall depart out of the ſame on or before the Five and twentieth Day of *June*, in the Year of our Lord One thouſand ſeven hundred and twenty three: And that if the ſaid *Francis* Lord Biſhop of *Rocheſter* ſhall return into or be found within this Realm, or any other his Majeſty's Dominions at any time after the ſaid Five and twentieth Day of *June*, in the Year of

our Lord One thouſand ſeven hundred and twenty three, he the ſaid *Francis* Lord Biſhop of *Rocheſter*, being thereof lawfully convicted, ſhall be adjudged Guilty of Felony, and ſhall ſuffer and forfeit as in Caſes of Felony, without Benefit of Clergy, and ſhall be utterly incapable of any Pardon from his Majeſty, his Heirs or Succeſſors.

And be it further enacted by the Authority aforeſaid, That all and every Perſon and Perſons, who ſhall, from and after the ſaid Five and twentieth Day of *June*, in the Year of our Lord One thouſand ſeven hundred twenty three, be aiding or aſſiſting to the Return of the ſaid *Francis* Lord Biſhop of *Rocheſter* into this Realm, or any other his Majeſty's Dominions, or ſhall harbour or conceal him within the ſame, or any of them, being thereof lawfully convicted, ſhall be adjudged Guilty of Felony, and ſhall ſuffer and forfeit as in Caſes of Felony, without Benefit of Clergy.

And be it further enacted by the Authority aforeſaid, That if any of the Subjects of his Majeſty, his Heirs or Succeſſors, except ſuch Perſons as ſhall be licenſed for that purpoſe by his Majeſty, his Heirs or Succeſſors, under his or their Sign Manual, ſhall, from and after the ſaid Five and twentieth Day of *June*, in the Year of our Lord One thouſand ſeven hundred and twenty three, within this Realm or without, hold, entertain, or keep any Intelligence or Correſpondence in Perſon, or by Letters, Meſſages, or otherwiſe, with the ſaid *Francis* Lord Biſhop of *Rocheſter*, or with any Perſon or Perſons employed by him, knowing ſuch Perſon or Perſons to be ſo employed, ſuch Perſon ſo offending, being thereof lawfully convicted, ſhall be adjudged Guilty of Felony, and ſhall ſuffer and forfeit as in Caſes of Felony, without Benefit of Clergy.

And be it further enacted, That if any Offence againſt this Act ſhall be committed out of this Realm, the ſame ſhall or may be alledged, laid, enquired of, and tried in any County within *Great Britain*.

In purſuance of this, on *Tueſday* the 18th of *June*, the deprived Biſhop of *Rocheſter*, accompanied by his Son-in-Law Mr. *Morrice* and his Wife, embark'd on Board the *Aldborough*, one of his Majeſty's Ships of War, and on *Friday* the 21ſt, landed at *Calais*.

The

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CXCII. *The Trial of* Thomas, *Earl of* Macclesfield, *Lord High Chancellor of* Great Britain, *for* High Crimes and Misdemeanors *in the Execution of his Office, May* 6. 1725. 10 *Geo.* I.

The FIRST Day.

ABOUT Eleven of the Clock, the Lords being ſeated in their Houſe, the Managers for the Houſe of Commons being in the Conveniencies made for them at their Lordſhips Bar, Thomas, *Earl of* Macclesfield, *having a Stool plac'd for him within the Bar, and his Councel,* viz. *Mr. Serjeant* Probyn, *Doctor* Sayer, *Mr.* Lingard, *Common-Serjeant of the City of* London, *Mr.* Robins, *and Mr.* Strange, *ſtanding near him at the Bar, the Serjeant at Arms made Proclamation as follows:*

Serj. at Arms, Oyez, Our Soveraign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then the *Serjeant at Arms* again made Proclamation as follows:

Serj. at Arms. Oyez, Whereas a Charge of High Crimes and Miſdemeanors has been exhibited by the Houſe of Commons, in the Name of Themſelves, and of all the Commons of *Great Britain*, againſt *Thomas*, Earl of *Macclesfield*; all Perſons concern'd are to take Notice, that he now ſtands upon his Tryal, and they may come forth in order to make good the ſaid Charge.

Then the *Clerk-Aſſiſtant*, by Direction of the *Lord-Chief-Juſtice* King, Speaker of the Houſe of Lords, read the Articles of Impeachment, the Earl of *Macclesfield*'s Anſwer, and the Replication of the Houſe of Commons, as follows:

ARTICLES

Exhibited by the Knights, Citizens, and Burgeſſes in Parliament Aſſembled, in the Name of Themſelves, and of all the Commons of Great Britain, *againſt* Thomas, *Earl of* Macclesfield, *in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors.*

WHEREAS the Office of Lord Chancellor of *Great Britain* is an Office of the Higheſt Dignity and Truſt, upon the impartial and uncorrupt Execution whereof the Honour of the Crown, and the Welfare of the Subjects of this Kingdom greatly depend: And whereas *Thomas*, Earl of *Macclesfield*, in or about the Month of *May*, in the Year of our Lord, One thouſand ſeven hundred and eighteen by the great Grace and Favour of His moſt Excellent Majeſty, was conſtituted and appointed Lord Chancellor of *Great Britain*, and did thereupon take the uſual Oath for the due Execution of that High Office, whereby he did ſwear well and truly to ſerve our Soveraign Lord the King, and His People, Poor and Rich, after the Laws and Uſages of this Realm, and ſuch other Oaths as have been accuſtomed; and the ſaid Earl continued in this great Office until about the Month of *January*, in the Year of our Lord, One thouſand ſeven hundred and twenty four, and in Right thereof was intruſted with the Nomination and Admiſſion to the Offices of Maſters of the Court of Chancery, which Maſters of the ſaid Court are Officers of great Truſt ſworn to ſerve the King and his People, and aſſociated to the Lord Chancellor for his Aſſiſtance in the due Adminiſtration and Execution of Juſtice in the ſaid Court: And whereas His Majeſty, upon the ſaid Earl's being appointed to the Office of Lord Chancellor, did, of His Grace and Bounty, beſtow upon the ſaid Earl the Sum of Fourteen thouſand Pounds, or ſome other great Sum, and did likewiſe grant unto *George Parker* Eſq; now commonly called Lord *Parker*, Eldeſt Son and Heir Apparent of the ſaid Earl, a Yearly Penſion of Twelve Hundred Pounds, payable out of His Majeſty's Receipt of the Exchequer, during the joint Lives of His Majeſty and the ſaid Lord *Parker*, determinable upon His Majeſty's making a Grant to the ſaid Lord *Parker*, in Poſſeſſion of the Office of one of the Tellers of His Majeſty's Exchequer, for the Term of his Natural Life, which Office being of the Yearly Value of Fifteen hundred Pounds, or upwards, has been ſince granted by His Majeſty unto the ſaid Lord *Parker* for his Life, who in or about the Month of *July*, in the Year of our Lord, One thouſand ſeven hundred and nineteen, was duly admitted to and doth ſtill enjoy the ſame; and the ſaid Earl during the Time of his continuing Lord Chancellor of *Great Britain*, did not only enjoy the uſual Salary, Fees, and Profits belonging to his Office, of a very great Annual Value, but alſo did continue to receive an Annual Penſion of Twelve hundred Pounds, which His Majeſty in or about the Month of *June*, in the Year of our Lord One thouſand ſeven hundred and ſixteen, had granted to him and his Aſſigns, during His Majeſty's Life; and did likewiſe receive from the Crown a further Annual Allowance of Four thouſand Pounds, and many other Advantages: Yet the ſaid *Thomas*, Earl of *Macclesfield*, not being ſatisfied with this large and ample Revenue, nor regarding the Obligation of his Oath, or the Duty of his high and important Office, but entertaining wicked and corrupt Deſigns and Views, to raiſe and procure to himſelf exceſſive and exorbitant Gain and Profit, by divers unjuſt and oppreſſive Practices and Methods herein after-mentioned, whilſt he continued in the ſaid Office of Lord Chancellor, did Illegally, Corruptly, and Extorſively take and receive to his own Private Uſe the following or ſome other great Sums of Money.

ARTICLE I.

That *Richard Godfrey*, Esq; having Contracted with Sir *Thomas Gery*, One of the Masters of the Court of Chancery, for the Purchase and Surrender of his Office, at the Price of Five thousand Pounds, or some other Great Sum of Money; The said *Thomas* Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *Richard Godfrey* into the Office of One of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take and Receive of and from the said *Richard Godfrey* the Sum of Eight hundred and forty Pounds, or some other Sum of Money, for the Admitting him into such Office of a Master of the Court of Chancery, and to the Intent that the said *Richard Godfrey* should Have, Exercise and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court, and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same Infamous and Corrupt Nature, did admit and swear the said *Richard Godfrey* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said Sir *Thomas Gery*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him Reposed, contrary to the Duty of his Office, and against the Good and Wholesome Laws and Statutes of this Realm.

ART. II.

That the Office of One of the Masters of the said Court of Chancery becoming Vacant by the Death of *Samuel Browning*, Esq; One of the late Masters of the said Court; The said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of *James Lightboun*, Esq; into the said Office of One of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take and Receive of and from the said *James Lightboun* the Sum of Six thuosand Pounds, or some other great Sum of Momey, in Consideration of, and for the Admitting him into such Office, and to the Intent that the said *James Lightboun* should Have, Exercise and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court, and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same Infamous and Corrupt Nature, did admit and swear the said *James Lightboun* into the Office of One of the Masters of the said Court of Chancery, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him Reposed, contrary to the Duty of his Office, and against the Good and Wholesome Laws and Statutes of this Realm.

ART. III.

That *John Borret*, Esq; having Contracted with *John Meller*, Esq; One of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Nine thousand Pounds, or some other great Sum of Money; The said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *John Borret* into the Office of One of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take and Receive of and from the said *John Borret* the Sum of Fifteen hundred and seventy five Pounds, or some other Sum of Money, for the Admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *John Borret* should Have, Exercise and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; And the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same Infamous and Corrupt Nature, did admit and swear the said *John Borret* into the Office of One of the Masters of the said Court of Chancery, upon the Surrender of the said *John Meller*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the Good and Wholesome Laws and Statutes of this Realm.

ART. IV.

That *Edward Conway*, Esq; having Contracted with *John Orlebar*, Esq; one of the late Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Six thousand Pounds, or some other great Sum of Money, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *Edward Conway* into the Office of one of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take, and Receive of and from the said *Edward Conway*, the Sum of Fifteen hundred Pounds, or some other Sum of Money, for the Admitting of him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *Edward Conway* should Have, Exercise, and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *Edward Conway* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *John Orlebar*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the Good and Wholsome Laws and Statutes of this Realm.

ART. V.

That *William Kynaston*, Esq; having Contracted with *William Rogers*, Esq; one of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Six thousand Pounds, or some other great Sum of Money, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *William Kynaston* into the Office of one of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take, and Receive of and from the said *William Kynaston*, the Sum of Fifteen hundred and seventy five Pounds, or some other Sum of Money, for the Admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *William Kynaston* should Have, Exercise, and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *William Kynaston* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *William Rogers*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the Good and Wholesome Laws and Statutes of this Realm.

ART. VI.

That *Thomas Bennet*, Esq; having Contracted with *John Hiccocks*, Esq; one of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Seven thousand five hundred Pounds,

Pounds, or ſome other great Sum of Money, the ſaid *Thomas* Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, and before the Admiſſion of the ſaid *Thomas Bennet* into the Office of One of the Maſters of the ſaid Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorſively Inſiſt upon, Take, and Receive of and from the ſaid *Thomas Bennet*, the Sum of Fifteen hundred and ſeventy five Pounds, or ſome other Sum of Money, for the Admitting him into ſuch Office of a Maſter of the ſaid Court of Chancery, and to the Intent that the ſaid *Thomas Bennet* ſhould Have, Exerciſe, and Enjoy the ſame, which ſaid Office Touches and Concerns the Adminiſtration and Execution of Juſtice in the ſaid Court; and the ſaid *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Purſuance and Execution of the ſaid wicked and corrupt Bargain, or in Purſuance of ſome other Bargain or Agreement of the ſame infamous and corrupt Nature, did admit and ſwear the ſaid *Thomas Bennet* into the Office of One of the Maſters of the ſaid Court of Chancery, upon the Surrender of the ſaid *John Hiccocks*, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Truſt in him repoſed, contrary to the Duty of his Office, and againſt the good and wholſome Laws and Statutes of this Realm.

ART. VII.

That the Office of one of the Maſters of the ſaid Court of Chancery, becoming vacant by the Death of *William Fellows*, Eſq; One of the late Maſters of the ſaid Court, the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, and before the Admiſſion of *Francis Elde*, Eſq; into the ſaid Office of One of the Maſters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorſively Inſiſt upon, Take, and Receive of and from the ſaid *Francis Elde*, the Sum of Five thouſand two hundred and fifty Pounds, or ſome other great Sum of Money, in Conſideration of, and for the Admitting him into ſuch Office of a Maſter of the ſaid Court of Chancery, and to the Intent that the ſaid *Francis Elde* ſhould Have, Exerciſe, and Enjoy the ſame, which ſaid Office touches and concerns the Adminiſtration and Execution of Juſtice in the ſaid Court; and the ſaid *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Purſuance and Execution of the ſaid wicked and corrupt Bargain, or in Purſuance of ſome other Bargain or Agreement of the ſame infamous and corrupt Nature, did admit and ſwear the ſaid *Francis Elde* into the Office of One of the Maſters of the ſaid Court of Chancery, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Truſt in him repoſed, contrary to the Duty of his Office, and againſt the good and wholſome Laws and Statutes of this Realm.

ART. VIII.

That the Office of One of the Maſters of the ſaid Court of Chancery becoming vacant by the Death of *John Borret*, Eſq; One of the late Maſters of the ſaid Court, who died inſolvent, greatly indebted to the Suitors of the ſaid Court, the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, without ſecuring a juſt Satisfaction to the ſaid Suitors, for their Debts, and before the Admiſſion of *Mark Thurſton*, Eſq; into the ſaid Office of One of the Maſters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorſively, Inſiſt upon, Take, and Receive, of and from the ſaid *Mark Thurſton*, the Sum of Five thouſand two hundred and fifty Pounds, or ſome other great Sum of Money, in Conſideration of and for the admitting him into ſuch Office of a Maſter of the ſaid Court of Chancery, and to the Intent that the ſaid *Mark Thurſton*, ſhould Have, Exerciſe and Enjoy the ſame, which ſaid Office Touches and Concerns the Adminiſtration and Execution of Juſtice in the ſaid Court; and the ſaid *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Purſuance and Execution of the ſaid wicked and corrupt Bargain, or in purſuance of ſome other Bargain or Agreement of the ſame infamous and corrupt Nature, did admit and ſwear the ſaid *Mark Thurſton* into the Office of One of the Maſters of the ſaid Court of Chancery, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Truſt in him repoſed, contrary to the Duty of his Office, and againſt the good and wholſome Laws and Statutes of this Realm.

ART. IX.

That whereas *Thomas Bennet*, Eſq; in or about the Month of *Auguſt*, in the Tenth Year of His Majeſty's Reign, was poſſeſs'd of an Office in the Court of Chancery, called the Office of Clerk of the Cuſtodies, for the Term of his Life, by Virtue of his Majeſty's Letters Patents under the Great Seal of *Great Britain*, which Office is an Office of Truſt in the ſaid Court, in the Gift and Diſpoſal of the Crown by Grant under the Great Seal, and concerns the writing and making Commiſſions to inquire of Ideots and Lunaticks, and the Proceſs thereupon, and Letters Patents for the Cuſtody of the Bodies of Ideots and Lunaticks, and the keeping, entring, and tranſcribing Orders, Reports, and Accounts made and declared touching Ideots and Lunaticks, and their Eſtates in the ſaid Court of Chancery; and the ſaid *Thomas Bennet* having agreed with *Hugh Hamerſley*, Eſq; to reſign the ſaid Office, in order to obtain His Majeſty's Royal Grant of the ſaid Office to the ſaid *Hugh Hamerſley*, the ſaid *Thomas*, Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, did refuſe to permit or accept of ſuch Reſignation, until the ſaid *Thomas Bennet* had agreed to pay unto the ſaid *Thomas*, Earl of *Macclesfield*, or unto his Uſe, One hundred and five Pounds, or ſome other Sum of Money, as a Conſideration for the ſame, and, by Colour of his Office of Lord Chancellor, did Illegally, Corruptly, and Extorſively Inſiſt upon, Take, and Receive, of and from the ſaid *Thomas Bennet*, the ſaid One hundred and five Pounds, or ſome other Sum for and in Conſideration of the permitting and accepting ſuch Surrender of the ſaid Office, in order to and for the obtaining and procuring a New Grant of the ſaid Office to the ſaid *Hugh Hamerſley*; and in purſuance thereof, the ſaid *Thomas*, Earl of *Macclesfield*, then being Lord Chancellor, and One of the Lords Juſtices of this Kingdom, during His Majeſty's Abſence, did accept, or cauſe to be duly accepted, the Reſignation of the ſaid *Thomas Bennet* of the ſaid Office, and by his Intereſt and Recommendation did obtain and procure His Majeſty's Royal Warrant for preparing and paſſing His Majeſty's Grant of the ſaid Office, under the Great Seal, to the ſaid *Hugh Hamerſley* for the Term of his Life; which Grant afterwards, in or about the Month of *September*, in the Tenth Year of His Majeſty's Reign, did accordingly paſs the Great Seal, then in the Cuſtody of the ſaid Earl, for which all the uſual and accuſtomed Fees were paid, over and beſides the ſaid One hundred and five Pounds, in great Deceit of the Crown, in Breach and Violation of his Oath as Lord Chancellor, and of the ſeveral great Truſts then in him repoſed, contrary to the Duty of his Office, and againſt the good and wholſome Laws and Statutes of this Realm.

ART. X.

That the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, did Illegally and Corruptly Ordain, Name, and Make divers other Officers and Miniſters of His Majeſty, for Gift and Brocage, and did likewiſe Illegally and Corruptly ſell divers other Offices, touching and concerning the Adminiſtration and Execution of Juſtice in the Court of Chancery, to ſeveral Perſons, for divers great Sums of Money, which the ſaid Earl did receive from the ſaid Perſons for their reſpective Admiſſions into ſuch Offices, and before they were admitted thereinto, and in order that the ſaid Perſons ſhould Have, Exerciſe, and Enjoy the ſame, in great Breach of the Truſt in him repoſed, and of his Oath as Lord Chancellor, contrary to the Duty of his Office, and againſt the Laws and Statutes of this Realm.

ART. XI.

That the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued in the Office of Lord Chancellor of *Great Britain*, in order to advance and increaſe the Illegal and Corrupt Gain, ariſing to himſelf from the Sale and Diſpoſal of the Offices of Maſters of the Court of Chancery, in Violation of the great Truſt repoſed in him for the Care and Protection of the Suitors of the ſaid Court, whoſe Money and Effects were, by Orders of the ſaid Court, lodged in the Hands of the Maſters of the ſaid Court of Chancery, did admit ſeveral Perſons to the ſaid Offices of Maſters of the ſaid Court of Chancery, who, at the Time of ſuch their

Admiſſions, were of ſmall Subſtance and Ability, very unfit to be truſted with the great Sums of Money and other Effects of the Suitors of the ſaid Court, lodged in their Hands by the Orders of the ſaid Court; and did publickly in open Court, when he ſat there as Lord Chancellor, falſly repreſent the ſaid Perſons, ſo by him admitted to the Offices of Maſters of the ſaid Court of Chancery, as Perſons of great Fortunes, and in every reſpect qualified for the Truſt repoſed in them, to the manifeſt Deceit and Injury of the Suitors of the ſaid Court.

ART. XII.

That whilſt the ſaid *Thomas*, Earl of *Macclesfield* executed the ſaid Office of Lord Chancellor, an unjuſt and fraudulent Method was practiſed in the Court of Chancery upon the Sale of the Offices of Maſters of the ſaid Court, and upon the Admiſſions of new Maſters, that the Prices or Sums of Money agreed to be paid for the Purchaſe of the ſaid Offices, and for the Admiſſions thereinto, were ſatisfied and paid out of the Monies and Effects of the Suitors of the Court depoſited in the Hands of the reſpective Maſters, ſurrendring their Offices, or dying, either by way of Retainer of the Purchaſe Money in the Hands of the Maſter reſigning, or of replacing the Money diſburſed for ſuch Purchaſe or Admiſſion by the ſucceeding Maſter, out of the Money and Effects of the Suitors coming into his Hands; by which Practice the Price and Value given upon the Sale of the ſaid Offices, and Admiſſions thereinto, during the Time aforeſaid, were greatly advanced, and ſeveral Perſons of ſmall Ability and Subſtance were encouraged to Contract for the ſaid Offices, upon a Proſpect of the eaſie Method of paying for the Purchaſe of the ſame, by means whereof great Deficiencies have incurred in the Offices of ſeveral Maſters of the ſaid Court, admitted by the ſaid *Thomas*, Earl of *Macclesfield*, which they have not been able to anſwer and make good; and although the ſaid Practice was notorious and publick, and the ſaid Earl was well informed thereof, and fully acquainted therewith, yet the ſaid *Thomas*, Earl of *Macclesfield*, in order to increaſe his own unjuſt and corrupt Profit in the ſelling the ſaid Offices, and the Admiſſions thereto (which in conſequence of this evil Practice was raiſed and received by him out of the Effects of the Suitors, for whom he was intruſted) did not at any Time, whilſt he continued in his Office of Lord Chancellor, uſe or take any Meaſures to reform the ſaid Abuſe, or to prevent the ſame, either by cauſing proper Schedules to be taken of the Money and Effects of the Suitors delivered over and Transferred, or by appointing any Perſon, in his Behalf, to inſpect or ſuperviſe the Transfers or Deliveries thereof, or in any other Manner; But on the Contrary, the ſaid *Thomas*, Earl of *Macclesfield*, Unjuſtly, Corruptly, and contrary to the Duty of his ſaid Office of Lord Chancellor (to whom the Superintendency of the ſaid Maſters, and of their Accounts did Appertain) did ſuffer the ſaid Fraudulent Practice to proceed and be exerciſed without any Controul or Check, whereby great Embezzlements have been made of the Suitors Money and Effects, to their great Loſs, in the Offices of ſeveral of the Maſters of the ſaid Court, who have not been able to anſwer and pay their reſpective Ballances owing upon their Accounts, in breach of the Truſt repoſed in him for the Preſervation of the Eſtates and Effects of the Suitors, to the Diſhonour and Diſcredit of the ſaid Court, and to the great Injury and Defrauding of the ſaid Suitors, in a Court of Equity, Eſtabliſhed for their Relief and Protection.

ART. XIII.

That *Fleetwood Dormer*, Eſq; one of the Maſters of the Court of Chancery, having Embezzled great Part of the Money and Effects belonging to the Suitors of the ſaid Court, with which he was Intruſted by the ſaid Court, and diſpoſed of the ſame for his own Private Advantage, by Means whereof there became, and ſtill Continues a great Deficiency in that Office, to the Amount of Twenty five thouſand Pounds, or ſome other great Sum; and the ſaid *Fleetwood Dormer*, having Abſconded and for ſome time Abſented himſelf, Application was made to the ſaid Earl of *Macclesfield*, then Lord Chancellor of *Great Britain*, to ſecure the Perſon of the ſaid *Fleetwood Dormer*, and to take proper Methods for Compelling the ſaid *Fleetwood Dormer* to make Satisfaction to the Suitors for the Money and Effects, which he had ſo Embezled, yet the ſaid Earl, from an Apprehenſion, that a Publick Diſcovery of the ſaid Deficiency might leſſen the Unjuſt Gain he propoſed to make to himſelf, by ſelling and diſpoſing of the ſaid Offices of Maſters of the ſaid Court, neglected and declined either to ſecure the Perſon of the ſaid *Fleetwood Dormer*, and his Eſtate and Effects, or to make a proper Enquiry into the ſaid Deficiency: But on the Contrary, the ſaid Earl, whilſt he Continued Lord Chancellor of *Great Britain*, did Endeavour, by many Indirect Practices, to conceal from the Suitors of the Court, the true State and Condition of the ſaid Office, as well with reſpect to the Effects of the ſaid *Fleetwood Dormer*, as to the Debt due from him to the Suitors of the Court; And upon Motion made in the ſaid Court of Chancery (after the ſaid Earl knew that the ſaid *Fleetwood Dormer* had ſo Abſconded) on behalf of ſome of the Suitors of the Court, to have their Effects Transferred from the ſaid *Fleetwood Dormer* to ſome other Maſter, for the better Securing thereof, the ſaid Earl of *Macclesfield*, in order to delude the Suitors of the ſaid Court into a Belief that their Effects were ſafe, and thereby to prevent a Publick Enquiry, then ſitting as Lord Chancellor in open Court, did ſay, That the ſaid Parties need not be in haſte, and did at the ſame time falſly and deceitfully Declare, that the ſaid *Fleetwood Dormer* was only gone to take the Air in the Country, and that he would return in a little time, and all would be well, or to that Effect.

ART. XIV.

That the ſaid *Fleetwood Dormer*, having towards Satisfaction of the Suitors of the ſaid Court, aſſigned to *Henry Edwards*, Eſq; (who Succeeded him in his Office of Maſter of the ſaid Court of Chancery) a Debt of Twenty four thouſand and forty ſix Pounds Four Shillings, or ſome other great Sum due from *William Wilſon*, a Banker to the ſaid *Fleetwood Dormer*, to the intent that the Money received on Account thereof ſhould be applied and diſpoſed of, as the ſaid Court of Chancery ſhould Order and Direct, the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, for the Unlawful Purpoſes aforeſaid, without Regard to the Intereſt of the ſaid Suitors, by colour of his Office, did, in an Unwarrantable, Clandeſtine, and Unuſual Manner, Authorize, Direct, and Eſtabliſh a precarious and trifling Compoſition with the ſaid *William Wilſon*, upon the Terms of the ſaid *William Wilſon*'s paying the Sum of Fourteen hundred ſixty three Pounds, two Shillings and a Penny, and aſſigning Ten thouſand Pounds, part of a Debt of Twenty two thouſand and ſixty Pounds, twelve Shillings and five Pence, pretended to be due to the ſaid *William Wilſon* from *Edward Poulter*, or to that Effect, in Diſcharge of the ſaid Debt; and to that End, upon the Report of *John Hiccocks*, Eſq; then one of the Maſters of the ſaid Court, without any Attendance order'd or had thereupon, and without Notice to the ſaid Suitors, did, by a private Order not made in open Court, order the ſaid *Henry Edwards* to accept of the ſaid Compoſition, in full Diſcharge of the ſaid Debt, which ſaid *Edward Poulter* was a Perſon inſolvent, and has ſince abſconded for Debt, and none, or but a very ſmall part of the ſaid Ten thouſand Pounds, has been or is ever likely to be received.

ART. XV.

That the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, to carry on his Corrupt and Unjuſt Purpoſes, and to conceal the Deficiency that was in the Office of the ſaid *Fleetwood Dormer*, did, in or about the Month of *February*, in the Year of our Lord, One thouſand ſeven hundred and twenty, order the ſeveral Maſters of the ſaid Court of Chancery to bring in their Accounts of the Caſh, Effects, and Securities in their Hands belonging to the Suitors of the Court, not with a Deſign of Examining their Accounts, or Securing the Eſtate and Effects of the Suitors, but with an Intent to Terrify the ſaid Maſters, and thereby oblige them to contribute great Sums of Money towards anſwering the Demands that ſhould, from Time to Time, be made upon the ſaid Office; for which Purpoſe, he the ſaid Earl did at ſeveral Times repreſent, or cauſe to be repreſented to the ſaid Maſters, that if they refuſed ſo to do, the Money and Effects of the Suitors would

be taken out of their Hands, and the ſaid Maſters deprived of making any Profit of the ſame; by which Practices the ſaid Earl, being then Lord Chancellor of *Great Britain*, by colour of his Authority, did perſuade and induce Nine of the Maſters of the ſaid Court of Chancery, to pay Five hundred Pounds each for the Purpoſes aforeſaid, ſeveral of whom paid the ſame out of the Money or Effects of the Suitors in their Hands; but after ſuch Payments, the ſaid *Thomas*, Earl of *Macclesfield* did not oblige the ſaid Maſters to deliver in their Accounts in Purſuance of ſuch his ſaid Order.

ART. XVI.

That *Elizabeth Chitty*, Widow, having obtained an Order of the Court of Chancery, on or about the Seventeenth Day of *March*, in the Tenth Year of His preſent Majeſty's Reign, made by the ſaid *Thomas*, Earl of *Macclesfield*, then Lord Chancellor, whereby *Henry Edwards*, Eſq; One of the Maſters of the ſaid Court of Chancery, who ſucceeded *Fleetwood Dormer*, Eſq; in the ſaid Office, was ordered to pay her the Sum of One thouſand Pounds, Part of the Sum of Ten thouſand Pounds, or other great Sum of Money, formerly paid into the Hands of the ſaid *Fleetwood Dormer*, as a Maſter of the ſaid Court, and by the ſaid Order mentioned to be then in the Hands of the ſaid *Henry Edwards*; and the ſaid *Henry Edwards* complaining to the ſaid Earl, that the making Orders upon him to pay Money which had been received by the ſaid *Fleetwood Dormer*, was a very great Hardſhip upon him the ſaid *Henry Edwards*, in regard he had not any Money or Effects in his Hands to anſwer ſuch Demands, the ſaid Earl of *Macclesfield*, being then Lord Chancellor, in further proſecution of his Unjuſt and Corrupt Purpoſes, did, by Colour of his Authority, endeavour to prevail with the Maſters of the ſaid Court of Chancery, to raiſe the ſaid Sum of One thouſand Pounds out of their Effects, by repreſenting to them, that a Diſcovery of the Deficiency in the ſaid Office might occaſion a Parliamentary or Publick Enquiry into the Nature and Condition of their Offices, and hazard the Forfeiture of the ſame, by reaſon of their having bought the ſaid Offices contrary to Law, which the ſaid Earl then declared would affect him, but themſelves much more, or to that Effect; but the ſaid Maſters refuſing to raiſe the ſaid Sum of One thouſand Pounds, the ſaid Earl of *Macclesfield* did order his Secretary *Peter Cottingham*, Eſq; to pay the ſaid One thouſand Pounds; who, in purſuance of the ſaid Earl's Directions, in or about the Month of *July*, One thouſand ſeven hundred and twenty four, did pay the ſame to *Aſcan Chriſtopher Lochman*, for the Uſe of the ſaid *Elizabeth Chitty*; and the ſaid Earl of *Macclesfield*, upon Application made to him by the ſaid *Aſcan Chriſtopher Lochman*, for Payment of the ſaid Money, did acquaint him, that he, the ſaid Earl, had given Directions to his Secretary for Payment of that Sum, but at the ſame time declared to the ſaid *Aſcan Chriſtopher Lochman*, that he, the ſaid Earl, belived this would be the laſt Payment ſhe was like to receive out of the ſaid Money paid into the Hands of the ſaid *Fleetwood Dormer*, for the Reſidue thereof was in great Danger of being loſt, by reaſon of the Deficiency in the Effects of the ſaid *Fleetwood Dormer*, or to that Effect. Notwithſtanding all which Proceedings, in this and ſeveral other Articles mentioned, upon a Motion made in the Court of Chancery before the ſaid *Thomas*, Earl of *Macclesfield*, then Lord Chancellor, on or about the Fifth Day of *December* laſt, in a Cauſe there depending between *Jane Harper*, Plaintiff, and *Thomas Caſe*, and others, Defendants, relating to the Sum of Two hundred and ſixty Pounds, or ſome other Sum, depoſited in the Hands of the ſaid *Fleetwood Dormer* before his abſconding, and which was then apprehended in great Danger of being loſt, the ſaid *Thomas*, Earl of *Macclesfield*, then ſitting in Court as Lord Chancellor, did Publickly, Falſely, and Deceitfully declare, That he had heard there was a Deficiency in the Office of the ſaid *Fleetwood Dormer*, but that he, the ſaid Earl, knew nothing of it, only as publick News, or to that Effect; and thereupon did order, that the ſaid *Henry Edwards* ſhould examine in what Manner the ſaid Two hundred and ſixty Pounds was depoſited with the ſaid *Fleetwood Dormer*, and whether there was likely to be a Loſs of any Money depoſited with the ſaid *Fleetwood Dormer*.

ART. XVII.

That notwithſtanding the ſaid Earl of *Macclesfield* well knew, that there was a very great Deficiency and Loſs by the Failure of the ſaid *Fleetwood Dormer*, and that the ſaid *Henry Edwards*, his Succeſſor, had not ſufficient in his Hands to pay the whole Money due to the Suitors of the Court, that had been received by the ſaid *Fleetwood Dormer* on their Account; yet the ſaid Earl of *Macclesfield*, being Lord Chancellor, in order to carry on his Unjuſt Deſigns of concealing the ſaid Deficiency, and to prevent any publick Enquiry that might ariſe from the juſt Complaints of the Suitors of the ſaid Court, did, from time to time, in manifeſt and wilful Violation of the Truſt repoſed in him, make Orders on the ſaid *Henry Edwards* for Payment of the Money belonging to ſeveral particular Suitors, which had been lodged in the Hands of the ſaid *Fleetwood Dormer*; In Obedience to which Orders ſeveral Sums were paid, without regard to, or conſideration of the Proportion which the reſt of the Suitors were Entituled to, out of the Effects of the ſaid *Fleetwood Dormer*, whereby many of the ſaid Suitors loſt the Benefit of their proportionable Share, to which in Juſtice they were Entituled.

ART. XVIII.

That the ſaid *Thomas*, Earl of *Macclesfield*, notwithſtanding that he very well knew, and was informed that the Maſters of the ſaid Court did, or that it was in their Power, from Time to Time, and at their Pleaſure to diſpoſe of and employ the Money and Effects belonging to the Suitors of the ſaid Court, which were intruſted with them reſpectively, and more particularly, that the Deficiency appearing in the Office of *Fleetwood Dormer*, Eſq; One of the Maſters of the Court of Chancery, was chiefly occaſioned by his the ſaid *Fleetwood Dormer*'s having taken upon himſelf unduly to Diſpoſe of and Employ the Money and Effects belonging to the Suitors of the ſaid Court, which were Intruſted in his Hands; and notwithſtanding that, ſoon after the ſaid *Fleetwood Dormer* became Inſolvent, it was repreſented and propoſed to the ſaid *Thomas*, Earl of *Macclesfield*, then Lord Chancellor of *Great Britain*, in order to prevent for the Future any Loſſes that might happen to the Suitors of the ſaid Court, that the ſeveral Effects and Securities belonging to the Suitors ſhould be placed out in ſuch Manner, as that the Power of Diſpoſing, Imploying, or in any manner Trading with the ſame, might be totally taken away from the ſaid Maſters, for the Effecting of which juſt Deſign, a particular Method was laid before the ſaid Earl; and it was alſo further propoſed, that the ſaid Maſters ſhould give ſome reaſonable Security to anſwer the Ballance of ſuch Caſh, as ſhould, from Time to time be in their Hands; and notwithſtanding the ſaid Earl was Credibly Informed, that the Sufficiency of ſome other of the ſaid Maſters was very much ſuſpected, yet the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he was Lord Chancellor of *Great Britain*, contrary to the Duty of his Office, and thereby propoſing to make unlawful Gain to himſelf by the Diſpoſal and Sale of the Offices of Maſters of the ſaid Court of Chancery; and in order to Induce Perſons to give him, the ſaid Earl, a greater Price or Reward for their being admitted to the ſame, did not Require or Demand any Security whatſoever, to be given by any of the ſaid Maſters, upon their being admitted to their Offices, or at any other Time; and the ſaid Earl, with the ſame Corrupt View and Intention, and to keep up the Price of the ſaid Offices, totally neglected to Enquire into the Accounts of the ſaid Maſters, and did Fraudulenly, Unjuſtly, and in Breach of the Truſt repoſed in him, Permit and Incourage the Maſters of the ſaid Court, to Employ and Traffick with large Sums of Money belonging to the Suitors of the ſaid Court, and to make Intereſt thereof for their own unjuſt Gain and Profit; and the ſaid Earl, after ſuch Propoſal made to him, as aforeſaid, or at any other Time, during his Continuance in the ſaid Office, did not take any Care that the Effects of the ſaid Suitors ſhould be placed out in ſuch Manner, as to prevent the Maſters from Trafficking therewith, or that the ſaid Maſters ſhould give ſuch Security, as was propoſed; by Means whereof great Deficiencies, to the amount of many Thouſand Pounds, have been, through ſuch Default of the ſaid Earl, occaſioned in the Offices of ſeveral other of the Maſters, to the great Loſs and Injury of the Suitors of the ſaid Court.

ART. XIX.

That whereas his moſt Sacred Majeſty, out of his Fatherly Goodneſs to His People, did, in or about the Month of *November* laſt, direct an Enquiry to be made into the Accounts of the Maſters of the ſaid Court of Chancery, to the Intent that proper Methods might be taken for the Security of the Suitors of the ſaid Court; the ſaid *Thomas*, Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*,

and One of His Majesty's most Honourable Privy Council, in order to Obstruct the same, and to prevent a Parliamentary Enquiry into the State and Condition of the Offices of the said Masters, In Breach of the several great Trusts reposed in him, did give Advice and Encouragement to the said Masters to Assist and Supply each other with Money and Effects, and did represent to the said Masters, that it would be for their Honour and Service, to appear able and sufficient, and that if they made a Bold Stand now, it might prevent a Parliamentary Enquiry, or to that Effect; and did persuade several of them to make false Representations of their Circumstances to His Majesty, by adding a Subscription to their respective Accounts deliver'd to the said Earl, to be laid before His Majesty, to the Effect following (*viz.*) That they were able to answer the Money and Securities in their Hands, and were willing to pay the same to such Persons as were Entituled thereunto, although the said Earl knew, or had good reason to believe, that several of the Masters were not then able to answer the Ballance of their Accounts, nor are they yet able to satisfie or make good the same; and when the said Masters were afterwards required to produce the Cash and Effects of the Suitors in their Hands, some of the said Masters, according to such Advice and Encouragement given by the said Earl, did Supply others of them with Cash and Effects, to make a false shew and appearance of their Ability and Readiness to answer the Ballance of their Accounts.

ART. XX.

That the said *Thomas*, Earl of *Macclesfield*, whilst he continued in the Office of Lord Chancellor of *Great Britain*, in Breach of the Trust reposed in him, and contrary to the Duty of his Office, did, at several times, borrow and receive of some of the Masters of the said Court, several great Sums of the Money belonging to the Suitors of the said Court, deposited in the Hands of such Masters, and did make use thereof for his own private Service and Advantage, so long as he had occasion for the same.

ART. XXI.

That the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, did, in an illegal and arbitrary Manner, extend the Power and Authority of Lord Chancellor, and of the Court of Chancery, beyond their lawful and just bounds, and did arbitrarily and illegally assume to himself, as Lord Chancellor, and by Colour of his Office, an unjust and unlimited power of dispensing with, suspending and controlling the Statutes of this Realm, made for the Security and Preservation of the Estates and Properties of the Subjects of this Kingdom, to the great Oppression of the Suitors of the said Court, in subversion of the Laws and Statutes of this Realm, in manifest Breach and Violation of the Rights and Liberties of his Majesty's good Subjects, and of his own most solemn Oath, as Lord Chancellor of *Great Britain*; and more especially, when *Francis Tyssen*, Esq; deceased, being seized, and possessed of a real Estate of the Value of three thousand Pounds *per Annum*, or some other great annual Value, did, by his last Will and Testament in writing, duly executed, in or about the Month of *October*, one thousand seven hundred and seventeen, give and devise all his said real Estate to the Child his Wife was at that time *enseint* with (if such Child should be a Son) for his Life, without Impeachment of Wast, with Remainders to the first, and other Sons of the said Infant in Tail Male, and did likewise by such Will expresly nominate and appoint his the said Testator's Wife, *Rachel Tyson*, to be the Guardian of all his Children, during their respective Minorities, if she should so long continue a Widow; and the said *Francis Tyssen*, soon after died, leaving one Daughter, and the said *Rachel*, his Widow, with Child, after whose Decease the said *Rachel* was delivered of such Child, being a Son, afterwards named *Francis John Tyssen*, in whose Right by virtue of the said Will, and of the Statute made in the Twelfth Year of the Reign of King *Charles* the Second, intituled, *An Act for the taking away the Court of Wards and Liveries, and Tenures* in Capite, *and by Knights Service, and purveyance, and for settling a Revenue upon His Majesty in lieu thereof*; the said *Rachel Tyson* did lawfully take into her Care and Custody her said Infant Son, and the Estate so devised to him, or was willing and endeavoured so to do, and to undertake the management of his said Lands and Tenements for his best Advantage, and demeaned herself therein without any Misbehaviour; yet the said *Thomas*, Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, under Colour of his Office and authority, did, by several Orders made by him, in the Months of *January* and *February*, in the Fifth Year of his Majesty's Reign, or in one of them, illegally and arbitrarily, and in direct contravention of the Statute made in that Behalf, remove and exclude the said *Rachel Tyson*, the Guardian of the said Infant, and also *John Nicholas* Esq; (a Person of good Substance and Ability, nominated by the said *Rachel Tyson* to be Receiver of the Rents and Profits of the said Infant's Estate, and approved by *Robert Holford*, Esq; one of the Masters of the said Court, and for that purpose, who had given sufficient Security for the due Execution of his said Trust) from the Management and Receivership of the said Infant's Estate; and did, by such Orders, unduly and injuriously nominate and appoint *Robert Doyley*, Esq; a Creature and Confident of his own, and a Person altogether unfit and unqualified for so great a Trust, to be Receiver of the Rents and Profits of the said Infant's Estate, and to have a Salary for the same with a Power to let such Part of the said Estate, as was or should become untenanted, with the Approbation of the said *Robert Holford*, although the said *Rachel Tyson* did expresly object unto, and oppose such Appointment of the said *Robert Doyley*, and did insist to have the Benefit and Exercise of her Right in that Respect, as the Guardian appointed and intrusted by her late Husband; and the said *Robert Doyley*, after he was so admitted into the said Receivership, did for several Years receive the Rents and Profits of the said Infant's Estate, to the Amount of about Ten Thousand Pounds, or other great Sum, and in his Life-time did embezzle and convert to his own Use great Part thereof; and in or about the Month of *November*, One thousand seven hundred and twenty two, died insolvent and indebted to the said Infant and his Estate in the Sum of Two thousand six hundred Pounds, or other great Sum, upon the Ballance of his Account, no Part whereof has hitherto been satisfied or paid; and the said *Thomas*, Earl of *Macclesfield*, in further Abuse of his Power, and in contempt of the Laws and Statutes of this Realm, when upon Debate of the Matter in the said Court of Chancery, before the said Earl, being then Lord Chancellor, in the Month of *January* or *February*, in the Fifth Year of His Majesty's Reign, or in one of them, it was insisted upon, in Behalf of the said *Rachel Tyson*, by her Council of great Ability and Experience in the said Court, that such the Proceedings of the said Earl, as Lord Chancellor, were a reviving the Power of the Court of Wards, and were not supported or warranted by any Precedent in the Court of Chancery, he, the said *Thomas*, Earl of *Macclesfield*, then sitting in the Court as Lord Chancellor, did not only persist in such his Appointment of the said *Robert Doyley*, but did also arbitrarily, and in Defiance of the said good and beneficial Statute, say and declare, in open Court, that then he would make a Precedent in that Instance, or he, the said Earl, declared and expressed himself to that Effect; which Actings, Proceedings, and Declarations of the said Earl, have been and were not only very injurious and prejudicial to the Right and Interest of the said *Rachel Tyson*, as Guardian, and to the great Damage and Loss of the Infant *Francis John Tyson*, and a notorious Violation of Property, but were also a dangerous Exercise of illegal and arbitrary Power, to the Destruction of the Laws and Constitution of this Realm, in manifest Breach of his Oath as Lord Chancellor, and in great Abuse of his Authority.

And the said Knights, Citizens, and Burgesses, by Protestation, saving to themselves the Liberty of exhibiting, at any Time hereafter, any further Articles, or other Accusation or Impeachment against the said *Thomas*, Earl of *Macclesfield*, and also of replying to his Answers which he shall make unto the said Articles, or any of them, and of offering Proof to all and every the aforesaid Articles, and to all and every other Articles, Impeachment, or Accusation, which shall be exhibited by them, as the Case shall, according to the Course of Parliament, require, do pray, that the said *Thomas*, Earl of *Macclesfield*, may be put to answer the said Crimes and Misdemeanors, and that such Proceedings, Examinations, Tryals, and Judgments, may be thereupon had and given, as is agreeable to Law and Justice.

The ANSWER *of* Thomas, *Earl of* Macclesfield, *to the* ARTICLES *exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in the Name of themselves, and of all the Commons of* Great Britain, *in Maintenance of their Impeachment against him for high Crimes and Misdemeanors, supposed to have been by him committed.*

THE said Earl saving to himself all Advantage of Exception to the said Articles, and of not being prejudiced by any Words or want of Form in this his Answer, and also saving

to himſelf all Benefit and Advantage of the Act for the King's moſt gracious, general, and free Pardon herein after mentioned, and all Rights and priviledges belonging to him as one of the Peers of this Realm, for Anſwer to the ſaid Articles ſaith, That he having for ſeveral Years executed the Office of Chief Juſtice in the Court of King's-Bench, His Majeſty of His Royal Grace and Favour was pleaſed, the Tenth Day of *March*, One Thouſand ſeven hundred and fifteen, to advance the ſaid Earl to the Dignity of a Peer of this Realm, and created him Baron of *Macclesfield*; and, in regard to his Circumſtances at that Time, was further pleaſed, for the better Support of that Honour, to grant to the ſaid Earl the Penſion of Twelve hundred Pounds *per Annum*, in the Articles mentioned, payable at the Receipt of the Exchequer; and His Majeſty was then likewiſe pleaſed to declare His Royal Intentions of giving to the ſaid Earl's only Son, *George Parker*, for his Life, an Office of conſiderable Profit, when a proper Opportunity ſhould offer; That in the Beginning of *May*, in the Year One thouſand ſeven hundred and eighteen, he the ſaid Earl, was, by his Majeſty's great Grace and Favour, appointed Lord Chancellor of *Great Britain*, and was ſworn before His Majeſty in Council the Fourteenth Day of that Month, when the following Oath, being the uſual Oath of Lord Chancellor, was adminiſtred to him, (*viz.*)

YOU *ſhall ſwear, that you ſhall well and truly ſerve our Sovereign Lord the King, and his People, in the Office of Chancellor of* Great Britain; *and you ſhall do Right to all manner of People, Poor and Rich, after the Laws and Uſages of this Realm; and truly you ſhall Counſel the King, and his Council you ſhall lain and keep; and you ſhall not know nor ſuffer the Hurt or Diſheriting of the King, or that the Rights of the Crown be decreaſed by any Means, as far forth as you may lett, and if you may not lett it, you ſhall make it clearly and expreſsly known to the King, with your true Advice and Counſel; and that you ſhall do and purchaſe the King's Profit in all that you may; All which you ſhall do to the beſt of your Skill and Knowledge.*

As God ſhall help you.

And the ſaid Earl at the ſame Time took the Oaths of Allegiance and Supremacy, but no Oath of Office beſides that above ſet forth; and the ſaid Earl doth admit, That, during his Continuance in the ſaid Office of Lord Chancellor, he did Enjoy the uſual Salary, Fees, and Profits belonging to ſuch Office, which, he ſays, are of much leſs annual Value than they are generally (as he believes) eſteemed to be; And that His Majeſty was pleaſed to grant him the Salary or Allowance of Four thouſand Pounds *per Annum*, in the Articles mentioned, during ſuch Time as he ſhould Continue to be Lord Chancellor; but the ſame is ſo far from being particular in the Caſe of the ſaid Earl (as the ſaid Articles would inſinuate) that it is no other than what hath been for many Years paſt conſtantly granted to, and enjoyed by his Predeceſſors in the ſaid Office; and the ſaid Earl doth likewiſe admit, That His Majeſty did, of His Royal Grace and Bounty, ſign a Warrant for Payment of the Sum of Fourteen thouſand Pounds mentioned in the ſaid Articles, to the ſaid Earl, out of the Receipt of the Exchequer, whereof Two thouſand Pounds was the conſtant uſual Allowance from the Crown to the Lord Chancellor or Lord Keeper, for and towards the Expences in entring upon the ſaid Office; and the Reſidue of the ſaid Fourteen thouſand Pounds, over and above the uſual Fees and Deductions upon Payment thereof, was His Majeſty's Royal Munificence to the ſaid Earl, and the ſame was received by him accordingly; And the ſaid Earl doth likewiſe, with the greateſt Gratitude, own, that about the ſame Time, his ſaid Son being then of a proper Age, and deſirous to go abroad to travel, His Majeſty was pleaſed to grant to the ſaid *George Parker* the Yearly Penſion of Twelve hundred Pounds, payable out of the Receipt of the Exchequer, during the joynt Lives of His Majeſty and the ſaid *George Parker*, determinable upon His Majeſty's granting to him, the ſaid *George Parker*, in Poſſeſſion or Reverſion, the Office of One of the Tellers of the Exchequer, for Life, and his coming into the actual Poſſeſſion thereof and which the ſaid Earl likewiſe admits has been ſince granted to his ſaid Son, and that he came into the actual Poſſeſſion thereof in or about *July*, One thouſand ſeven hundred and nineteen, whereby the ſaid Yearly Penſion is determined; And the ſaid Earl ſaith, That, during his continuance in the ſaid Office of Lord Chancellor, or at any other Time, he never once had a Deſign, or View, or Wiſh to raiſe to himſelf any Exorbitant Gain or Profit, much leſs uſed or ever thought of uſing any Unjuſt or Oppreſſive Methods to Extort or Obtain any Sum whatſoever, as in the ſaid Articles is ſuggeſted, but ſuch Views and Practices are inconſiſtent with the whole Tenor of his Life and Actions; And in caſe it ſhall be thought proper for the ſaid Earl to lay before your Lordſhips an Account of his Eſtate and Fortune, and of the conſiderable Sums of Money he has diſtributed for the Relief and Support of others, it will appear that he is not ſuch a Deſigning, Avaritious, and Oppreſſive Man, as in the ſaid Articles he is repreſented; And the ſaid Earl humbly hopes, that he ſhall be allowed, in this his Anſwer, to diſtinguiſh between Acts themſelves, and the Inferences drawn from them by the ſaid Articles, and that whenever he admits any Fact, he may not be underſtood to admit that ſuch Fact was by him done or committed upon ſuch Motives, and with ſuch Deſigns, or in ſuch Manner, as is ſuggeſted in the ſaid Articles. And with this Reſervation he anſwereth, as followeth: By way of General Anſwer to ſuch of the ſaid Articles, as relate to the making any Preſent by Perſons admitted to the Office of Maſters in Chancery; The ſaid Earl doth ſay, That the ſame has been long uſed and practiſed in the Time of his Predeceſſors, in the ſaid Office, and that ſuch Preſents have been reckoned amongſt the ancient and known Perquiſites of the Great Seal, and the making and accepting thereof has been Notorious to all the World, and never before looked upon to be Criminal or Complained of as ſuch; And the ſaid Earl humbly hopes, that the giving or receiving of a Preſent on ſuch Occaſion is not Criminal in itſelf, or by the Common Law of this Realm, and that there is not any Act of Parliament whatſoever, by which the ſame is made Criminal, or ſubject to any Puniſhment or Judgment, which can be prayed in this Proſecution; And the ſaid Earl thinks himſelf obliged humbly to lay this before your Lordſhips, not only in his own Defence, but in Vindication of the Honour of ſo many Great and Excellent Men, who have been his Predeceſſors in the ſaid Office, and have all along done the ſame, for which the ſaid Earl is now complained of, and of others having been Lords Chief Juſtices of the King's Bench and Common Pleas, Maſters of the Rolls and other Judges, who have likewiſe received Preſents in Money, upon the Admiſſion of the ſeveral and reſpective Officers under them, in ſeveral Courts of Juſtice, and who, the ſaid Earl is aſſured, never apprehended themſelves to be Guilty of any Crime againſt any the good and wholſome Laws or Statutes of this Realm.

To the Firſt, Second, Third, Fourth, Fifth, Sixth, and Seventh Articles, The ſaid Earl further ſaith, That long before the Twenty fourth of *July*, One thouſand ſeven hundred and twenty one, He did Admit and Swear *Richard Godfrey*, *James Lightboun*, *John Borrett*, and *Edward Conway* Eſquires, into the Offices of Maſters of the Court of Chancery, and every One of them did Freely and Voluntarily, and of their Own Accord, as former Maſters had done to the Predeceſſors of the ſaid Earl, ſend to the ſaid Earl a Preſent upon Occaſion of the reſpective Admittances, which the ſaid Earl accepted, and that after the ſaid Twenty fourth of *July*, One thouſand ſeven hundred and twenty one, he did Admit and Swear *William Kynaſton*, *Thomas Bennet*, and *Francis Elde* into the Offices of Maſters of the Court of Chancery, and ſaith, That every of the ſaid Perſons laſt Named did Freely and Voluntarily, and of their Own Accord, in like Manner, ſend a Preſent to the ſaid Earl upon Occaſion of their reſpective Admittances, but ſaith, That it being pretended by the ſaid *Kynaſton* and *Bennet*, that they were by ſuch Preſents diſabled from Anſwering ſo much of the Money due from them to the Suitors of the Court, he the ſaid Earl did afterwards, and before the Impeachment deliver the Preſent ſo ſent him by the ſaid *William Kynaſton*, being Fifteen hundred ſeventy five Pounds; and alſo the Preſent ſo ſent him by the ſaid *Thomas Bennet*, being the like Sum of Fifteen hundred ſeventy five Pounds, into the Court of Chancery, in open Court, to be applied for the Benefit of the Suitors, as the Court ſhould Direct, and that the ſaid Earl retained of the Preſent ſo ſent him by the ſaid *Francis Elde*, no more than the Sum of One Thouſand eight hundred and fifty Pounds.

VIII. To the Eighth Article the ſaid Earl further ſaith, That in *July* laſt the Office of one of the Maſters of the ſaid Court became Vacant by the Death of *John Borrett*, Eſq; who died Inteſtate, but whether Solvent or not, he cannot ſay, but upon Notice of his Death, the ſaid Earl did at Firſt deſire *Richard Godfrey*, Eſq; One of the Maſters of the ſaid Court, who had been very well acquainted with the ſaid Mr. *Borrett*, and his Affairs, and afterwards the ſaid Mr. *Godfrey* and *John Bennet* Eſquire, another of the Maſters of the ſaid Court, to inquire into his Effects, and to take what Care they could about the ſame, who, after ſome Inquiry, informed the ſaid Earl, that they believed there would be no Deficiency, and Secured a

Conſiderable Part of the Effects of the ſaid Mr. *Borrett*, and Entred a Proper Caveat in the Prerogative Court, to prevent Adminiſtration being granted to any Perſons who might Embezzle the ſaid *Borrett*'s Eſtate; and afterwards, at the Requeſt of the ſaid Earl, proceeded ſo far, as to Obtain a Sentence in the ſaid Prerogative Court, for Adminiſtration to be granted, for the Benefit of the Suitors of the Court, to them, the ſaid Mr. *Bennet* and Mr. *Godfrey*, which was afterwards upon their Waving thereof, Granted to Mr *Paxton*, as the ſaid Earl believes, but the ſaid Earl thought it proper and neceſſary to Admit another Maſter in his Place, to Carry on the Buſineſs of the Court, and to be Intituled to Demand the Effects of the Suitors, from the Repreſentative of the ſaid Mr. *Borrett*, when one ſhould be appointed; and therefore, about the Fifth Day of *Auguſt* laſt, did Admit and Swear *Mark Thurſton*, Eſq; into the ſaid Office, Vacant by the Death of the ſaid *Borrett*, and the ſaid Earl Admits the ſaid *Mark Thurſton* did upon that Occaſion Freely and Voluntarily, and of his own Accord, ſend a Preſent, whereof Two thouſand Pounds and no more were Retained.

IX. In Anſwer to the Ninth Article the ſaid Earl ſaith, That he believes *Thomas Bennet*, Eſq; in this Article named, was Poſſeſſed of the Office of Clerk of the Cuſtodies, in the Article deſcribed, and that ſuch Office is in the Gift and Diſpoſal of the Crown, by Grant under the Great Seal, but denies that he did at any time Inſiſt upon the Sum of One hundred and five Pounds, or any other Sum of Money, to permit or accept of the Reſignation of the ſaid *Thomas Bennet*, or did refuſe to permit or accept thereof, until the ſaid *Thomas Bennet* had agreed to pay the ſame, or any other Sum on that Account; But ſaith, That although the ſaid Office be uſually granted by the Crown, yet it has always been looked upon to be the Right of the Lord Chancellors, or Lord Keepers, to Recommend to that, and other Offices under the Great Seal, and to Approve and Allow of the Deputies to Execute the ſame; and, upon ſuch Recommendations and Approving of Deputies, have accepted Preſents, and looked upon the ſame as their Right; and further ſaith, That there have been Two of ſuch Offices granted in his Time, One of which appearing to him to be a Caſe wherein the Party had ſuffered great Hardſhip, the ſaid Earl paſſed the ſame without any Preſent whatſoever, though the Office be of Conſiderable Value; the other was the Caſe of Mr. *Hamerſley*, in the Articles mentioned, in which the ſaid Earl owns he did Accept a Preſent.

X. In Anſwer to the Tenth Article the ſaid Earl ſaith, The ſame is conceived in ſuch General Terms, that it is not to be expected he ſhould give any particular Anſwer thereto; However, he ſaith, That, during the whole Time of his being Lord Chancellor, he never Once took any Money, Preſent, or Gratuity whatſoever, for or upon Account of the Naming, Making, or Admitting any Officer whatſoever, other than before particularly named, Except in the Curſitor's Office, where he owns he has done, as was done by all his Predeceſſors before him.

XI. In Anſwer to the Eleventh Article the ſaid Earl ſaith, That the ſame not containing any Particular Charge, he apprehends himſelf not obliged to give any Particular Anſwer thereto; but however, in General, does ſay, That he never did Admit any Perſon into the Office of a Maſter of the Court of Chancery, but who was either known to be of Subſtance and Ability, and fit to be Truſted in ſuch Office, or, upon a proper Inquiry, very well recommended to him as ſuch; and, whenever there have been ſeveral Candidates, the ſaid Earl has Conſtantly given the Preference to him that he thought would beſt Diſcharge the Office, and moſt for the Honour of the Court, and the Advantage of the Suitors; and believes that he may, upon ſome Occaſions, have declared, that he thought the then Body of Maſters as Good, with reſpect both to their Eſtates, and Ability for Diſcharge of the Office, and their Integrity, as had been at any time before, or to that Effect, and what he did ſay to that Purpoſe, he thought to be really true.

XII. To the Twelfth Article the ſaid Earl ſaith, That if there was any ſuch Practice as is mentioned in the Article, of paying for the Places of the Maſters out of the Money and Effects belonging to the Suitors of the Court, he was totally ignorant of it; but admits, that he did not, nor did any of his Predeceſſors, that ever he heard or believes, give any particular Directions for Schedules to be made of the Money and Effects of the Suitors of the Court to be delivered over to the ſucceeding Maſters, but believes, that in Virtue of the General Order of Transfer made of courſe upon every Admittance, ſuch Schedules were made between the New Maſters and their Predeceſſors, or the Repreſentatives of their Predeceſſors; and if the ill Conſequences, in the Articles alledged, had followed from ſuch Practice, or the not ordering ſuch Schedule, which he does not Admit, he Inſiſts that the ſame could not render him Criminal.

XIII. In Anſwer to the Thirteenth Article the ſaid Earl ſaith, That after *Chriſtmas*, in the Year One thouſand ſeven hundred and twenty, he was Informed, That the ſaid *Fleetwood Dormer* had withdrawn himſelf to *Holland*, where he then was, and thereupon the ſaid Earl uſed all the propereſt Methods he could for Securing his Effects, and particularly directed Mr. *Hiccocks* and Mr. *Rogers*, the then two Senior Maſters of the Court, to make an Enquiry into his Affairs and Accounts, and to conſider what would be moſt proper to be done; And the ſaid Earl believes, that the ſaid two Maſters, in Purſuance of the Directions from the ſaid Earl, did ſearch the Chambers of the ſaid *Fleetwood Dormer*, in *Lincolns-Inn*, to ſee what Books, Accounts, or Effects could there be met with, but found no Account whatſoever, nor any Effects of Value, and did put a Stop to the transferring of the Stock, then in the Name of the ſaid *Fleetwood Dormer*, in any of the Publick Companies; And the ſaid *Fleetwood Dormer*'s Perſon being thus out of Reach, and his Accounts and Effects wholly unknown, except the Stock, which could not be diſpoſed of without his Concurrence, a Propoſal was ſome time after made to the ſaid Earl, That the ſaid *Fleetwood Dormer* might have a Promiſe of his Liberty from the ſaid Earl, and upon that Condition he would come over, and aſſign all his Effects, and aſſiſt in getting them in, and ſettling and adjuſting his Accounts; And the ſaid Earl, ſeeing no other way open to get any thing for the Suitors, and being made to believe, that if any Deficiency ſhould happen, the ſame would be made up by the other Maſters, did agree, That in caſe the ſaid *Fleetwood Dormer* would come over, and make a full Diſcovery of all his Effects, and aſſign the ſame for the Benefit of the Suitors, he the ſaid Earl would allow him his Liberty on that Condition, and not otherwiſe; and the ſaid Earl was ſoon after Informed, That the ſaid *Fleetwood Dormer* ſubmitted to thoſe Terms, and would very ſoon come over, and diſcover and deliver up his Effects; And the ſaid Earl did not doubt, but the whole Debt upon the ſaid *Fleetwood Dormer* would be paid. And the ſaid Earl ſaith, That he does not remember that any Application was ever made to him, by the ſaid Maſters of the ſaid Court, for any Aſſiſtance of the Court, touching the Perſon or Effects of the ſaid *Fleetwood Dormer*, but what he granted, ſo far as he thought it tended to the Benefit of the Suitors, and believes that no Application was ever made to him by the Suitors, or any of them, or any other, to ſecure the Perſon of the ſaid *Fleetwood Dormer*, or for Compelling him to make Satisfaction to the Suitors; And the ſaid Earl ſaith, That he never endeavoured to Conceal the true State and Condition of the ſaid Office from the Suitors of the Court, nor did any of them apply, till very lately, to the ſaid Earl to look into the ſame; And further ſaith, That he remembers nothing of his ever Uſing any ſuch Expreſſion, as is charged in the ſaid Article, at any Time before or after he knew that the ſaid *Fleetwood Dormer* Abſconded.

XIV. To

XIV. To the Fourteenth Article the Earl ſaith, That *Henry Edwards*, Eſq; in this Article mentioned, ſucceeded to the Office of Mr. *Dormer* about the Eighteenth Day of *May*, One thouſand ſeven hundred and twenty one; but, by Reaſon of the Diſorder the ſaid Office was then under, and the great Danger of a Loſs therein, the Earl had given up and quitted all the Advantage which might Accrue to him upon the Diſpoſal thereof, and left it entirely to the other Maſters to raiſe what Money they could thereby, which was agreed to be all applied towards making Good any Deficiency or Loſs, which might happen to the Suitors of the Court Concerned in that Office; and thereupon the Sum of Five thouſand Pounds was raiſed, by the Diſpoſal of the ſaid Office to Mr. *Edwards*, and was applied accordingly; And the ſaid Earl believes the Debt from *William Wilſon*, in this Article mentioned, was aſſigned by the ſaid Mr. *Dormer* to the ſaid Mr. *Edwards* in Truſt, and to the Intent, that he ſhould Pay, Apply, and Diſpoſe of the ſaid Debt, or ſuch Part thereof, as ſhould, from Time to Time, be by him got in, and received of and from the ſaid *William Wilſon*, in ſuch manner as the Court ſhould Order and Direct, or to that Effect; after which ſaid Aſſignment ſo made, the Earl believes that the ſaid Mr. *Edwards* uſed great Endeavours to obtain Payment and Satisfaction of the ſaid Debt from Mr. *Wilſon*; but finding all his Endeavours fruitleſs, and that the ſaid *Wilſon* had long before ſtopt Payment, and was in no Condition of Paying his Creditors the Whole of their Debts, but that he was willing, and had offered to come to a Compoſition, and to pay them in Proportion the Utmoſt he was able; The ſaid Mr. *Edwards* thereupon, about the Thirtieth Day of *June*, in the Year of our Lord, One thouſand ſeven hundred and twenty two, preferred his Petition to the ſaid Earl, as Lord Chancellor, ſetting forth in Subſtance the State of the Caſe, as before mentioned, and Praying that it might be referred to one of the Maſters of the Court, to ſee if ſuch Compoſition, ſo propoſed by the ſaid *William Wilſon*, were for the Benefit of the Perſons Intituled to receive the ſame; and the ſame was accordingly, by Order of the ſaid Earl, referred to Mr. *Hiccocks*, the then Senior Maſter of the Court, to Enquire into, and make his Report therein; And about the Six and twentieth Day of *July*, then next following, the ſaid Mr. *Hiccocks* made his Report, that the ſaid *William Wilſon* had, under his Hand in Writing, propoſed to Aſſign over to the ſaid Mr. *Edwards*, as a Compoſition for, and in full Diſcharge of, the Sum of Twenty four thouſand forty ſix Pounds and four Shillings, therein mentioned to be due and owing from him to the ſaid Mr. *Edwards*, as Aſſignee of the ſaid Mr. *Dormer*, the Sum of Ten thouſand Pounds, Part of a large Sum due to the ſaid *William Wilſon*, from *Edward Poulter* of *Hackney*, Gentleman, in this Article mentioned, and to pay the ſaid Mr. *Edwards* in Specie, the Sum of One thouſand four hundred ſixty three Pounds, two Shillings and one Penny, over and above the Sum of Five hundred and ſixty Pounds, then already paid to the ſaid Mr. *Dormer*, in Part of the ſaid Compoſition; and that upon Conſideration had of the Circumſtances of the ſaid *William Wilſon*, and the ſaid ſeveral Matters, he was of Opinion, that the accepting the ſaid Compoſition would be for the Benefit of the Perſon or Perſons Intitled to receive the ſame; Upon which ſaid Report the ſaid Mr. *Edwards*, about the Third of *Auguſt* then next, preferred another Petition to the ſaid Earl, with the ſaid Report annexed, and thereby expreſly Prayed the ſaid Earl to Order him, the ſaid Mr. *Edwards*, to accept of the ſaid Compoſition, whereupon the ſaid Earl, in a proper and uſual Manner, Ordered the ſame as Prayed; And the ſaid Earl ſaith, that he was informed, and believes, that the ſaid Compoſition was Made and Agreed to, upon a Conſultation of all or moſt of the Maſters of the ſaid Court, who the ſaid Earl did believe would Uſe their beſt Endeavours to get as much as they could; And the ſaid Earl ſaith, he hath heard, and believes it to be true, that beſides the One thouſand four hundred ſixty three Pounds, Two Shillings and One Peny, then paid down, there hath been ſince got in by Mr. *Edwards*, on Account of the ſaid Debt from *Edward Poulter*, the Sum of One thouſand Pounds, or thereabouts; and that at the time of the ſaid Aſſignment, the ſaid Debt, claimed by *Wilſon* from *Poulter*, was a juſt Debt, and Judgment at Law has been ſince obtained for Eighteen thouſand Pounds, Part thereof, and the ſaid *Poulter* was looked upon to be a Subſtantial Perſon, though, to avoid Payment of the ſaid *Wilſon*'s Debt, which aroſe on account of their Dealings in *South Sea* Stock, and Subſcriptions in the Year, One thouſand ſeven hundred and twenty, the ſaid *Poulter* not only brought his Bill in Chancery, but, after the ſame was diſmiſſed, and that he was taken in Execution at *Wilſon*'s Suit at Common Law, he found Means to make his Eſcape out of the Cuſtody of the Marſhal of the Court of King's Bench, and to get over to *France* or *Holland*, where he ſtill Continues, as the Earl is informed; but he is likewiſe Informed, that, after the ſaid Eſcape, a Commiſſion of Bankruptcy was taken out againſt him by the ſaid *Wilſon*, upon which ſome Effects were recovered, and likewiſe an Action at Law brought, and a Verdict and Judgment for Eighteen thouſand Pounds and upwards obtained by the ſaid *William Wilſon* againſt the Marſhal, on Account of the ſaid Eſcape; and ſaith, he hath likewiſe been Informed, That the ſaid *Edward Poulter* and the Marſhal have each of them offered Conſiderable Sums of Money by way of Compoſition for the ſaid Debt; but the ſaid *Wilſon*, from a Perſuaſion of the Abilities of the ſaid *Edward Poulter* to pay the Whole, did at firſt refuſe any Compoſition with the ſaid *Poulter*, and ſince hath been afraid to make any Compoſition, either with *Poulter* or the Marſhal; and what may be the Conſequence thereof, with regard to the Suitors of the Court, or what further Sums of Money may be recovered upon Account of the ſaid Debt, towards making them Satisfaction, the Earl ſaith, he cannot with any Certainty take upon him to Anſwer.

XV. To the Fifteenth Article the Earl ſaith, That about the Month of *February*, in the Year of our Lord, One thouſand ſeven hundred and twenty, he gave Orders to his Secretary to write to the ſeveral Maſters of the Court of Chancery, to bring in their Accounts of the Caſh, Effects, and Securities in their Hands, belonging to the Suitors of the Court, and believes he did ſo, but denies that the ſame was done with any unjuſt Purpoſe, or with any Thought to terrifie the ſaid Maſters to make any Contribution, towards Satisfying the Demands upon the ſaid Office of *Fleetwood Dormer*, but believes, what they did contribute, they paid Freely and Voluntarily, and out of their own Money, and therein, as the ſaid Earl believes, did no more than follow a Precedent of the like Nature, on the Failure of Dr. *Edisbury*, formerly a Maſter of the ſaid Court; And the ſaid Earl ſaith, That his real and whole Intention in Calling for the ſaid Accounts, was to Inform himſelf, in the beſt Manner he was able, of the State and Condition of the ſeveral Offices, and thereby to be the better able to make proper Regulations concerning the ſame; and therefore, though the ſaid Article ſeems to Inſinuate, as if the Calling for the ſaid Accounts was dropped, as ſoon as the Maſters were prevailed on to Contribute, the ſaid Earl ſaith, That afterwards, and without any Regard thereto, he ſtill Continued to Call for the ſaid Maſters Accounts, and not finding them brought in, as he expected, he did, about the Beginning of *November* following, cauſe another Letter to be ſent to them, requiring them to bring in their Accounts; and, by both the Letters ſent to them on that Occaſion, he directed the particular Method in which he would have their Accounts made up; but the ſaid Earl, being afterwards convinced how Difficult and Tedious a Work it would be, and what Obſtruction it would give to the Buſineſs of the Court, and that at laſt it could not be depended upon with any Certainty, was forced to lay aſide that Deſign, and to content himſelf with going on in the ſame Road which his Predeceſſors had done; and humbly begs

leave to Obſerve, That what has been lately done, with reſpect to the Accounts of the ſaid Maſters, plainly ſhews the Inſuperable Difficulties of ſuch an Undertaking.

XVI. To the Sixteenth Article the Earl ſaith, That he believes that, on or about the Seventeenth of *March*, One thouſand ſeven hundred and twenty three, ſuch Order was made, as in the ſaid Article is mentioned, for *Henry Edwards*, Eſq; to pay *Elizabeth Chitty* one thouſand Pounds, Part of the Money brought before Mr. *Dormer*, but does not remember that the ſaid *Henry Edwards* made any Complaint thereof to the ſaid Earl, but believes Mr. *Edwards*, not having then ſufficient Effects of Mr. *Dormer*'s in his Hands, refuſed Payment thereof; and that in *July* following, Mr. *Lochman*, in the Articles named, applied himſelf to the ſaid Earl ſeveral times, and in a very earneſt Manner, to help the ſaid Mrs. *Chitty* to the ſaid One thouſand Pounds, alledging that he the ſaid Mr. *Lochman* was to marry her, and that he had made a Compoſition with his Creditors, upon which One thouſand Pounds was to be paid in a very ſhort Time, which he then mentioned; and that he the ſaid Mr. *Lochman* was to have the ſaid One thouſand Pounds for that Purpoſe; and that, if he had it not by the Time, the Compoſition would be Void, and he ſhould be utterly Ruin'd; And at length the ſaid Earl, being greatly moved by the preſſing Importunities of the ſaid Mr. *Lochman*, and by Compaſſion for the very great Diſtreſs in which he then appeared to be, did promiſe to ſupply him with the ſaid One thouſand Pounds out of his own Pocket, and accordingly directed Mr. *Cottingham*, then his Secretary, to pay it, taking from the ſaid Mrs. *Chitty* an Aſſignment of the Benefit of the ſaid Order, and believes the ſame was done accordingly; and that, upon Mr. *Lochman*'s Preſſing for a further Sum for the ſaid Mrs. *Chitty*, for her own Uſe, the ſaid Earl might tell him, that the ſaid One thouſand Pounds was all that he muſt Expect from the ſaid Earl; and the ſaid Earl does not believe that he had any Diſcourſe with the ſaid Maſters to perſuade them to pay the ſaid One thouſand Pounds to Mr. *Lochman*.

And as to the laſt Branch of the ſaid Article the ſaid Earl ſaith, That the Fact was, that one *Jackman*, having, in the Cauſe in the Article mentioned been Confirmed the beſt Purchaſor of part of the Eſtate of *T. Harper* at the Price of Two hundred and ſixty Pounds, ſo long ago as the Nineteenth of *December*, one thouſand ſeven hundred and ſeventeen, and it being at the ſame time Ordered, That the Writings belonging to ſuch Eſtate, ſhould be delivered to his Councel, and that the Tenants ſhould Attorn to him, on his bringing his Purchaſe Money before Mr. *Dormer*, then one of the Maſters, and the ſaid Money having been brought before the ſaid Maſter the Twenty fourth Day of *December*, One thouſand ſeven hundred and ſeventeen, and the Tenants, having Attorned to *Jackman*, but the Conveyances not being then executed, though long before approved, a Motion was made in the Court of Chancery before the ſaid Earl on the Fifth Day of *December* laſt, that all Parties might Execute the Conveyances, and the Two hundred and ſixty Pounds be paid to the Plaintiff, towards Satisfaction of a Demand ſhe had out of the Eſtate of the ſaid *Harper*; and thoſe that were to have the *Reſiduum* of the ſaid *T. Harper*'s Eſtate, inſiſted, that they were always ready to joyn in the Conveyances, if the Purchaſe Money were applied to Diſcharge the reſt of the Eſtate, that they were Apprehenſive of a Deficiency of Mr. *Dormer*'s Eſtate, and therefore neither they nor the Plaintiff ought to be Sufferers by ſuch Deficiency, the Delay having been occaſioned by the Purchaſer, and not by the Plaintiff, and therefore ſcrupled Executing the Deeds, unleſs upon Payment of the Money to the Plaintiff, and diſcharging the reſt of the Eſtate therefrom; and this being the firſt Time that any Queſtion relating to Mr. *Dormer*'s Deficiency had been laid before the Court, by any of the Suitors, the ſaid Earl took Notice of its being ſo, and believes he might Expreſs himſelf to this Effect, That he had indeed heard of the ſaid *Dormer*'s Deficiency, but that it had never yet come Judicially before him, upon Complaint of any of the Suitors of the Court; and further Declared, That if there ſhould be any Deficiency in his Office, ſeveral Circumſtances had concurred thereto, as *Wilſon* the Banker's ſtopping Payment, greatly Indebted to him, *Poulter*'s going away in *Wilſon*'s Debt Eighteen thouſand Pounds, and upwards, after a Verdict and Judgment at Law, and *Poulter* in Actual Execution for it; and that, as he had heard, *Wilſon* had then lately brought an Action of Eſcape againſt the Marſhal, and recovered a Verdict againſt him for the like Sum; and how all theſe Matters would at laſt come out, the ſaid Earl ſaid he did not know, or he expreſſed himſelf to that Effect, and no other; and thereupon Ordered, that it ſhould be referred to Mr. *Edwards*, to examine whether the ſaid Two hundred and ſixty Pounds was Depoſited with Mr. *Dormer* for the Benefit of any particular Perſon, and whom, and what was the Occaſion of the Delay, that the ſaid Conveyances were not Executed, and the ſaid Two hundred and ſixty Pounds, Purchaſe Money, paid out before the Year one thouſand ſeven hundred and twenty; and whether there was likely to be a Loſs of any Money Depoſited with the ſaid Mr. *Dormer*, and that upon the Maſters Report ſuch further Order ſhould be made, as ſhould be juſt; and the ſaid Earl hopes the ſaid Order was very proper and neceſſary, and takes the Liberty of Repreſenting to your Lordſhips, That this was after the Accounts of the Maſters had been laid by the ſaid Earl before the Lords of the Council, and had been for ſome Time under the Conſideration of the Judges and others, appointed by His Majeſty to inſpect the ſame.

XVII. To the Seventeenth Article the Earl ſaith, That he never Endeavour'd to conceal the Deficiency Occaſioned by Mr. *Dormer*'s Failure, but as the ſaid Earl was under a full Perſuaſion, that the ſame would all in due Time be made Good, and as Mr. *Dormer*'s Effects were coming in by Degrees, and no Application was made to him by any of the Perſons concerned, to put a Stop to, or any Reſtraint upon, the Payments, he did not think it Incumbent upon him, *Ex Officio*, to make a Declaration of an Average. And the ſaid Earl ſaith, That he does not know that any Order was made by him for Mr. *Edwards* to pay any Money that had been lodged with Mr. *Dormer*, except the Order aforementioned, in the Caſe of *Chitty*, but believes ſeveral Orders have been made by the Court for that Purpoſe, and that the ſaid Mr. *Edwards*, under a firm Perſuaſion that the whole Deficiency would be made Good, paid out the whole Sums ſo Ordered, ſo far as the Money then in his Hands would extend.

XVIII. To the Eighteenth Article the ſaid Earl ſaith, He never knew how the Maſters kept or diſpoſed of the Money and Effects belonging to the Suitors of the Court; and as he believes, that after Dr. *Edisbury*'s Failure, the then Lord Chancellor, ſo he knows that after Mr. *Dormer*'s misfortune, the Earl thought of ſeveral methods to prevent any Inconvenience upon the like Accident for the Future; but they had both the ſame misfortune, not to bring any of them to ſuch Perfection, as to venture to put them in Practice.

That Several Propoſals were made to him by the Perſons he conſulted upon that Occaſion, but none that he believes, it will be held Criminal not to have then Eſtabliſhed; ſome Things were propoſed that he thought Impracticable, ſome Inſufficient, ſome Inconſiſtent with that compleat Regulation he hoped to make, the Objects he propoſed to himſelf, were to Provide for whatever Deficiency might happen in the Office late of Mr. *Dormer*, to Secure the Suitors from any future Loſs, and to make ſeveral Regulations relating to the Offices of the Maſters, and he thought theſe would be beſt done together, nor had he perfected the Scheme of any One of them to his own Satisfaction; he Remembers no Propoſal, that he thought would take it totally out of the Power of the Maſters, to diſpoſe of the Securities or Effects, or effectually Secure the Caſh. The ſaid Earl Admits, that he did not demand any Security to be given by any of the ſaid Maſters at the time of their Admittance, becauſe it had not been done by his Predeceſſors, who were much wiſer Men than himſelf, nor was he ſo much as asked by any of the Parties Intereſted ſo to do; as to what the ſaid Earl did with Relation to the Accounts of the ſaid Maſters, he hath already ſet forth, and ſaith, That he gave no Permiſſion nor Encouragement to the Maſters of the Court, to Employ or Traffick with the Suitors Money for their own Gain or Profit; he owns, that with reſpect to the Securities in the Hands of the Maſters, he made no General Order, and thinks it the leſs material, becauſe, notwithſtanding what is alledged in the Cloſe of this Article, he believes all the preſent Maſters did, in *December* laſt, Produce all the Securities in their Hands, and the Court of Chancery hath ſince Secured the ſame for the Benefit of the Suitors.

XIX. To the Nineteenth Article the ſaid Earl ſaith, That upon great Conſideration of Mr. *Dormer*'s Deficiency, and of

the Danger there might be of further Inconveniences, with Relation to the Money and Effects in the Hands of the Maſters, and of ſeveral Diſputes and Differences that had ariſen in the Court of Chancery, and of ſome Applications of the ſaid Maſters, for Eſtabliſhing them in their juſt Rights, and of ſome Practices of the Maſters, which the ſaid Earl thought ought to be Reformed; he was Convinced, that the ſame was a work of too great Conſequence for him Singly to Attempt, and being highly Senſible of His moſt Sacred Majeſty's Paternal Goodneſs to His People, did preſume humbly to Beſeech His Majeſty, as the fountain of Juſtice, to Depute ſome of His moſt Honourable Privy Council, to take the matters aforeſaid into Conſideration, in Order to the Eſtabliſhing ſuch Regulations, as might tend to the Honour of that High Court, and to the Advantage of His Majeſty's Subjects being Suitors there; which Requeſt, His Majeſty out of His Wonted Goodneſs, was pleaſed to receive very Graciouſly, and Named ſeveral Lords, and other Honourable Perſons of His Privy Council, to be a Committee, to take the ſame into Conſideration; and purſuant to His Majeſty's Command, the ſaid Committee met, and began with the Accounts of the ſaid Maſters, wherein the ſaid Earl begs leave to Appeal to ſuch of your Lordſhips, who Attended in that Committee, whether he did not Contribute to the Utmoſt of his Power, to have every thing done which the ſaid Committee thought Expedient: And the ſaid Earl ſaith, that he made all ſuch Orders as were by them Judged requiſite, and ſo preſſed the Execution thereof, that not only the Accounts of all the Maſters then in being were brought in, but all the Securities in all their Hands, and the Caſh of moſt of them were Actually Lodged in the Bank of *England*, and therefore the ſaid Earl is greatly Surprized, to find himſelf Charged with Obſtructing the taking thoſe Accounts, which he had thus deſired might be taken, and contributed to the taking of them with all his Power. And the ſaid Earl ſaith, That he never thought of preventing a Parliamentary Enquiry, any otherwiſe, than by making it unneceſſary, and procuring to the Suitors a full redreſs of all their Grievances, and rectifying whatever he found Amiſs, and that he looked upon to be his Duty, and begs leave to ſay it here Once for all, in Anſwer to all the ſeveral Inſinuations of that kind contained in the Articles,

And the ſaid Earl further ſaith, That while the ſaid Accounts were taking, every one of the ſaid Maſters declared over and over, that they had Effects ſufficient to Anſwer their whole Accounts, and the ſaid Earl Firmly believed the ſame to be true, and as all of them, that he ſaw (which he believes were all, or at leaſts all but Mr. *Kynaſton*) had told the ſaid Earl, that they were able to Anſwer their Accounts; and when they brought their Accounts to the ſaid Earl, for him to lay before the ſaid Committee, Mr. *Holford* had wrote under his Account ſome Declaration to that Effect, and ſome others of them, as he remembers, had made uſe of ſome other Expreſſions, which he thought not ſo proper; and ſome, as he believes, had wrote nothing (but he cannot Diſtinguiſh the Perſons) and the ſaid Earl thinking that when the ſaid Accounts came to be laid before the Committee of Counſel by him, it would be proper that the ſame thing ſhould be Declared to the Committee, which had been ſaid to him ſingly, he Adviſed them all to Write the ſame Words under their Accounts, and did tell them, in great Sincerity and Friendſhip, that at a Time when ſo many Men's Mouths were open againſt them as Inſolvent, it would be for their Honour and Intereſt to make it appear, that they were Able and Sufficient, as he then believed them to be, but never thought of a Contrivance to have them Deceitfully appear or ſeem what they really were not; and he ſays they did then withdraw to make the Subſcription, or at leaſt ſo many of them whoſe Accounts were then ready, and ſoon after deliver'd them to the ſaid Earl, who carried them with him to the Committee of Council, whither he was then going, without looking upon them; but upon reading them at the Council, it was obſerved that they had not all uſed the ſame Words, having Varied conſiderably, but what any of the Subſcriptions were, he cannot take upon him to ſet forth.

And the ſaid Earl further ſaith, That a ſubſequent Order being made by the ſaid Earl, for the ſaid Maſters to produce their Securities, and their Caſh, before the Perſons appointed to Inſpect their Accounts, they made great Complaint, that ſo many hundred thouſand Pounds ſhould be required at ſo ſhort a Warning, and ſome of them ſaying, that though they had Effects ſufficient, and could raiſe the Whole, if they had a little Time, deſired the ſaid Earl to allow them further Time for that Purpoſe; but the ſaid Earl ſaith, That he required them to beſtir themſelves, and raiſe it immediately, telling them, that ſince they had Effects to give Security, they might find Friends to furniſh the Money; and believes he did ſay, that ſome of their own Brethren might perhaps be able to let them have Money till they could raiſe it another Way.

But if any of them did ſupply others with Caſh or Effects to produce, only to make a falſe Shew and Appearance of their Ability and Readineſs to Anſwer the Ballance of their Accounts, the ſaid Earl knows nothing of it, and is ſure they had not the leaſt Encouragement from him ſo to do.

XX. To the Twentieth Article the ſaid Earl ſaith, That it never entred into his Thoughts, to make uſe of, nor did he ever make uſe of any of the Money belonging to the Suitors of the Court, for his own private Advantage, but believes, that in *December*, One thouſand ſeven hundred and twenty, having Occaſion for the Sum of One thouſand five hundred Pounds, and Asking his Secretary, Mr. *Cottingham*, whether he could lend him the ſame, he ſaid he could not, but would procure it for him, and accordingly Borrowed the ſame from Mr. *Godfrey*, one of the Maſters of the ſaid Court, and the ſaid Earl gave his own Note for Payment thereof to the ſaid Mr. *Godfrey*, and in *February* following Repaid One thouſand Pounds, Part of the ſaid Principal Sum; but in the ſame month of *February*, One thouſand ſeven hundred and twenty upon a freſh Occaſion, borrowed again Part of the ſaid One thouſand Pounds ſo paid back, and a Note or Notes were given for the Payment thereof; and ſome Time after the ſaid Earl Ordered the whole Money borrowed of the ſaid Mr. *Godfrey* to be paid, with all the Intereſt due for the ſame; and the ſaid *Godfrey* received the Principal, but would not be prevailed upon to take the Intereſt, or any Part thereof: And the ſaid Earl ſaith, That all the ſaid Money was repaid within the Compaſs of a Year, after it was borrowed; and the ſaid Earl declares, That he never received or borrowed any Sums of Money whatſoever of any of the Maſters of the ſaid Court, except as above ſet forth.

XXI. To the One and twentieth Article the ſaid Earl ſaith, That upon the ſtricteſt Review of his own Behaviour, during the Time he had the Honour of Serving His moſt Sacred Majeſty in the Office of Lord Chancellor, he is not Conſcious to himſelf that he ever did, in any Illegal or Arbitrary manner, Extend his Power, or the Power of the Court, beyond their Lawful and Juſt Bounds, or that he did Arbitrarily or Illegally aſſume to himſelf, as Lord Chancellor, or by Colour of his Office, any unjuſt and unlimitted Power of Diſpenſing with, Suſpending, or Controlling the Laws or Statutes of this Realm, or that he any ways Oppreſſed the Suitors of the Court, or was guilty of any Breach or Violation of the Rights or Liberties of the Subject, or of his own Oath, as Lord Chancellor: And with regard to the particular Complaint againſt him in this Article, the ſaid Earl ſaith, That *Rachel Tyſon*, in the Article named, as the Earl is informed, cauſed a Bill to be Exhibited in the Court of Chancery, in the Name of her Son and Daughter, in the ſaid Article likewiſe mentioned, by their *Prochein Amy*, againſt herſelf, and the ſaid *John Tyſon* and others, to have the Truſts in the Will of her late Husband duly performed; and the ſame was brought to Hearing at the Rolls the Seventh Day of *July*, One thouſand ſeven hundred and eighteen, and by the Decree then made, It was amongſt other Things Ordered, upon the Prayer (as the ſaid Earl hath heard and believes) of the Councel employ'd by the ſaid *Rachel Tyſon*, that a Receiver ſhould be appointed of the Rents and Profits of the Real Eſtate, who was to have a Salary allowed him, and Power to Let and Set the ſaid Eſtate, as there ſhould be Occaſion, with the Approbation of the Maſter, to whom the Cauſe was referred: And the ſaid Earl ſaith, That an Execution of that Part of the Decree, which directed a Receiver to be appointed, the Maſter having certified that he had appointed *John Nicholas*, Eſq; to be the Receiver of the Rents and Profits of the ſaid Eſtate, the ſaid *John Tyſon*, thinking himſelf Aggrieved thereby, did, in the uſual Courſe of Proceedings in the ſaid Court, cauſe Exceptions to be Filed againſt the ſame, and upon the Arguing thereof before the ſaid Earl,

by Councel of both Sides, Affidavits were read, to ſhew that the ſaid *John Nicholas* was an Improper Perſon; that the ſaid Teſtator had declared in his Life Time, that the ſaid *John Nicholas* by Name ſhould not have any thing to do with the Management of his Eſtate; and that a conſiderable Part thereof conſiſted in old Houſes and Water-works: And the ſaid Earl, upon a Full Hearing of both Parties, was of Opinion, that the ſaid *John Nicholas* ought not to be appointed the Receiver; and upon the Propoſal of the ſaid *John Tyſon*, then in Court, Order'd *Robert Doyley*, Eſq; to be Receiver, he giving Security to be approved of by the ſaid Maſter; which Order was made, as he believes, on the Fifteenth of *January*, in the Year One thouſand ſeven hundred and eighteen; and affirmed upon the Re-arguing the ſaid exceptions on the Sixth of *March*, in the Year One thouſand ſeven hundred and eighteen; ſince which Time the Parties Intereſted have never thought fit to complain thereof to your Lordſhip's by Appeal, in order to have it Reverſed, as miſtaken or Unjuſt, though now the making thereof is complained of as a crime; and the ſaid Earl is not Aſhamed to Own, that he was very well Acquainted with the ſaid *Robert Doyley* for ſome Years before the ſaid Order, and believed him to be a Perſon of great Honour and Integrity, Application and Exactneſs, and believes there are ſeveral Perſons of Diſtinction, to whom he had the Honour to be known, who had the ſame Opinion of him; but the ſaid Earl did not appoint him Receiver becauſe of his own Reſpect for him, but becauſe he was named by the ſaid *John Tyſon*, who was Uncle of the ſaid Infant, and Executor of his Father's Will in Truſt for him, and by the ſame Will appointed his Guardian in caſe of his Mother's Death or Marriage, and to whom the ſaid Teſtator had Deviſed the ſaid Eſtate, in caſe of the Death of the ſaid Infant without Iſſue Male, and whoſe Intereſt it therefore was to take Care of the Infant's Intereſt in that particular; and the ſaid *John Tyſon* and Sir *Cæſar Child* (whoſe Daughter the ſaid *John Tyſon* had Married) had ſuch Confidence in him the ſaid *Robert Doyley*, that upon the Eighteenth Day of *March*, One thouſand ſeven hundred and eighteen, they entred into a Rocognizance, together with him, in the Penalty of ſeven thouſand Pounds, for the ſaid *Robert Doyley*'s duly accounting for and paying the Money he ſhould receive out of the ſaid Infant's Eſtate; And the ſaid Earl ſaith, That no Complaint was ever made to the ſaid Earl againſt the ſaid *Robert Doyley* to the time of his Death, but he owns that he hath heard, that upon the Maſter's Stating the Accounts ſince *Chriſtmas* laſt, there does appear due from the ſaid *Robert Doyley* about Two thouſand and five hundred Pounds, or Two thouſand ſix hundred Pounds, but believes there is not any fear or doubt but that the ſame is very well ſecured by the ſaid Recognizance.

And the ſaid Earl ſaith, That he does not remember the particular Expreſſions uſed by the Council or himſelf, upon Aruging or Re-arguing the ſaid Exceptions, but he cannot believe that any Council of great Ability and Experience in the ſaid Court, would have thought what the ſaid Earl did Extraordinary, much leſs would have uſed ſuch an Expreſſion to the ſaid Earl as in the Articles, which is an Indecent Cenſure of his Proceedings; and here being a Decree in this Caſe, approved of by all Parties, that a Receiver ſhould be appointed to receive the Rents and Profits of the Infant's Eſtate, the ſaid Earl is at a loſs to underſtand, how the fixing on the Perſon to be the Receiver, upon good Security, to account for and pay the ſame for the Infant's Uſe, is Reviving the Court of Wards, whoſe Buſineſs it was to take the Rents and Profits of the Infant's Eſtate for the King's Uſe, without Accounting for any of them to the Infant, but barely providing a Maintenance for him, at the Diſcretion, perhaps, of ſome Grantee of the Cuſtody.

Thus the ſaid Earl has laid his Caſe before your Lordſhips, and doth further, for Anſwer to all the ſaid Articles, ſay, That he is not Guilty of all or any of the Matters contained in the ſaid Articles, or any of them, in Manner and Form as they are therein Charged againſt him; And the ſaid Earl doth further Inſiſt upon the Benefit of His Majeſty's moſt Gracious and General Free Pardon, granted to all His Subjects (not therein Excepted) in and by an Act of Parliament for that Purpoſe made in the Seventh Year of His Majeſty's Reign, in Bar of, and in his Defence againſt the ſaid Impeachment, and the ſaid Articles exhibited in maintenance thereof, and all and every the Proceedings thereupon, ſo far as the ſame extend to any Neglect, Offence, or Miſdemeanor, or Suppoſed Neglect, Offence, or Miſdemeanor, or any other Act, Matter, or Thing, Suffered, Done, or Committed, or Omitted, by him the ſaid Earl, before the Four and twentieth Day of *July*, in the Year One thouſand ſeven hundred and twenty one, and doth humbly Inſiſt, That no Evidence ought to be given againſt him for or concerning any of the Matters or Things aforeſaid, in and by the ſaid Act Pardoned, or any of them; and doth Aver, That he is not within any of the Exceptions in the ſaid Act contained.

MACCLESFIELD.

The COMMONS REPLICATION *to the Anſwer of* Thomas, *Earl of* Macclesfield.

THE Commons have conſidered the Anſwer of *Thomas*, Earl of *Macclesfield*, to the Articles Exhibited againſt him by the Knights, Citizens, and Burgeſſes in Parliament Aſſembled, and Obſerve, that the ſaid Earl hath Induſtriouſly Avoided giving a direct and particular Anſwer to ſeveral Matters poſitively and certainly Alledged againſt him in the ſaid Articles, which, from the Nature of the Facts themſelves, muſt neceſſarily Lie in his own Knowledge, and hath Attempted to Diſguiſe and cover the real Crimes laid to his Charge, by Immaterial and Evaſive Inſinuations of Facts of a different Nature; and that many Parts of the ſaid Anſwer are Contradictory to, and Inconſiſtent with each other, upon which they might Demand your Lordſhips Immediate Judgment: Yet the Commons being able to Maintain the Truth and Juſtice of their Accuſation, are willing to Enter into the due Examination thereof: and do Aver their Charge of High Crimes and Miſdemeanors againſt the ſaid *Thomas*, Earl of *Macclesfield* to be true, and that the ſaid Earl is Guilty, in ſuch Manner as he ſtands Impeached; and that the Commons will be ready to prove their Charge againſt him, at ſuch convenient time as ſhall be Appointed for that Purpoſe.

Lord

Lord C. J. King. Gentlemen of the House of Commons, you may proceed as you please.

Sir G. Oxenden. My Lords, the Commons of *Great Britain* in Parliament assembled have, out of their indispensible Duty to His Sacred Majesty, and Zeal for the Security of the Estates and Properties of their Fellow-Subjects, exhibited a Charge of High Crimes and Misdemeanors against the Earl of *Macclesfield*, late Lord Chancellor of *Great Britain*, complaining of many dangerous and corrupt Practices, many grievous and heinous Offences committed against the good and wholesome Laws and Statutes of this Realm.

The first and principal Accusation of the Commons is, That the Earl at the Bar, whilst he continued in the Office of Chancellor, did illegally and corruptly insist upon, and take of divers Persons, several great and exorbitant Sums of Money, in Order to, and before their Admission into their Offices of Masters in Chancery; and that those Offices concern the Administration of Justice in that Court.

This, my Lords, is a Charge of the deepest Dye; The Crime alledged strikes at the very Root of Government itself; it is the Essence and Stability of Society, that Justice should be administer'd with Clearness and Impartiality, that the People may sit easy under the Wings and Protection of the Laws, and their Properties be guarded from unjust Invasions. In the Progress of the Charge your Lordships will observe, That almost all the other Crimes and Misdemeanors, of which this noble Person stands accused, are subservient to this chief Design of amassing together vast and immense Sums of Money, and that they have a Tendency to advance the Price of these Offices: Whether they be acts of unjust Oppression; of wilful Neglect; or of partial and unequal Administration of Justice: Whether they be Acts of open Violation of Duty, or of secret and private Intrigue to elude the publick Justice of the Kingdom: Your Lordships will find these Arrows drawn all from the same Quiver, dipt in the same deadly Poison, and directed to the same Mark.

In order to set this in the clearest Light, I must go on and observe, That the Commons charge in the next Place, That insufficient Persons were found out and pitched upon, to be admitted Masters of the Court, Men of small Substance and Ability; no ways fit to be entrusted with the great Sums of Money and Effects lodged in their respective Hands.

My Lords, The natural Qualities and Endowments requisite to recommend Men to so great a Trust ought to have been Honesty and Probity; The acquir'd ones, those of Knowledge and Experience; without a due Mixture of these it was very hazardous to admit any into Trust: But no doubt Credit and Competency of Fortune were Ingredients perfectly necessary; because whatever Loss, or Misfortune, might attend the Management of a Master so accomplished, in the ordering the Suitors Money, here might be some Provision coming out of his Estate to make Reparation. Your Lordships will, no question, at the first View, think it carries an odd Appearance, when this unfortunate Earl had resolved within himself, at all Hazards, to raise exorbitant and immense Treasures out of the Sale and Disposal of the Masters Places, how it should answer his corrupt Designs to admit into them Persons of small Substance, and some of almost desperate Fortunes, utterly unable to lay down the vast Prices those Offices were sold for at Publick Auction: But, my Lords, the Vastness of the Price was no Objection, or Discouragement, to a Person already undone, provided he might be made easy in the Manner of Payment, and run no Hazards. Men of Substance might very well be afraid to *Present*, as his Lordship's Phrase is, a whole Estate at once for an uncertain and precarious Prospect, either of Success in the Office, or of Life, or Health, to enjoy it; so that the fittest Engines and Instruments to effect the noble Lord's Purposes, were Men of small and shattered Circumstances. And therefore the Commons go on and charge, That there was a fraudulent and unwarrantable Method made use of in paying for the Masters Offices out of the very Money belonging to the innocent Suitors of the Court.—That this Practice was notorious and publick, and the Person at the Bar well acquainted therewith. Your Lordships now observe, That the greatest Difficulty of all to an indigent Person, *viz.* the Payment of the Money, was, by this dangerous and unjustifiable Contrivance, totally removed, and when a Man was neither to be out of Pocket himself, nor thrown into any Fears and Apprehensions of being questioned for misapplying the Suitors Money, is it at all to be wondered at, that the Price of these Offices should swell to that Bigness, as long to be the Topick of Conversation in the World about us, and at last become the Subject of a National Enquiry? This scandalous Method of Payment is of the most malignant Kind, and a Suitor is, contrary to the Law of Nature, made the Instrument of his own Destruction; his Substance which ought to be his Support and Relief, is turned to his Oppression, or if Part only be taken from him, it is in order to arm another to dispossess him of the Rest. The great Person, whose Duty it is to protect his Property, is the Promoter of his Loss, and is the more unpardonable in it, as he turns that Loss to his own Advantage. If it be a Thing universally condemn'd, for a Person in the Earl's late high Station, to borrow a Suitor's Money without his Knowledge, notwithstanding he offers a moderate Interest for it, because it is encouraging the Masters, by his own Example, to lend out Sums with as much Justice to other People, How infinitely greater is this Offence? If it be a Crime to put Mens Properties to hazard, how much blacker is it to take them to one's self, and incorporate the Widow's Mite with one's own Heap! But, My Lords, when such prodigious Sums were extorted from the Masters, could it be any Mystery how they were to re-imburse themselves? For although they paid no Money of their own, yet they made themselves accountable for what they used of the Suitors; was it not an obvious Consideration, That if they dared pay for their Employments with part of the Trust-Money they meant to traffick and game with the Remainder too? They came in Masters upon such Terms, for no other Purpose but to pillage and fleece those under their Care. What must be the natural and unavoidable Consequence of lodging in their Hands such uncontrollable and licentious Power over their Cash, but that the first ill Run would crush them at once, and pave the Way to great Deficiencies! But lest the Prospect of so calamitous a Case should deter the most greedy from contracting for a Master's Place on Terms the most inviting, you will see, in the Series of this Affair, what Shifts, what Artifices were employed, to hide such a miserable Scene from the Eyes of the World. For the Commons in the next Place charge, That *Fleetwood Dormer*, Esq; having embezzelled great Part of the Effects belonging to the Suitors of the Court, died indebted to them in divers Sums of Money, amounting in the whole to 25000*l.* and upwards; that the noble Lord at the Bar has not made any proper Inquiry into *Dormer*'s Deficiency, taken no Care about his Effects, but has endeavoured to hide and conceal, from the Suitors, the State and Condition of the Office, and that this Concealment was, lest a publick Discovery of the Deficiency might

leſſen the unjuſt Gains he propoſed to himſelf from the Sale of the Maſters Places. Your Lordſhips obſerve here, That one Accuſation is, a great and manifeſt Neglect in the Execution and Diſcharge of his Duty; a wilful and deliberate Neglect; not ariſing from the Infirmity of human Nature, but growing out of the Corruption of it; mitigated by no one Shadow of Excuſe, but aggravated by the Attendance of many foreſeen ill Conſequences. If an Office abuſed in the moſt fatal Manner, on the Brink and Precipice of utter Deſtruction, was not a proper Object of his immediate Inſpection, no wonder the more proſperous Offices did not deſerve his Care; what Maſter, who was an Eye-Witneſs of this, would be under that decent and neceſſary Awe of the preſiding Perſon, and keep himſelf within the juſt Bounds and Limits of his Office? This, my Lords, is indeed a wilful Neglect: But if you look on it in another Light, in Order to conceal the Deficiency, that the Value of the Maſters Places might not be run down, it will appear, in its worſt Colours, an Artifice to ſupport and carry on a Fraud, a Contempt of Duty for the ſake of Corruption. The Series of the Accuſation will evidently ſhew, that the Earl's Heart was ſet upon this Concealment; for we ſhall now find him beginning to diſplay his utmoſt Ingenuity; here was an Accident, which, unleſs great Care were taken, would entirely fruſtrate and blow up his Deſigns; were *Dormer*'s Deficiency divulged abroad, and the whole Body of the Suitors (who had ſure a Right, even from Compaſſion, to be taken care of) made acquainted with the ruinous Condition of his Office, who would anſwer that the Government itſelf might not have been alarmed, and a publick Inſpection made four Years ago into the other Maſters Accounts too? The Dread of a publick Examination now overbalanced all other Conſiderations; and as ſome of the Suitors (whoſe Intelligence and Sagacicity were better than the reſt) were daily preſſing and ſolliciting for their Due, the Office-Money embezzelled, no care taken to ſecure *Dormer*'s Effects, all Supplies and Demands on *Wilſon* cut off by the wretched and unwarrantable Compoſition made for the Suitors without their Conſent or Knowledge: Theſe Diſtreſſes and Difficulties preſſing and ſurrounding this unfortunate Earl, it was neceſſary ſome Meaſures ſhould be immediately concerted to prop and ſupport this tottering Office; and therefore, my Lords, you will now find him arming himſelf with the Weapons of Authority and uncontrollable Power, and playing the Tyrant under the ſpecious Pretence and Colour of Duty. For the Commons go on and charge, That the Perſon at the Bar, during the Time he was Lord Chancellor, made an Order for the Maſters to bring in their reſpective Accounts of the Caſh and Securities in their Hands; (a very proper Inſpection, no doubt, had it been well-deſigned) but your Lordſhips will obſerve the Charge is, That this was done to terrify and induce the Maſters to contribute Money towards *Dormer*'s Deficiency; to conceal the true State of the Deficiency from the Knowledge of the World: and they further alledge, That in purſuance of this intimidating Order, Money was contributed for that Purpoſe, Part of which we ſhall prove to be paid ſince the Act of Grace, on the 11th of *Auguſt*, 1721. and that thoſe Accounts were not inſiſted upon after that. My Lords, This Propoſal met with its deſerved Oppoſition from the Maſters; however, the Apprehenſion of loſing the Caſh and Effects prevailed at laſt, the Point was carried, and a Sum accordingly contributed. When your Lordſhips have but juſt now ſeen that there was a very viſible, and deſigned Neglect in forbearing to inquire into *Dormer*'s Effects, and to go to the Bottom of his Deficiency; is it to be imagined, that this calling for the State of their Accounts cou'd be done out of Vigilance and Duty? No Man can think ſo; were they ever inſiſted upon after the Contribution? His Lordſhip knows they never were; if the real Deſign was to ſearch and examine them, it was as proper a Time to do it after the 11th of *Auguſt* as before, no body believes they were in a better Condition, the Maſters had the ſame free Power of their Caſh, and the Perſon at the Bar had as deep a Senſe of his Duty after that Day ſure, as before. If the Misbehaviour of *Dormer* gave occaſion to this deſigned Inſpection into the general Condition of the other Offices, how came it about the Deſign was never carried into Practice, till His Majeſty, out of Compaſſion and Paternal Goodneſs to his oppreſſed People gave Directions for that End? The Deficiency of *Dormer* continues ſtill, and yet the Earl impeached has made no Regulations in the Offices, examined no Accounts during the Time he remained in that high Poſt; nor ſet up any Lights, or Land-Marks, whereby the preſent deficient Maſters might have cleared the Rocks on which they have ſplit. No, my Lords, this was only a Pretence of Regulating; a Diſſimulation of Duty, for the better Concealment of *Dormer*'s Frauds. Beſides, the Propoſal that the Maſters ſhould contribute to the patching up a Deficiency in another's Office, is unjuſt in itſelf, and fatal in its Conſequence. Can any thing be more repugnant to Juſtice than to oblige one Perſon to repair the Loſſes of another, incurred without his Knowledge or Fault? Or where is the Advantage to the Offices in general, allowing it to be juſt? if *Dormer*'s Deficiency be ſupplied out of other Offices, will not thoſe Offices miſs thoſe Supplies? and be as much impoveriſhed in the general, as *Dormer*'s is mended in particular? Surely, my Lords, there needs no Reaſoning about this, the Thing ſpeaks itſelf. The Commons take notice of an Alternative in this Article offered to the Maſters, either to conſent to a Contribution, or to be immediately ſtripp'd of the Caſh and Effects; ſo that upon paying down the Sum demanded, a Maſter was confirmed afreſh in the ill Conduct of his Affairs, he pays his Fine, and renews his Leaſe of Knavery and Impunity; his Books may be kept as cloſe from Inſpection as the Books of the Sybils, they contain alike the Deſtiny of Mankind, and he may go on with Authority to prey upon the Properties of the Fatherleſs and Widow; and no doubt the Maſter argues upon as good Grounds as the noble Earl; and concludes, that if for the Advantage of his unjuſt Schemes, the impeached Lord thinks it highly reaſonable to extort Money from him belonging to the Suitors, which is never to be reſtored, it may, with Parity of Juſtice, be as decent for him to take the ſame Liberty with their Caſh too, for the Service of his own. But the Commons deteſt the corrupt Practices of both, and expect exemplary Juſtice on the Great Offender at the Bar.

Thus far I have touched in a general Manner on the Management and Artifices uſed in the Concealment of *Dormer*'s Deficiency, and, no doubt, it muſt create an univerſal Aſtoniſhment in your Lordſhips, how it could ever enter into the inmoſt Receſſes of his Thoughts, that ſo great a Calamity as this could poſſibly be for ever hid in Darkneſs; that ſo torn and ghaſtly a Wound could ever heal of itſelf; or rather, that it ſhould not by long Neglect become quite incurable.

Your Lordſhips will obſerve in the enſuing Charge, That Mrs. *Elizabeth Chitty*, an unfortunate Widow, having obtain'd an Order from the Earl at the Bar, by Virtue of which Mr. *Edwards*, *Dormer*'s Succeſſor, was to pay her 1000 *l.* part of a much larger Sum depoſited in the Hands of Mr. *Dormer*, and *Edwards* refuſing to pay the ſame, not having ſufficient in his Hands, out of *Dormer*'s Effects, to anſwer the ſaid Demand. The impeach'd Lord did again make uſe of the ſame Artifices

fices and Stratagems to compel the ſeveral Maſters to contribute this further Sum of 1000 *l.* to ſtop the Complaints, and ſtifle the Murmurings of Mrs. *Chitty*; and did alſo intimidate them, by repreſenting, That if the Deficiency were known, a Parliamentary Enquiry would probably enſue, and the Maſters be deprived of their Offices, having bought them contrary to Law: This not taking Effect, the Commons Charge, That in order to accompliſh his wicked and corrupt Purpoſes, he did himſelf pay the 1000 *l.* into *Lochman*'s Hands, for the Uſe of Mrs. *Chitty*, ſaying, this was the laſt Money ſhe was ever likely to receive, by reaſon of a Deficiency in *Dormer*'s Office. My Lords, You ſee here is a ſecond Attempt, a freſh Endeavour to conceal the Deficiency by the Aid and Aſſiſtance of the ſame Meaſures made uſe of before, but backed by the Terrors of a National Inſpection. The Continuation of theſe Arts is no ſmall Preſumption, that the End deſigned was unjuſt in the Earl's own Judgment. His Condemnation, in this Inſtance, ariſes and ſprings out of his own Arguments and Conduct. If a publick Diſcovery of this Deficiency would lay the Foundation of a publick and national Examination; What ſafer, what more expedient Meaſures could be concerted and taken, than immediately to ſatisfy Mrs. *Chitty*'s Demands; by the Refuſal of which, this publick Diſcovery, ſo much, and ſo juſtly apprehended, might come out? And what ſtronger Inducement could he lay before the Maſters, why the Burden of this Payment ſhould fall upon them, than by ſhewing in how fatal a Manner that national Examination would affect themſelves? He repreſents to them their having purchaſed their Offices (and many of them of himſelf too) in direct defiance of the Law, and that it was their near Concern to avoid the Pit, in which they were likely to be ſwallowed up. My Lords, I take this to be a plain Confeſſion of his Crime: Our Accuſation is, That the Sale of theſe Offices is repugnant to Law and Juſtice; Here is his own manifeſt Acknowledgment that it is ſo, but aggravated and heightened by this flagitious Circumſtance, That whilſt he is reminding the Maſters of that Guilt which he himſelf ſhared, he draws an Argument from that very Guilt, why they ſhould aſſiſt him in a freſh Offence; and ſince they had already offended againſt the Laws of the Land, if they would avoid Puniſhment, the beſt way of doing it, was by a new Tranſgreſſion. You have his own Word for it, that he knowingly exceeded the ſtatutable Limits preſcribed by the Wiſdom of our Anceſtors, for the Safeguard and Protection of the Rights and Properties of the *Britiſh* Nation. If the Buyer is Criminal, how can the Seller be Innocent? And yet his Lordſhip, it ſeems, knows of no Statute now in being, on which Judgment can be prayed in this Proſecution. 'Tis this wilful and deliberate Tranſgreſſion of the Laws that has opened that Fountain of Iniquity which has drowned and laid waſte the Fortunes of our Fellow Subjects.

In ſtating the Charge thus far, it is Evident, That neither a wilful Neglect of Duty has been wanting, nor a thorough Contempt of Juſtice; no Pains ſpared, no Artifices unemploy'd to plunge the Deficiency in *Dormer*'s Offices in the deepeſt Obſcurity: You have found him forcing and wreſting a Contribution from the Maſters; not ſuch a one, my Lords, as would equally anſwer all Demands on the Office, but as a bare Sufficiency to ſatisfy the Importunities of Perſons for the preſent, and thereby lull others into a deſtructive and fatal Security; To make a falſe ſhew and appearance of Ability in this Office, which the Maſters were afterwards directed to do in theirs. Your Lordſhips ſhall ſoon find him acting another Part, and diſheartning *Lochman* from ingaging any further in the Marriage with Mrs. *Chitty* (for the Sollicitations of a weak Woman to have her juſt Due might be eaſier dealt with) aſſuring him, that the Deficiency was ſuch as muſt infallibly root out all future Hopes and Expectations on her Account; and yet the cloſe of this Article ſets forth, That ſo lately as the fifth of *December* laſt, this Earl ſitting then in open Court, did, in a Cauſe depending before him, proteſt and affirm, That, for his Part, he knew nothing of *Dormer*'s Deficiency, but as publick News. My Lords, If Truth and Sincerity are not to be found in the Seat of Judgment, where muſt we look for them? Where ſhall we place our Confidence, if there is no Dependence on the Affirmation of a Judge? Where ſhall we ſeek Examples worthy our Imitation, if the uprighteſt Places afford them not? But to paſs over this unpleaſing Scene, your Lordſhips will be pleaſed to take Notice, That the unfortunate Perſon at your Bar, in Hopes ſtill to cover the Deficiency, made divers Orders on Mr. *Edwards* for the diſcharging and paying the intire and full Dues to ſome of the Suitors, whilſt others were put off with an inconſiderable Share. Is there any Thing more Noble in the Mind of Man, than a Deſire of diſtributing equal Juſtice? Without Equality Juſtice is deſtroy'd and ſacrificed to the Paſſions and Infirmities of Men; and yet your Lordſhips will find there is no Virtue ſo lovely, no Principle ſo amiable, but muſt be abandoned and proſtituted to the carrying on this wretched Scheme. Such is ever the miſerable Fate of thoſe who dip their Hands in Corruption; they ingage originally in one Vice only, but are forced to adopt and cheriſh a number of others to keep that one a Secret from the World. For it becomes, at laſt, *neceſſary* to do injuſtice for the ſake of Security; Peoples Neceſſities, tho' they may be alike, yet are their Paſſions quite different, and a neceſſitous and ſtarving Suitor of a broken and worn-out Spirit might be turned away from his Lordſhip's Preſence with a tenth Part of his Right; whilſt one of a more obſtinate Make, and a bolder Conſtitution, would inſiſt upon, and wrangle for the whole. This Difference of Tempers might facilitate, poſſibly, ſuch unjuſt Dealings for a Time; but could this partial Preference of one Perſon to another, in manifeſt Contempt and Violation of the Rules of Equality, be any otherwiſe of Service to this Noble Lord, or make any amends for diminiſhing Reputation, but by ſtopping the Mouths and Cries of the ſollliciting Suitors with ſuch Proportions as would go down with them, prevent the Contagion from breaking out, and diſappoint the Application of a publick Remedy? You ſee plainly the miſerable Conſequences the Sale of the Maſters Places has been attended with; the fraudulent Method of Payment; the unjuſt and uncontrolled Abuſes of the Maſters; the great Neglect of *Dormer*'s Deficiencies; the unjuſtifiable Concealment of it; the ſtretches of Art and Injuſtice in the Manner of doing it; 'tis one continued Series and Succeſſion of Maleadminiſtration, calculated for the advancing the Profit and Gain of the Perſon at your Bar. Your Lordſhips would, no doubt, wonder elſe, why ſo great a Truſt as upwards of a Million of Money, ſhould be repoſed in the Maſters, without ſome reaſonable Security on their Part, or ſome proper Reſtraint laid upon them for their due and fair Diſcharge of it, eſpecially, ſince *Dormer* had broke, and brought upon the Sufferers ſo fatal a Misfortune: And this it is, my Lords, that raiſes the Reſentment and Amazement of the Commons, who farther Charge, That, notwithſtanding the Earl well knew that *Dormer*'s Deficiency was chiefly occaſion'd by the Liberty he aſſumed to himſelf of Trafficking and Gaming with the Suitors Effects, and that the other Maſters did, or had it in their Power ſo to diſpoſe of, or otherwiſe

wiſe miſemploy the Money and Securities in their Hands; and, notwithſtanding a reaſonable and proper Scheme was laid before him, whereby the like Misfortune might be prevented for the future, yet the Earl never required any Security, or laid any Reſtraints on the Maſters, but left them to the wide and boundleſs Liberty of abuſing their Truſt as Avarice and Ambition ſuggeſted Occaſions. I will not enter into the Conſideration how far it may have been the Practice not to require Security, I take it for granted, if none has been formerly demanded, it was becauſe the Preſiding Perſons were vigilantly executing the Duty of their Offices, and by frequent Inſpections into the Maſters Accounts, reſtraining them from the Exerciſe of unwarrantable Power. But were that otherwiſe, bad Precedents, my Lords, will not juſtify Omiſſions; no, nor extenuate them, tho' I believe not any Inſtance can be produced, not ſo much as the Appearance of any, where it was ſo indiſpenſibly and abſolutely Neceſſary as in this Caſe; there was no need or uſe of any Example to remind him of it, common Prudence teaches us the Neceſſity of providing againſt Diſorders or Loſſes for the Time to come, which our paſt Negligence has once brought upon ourſelves or others; 'tis the only Attonement a Man can make for his former Faults; and if the Perſon at the Bar had had at Heart the leaſt Intention of repairing the Breaches made in the Juſtice of that Court where he governed, here was the moſt fortunate Opportunity of doing it; for your Lordſhips ſhall find the very Maſters themſelves, in a manner, importuning and ſolliciting him to tie up their Hands by ſuch proper and equitable Reſtrictions, as would put the fluctuating Fortunes of their Fellow-Subjects on the firmeſt Eſtabliſhment. Had the Noble Lord liſtened to this Propoſal (which will come more properly within the Province of another Gentleman to open to your Lordſhips) the unhappy Deficiencies in the preſent Maſters Offices had been fortunately prevented, the Clamours of the World about us had been ſtopt, and the Nation eaſy. Did not Neceſſity demand it? The deplorable Havock committed ſince ſhews it did. Did not the National Voice call aloud for it? The Proſecution of this Day is ſufficient Teſtimony. Was it not his Duty? Sure I am, it would have been his Happineſs. And ſhall not the Ruin of Widows and Orphans plead for Puniſhment and Reparation? The Commons rely upon your Lordſhips Juſtice that they ſhall.

But, my Lords, there is a Charge behind, which contains Matter worthy your Obſervation; it ſets forth, That his moſt ſacred Majeſty, out of his fatherly Goodneſs to his People, having directed an Enquiry to be made into the Accounts of the Maſters in Chancery, in the Month of *November* laſt, the Earl impeached did, by his Advice and Authority, perſuade and induce them to make falſe Repreſentations of their Accounts and Circumſtances to his Majeſty in Council, and to aſſiſt one another with Caſh and Effects to make a falſe Shew and Appearance of their Ability, that a Parliamentary Enquiry might be prevented; and did oblige them to declare in Writing, at the Foot of their Accounts, That they were able and willing to pay the Ballance, although the Earl well knew many of them were not. Your Lordſhips, ſure, cannot but be aſtoniſhed at the Boldneſs of this Attempt, to defeat and fruſtrate the gracious Intentions of his moſt ſacred Majeſty, to take from his unfortunate Subjects that Redreſs and Satisfaction, which their Duty and Loyalty, their Wrongs and Sufferings had claimed in his Royal Mind; to deceive his Majeſty at the very Council-Table, where he had the Honour himſelf to ſit; and to deprive the Commons in Parliament of that Inquiſition for Juſtice, which the Nation expected at their Hands. The Dread and Apprehenſion of Parliamentary Juſtice is a ſtrong Preſumption of his Guilt. Why, my Lords, ſhould publick Enquiries terrify and diſmay an innocent Perſon? National Acquittals are eternal Monuments of Renown; they are more glorious and laſting than Pillars of Marble, or triumphal Arches; they remain upon Record to all Poſterity, never to be defaced by the Malice or Teeth of Time. But, my Lords, as there are Monuments of Praiſe, ſo there are Columns of Infamy; there are National Condemnations as well as National Acquittals; and the noble Lord muſt now take his Fate in the Judgment of your Lordſhips, which he ſo much dreaded. It is an Evidence of a Man's Crime, if he flies for it; it betrays a Self-Conviction in the Party accuſed, in that he dares not abide a Legal Trial; it is another Circumſtance againſt a Man, to be found tampering with a Witneſs, and carries with it ſome Preſumption of his Guilt; becauſe no innocent Perſon wants the Aid and Aſſiſtance of a falſe Evidence. Your Lordſhips have ſeen him as it were flying from his Tryal, and you will now find him tampering and intriguing with the Maſters in the moſt dangerous and artful manner; and that the Maſters are Evidence, and cloſe ones too, will fully appear at your Bar. You ſhall find him colouring and gloſſing over the Maſters Accounts, with Touches and Strokes of his own, hoping to ſhelter his own male Adminiſtration, by putting the Vizor of Integrity on theirs; *this* is the glorious Exit *he* makes; *thus* he finiſhes his *Impartial and Juſt Adminiſtration.*

My Lords, the Evidence to ſupport this Charge will be opened to you, by the learned Gentlemen to whom the particular Proofs are aſſigned; I ſhall not therefore take up your Time in entring upon that which exceeds my Province; I only beg leave to hope for your further Indulgence, while I make a general Obſervation or two on the Nature of the Charge.

The Ground-work and Baſis of this Noble Perſon's Crimes is Corruption, a thing in private Life the moſt deteſted, and in publick Perſons of the moſt malignant Influence to the State. It deprives the Crown of that ſolid Strength and Grandeur, that ſhining Luſtre and Beauty, which a juſt Execution of the Laws reflect upon it; it diſarms the People of that Security and Safety which naturally flows upon them from an impartial and uninterrupted Adminiſtration of Juſtice. The Conſequence of which will ever be, the Crown will loſe that proper Reverence and Veneration from the People which are its Due; and the Subjects reſtleſs, and uneaſy for want of Juſtice, will lay hold on the firſt Opportunity of throwing off Allegiance itſelf. It brings a National Reproach upon us; and, by ſowing the Seeds of Diſcontent at Home, expoſes us to the Incurſions and Depredations of our Enemies: But, my Lords, when it protects itſelf under the Shadow of Juſtice, and puts on the Smiles of Innocence, 'tis high time to riſe up in Defence of our violated Laws, and ſet a publick Mark of Infamy upon it. To what purpoſe are Judges and Miniſters reſtrained, by the Proviſion of Acts of Parliament, from ſelling Offices under their Protection and Care, if Men ſhall hide themſelves under Example in bar of the Laws! Will Example plead for him? Surely, my Lords, there are none ſuch: Or, if there were, what would that be but to defend Crimes by their own Blackneſs and Malignity? As if a Diſtemper were not to admit of any Remedy becauſe it is general and contagious. But ſuppoſing, for Argument's ſake, there have been Great Perſons, his Predeceſſors, who have ventured upon ſmall Preſents and Gifts on ſuch Occaſions, does it follow, with any colour or pretence of Reaſoning, becauſe thoſe have been confined within the Bounds of Moderation,

there-

therefore the Extortion of exorbitant Sums, to connive at outragious Measures and Oppressions, exceeding almost the Fears of the Oppressed themselves, should take shelter under the poor Pretence of Precedent and Example? Alas! my Lords, I am afraid Example only operates according to Mens Appetites and Passions; else whence comes it about, that Example should have all the Beauty of an Angel in this Instance, and all the Deformity and Horror of a Fiend in another? His great * Predecessor made no Attempts to conceal a deficient Office in his Time. No, my Lords, he had no corrupt Purposes to feed. The same Noble Person never ordered some Suitors their entire Demands, and left others groaning and starving under the Pressure of an unequal Distribution; he did the direct contrary. Happy had it been for this unfortunate Person, happy for the Widows and Fatherless, had he copied after the Example of his renowned Predecessors, in their wise and upright Distribution of Justice, as well as flown to their eminent Names for Protection, in the illegal Practices wherewith he is charged! To what a low Ebb is the Virtue and Reputation of this Nation reduced, if Impunity shall justify Offences, if Bribery shall receive a Patronage from great Examples, and the basest Actions be adorned with the same Lustre and Honour, that are only due to the most virtuous. But, my Lords, the Commons have found him bargaining and bartering an † Office, in the Gift of the Crown, for the poor and sordid Advantage of an hundred Guineas. This is an Instance wherein the very Person of the King is insulted in the most flagrant manner; 'tis a Prostitution of the Regal Honour and Dignity, by one who had the Trust reposed in him, as one of the joint Guardians of the Realm during his Master's Absence: As if too there was no Access to the Throne for Grace and Favour, no tasting the refreshing Streams of that Fountain of Goodness, which rises in his Majesty's Breast, for the universal Comfort of a dutiful and happy People, but by the Assistance of the most abandoned Measures. Can your Lordships any longer wonder the People's Properties were imployed to ill Purposes, when his Majesty's Prerogative is traffick'd with and sold? Could it be expected a poor Suitor's Rights should remain secure under his Protection, as Chancellor, when the King's were precarious in the Hands of his own Trustee? And yet, my Lords, how often and how gloriously has this Nation vindicated and asserted its own Honour, in the Ruin it has poured on the Heads of corrupt Judges and Ministers! It was the Loss and Forfeiture of all the Lands and Estate of Sir *William Thorpe*, Justice of the King's Bench, who was sentenced for Bribery in the Reign of *Edw.* III. Nay, the Sentence extended even to Loss of Life itself, though that part has been thought not sufficiently warranted, and should have ended in Imprisonment only. Every one knows the Vengeance hurled on the Earl of *Middlesex*, which is to be found in the Rolls of Parliament. This unfortunate Earl, having delayed Justice to the Farmers of the Customs, in a Matter referred to him by King *James* I. and having polluted his Hands with exorbitant Bribes, was sentenced in Parliament to lose all his Offices, which he held in the Kingdom; to be for ever uncapable of any Office, Place, or Employment in the State; to be imprisoned in the Tower of *London* during the King's pleasure; to be fined 50,000 *l.* never to sit in Parliament any more, nor to come within the Verge of the King's Court. The Case of my Lord *Bacon* is another Instance of the Virtue and Integrity of your Ancestors, in the Abhorrence they shewed, and the Punishment they inflicted on that Great Man's Crimes.

My Lords, if the Offences committed by the Earl, and those of the Great Persons just mentioned were compared, and the Consequences naturally flowing from them, it would be found how much greater Guilt is comprehended in the Charge of this Day. I will not spend your Lordship's Time, in enlarging on a Distinction between Bribery *In* an Office, and Bribery *by Colour* of an Office; between Bribery in a Judicial Way, on account of Judgment in Causes, and Bribery in the Disposal of Offices, that concern the Administration of Justice; but only observe, that the Sale of the Masters Places, accompanied with the Circumstances I have already explained, is attended with more mischievous and oppressive Consequences to the Subject, than a Judge's accepting a Bribe in Causes depending before him. By means of the latter a Person is put to an extraordinary Expence indeed to come at his Right; or, if he is deprived of it by a corrupt Determination, yet still there is another Resource; and his Happiness is, that he may appeal to Parliament for Redress. But the Consequence of the other Case is, he can come at no Right at all; his Money is embezzelled and lost, the Master runs away, the Chancellor is in the Secret, and there is no Remedy left. Is it any Excuse to say, That the Master is liable to answer for his own Frauds, and not the impeached Lord? I beg only to put the following Case. If a Keeper, who has undertaken the Care and Management of a Madman, wilfully neglects his Duty, sees the disordered Person going to do Mischief, and does not interpose, is not the Keeper responsible? Surely, my Lords, by the Law of Reason he ought. But what if the Noble Lord did not foresee the Mischief, and yet be the Occasion of it, from the Exercise of an unlawful Act, there is no question but he would be answerable. A Person intends to rob the King's Forrest, and shooting at a Deer, kills the Keeper, is not he guilty of Murder? No doubt he is: Because though he did not intend Murder, yet the Act he was about, was an unlawful Act. But, my Lords, the Person at your Bar has not this Excuse; he foresaw the Consequence, and his Intention was bad.

When the Commons consider the high Station in which this noble Lord was placed, the many signal Marks of his Majesty's Favour and Munificence bestowed upon him; the notorious Breach and Violation of his Oath, and of the several great Trusts reposed in him; when they have found him prostituting and abusing the Authority and Dignity of the Crown, trampling upon the Laws and Statutes of the Realm, destroying and confounding the Properties and Rights of divers of his Majesty's Subjects; the Commons could not sit still, and see this great Offender triumph in the Luxury of unpunished Crimes, without using their best and most effectual Endeavours to bring him to Punishment, and to make him an Example of the Justice of the present Age, a Warning and a Terror to Times to come.

Sir *Clement Wearg*, Solicitor General. My Lords, I have likewise received the Commands of the Commons, to lay before your Lordships the Evidence, in maintenance of the Charge of High Crimes and Misdemeanors, against *Thomas*, Earl of *Macclesfield*.

The Nature of the Charge consists,

In illegally and corruptly Selling and Disposing of Offices, which concern the Administration of Justice; in using and practising many indirect and unjustifiable Methods, for the keeping up the Price of such Offices, in order to advance his own unjust Gain,

* *Lord* Cowper. † *Clerk of the Custodies.*

My Lords, The Honour of every Government, and the Happiness of every Nation, depend upon nothing more than a strict impartial Administration of Justice; and the Justice of every Court depends not only upon the Uprightness of the Judge that pronounces the Decree, but likewise upon the Honesty and Uncorruptness of the lesser Officers, who are Assistants to him, and upon whose Reports and Representations his Decrees are founded.

It was doubtless from a just Sense of this, that the Legislature, in the fifth Year of *Edward* VI. in order to prevent such a corrupt Bartering for Offices, which was before that Statute, against Law, wisely provided, that where any Office, which concerned the Administration of Justice, not excepted in that Statute, was procured for Money, the Office should become void, and the Parties concerned in the corrupt Bargain disabled from holding it.

The Court of Chancery, in which the Earl presided, must be allowed, with regard to the Number and great Value of Suits instituted there, to be by far the most considerable Court of Justice within this Kingdom.

The Masters of Chancery are next to the Person that has the Custody of the Great Seal, and the Master of the Rolls, the great Officers of that Court.

They are, by Commission under the Great Seal, associated with the Judges in hearing Causes, and claim a Right to interpose their Opinions in the making of Orders and Decrees under that Commission.

They are intrusted by the Court to state and report Matters of Fact, upon the Truth and Fairness of which Reports the Justice of the Decree of the Court must depend. They are sworn to advise the Chancellor himself.

And of late Years they have been intrusted with the Effects and Estates of the Suitors of the Court, to an immense and incredible Sum.

My Lords, great part of the Charge against the Earl consists in setting up those Places to Sale, in using unwarrantable Methods to incourage Purchasers, and increase the Price.

It is Matter of great Surprize, to find in his Lordship's Answer an Insinuation, That it is not illegal, or against any Statute, to sell those Offices.

Surely, my Lords, there are no Places, that concern the Administration of Justice, more improper to be sold from the Nature of them, or the Selling of which is more evidently against the Statute of *Edward* VI. than the Masters in Chancery, unless it be Judges themselves.

But it must be owned, the Expressions made use of by his Lordship are conceived in such doubtful Terms, that it is difficult to know whether he intends to represent the Lawfulness of selling those Places for a Price, or only of taking a Present which the Party gives freely, voluntarily, and of his own accord, and which his Lordship says his Predecessors used to take

There possibly may be a Difference between a Present and a Price; if there is, it is the latter his Lordship is charged with taking; a Price fixed by his Lordship, insisted upon, haggled for, and with Unwillingness paid by the Purchaser.

But, my Lords, even this may be said to be nothing more than an Offence against the Statute of *Edward* VI. which as it creates the Offence, so it prescribes the Punishment,

Where the Person admitted to the Office is in all Respects equal to the great Trust reposed in him;

Where the Price given bears a Proportion to the lawful Gain arising from such Office, there may be some pretence to say, It is only an Offence against that Statute.

But if Persons are admitted to an Office, by which they are intrusted with near 100,000 *l.* and give as much, or more, for that Office, than their whole Substance amounts to;

If the Price they give is greater than can possiby be given, by one who would be contented with the honest Profits of the Office; if that Price is paid for out of the Money of the Suitors of the Court; if, to make the Officers amends for giving such extravagant Prices, they are connived at, indulged, incouraged to traffick with the Money and Effects of the Suitors of the Court, lodged with them for safe Custody only;

This is something more than barely an Offence against the Statute of *Edward* VI.

'Tis selling a Licence to abuse and defraud the Suitors of the Court, and making the Suitors themselves pay the Price of that Licence.

It is this the Commons have charged the Earl of *Macclesfield* withal. And this surely is Illegal, and against some Law or Statute in being.

My Lords, the ill Consequences of this Practice are very obvious; the least of them is a Delay of Justice, from the Masters using Shifts and Excuses to continue that Money in their Hands, which they are allowed to make a Gain by, and which probably, when called for, may be locked up by some hazardous Contract.

But the most fatal Consequence is, what cannot be mentioned or thought of, without feeling the greatest Compassion for the unhappy People concerned in it, the Loss which the Suitors of the Court are likely to sustain by it. The Hazard was all theirs, but the Gain belonged to others.

My Lords, whatever Excuses might be made for his Lordship, from the great Variety of Business his High Office engaged him in, which might prevent his Attending to those Things, an Accident happened in his Lordship's Time, sufficient to awaken the most engaged Attention.

When *Dormer* withdrew from his Office, the Masters themselves were alarmed at it.

When it appeared his Misfortunes were brought upon him by trafficking with the Money of the Court, and lending it to Goldsmiths at 10 *l. per Cent.* they expressed a Concern for the Suitors of the Court.

And, to prevent the like Mischief for the future, a Proposal was made to his Lordship by one of them, That the Masters might give some Security for the Money in their Hands; that the Effects might be put in the Name of more than one Master, to prevent their being trafficked with.

This might have prevented the Mischief for the future, at least in some Degree.

But

But who then would have given 6000 *l.* for the Purchaſe of a vacant Place? Who would have given 1500 *Guineas* to procure an Admiſſion?

For theſe Reaſons the Commons charge the Propoſal was not liſtned to, was not put in Execution.

My Lords, another Accuſation againſt the Earl conſiſts in his amuſing the Suitors of the Court, with a falſe Repreſentation of the Maſters Subſtance, by declaring from the Bench, That they were Men of as good Fortunes as ever filled thoſe Places.

Such an Encomium from a Chancellor would have been a great Honour, had all the Perſons really deſerved it.

But it ſurely reflects Diſhonour, if ſpoke at a Time when ſcarce any one Perſon, who heard it, could give credit to it.

When it was the Subject of common Converſation, that one third of the Maſters had given as much, ſome of them more, for the Purchaſe of their Places, and to procure their Admiſſion, than they were worth in the World at the Time of their Purchaſe. And the Perſon, for whoſe ſake the Compliment was made, leaſt deſerved it of any; having but lately been a Receiver of a County, nominally diſcharged by ſubſtituting his Brother into his Place, and having paid off a large Arrear, ſoon after he got the Money of the Suitors into his Hands, out of that Money.

But there was then a Maſter's Place vacant.

His Lordſhip is further charged with endeavouring to conceal the Deficiency in *Dormer*'s Office;

With making a trifling, precarious Compoſition, for a large Debt aſſigned for the Benefit of the Suitor, in a very unwarrantable manner;

With making Orders for the Payment of Money out of that deficient Office, without regard to the other Suitors, who were entituled to a Proportion of what was left.

His Lordſhip ſeems to intimate, That he never thought there would be any Deficiency in that Office, but is under a full Perſuaſion that all would be made good.

How that is conſiſtent with his quitting 1500 *Guineas* from the Danger of a great Loſs in that Office, I ſhall ſubmit to your Lordſhips; but ſurely the Manner in which *Dormer* withdrew was a ſtrong Symptom of a Deficiency, when the Maſters intruſted to ſecure his Effects found little more than the Debt from *Wilſon* to anſwer a Ballance of near 40000 *l.*

When that Fund was reduced to nothing by a Compoſition made for half that Sum upon a Beggar, who has ſince eſcaped out of Goal and abſconds for Debt.

From whence thoſe full Aſſurances could ariſe, we muſt wait to hear from his Lordſhip.

That his Lordſhip did endeavour to conceal this Deficiency, needs no other Proof than his not doing any one Act in publick relating to it.

Had Mr. *Dormer*'s Perſon been rendered ſacred, by that extraordinary Promiſe of Security, mentioned in his Lordſhip's Anſwer, yet he might have been examined upon Interrogatories to diſcloſe his Effects.

The Suitors might have had ſome Warning to have uſed their Diligence in diſcovering his Eſtate, and preventing any Concealment of it.

Nothing of this done, but on the contrary; upon an Application by one of the Suitors to have his Money transferred to another Maſter, from an Apprehenſion of Loſs, after *Dormer* had abſented himſelf from the Office; he was informed from the Bench, that his Fears were raſh, the Maſter only gone to take the Air, and that all would be well.

From this Time every thing was carried on with the greateſt Privacy between his Lordſhip and the Maſters.

Orders were made for the Payment of Money out of that Office, as if it had been clear from all Suſpicions of Loſs, contrary to that Rule of Equality, which is a fundamental Principle of a Court of Equity, That where ſeveral Perſons have Demands out of a Fund like to prove deficient, they muſt bate in Proportion.

And altho' where that Fund is in the Hands of private Perſons to be paid by them, it may be intelligible to talk of judicial Knowledge, and an *ex Officio* Declaration of an Average,

Yet where the Fund is in the Hands of the Court, the Payment to be made by the Court, and the Loſs ſuſtained while the Court was poſſeſſed of that Fund.

Every Knowledge of ſuch Loſs is judicial, and the Court ought in Juſtice, by what means ſoever the Knowledge of that Loſs comes before the Court, to direct the Payment in Proportion only.

There is but one Article more that I ſhall take particular Notice of, whereby his Lordſhip is charged with endeavouring to diſappoint His Majeſty's gracious Intent of having the Accounts of the Maſters, and the State of their Office enquired into.

His Lordſhip, to put a Stop to ſuch Enquiry, perſuaded ſeveral of the Maſters to make a falſe Appearance of Subſtance, and a Shew of Readineſs to pay over the Money and Effects of the Suitors of the Court in their Hands.

This was not only a Breach of his Duty as Chancellor, but a great Violation of that high Truſt repoſed in him as he was a Privy-Counſellor; And if his Lordſhip did at the ſame time in Council ſeem to promote every Step taken there, that is a very great Aggravation of his Crime.

Such, my Lords, is the Nature of the Charge, which the Commons have exhibited againſt the Earl of *Macclesfield*; which they are able to make good by plain and clear Proof.

Sir *William Strickland*. My Lords, The Gentlemen who have ſpoke before me, having fully opened to your Lordſhips the general Charge againſt the Earl of *Macclesfield*, it is my Province, and that of the Gentleman who is to ſpeak after me, to open the Evidence we ſhall produce to make good the ſeveral Facts contained in the *5th, 6th, 7th, 8th, and 9th Articles*; but as the ninth differs very much in its Circumſtances from the other four, I ſhall ſay nothing to that Article, but leave that to the Gentleman to whom the opening of theſe Articles is likewiſe allotted.

My Lords, We ſhall ſhew you, that notwithſtanding the many *great and beneficial Favours* beſtowed upon this *Earl* by the bountiful Hand of his Majeſty; that all thoſe *Honours* conferr'd upon Himſelf and his

Family; the *Dignity* of his high Office, and the great *Truſt* repoſed in him, have been *proſtituted*, in order to ſatiate a *boundleſs Appetite* for *unlawful Gain*.

This I ſhall now particularly proceed to ſhew, by mentioning to your Lordſhips, in the firſt Place, the ſeveral *Grants* which the *Earl*, in his Anſwer, has *own'd* to have *receiv'd*; and, afterwards, by opening the Evidence, the Commons will produce, to make good their Charge contain'd in the *5th*, *6th*, *7th*, *and* 8*th* Articles abovementioned, which relate to the *illegal* and *corrupt* Admiſſion of four Maſters in Chancery.

The firſt beneficial Grant the Earl, in his Anſwer *owns* to have receiv'd from his Majeſty, before the Honour of Peerage was conferr'd upon him, was 1200 *l. a Year* granted to him and his Aſſigns, during the Life of his Majeſty, in, or about *June* 1716; in the next Place, that in the Year 1718 he was created *Lord High Chancellor* of *Great Britain*; and, that at the ſame Time, his Majeſty, out of his Royal Bounty, did beſtow upon him 14000 *l* and likewiſe granted to his eldeſt Son, now Lord *Parker*, an annual Penſion of 1200 *l.* payable during the joint Lives of his Majeſty and the ſaid Lord *Parker*, but determinable whenever he ſhould be put into Poſſeſſion of one of the Offices of a *Teller* in the *Exchequer for Life*, and which Office he has ſince obtained; and over and above all theſe *great* and *beneficial Grants*, the uſual *Salary* of 1500 *l.* a Year out of the *Hanaper* Office; the other great *Profits* and *legal Perquiſites* of his high Office, the Earl owns to have had an Allowance of 4000 *l. a Year*. As theſe were all Marks of the greateſt *Honour*, *Eſteem* and *Confidence* from his Great and Munificent Benefactor, ſo ſurely they ought to have produced in him all ſuitable Returns of Gratitude, by a *juſt* and *impartial* Execution of the *Truſt* repoſed in him, to the Honour of his Majeſty, and the Good and Welfare of his Subjects.

But my Lords, The Thirſt of Gain was predominant; and in purſuance of that, he did, in a Manner highly *derogatory* to the *Dignity* of the Office he then bore, *illegally*, *corruptly* and *extorſively*, by *Himſelf* and *Servants*, *treat* and *barter* for the *Sale* of Offices of Maſters in Chancery, which Offices concern the Adminiſtration of Juſtice; and, in the *ſame* Manner, did take very great Sums of Money for their *Admiſſions* into the ſaid Offices.

I muſt take Notice that his Lordſhip, in his Anſwer, does not *deny* to have taken all the ſeveral Sums laid to his Charge by the Commons, on the Admiſſion of the Maſters, mentioned in the Articles of Impeachment, to their reſpective Offices; but alledges that he took them as *Preſents* only, *freely* and *voluntarily* given, and ſuch as had been *uſual* on ſuch Occaſions. But, my Lords, we ſhall ſhew you that the Sums of Money taken by him were taken in the *Manner* alledged in the Articles; and by the Evidence I ſhall now open, your Lordſhips will ſee how very *different* this Matter will appear from that which the Earl would inſinuate in his Anſwer; I ſhall begin by opening the Evidence to the *5th* Article, which relates to the *illegal* and *corrupt* Admiſſion of Mr. *William Kynaſton* to the Office of a Maſter in Chancery, in *Auguſt* 1721. We will ſhew you that before Mr. *Kynaſton* was admitted to be a Maſter, he was adviſed by Mr. *Rogers* (with whom he had then contracted for the Sale of his Office for 6000 *l.*) that the Lord *Chancellor* would expect 6 or 700 for his Admiſſion; upon this he applied to my Lord's Secretary, Mr. *Cottingham*, (who appears to have been the *Broker* on all theſe Occaſions) and deſired to be recommended to the *Chancellor* for that Office, and told Mr. *Cottingham*, that if it was neceſſary he could obtain my Lord *Bradford*'s Recommendation; the Secretary only anſwer'd, that another Maſter had given 1500 *Guineas* on the ſame Occaſion; Mr. *Kynaſton* then offered 1000 *l.*; *Cottingham* reply'd, he could mention nothing *leſs* to the *Lord Chancellor* than 1500 *l.*; but being afterwards asked by the Perſon who was to pay the *Money*, what Sum would be *inſiſted on*? Anſwered, It muſt be 1500 *Guineas*, nothing it ſeems was to be abated, for this (Mr. *Cottingham* told Mr. *Kynaſton*) was one of the *beſt* Offices, being the fulleſt of *Money* and *Securities*. *Money* and *Securities*, my Lords, the Property of the Suitors of the Court; and how *fatal* the Maſters making *Uſe* of ſuch Money for their *own Profits* has been, in order to *reimburſe* themſelves for the very great *Sums* paid for their Offices, is now too ſeverely felt by Numbers of helpleſs *Orphans* and *injured Suitors*. Mr. *Kynaſton*, however, ſeeing no *Poſſibility* of Admiſſion without paying the *whole Sum of* 1500 *Guineas*, comply'd at laſt, ſent *the Guineas* to Mr. *Cottingham*, who afterwards paid it to the *Chancellor*; and the next Day Mr. *Kynaſton* was admitted and ſworn a Maſter.

I come now to open to your Lordſhips, the Evidence which we ſhall produce to make good the *6th* Article, which relates to the *illegal* and *corrupt* Admiſſion of Mr. *Thomas Bennet* to the Office of a Maſter in Chancery.

Mr. *Thomas Bennet*, about *May*, 1723, bargain'd with Mr. *Hiccocks*, then a Maſter in Chancery, for the Sale of his Office, at the Price of 7500 *l.* The next Thing to be done, was to apply to Mr. *Cottingham*, which he did, deſiring to be recommended to my Lord *Chancellor* for that Office. Mr. *Cottingham* did recommend him, and told him, that the Lord *Chancellor* had no Objection to him, that he knew his Father, and ſhould be glad to *oblige* him; the Compliment, however, ended with a Propoſition of a Preſent, as he *call'd* it, and ſaid, he indeed would name no Sum, but that his Brother, then a Maſter in Chancery, and Mr. *Godfrey*, would eaſily Chalk out a *Method* for him. Mr. *Bennet*, my Lords, after conſulting theſe Gentlemen, offer'd 1000 *Guineas*; Mr. *Cottingham ſhook his Head*, and ſaid, he did not care to go to the *Chancellor* with an offer of *that* Sum, that *more* had been given, and he hoped Mr. *Bennet* would not lower the *Price*. Mr. *Bennet* gave ſome Reaſons why he hoped *Lord Macclesfield* would accept the 1000 *Guineas*, and ſaid he did not care to give more; Mr. *Cottingham* again told him, he did not care to go with *that* Meſſage; upon which Mr. *Bennet* asked him what had been given by other Maſters; *Cottingham* told him 1500 *Guineas*.

However, Mr. *Bennet* again deſired he would go to the *Chancellor*, and ſaid, that if the *Sum* he had offered would not do, he would give 1500 *l.*; *Cottingham* deſired to be excuſed from going on *that* Meſſage, and ſaid my *Lord* did not love Haggling; and that if Mr. *Bennet* would give no *more*, he might *loſe* the Office, for that if the *Chancellor* ſhould refuſe *that* Sum, he would not go with any other *offer*; upon this, my Lords, Mr. *Bennet*, at *laſt*, conſented to give the 1500 *Guineas*; and this will appear to have been what the Lord *Macclesfield* calls Mr. *Thomas Bennet's free Gift*. The *Guineas* were paid to Mr. *Cottingham*, who paid them to the *Chancellor*, for *which* Mr. *Bennet* was admitted into his Office, which appears to have coſt him 9075 *l.* and that very Sum, upon the making up of his Accounts, appeared to have been wanting in his Office, for the making up of his *Ballance* due to the Suitors of the Court.

I muſt

I must take Notice to your Lordships, that the *Lord Macclesfield*, in his Answer, alledges, that the said *Kynaston* and *Bennet* pretending they were disabled from answering to the Suitors of the Court, so much Money as he had taken from them at their respective Admissions, the said *Earl* did, *before* the Impeachment, pay into the Court of Chancery, for the Use of the Suitors to that Court, the two several Sums received by him from Mr. *Kynaston* and Mr. *Bennet*; but, my Lords, that we shall shew to be a *gross Mistake* in the *Answer*, for we shall prove the said Sums were not repaid by him till *after* the Impeachment, and after they had by Affidavit charged the Payment of these Sums as one *Cause* of the *Deficiency* in their Offices.

I come next to shew the *Manner* in which Mr. *Francis Elde* was admitted to his Office of a Master in Chancery, which happened in *February*, 1723. upon the Death of Mr. *Fellows*; we shall shew your Lordships, that Mr. *Elde* applied personally to the *Chancellor*, who told him he would *treat* with him in a *different* manner from any Man living; in two or three Days after this he applied again to the *Earl* for the Office, and then did mention a Sum of 4 or 5000 *l.* my Lord told him, Mr. *Elde* and I must not make Bargains. So, my Lords, Mr. *Elde* after this went to Mr. *Cottingham*, and told him of his Intention to give the Chancellor 5000 *l.* Mr. *Cottingham* advised him to make it *Guineas*. And, in pursuance of this Advice, Mr. *Elde* did, on or about the 1st of *Febr.* 1723. carry to the said Lord *Macclesfield*'s House 3000 *Guineas*, and 2100 *l.* in *Bank-Notes*, *muffled* up in a *Dutch-Basket*, which he sent up to my *Lord* by Mr. *Cottingham*, who left it with his *Lordship*, brought down word all was well, and within a Day or two after Mr *Elde* was sworn into his Office.

I would observe upon this, That a Present, which might have been *innocently* made, and as *innocently* received, had needed no such *secret* Conveyance. But, my Lords, the Suitors of the Court now began to be awakened by the Apprehensions of their *Losses*, and the Voice of the People to exclaim against that *infamous manner* of admitting Masters in Chancery; and therefore I presume, my Lords, *Privacy* was now come to be thought so necessary, that the *Secretary* himself, tho' concerned in the Transaction, was kept ignorant of the Contents in the *Basket*.

I come next to open the Evidence we will produce, to prove the *illegal* and *corrupt* Admission of Mr. *Mark Thurston* to be a Master in Chancery, as it is laid in the VIIIth Article. He succeeded Mr. *Borrett* about the 5th of *August* last past: And, my Lords, notwithstanding what the *Earl* of *Macclesfield* alledges in his Answer, That he was informed by Mr. *Godfrey* and Mr. *John Bennet*, that there was like to be *no Deficiency* in that Office. We will shew your Lordships, That *before* Mr. *Thurston*'s Admission there was a great *Confusion* in it; and that his *Lordship* must have *forgot himself*, when he says he *ever* was acquainted by those two Masters, that there was like to be no Deficiency in that Office.

This, my Lords, the Commons will produce to shew, That, notwithstanding the very great Losses already sustained by the Suitors of the Court of Chancery, from the great *Prices* given by the Masters for their Offices, the great *Confusion* then in that Office, and in which there is a *Deficiency* of more than 10,000 *l.* yet, in the same *unlawful Pursuit* of *Gain*, he did admit Mr. *Mark Thurston* to the Office of a Master in Chancery, for the Sum of 5000 *Guineas*. The manner of it was thus, my Lords.

Mr. *Thurston*, upon Mr. *Borrett*'s Death, applied to Mr *Cottingham* about that Office, and the *Price* agreed upon betwixt them was 5000 *Guineas*; with this Agreement Lord *Macclesfield* was acquainted, and seemed to *agree* to it: But afterwards, upon a Report's being spread, that Lord *Macclesfield* designed to give the Office to Dr. *Sayer*, Mr. *Thurston* (*well advised no doubt*) applied to Lady *Macclesfield*; and, after many Arguments used to persuade her to write to my Lord in his Favour, produced at last 5000 *Guineas* in *Bank-Notes*, which had their desired Effect; my Lady wrote, and Mr. *Thurston* in two or three Days was admitted to his Office.

My Lords, I will make this Remark upon this Transaction; That the taking such an extravagant Sum of Money for an Office, in which there was like to prove a great Deficiency, was so far from being thought *blameless* even by the *Earl himself*, that it looks as if *this Way* was necessary to be found out, to hide *this* Transaction too from the *Secretary*, who had had the first hand in it: And, to take all cause of Suspicion away from him, he was *ordered* to be sure to take no *Money* from Mr. *Thurston*, on account of his Admission; which he observed so religiously, that I think he scrupled even his own Fees.

Before I conclude, my Lords, I must take notice of an Expression in the *Earl*'s Answer to the two last Articles I have mentioned.

That, of the Money he received from Mr. *Elde*, he *retained* no more than 1850 *l.* and, of that received from Mr. *Thurston*, no more than 2000 *l.* By this, I presume, the World is to believe, the Earl made an *immediate* Restitution of the Remainder of the Money: But, my Lords, we will shew you, that no Money was returned to Mr. *Elde* till *November* last, a Time that he stood in need of it to *shew* and *produce* his *Ballance*; nor to Mr. *Thurston* till *October* last, at which Time it was evident an *absolute Stop* must be put to the *infamous* Practice of *Stock-Jobbing* with the Suitors Money; and which of consequence would put those two Masters out of a Possibility of *reimbursing* themselves the great Sums so *lately* paid for their Offices.

My Lords, the next thing we shall prove will be, That in all these Transactions Mr. *Cottingham* has acted by my Lord *Macclesfield*'s *immediate Directions*; and when we have proved that, and the several Facts I have now opened to your Lordships, I doubt not but you will be of opinion, That we have fully made out the Allegations in the Vth, VIth, VIIth and VIIIth Articles, in their utmost Extent; and that the said *Earl* has taken the several Sums, laid to his Charge, *illegally*, *corruptly* and *extorsively*, in *Breach* and *Violation* of his *Oath* as *Lord Chancellor*, and of the great *Trust* in him reposed, contrary to the *Duty* of his Office, and against the good and wholsome Statutes of this Realm.

Mr. *Doddington*. My Lords, I am commanded by the Commons to assist the Gentleman who spoke before me, in making good the Vth, VIth, VIIth, VIIIth and IXth Articles against the Earl of *Macclesfield*, which relate to his taking Money for Offices.

The Commons look upon this part of their Charge as a necessary Foundation of the whole, because from this insatiate Desire of Gain has sprung all the Evils and Mismanagement, charged upon the Earl in the rest of the Articles.

The Charge againſt the Earl in four of theſe Articles is, in ſhort this, That he took ſeveral great Sums for the Admiſſion of ſeveral Perſons into the Office of Maſter in Chancery; and that he took them illegally, extorſively, corruptly, in Breach and Violation of his Oath as Lord Chancellor, and of the Truſt in him repoſed.

My Lords, theſe Facts have been ſo clearly ſtated to your Lordſhips, and the extorſive and corrupt manner in which they were committed, in Breach of his Oath as Lord Chancellor, ſo ſtrongly inforced by the Gentleman who ſpoke before me, that I ſhall not trouble your Lordſhips upon thoſe Heads.

As to the Illegality of ſuch Practices, that have been laid before your Lordſhips by the learned Gentleman who opened the general Charge; and, I do not doubt, will be further explained by other Gentlemen, to your Lordſhips Satisfaction: But when the Earl is pleaſed to ſay, in his general Anſwer to all theſe Articles, "That he hopes receiving Preſents on ſuch Occaſions "is not criminal in itſelf, or by the Common Law "of this Realm, and that there is not any Act of "Parliament by which the ſame is made criminal" Though I have not had the Happineſs to have been bred to the Profeſſion, I muſt beg leave to remind him of the Statutes of *Richard* II. and *Edward* VI. as to the Statute Law: And by all that I have ever heard, or can learn, the whole Tenor and Meaning of the Common Law does diſapprove and condemn ſuch Practices, (though poſſibly it has not been an adjudged Caſe) And the Statutes I have mentioned are one Proof of ſuch Meaning of the Law, to me, at leaſt, who have always looked upon them to be Comments and Declarations, made from time to time to explain and inforce ſuch Conſtruction.

Putting up Offices of Juſtice to Auction, my Lords, is repugnant to the Dictates of plain Reaſon, and conſequently to the whole Senſe and Spirit of the Common Law of this Realm, which is founded upon Reaſon; and in this Repugnance to the Intent and Meaning of the Law of the Land, lies this Offence, (in my poor Judgment) as to the Illegality of it.

We hope therefore, my Lords, (when we have given our Evidence) that it will fully appear to your Lordſhips, from what we have opened, That the Earl of *Macclesfield* has taken the Sums charged upon him; and that he has taken them, as they are charged in the Articles, extorſively, corruptly, illegally, in Breach and Violation of his Oath as Lord Chancellor, and of the Truſt in him repoſed.

I am now come to the IXth Article, which I am commanded to open to your Lordſhips; and, indeed, it is a moſt extraordinary Inſtance of human Frailty: The Earl of *Macclesfield* here is not charged with taking Money of a Perſon who received an Office from him, but of one who quitted an Office; not for an Admiſſion, but for a Reſignation.

I believe this is the firſt Inſtance, my Lords, where any Perſon, on the other Side of this Bar, was ever accuſed of forgetting his own Dignity, the Dignity of the Auguſt Body he belonged to, and the Honour of his Soveraign, whoſe Counſellor he was, and whoſe Royal Authority was, at that time, lodged in his Hands, for an hundred and five Pounds. This is ſo amazing, that did I not know there was full Evidence, to the moſt minute Parts of this Charge, I myſelf ſhould not believe it; and I am ſure your Lordſhips Hereditary Greatneſs of Mind muſt make it ſo inconceivable to you, that I ſhall need all your Patience and Indulgence in what it is my Duty to ſtate to your Lordſhips, till you hear the Evidence we ſhall produce.

The Caſe, my Lords, is this: Mr. *Thomas Bennet*, one of the Maſters mentioned in the VIth Article, ſoon after his Admiſſion, was deſirous to part with his Office of Clerk of the Cuſtodies, (which is in the Gift of the Crown) to Mr. *Hamerſley*; but being unwilling to do any thing, without my Lord *Macclesfield*'s Approbation, he applied to Mr. *Cottingham*, his Secretary, to obtain it upon this Occaſion. Mr. *Cottingham* promiſed to acquaint his Lordſhip with this Requeſt. In a few Days Mr. *Cottingham* told Mr. *Bennet*, that he had acquainted my Lord with his Deſign, but ſaid, a Preſent was expected of him; and asked him, what he would give? (Your Lordſhips will obſerve, that this was their conſtant Method, in driving all theſe Bargains; for they were conſcious that they were doing what was illegal) Mr. *Bennet* replied, That he did not apprehend that any thing was due to my Lord on this account; for that he ſucceeded his Brother, Mr. *John Bennet*, and neither himſelf, nor his Brother, made Lord *Cowper* any Preſent: And further added, That he hoped my Lord would not inſiſt upon any thing, on ſo trifling an Occaſion, ſince he had ſo lately paid him ſo conſiderable a Sum. But ſtill *Cottingham* inſiſted that a Preſent was required. Upon which Mr. *Bennet* ſeeing himſelf ſo hard driven, ſaid he would give my Lord 105 *l.* In a few Days *Cottingham* told him, That my Lord accepted the 105 *l.* but that he was to look upon it as a particular Favour, that he accepted ſo ſmall a Sum; and that if he would bring the Money to him, *Cottingham*, he need take no farther Trouble, for my Lord would apply to the King, for Leave to reſign. Accordingly on the 28th of *July*, 1723. Mr. *Bennet* carried a *Bank-Note* of 105 *l.* to *Cottingham*; and, in about three Weeks time, (your Lordſhips will be pleaſed to remember, that his Majeſty was then abroad) *Cottingham* told him, that the Sign Manual was come over, and chid him for not taking out the Patent; The Conſequence of which was, Mr. *Bennet* did take it out, and when it came to the Great Seal, no Conſideration was had of what he had given before, but it coſt him about 64 *l.* for the Seal.

We ſhall call Mr. *John Bennet* to inform your Lordſhips, that when he reſigned to his Brother, he asked the Lord *Cowper* if any thing was due to his Lordſhip, who told him nothing was due.

This, my Lords, is the naked State of the Caſe, and I ſhall make no Remarks upon it; I think nothing can be added to illuſtrate it, becauſe I am confident there never was any thing like it.

But I think, out of Duty to the Commons, and Juſtice to the Earl of *Macclesfield*, I am obliged to take Notice of what he alledges in his own Defence againſt this Charge.

His Lordſhip is pleaſed to ſay, "That tho' this "Office of Clerk of the Cuſtodies has been uſually "granted by the Crown; yet it has been always look'd "upon as the Right of the Lords Chancellors, or the "Lords Keepers, to recommend to that, and other Of-"fices under the Great Seal, and approve of the De-"puty to execute the ſame; and upon ſuch Recom-"mendations, and approving of Deputies, have ac-"cepted Preſents, and look'd upon the ſame as their "Right.

I ſhould not have taken Notice of his putting this Part of his Defence in the plural Number, and endea-

vouring to ſhelter himſelf under the pretended Practices of his Predeceſſors, if he had confined it to this Article; but in his general Anſwer to all the Articles we have opened to your Lordſhips, he ſays, "That he "has done no more than his Predeceſſors, Great "and Able Men have done before him, and therefore "hopes that it ſhall not be imputed as a Fault to him." And indeed this Reaſoning runs through almoſt his whole Defence.

My Lords, we could ſhew, That he has done more than any of his Predeceſſors; but your Lordſhips very well know, that is not now in queſtion. I am ſure, how Great or able ſoever a Man may be, that commits a Fault, your Lordſhips will always be Great enough, and Able enough to puniſh him for it, when he comes before you. And I am ſurprized the Earl ſhould ſuppoſe, that you will connive at a corrupt Practice in him, (if this be one) becauſe you have not condemned it in others, who were never called to anſwer it before you, if any have been guilty of it. I hope your Lordſhips will look on it as a new Way of Reaſoning, firſt made uſe of by the Earl of *Macclesfield*, to juſtify his own Faults by the Faults of another, and extenuate the Danger and Malignity of a Diſtemper by the Extent and Inveteracy of it.

By the reſt of this Argument of his, your Lordſhips plainly ſee, that he himſelf thinks that the Acceptance of any Gratuity for adviſing the King, as a Counſellor, to grant this Office, had been highly Criminal, for he was, at that Time, one of the Lords Juſtices, and during this whole Charge a Miniſter of State; but he does not ſay that he obtain'd leave for Mr. *Bennet* to reſign, and a new Grant of the Office as a Favour from the Crown; no, that he ſeems to admit would have been highly blameable; but he ſays, that as Lord Chancellor, he had a Right of Recommending to this Office; and his whole Conduct unhappily explains, that he looked upon a Right of Beſtowing or Recommending to be a Right of Selling; ſo that by his own Argument, he thinks himſelf juſtifiable in doing that as the chief Officer and Diſtributor of Juſtice, which he ſeems to own would be highly unjuſtifiable in a Miniſter or Servant of the Crown.

I ſhall take Notice of but one Part more of his general Anſwer to the Articles, which we have opened to your Lordſhips, and that is where he ſays, "That during his Continuance in the ſaid "Office of Lord Chancellor, or at any other "Time, he never once had a Deſign, or View, or "Wiſh to raiſe to himſelf any exorbitant Gain "or Profit, and appeals to the whole Tenor of "his Life and Actions for the Truth of his Aſ"ſertion.

This, my Lords, is an Inſtance how little the greateſt Men are acquainted with themſelves, and how much they are liable to miſtake, when they talk of their own Actions; many of his Tranſactions in Money Matters, have been opened to your Lordſhips, more will be opened; and ſurely, my Lords, you muſt be of Opinion, that this inordinate Longing after Gain, this Impotence of Mind where Money was concerned, is a conſtitutional Weakneſs in the Earl of *Macclesfield*, which has given a Tincture to every Thing that paſſed thro' his Hands: Your Lordſhips have ſeen him taking great Sums, accepting ſmall ones, taking 5000 *l.* accepting 105 *l.* taking for Offices in his own Gift, for Offices in the Gift of the Crown, taking for Admiſſions, taking for Reſignations; in this, indeed, he has ſhewn an Impartiality that, on every other Account, were highly to be wiſhed in a Judge.

My Lords, I would not trouble your Lordſhips again after our Evidence is examined, and therefore beg leave to ſay, that the Commons look upon theſe Practices ſo nearly to concern the Welfare of the People, they repreſent, that, notwithſtanding the great Part they bear in the Conſtitution of this Realm, they have thought it indiſpenſibly neceſſary to appear themſelves, and demand Juſtice of your Lordſhips, and we do it with the more Pleaſure, becauſe we are aſſured, That when the Commons are Proſecutors, and your Lordſhips Judges, the meaneſt Subject will have Juſtice, and the greateſt will not find Favour.

And, my Lords, conſidering that the Earl of *Macclesfield* is to be judged by the moſt auguſt Aſſembly in the World, of which he is himſelf a Member; it is but a ſuſpicious Symptom of his Confidence in his own Integrity, when he lays hold of any Subterfuge to avoid your Judgment, or endeavours to ſecure himſelf againſt any Part of it by any Plea but that of his Innocence, and the Juſtice of his Cauſe.

Sir *Thomas Pengelly, his Majeſty's Serjeant.* My Lords, Before the Managers lay before your Lordſhips any Evidence upon the particular Articles, there are ſome Things, we apprehend, neceſſary to be taken Notice of in the Introduction to the Articles, which are not ſufficiently admitted by the Lord *Macclesfield*, in his Anſwer, and wherein we apprehend it will be neceſſary to give your Lordſhips ſome Satisfaction; and that is relating to his immediate Duty as Lord Chancellor, and the Obligation he is under of an Oath, which is adminiſtred to his Lordſhip, and is eſtabliſhed by Act of Parliament. My Lords, We think it proper to lay this before your Lordſhips, becauſe the noble Lord has forgot it, not only in his Anſwer, but in his Conduct. The Oath is eſtabliſh'd by the Statute of the 12*th* of *Rich.* 2. which enacts, *That the Chancellor*, &c. *ſhall not name or make any Officer, or Miniſter, of the King, for any Gift, or Brocage, but make all ſuch Officers and Miniſters of the beſt and moſt lawful Men.*

My Lords, I beg leave to ſhew, that this Oath is eſtabliſh'd by Act of Parliament, and afterwards ſhew your Lordſhips, that it has been adminiſtred to, and taken by the noble Lord within the Bar. It is the Statute of the 12*th* of *Rich.* 2. *Chap.* 2. which enjoyns this Oath to be taken by his Lordſhip.

Mr. *Lutwyche.* My Lords, We are not willing to trouble your Lordſhips with more than is neceſſary, or to go about to prove thoſe Things that are admitted by the Earl's Anſwer, but where they are not fully admitted in ſuch a Manner as they are charged, and with all that Advantage that we think we can make of them, we muſt beg leave to trouble your Lordſhips with the Proof of them. My Lords, It is admitted by the Anſwer, that there was an Oath of Office taken; and it is likewiſe ſet forth in the Anſwer, what that Oath was, but the Anſwer goes no farther, and

doth not admit any Thing as to another Oath founded on the Statute of the 12*th Rich.* 2. which hath frequently been taken by the Noble Lord; we think it therefore neceſſary to have the Statute of *Rich.* 2. firſt read, and the Oath that is there preſcribed, and to ſhew you that the Noble Lord within the Bar, did take that Oath ſeveral Times.

Then the Clerk read the Statute of 12 *Rich.* 2. *Cap.* 2 *viz.*

" *Item*, It is accorded that the Chancellor, " Treaſurer, Keeper of the Privy-Seal, Steward " of the King's Houſe, the King's Chamberlain, " Clerk of the Rolls, the Juſtices of the one " Bench and of the other, Barons of the Exchequer, " and all other that ſhall be called to ordain, " name, or make Juſtices of Peace, Sheriffs, Eſ- " cheators, Cuſtomers, Comptrollers, or any other " Officer or Miniſter of the King, ſhall be firm- " ly ſworn, that they ſhall not ordain, name, or " make Juſtices of Peace, Sheriff, Eſcheator, " Cuſtomer, Comptroller, nor other Officer, nor " Miniſter of the King, for any Gift or Brocage, " Favour or Affection; nor that none which pur- " ſueth by him, or by other, privily or openly to " be in any manner of Office, ſhall be put in the " ſame Office, or in any other, but that they " make all ſuch Officers and Miniſters of the " beſt and moſt lawful Men, and ſufficient to " their Eſtimation and Knowledge."

Mr. Serjeant Pengelly. We beg leave that Mr. *Eyre* may be produced and ſworn, in order to prove the Adminiſtration of this Oath, and to prove the Noble Lord's taking it ſeveral Times.

Mr. *Thomas Eyre* Sworn.

Mr. Serjeant Pengelly. My Lords, We deſire that Mr. *Eyre* may be asked, Whether he is an Officer of the Exchequer, and what that Book in his Hand is?

Mr. Eyre. My Lords, This Book I have had in my Cuſtody ever ſince I have been in the Office. I have been there forty Years. This is the Book in which the Statute of 12 *Rich.* 2. is enter'd; and, before the Privy Council name the Sheriffs, this Statute is read over to them, and then the Privy Counſellors are all Sworn.

Mr. Lutwyche. My Lords, We deſire the Oath may be read.

Mr. Eyre. There is no Oath in the Book, 'tis only the Statute.

Earl of Macclesfield. Will your Lordſhips be pleaſed that he may ſpeak aloud. He ſays there is no Oath in the Book.

Mr. Eyre. The Statute is read, and as ſoon as it is read the Book is preſented to the Privy Counſellors, and they are Sworn.

Mr. Serjeant Pengelly. My Lords, We deſire he may be asked, Whether he was preſent at any Time when the Earl of *Macclesfield* has taken the Oath to perform this Statute in the Court of Exchequer?

Mr. Eyre. Yes, ſeveral Times.

Earl of Macclesfield. I beg leave to ask this Queſtion in the firſt Place, Is there any Oath there in that Book?

Mr. Eyre. No, nothing but the Statute of *Rich.* 2.

Earl of Macclesfield. Nothing but the Statute of *Rich.* 2. What is it you read or do at that Time when you ſay the Privy Counſellors are ſworn.

Mr. Eyre. As ſoon as this Statute is read, the Bible is preſented to the Privy Counſellors, and they kiſs the Book.

Earl of Macclesfield. Is there any one Word ſaid to them, or by them?

Mr. Eyre. No, the Statute is read over, and the Privy Counſellors kiſs the Book.

Mr. Serjeant Pengelly. My Lords, We deſire he may read it.

Earl of Macclesfield. My Lords, I deſire that he may read the very Words in the Book, as he reads them in the Exchequer.

[Mr. *Eyre* reads the Statute.]

Anno xii Richardi Secundi.

ITEM, *Accorde eſt & aſſentuz' que le Chancellor & Treaſurer Gardein du Privy Seal Seneſcall' de Hoſteil le Roy, Chamberleyn du Roy, Clerke du Rolls, Juſtices de lune Bank & de Lautre, Barons de le Exchequer & toutz autres, que Serrount Appelles Dordoigner nomer ou fair Juſtices de la Peace, Viſcounts Eſcheators, Cuſtomers Comptrollers, ou Aſcun autre Officer du Roy, ou Miniſtre, ſeroit firmement Jurez, & Serementez, quils ne Ordeigne noient ne facent Juſtices de la Peas, Viſcounts Eſcheators, Cuſtomers Comptrollers, ne null autre Officer ne Miniſtre du Roy, pur null' manner Don' ne Brocage favor n'affection, nique null que parſui par luy ou par autr' en priv' ou en Apert Deſtre en Aſcun manner Office, ſoit mijs en meſme l'Office, ou en Aſcune autr', unque que ils facient toutz tielz Officers & Miniſters de le pluis Bon & Loyalz & les pluis ſufficientz a lour eſſient & lour Conſcience.*

Earl of Macclesfield. Thoſe you ſay are the very Words you read at that Time when the Sheriffs are nominated in the Court of Exchequer?

Mr. Eyre. Yes.

Earl of Macclesfield. I ſuppoſe you read in that very Manner.

Mr. Eyre. Yes.

Earl of Macclesfield. Do you ſay any one Syllable more?

Mr. Eyre. No.

Earl

E. of *Macclesfield.* In the next place, I desire he may tell your Lordships what it is that the Officer does at this time?

Mr. *Eyre.* He carries the Book to all the Privy Counsellors, and they kiss it.

E of *Macclesfield.* Does he not carry it to the Judges too?

Mr. *Eyre.* Yes, every one present kisses the Book.

E. of *Macclesfield.* Does he say any thing to them?

Mr. *Eyre.* No.

E. of *Macclesfield.* You say he doth not say any thing to them?

Mr. *Eyre.* No, nothing at all.

Mr. Serj. *Pengelly.* My Lords, we desire that Mr. *Eyre* may be asked, whether, during his time, this hath not been the usual Method of Swearing the Lords of the Privy Council?

Mr. *Eyre.* Yes, my Lords, it has.

Mr. *Lutwyche.* My Lords, it seems to be a Question whether this is Swearing at all. Therefore the Question I desire may be ask'd this Witness, is, what Book it is they kiss?

Mr. *Eyre.* My Lords, it is the Bible.

Mr. *Lutwyche.* I desire he may be asked, whether this hath not been taken to be Swearing them to do what is commanded by this Statute?

Mr. Serj. *Probyn.* My Lords, we beg Leave to object to that Question. We apprehend the Witness is only called to give Evidence as to the Fact, and not to state his Reasons and Constructions of Fact.

Mr. *Lutwyche.* My Lords, I beg Leave then to ask a Question that I hope they won't object to: Whether or no this is not the Manner of Swearing the Lords, upon the Nomination of Sheriffs in the Court of Exchequer?

Mr. Serj. *Probyn.* My Lords, we humbly beg Leave to object to that Question: We apprehend That Centers in the same thing with the former. The Witness has already given your Lordships an Account of all that is said and all that is done when this Act of Parliament is produced. He tells your Lordships the Act of Parliament is read; they kiss the Book; nothing is asked of them, nor is any thing answered: And yet the Gentleman is pleased to ask, whether this is called a Swearing? The Witness has given his Evidence, your Lordships will determine whether it be a Swearing or no.

Mr. *Lutwyche.* My Lords, I desire he may be asked, whether this Kissing the Bible upon the reading this Act, is not usually done at the time of appointing the Sheriffs?

Mr. *Eyre.* As soon as ever the Act is read over, the Privy-Counsellors kiss the Bible.

Mr. Serj. *Pengelly.* My Lords, I desire it may be asked, whether they proceed to name or appoint any Sheriffs before they kiss the Book in this manner?

Mr. *Eyre.* No, they do not.

Mr. Serj. *Pengelly.* My Lords, we shall rest this matter here.

Lord *Lechmere.* My Lords, I would be glad if this Question might be asked the Witness; Whether there is any Entry or Memorandum made upon Record in the Court of Exchequer, of any Oath taken by the Privy-Counsellors on this Occasion?

Mr. *Eyre.* No, there is not.

Mr. *West.* We submitt this Matter to your Lordships: This Statute prescribes, that an Oath shall be particularly taken; the Fact has been stated by the Witness: And whether it does not amount to the Proof of an Oath, that they will comply with that Act of Parliament, we leave to your Lordships Judgment.

Mr. Serj. *Pengelly.* We shall leave this Evidence to your Lordships, and submit it to your Determination, whether this noble Earl can excuse himself from his Obligation to this Act of Parliament, as an Oath? It is very probable, by his future Conduct, he might be of Opinion, that there was no Obligation of any Act or Oath upon him: But upon the Evidence given, we shall submit this Fact: And shall next proceed to call some Witnesses to give an Account of the Nature of the Offices of the Masters in Chancery, who are admitted, by the noble Lord, within the Bar. We shall first produce the Oath which is administred to every Master in Chancery upon his Admission: Then we shall shew the Commissions from *Edw.* the VIth's time, and so from time to time, to this Day; wherein the Masters in Chancery are joined with my Lords the Judges, to hear and determine Causes in the Absence of my Lord Chancellor; to punish Contempts, to execute and administer a Jurisdiction in that Court. The particular Oath very little varies from the Oath administred to the Lord Chancellor, which, in his Lordship's Answer, is set out at large. However we shall now beg Leave to produce the Oath; and to that Purpose, we desire Mr. *Pynsent*, the Deputy-Clerk of the Crown in Chancery, may be examined, and he will produce the Oath before your Lordships.

Mr. *Pynsent* sworn.

Mr. Serj. *Pengelly.* Sir, will you produce, before the Lords, the Oath administred to the Masters in Chancery, upon their Admission to their Offices?

Mr. *Common Serjeant.* My Lords, we hope he shall give an Account, whether he hath seen the Oath taken, and hath administred it?

Mr. *Pynsent.* Yes, my Lords, I have seen the Oath taken, and have administred it myself.

Reads the Oath.

Sacrm Magistrorum Cancellarie } *YE shall swear that well and trulie Ye shall serve the Kinge Our Sovereigne Lord, and his People, in the Office of one of the Maisters of his Chauncerye, to the whiche Ye be called: Ye shall not assent, ne Procure the Disherytaunce, ne perpetual Damage of the Kinge, to Your Power, ne fraude; Ye shall doe or cause to be made wrongefullye to anye of his People, ne in anye thinge that touchethe the Seale: And lawfullye Ye shall Counsail the thinges that touchethe the Kinge, when ye shall be thereunto required. And the Counsayll that Ye shall geve touching him, Ye shall not disclose. And yf Ye know anye thinge of the Disheretaunce or Damage of the King, or fraude to be made upon anye thinge that touchethe the keeping of the Seale: Ye shall put Your lawfull Power it to redresse and amende; And yf that Ye cannot do, Ye shall advyse the Chauncellor, or Lorde Keper of the Seale, or other whiche may that amende, to Your Power. As God you helpe, and by the Content of this Boke.*

Mr. Serj. *Pengelly.* My Lords, there will be Directions given to lay a Copy of this Oath, as well as Copies of other Records, upon your Lordships Table.

The next Evidence we shall produce, are Commissions beginning in the Time of *Edw.* 6. to this time, granted to Masters, appointing them to hear Causes, *&c.* The first Commission we shall

produce, is dated the 9th of *October*, the 4th of *Edw. 6.* My Lords, we desire that Mr. *Paxton* may be sworn, who has Copies of these Commissions, and has examined them with the Records.

Mr. *Ralph Paxton* sworn.

Mr. Serj. *Pengelly.* My Lords, we desire that he may be asked, whether the Copies in his hand are true Copies, and where they were examined?

Ld. Ch. Just. *King.* Are they true Copies, and where did you examine them?

Mr. *R. Paxton.* My Lords, they are true Copies. I examined them in several Places. I must look upon each of them, and then I shall tell your Lordships where I examined them. I examined some at the Rolls, some at the Petty-Bag Office, and some at the Report-Office.

Ld. Ch. Just. *King.* Did you examine them all there?

Mr. *R. Paxton.* I did.

Mr. Serj. *Pengelly.* Are they true Copies?

Mr. *R. Paxton.* I believe they are, I took a great deal of Care and Pains in examining of them.

Mr. Serj. *Pengelly.* My Lords, we desire that these Copies may be read.

Mr. *Strange.* Are they upon Stamps?

Mr. *R. Paxton.* Yes, Sir, with a double Six-penny Stamp.

Mr. Serj. *Pengelly.* My Lords, it seems they are Stampt, since they make an Objection of that Nature, we desire they may be read.

Clerk reads.

Sexta pars Pat' de Anno Regni Regis Edti Sexti quarto.

Rex &c. Dilcis & fidelibus Consiliarijs Suis Rbto Southwell Militi Custodi ac Magro Rotulorum Cancellar' nre Willo Portman Militi uni Justic' nrorum ad Plita coram Nob' tenend' assign' Jacobo Hales Militi uni Justic' nrorum de Banco Rico Reade Militi et Johi Tregonwell Aro Magris Cancellar' nre predce Ac Dilcis Sibi Johi Olyver Clico Willo Cooke Aro Johi Croke Aro et Anthonio Bellassis Clico Magris ejusdem Cancellar' nre Saltm. Quia Predilcus et fidelis Consiliarius nr' Ricus Riche Miles Dus Riche Cancellar' nr' Angl' adeo Corporis invalitudine ad presens laborat qd ad ea que in Cur' Cancellar' nre in causis et materijs int' diversos ligeos & Subditos nros ibidem pendent' tractend' audiend' discuciend' et terminand' Sint & fieri debeant ad presens pro tempore non Sufficiat Considerantes igitur ipm ad Saltm cicius posse restitui Si ab arduis negocijs nris et detminacoe causarum in Cur' Cancellar' nre penden' ad tempus abstineat Et Volentes nichilominus interim in ejusdem Cancellarij nri absencia omibus & Singulis ligeis & Subditis nris quibuscumq; matias suas in Cur' Cancellar' nre predce prosequentibus plenam & celerem Justiciam exhiberi Ac de fidelitatibus & providis circumspeccoibus vris plenius Confidentes Assignavimus Vos octo Septem Sex quinq; quatuor & tres vrm quorum Vos prefat' Robte Wille Porteman Jacobe Hales Johes Olyver & Johes Croke unu' esse Volumus Ac tenore presenciu' Damus Vob' octo Septem sex quinq; quatuor & tribus vrm quorum aliquem vrm Vos prefat' Robte Wille Porteman Jacobe Hales Johes Olyver & Johes Crooke unu' esse Volumus plenam potestatem & auctoritatem audiend' et examinand' quascumq; materias causas & peticoes coram Nob' in Cancellar' nra int' quoscumq; ligeos et Subditos nros tunc pendent' et imposterum ibidem exhibend' & penden' & easdem matias causas & peticoes juxta Sanas discrecoes vras finalit' tminand' & debit' execucoi demandand' partesq; in matijs Sive causis vel peticoibus illis noiatas & Specificatas ac testes & alios quoscumq; quos Vob' fore videbitur evocand' quociens expedire videritis coram Vob' octo Septem Sex quinq; quatuor vel tribus vrm quorum aliquem vrm vos prefate Robte Wille Portman Jacobe Hales Johes Olyver & Johes Croke unu' esse Volumus evocand' ac ipos & eorum quemlt debite examinari compellend' diesq; productorios imponend' & assignand' processusq; quoscumq; in ea parte necessarios concedend et fieri faciend' contemptus etiam quoscumq; ibidem comiss' Sive perpetratos debito castigand' & puniend' cetaq; omia & Singula faciend' et exequend' que circa premissa necessaria fuerint Seu quomodolit oportuna Et ideo Vob' Mandamus qd circa premissa diligent' intendatis ac ea fac' & exequamini cum effcu Mandamus etiam tenore presenciu' omibus & Singulis Officiarijs & Ministris nris Cur' nre predce qd Vob' octo Septem Sex quinq; quatuor et tribus vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Oliver et Johes Croke Semper unu' esse Volumus in execucoe premissorum diligent' intendant prout decet Volumus etiam & per presentes Concedimus qd omia & Singula judicia Sive finalia decreta per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver et Johes Croke unu' esse Volumus Semper hmoi causis Sive materijs redden' Sive fiend' Sint & esse debeant tanti & consimilis valoris effcus efficacie robovis et virtutis ac si per Cancellariu' nrm Angl' et Cur' Cancellar' predce reddit' Sive reddend' forent Proviso Semper qd omia & Singula hujusmodi judicia Sive finalia Decreta per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver et Johes Croke unu' esse Volumus virtute presenciu' reddend' Sive fiend' manibus vris octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver & Johes Croke unu' esse Volumus Subscribantur & consignentur & Superinde eadem judicia Sive decreta prefat' Cancellar' nro presententur & libentur ut idem Cancellar' nr' antequam irrotulentur eadem Similit' manu sua consignet In cujus rei testimoniu' has Lras nras fieri fecimus Patentes usq; ultimu' diem Novembr' proper' futur' duratur' Si non interim per alias Lras nras Patentes huic Comissioni Supersederi decreverimus T. R. apud Westm' nono die Octobr'

per ipm' Regem
Concordat' cum Recordo et
Examinat' per me
WM. ROOKE.

Mr. Serj. *Pengelly.* We have several others of the same Nature, which we have proved, and shall not trouble your Lordships to read them. We shall beg Leave to lay them on your Lordships Table. We shall now desire to read some later Commissions; some granted when the noble Lord within the Bar had the Custody of the Seals himself.

E. of *Macclesfield.* If your Lordships please, the Date of that may be read.

Clerk reads.

'GEORGIUS Dei Gra' Magnæ Britanniæ Franciæ & Hibniæ Rex fidei defensor &c. Prædilecto & fideli Consiliario nro Josepho Jekyll Mil' Magro Rotlorum Cur' Canc' nre ac Dilcis' & fidelibus nris Littleton Powys Mil' un' Justiciar' nrorum ad plita coram nobis tenend' assign' Johi Blencow Mil' un' Justiciar' nrorum de Banco Robto Tracy Ar' al' Justiciar' nrorum de Banco Robto Price Ar' un' Baron'

ron' Sccij nri Johi Smith Ar' al' Baron' Sccij nri Robto Dormer Ar' un' Juſticiar' nrorum de Banco Robto Eyre Mil' un' Juſticiar' nrorum ad plita coram nobis tenend' aſſign' Johi Pratt Mil' al' Juſticiar' nrorum ad plita coram nobis tenend' aſſign' Jacobo Mountagu Mil' un' Baron' Sccij nri Johi Forteſcue Aland Mil' un' Baron' Sccij nri Thome Gery Mil' Willo Rogers Johi Hiccocks Willo Fellows Jacobo Meller Johi Orlebar Fleetwood Dormer Samueli Browning Robto Holford Henrico Lovibond & Johi Bennett Aris ſaltm Quia predilect' & fidei' Conſiliar' noſtr' Thomas Doms Parker Cancellar' noſtr' magne Britannie nris arduis negotijs ex Mandato nro continue attendens in eisdm' adeo verſatur quod continue attendere non poteſt ea que in Cauſis & materijs inter diverſos ligeos & ſubditos nros ac alios in Cur' nra Cancellar' penden' agen' tractand' audiend' expediend' diſcutiend' & terminand' ſint & fieri debent Nos premiſſa Conſiderantes volenteſq; eibus & ſingulis ligeis nris ac alijs quaſcunq; materias ſuas in eadm' Cur' Cancellar' proſequen' ſive proſecutur' plenam & celerem Juſticiam exhiberi tam in abſentia quam in preſentia predict' Cancellar' noſtr' Magn' Britann' ac de fidelitate & providis circumſpeciobus vris in hac parte plumu' confidente aſſignavimus vos ac tenore prentium Damus vob' & aliquibus tribus vel plur' vrum Quorum prefat' Joſephum Jekyll Littleton Powys Johem Blencowe Robtum Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Prat Jacobum Mountagu & Johem Forteſcue Aland unum eſſe volumus in abſentia dict' Cancellar' noſtr' Magnæ Britanniæ plen' prefat' & auctat' audiend' & examinand' quaſcunque materias Cauſas & petitiones coram nobis in dca Cancellar' nra inter quoſcunque ligeos & ſubditos aut alios quoſcunque nunc penden' aut Impoſter' ibm exhibend' & penden' materias Cauſas & peticones juxta ſanas diſcretiones vras vel trium vrm Quorum prefat' Joſephum Jekyll Littleton Powys Johem Blencowe Robtum Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Pratt Jacobum Mountagu & Johem Forteſcue Aland unum eſſe volumus finaliter terminand' & debit' execution' demandand' Parteſq; in materiis cauſis ſeu petitionibus illis nominat' & ſignificat' ac Teſtes & alios quoſcunq; quos vobis vel tribus vrm (ut pred' eſt) fore videbitur evocand' quoties expedire videritis coram vobis vel tribus vrm (ut pred' eſt) evocand' Ac ipſos & eorum quemlibet debite examinari dieſq; productiores imponend' & aſſignand' proceſſuſq; quoſcunq; in ea parte neceſſar' concedend' ac fieri faciend' Contemptus etiam quoſcunq; comiſs' ſive perpetrat' debite caſtigand' & puniend' ceteraq; oia & ſingla faciend' & exequend' que circa premiſſa neceſſar' fuerint ſeu quomodolibet opportuna Et ideo vobis mandamus qd circa premiſſa diligent' intendatis & ea fat' exequamini cum effu Mandamus etiam tenore prentium Officiar' & Miniſtr' Cur' nre Canc' pred' qd vobis vel tribus vrm (ut pred' eſt) in execuc' premiſſorum diligenter intendant prout decet Volumus etiam ac per prentes concedimus qd oia & ſingula Judicia ſive finalia decreta ac Ordines per vos aut tres vrm ut præd' eſt ſuper hum' cauſis ſive materijs ac peticioibus ut prefertur reddend' ſive fiend' ſint & eſſe debeant tanti & conſilis valor' effect' efficatie roboris & virtute Ac ſi per præd' Cancellar' noſtr' Magnæ Britanniæ & Cur' Cancellar' nre præd' reddit' ſive reddend' forent Proviſo tamen quod oia & ſingula Judicia ſive finalia decreta per vos vel tres vrm ut præd' eſt virtute prentium modo & forma ut prædicitur reddend' ſive fiend' Manibus vris vel trium vrm Quorum prefat' Joſephum Jekyll Littleton Powys Johem Blencowe Robtum Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Pratt Jacobum Mountagu & Johem Forteſcue Aland unum eſſe volumus ſubſcribentur & conſignentur & ſuperinde eadem Judicia ſive finalia decreta prefat' Cancellar' noſtr' Magn' Britan' preſententur & libentur Quodq; null' eorundem Judicior' ſive final' decretor' irrotulentur aut quoviſmodo execut' ſint antequam idem Cancellar' noſtr' Magn' Britann' ea manu ſua propria ſiliter conſignet Et quod he lre nre Patentes durabunt & permanebunt in pleno robore & effect' donec aliter per alias lras nras Patentes huic Commiſſioni ſuperſederi mandat' foret aut prædict' Cancellar' noſtr' Magn' Britann' in plena Cur' determinari decret' & irrotulat' erit In cujus rei Teſtimoniu' has lras nras fieri fecimus Patentes Teſte meipſo apud Weſtm' duodecimo die Maij Anno Regni noſtri quarto

per ipſum Regem

WRIGHTE.

Mr. Serj. *Pengelly.* We deſire that there may be another Commiſſion read, dated the 20th of *January*, the 8th of the King.

Clerk reads.

GEORGIUS Dei Gratia Magnæ Britanniæ, Franciæ, & Hiberniæ Rex, fidei Defenſor, &c. Prædilecto & fidel' Conſiliar' nro Joſepho Jekyll Mil' Magro Rotulor' Cur' Cancellar' nre ac Dilcis & Fidelibus nris Littleton Powys Mil' un' Juſtic' nroru' ad plita coram nobis tenend' aſſign' Johi Blencow Mil' un' Juſtic' nrorum de Banco Robto Tracey Ar' al' Juſtic' nrorum de Banco Robto Price Ar' un' Baron' Sccij nri Robto Dormer Ar' un' Juſtic' nrorum de Banco Robto Eyre Mil' un' Juſtic' nrorum ad plita coram nob' tenend' aſſign' Jacobo Montagu Mil' un' Baron' Sccij nri Johi Forteſcue Aland Mil' un' Juſtic' nrorum ad plita coram nob' tenend' aſſign' Franco Page Mil' un' Baron' Sccij nri Johi Hiccocks, Willo Fellowes, Robto Holford, Henco Lovibond, Johi Bennett, Rico Godfrey, Jacobo Lightbonn, Johi Borrett, Edro Conway, Henco Edwards, & Willo Kynaſton, Ar' ſalum. Quia Chariſſimus Conſanguineus & Conſiliar' noſter Thomas Comes de Macclesfield Cancellar' noſter Magnæ Britanniæ noſtris arduis negotiis ex Mandato noſtro continue attendens in eiſdem adeo verſatur quod continue attendere non poteſt ea que in Cauſis & Materiis inter diverſos ligeos & ſubditos noſtros ac alios in Cur' noſtra Cancellar' penden' agen' tractand' audiend' expediend' diſcutiend' & terminand' ſint & fieri debent nos premiſſa conſiderantes volenteſq; omnibus & ſingulis ligeis noſtris ac aliis quaſcunq; materias ſuas in eadem Cur' Cancellar' proſequend' ſive proſecutur' plenam & celerem Juſticiam exhiberi tam in abſentia quam in præſentia præd' Cancellar' noſtri Magnæ Britanniæ ac de fidelitate providis Circumſpectionibus vris in hac parte plurimum Confidentes Aſſignavimus vos ac tenore preſent' Damus vob' & aliquibus tribus vel plur' vrm' Quorum prefat' Joſephum Jekyl Littleton

' Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Forteſcue Aland & Francum Page unum eſſe Volumus in abſentia dicti Cancellar' noſtri Magnæ Britanniæ plen' poteſtat' & Authoritat' audiend' & examinand' quaſcunq; materias cauſas & petitiones coram nob' in dicta Cancellar' noſtra inter quoſcunq; ligeos & ſubditos aut alios quoſcunq; nunc penden' aut impoſter' ibidem exhibend' & penden' & eaſdem materias cauſas & petitiones juxta ſanas diſcretiones vras vel triu' vrm' Quorum prefat' Joſephum Jekyl Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Forteſcue Aland & Francum Page unum eſſe Volumus finalit' terminand' & debit' execution' demandand' parteſq; in materiis cauſis ſeu petitionibus illis noiat' & ſpecificat' ac teſtes & alios quoſcunq; quos vob' vel tribus vrm' (ut præd' eſt) fore videbitur evocand' quoties expedire videritis coram vob' vel tribus vrm' (ut præd' eſt) evocand' ac ipſos & eorum quemlibet debite examinari compellend' dieſq; productiores imponend' & aſſignand' proceſſuſq; quoſcunq; in ea parte neceſſar' concedend' ac fieri faciend' contemptus etiam quoſcunq; comiſs' ſive perpet' debit' caſtigand' & puniend' ceteraq; oia & ſingula faciend' & exequend' que circa præmiſſa neceſſar' fuerint ſeu quomodo libet opportuna. *Et Ideo* vob' mandamus quod circa præmiſſa diligent' intendatis & ea fac' & exequamini cum effectu. *Mandamus* etiam tenore preſentiu' officiar' & miniſtr' Cur' noſtre Cancellar' præd' quod vob' vel tribus vrm' (ut præd' eſt) in executione præmiſſorum diligent' intendant prout decet Volumus etiam & per preſentes concedimus quod oia & ſingula judicia ſive final' decreta ac ordines per vos & tres vrm' (ut præd' eſt) ſuper hum' cauſis ſive materiis & petitionibus ut prefert' reddend' ſive fiend' ſint & eſſe debeant tanti & conſilis valor' effectus efficacie roboris & virtutis ac ſi per præd' Cancellar' noſtr' Magnæ Britanniæ & Cur' Cancellar' noſtre præd' reddit' ſive reddend' forent. *Proviſo* tamen quod oia & ſingula judicia ſive finalia decreta per vos vel tres vrm (ut præd' eſt) virtute preſent' modo & forma ut predicitur reddend' ſive fiend' manibus vris vel triu' vrm' Quorum prefat' Joſephum Jekyl Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Forteſcue Aland & Francum Page unum eſſe Volumus ſubſcribantur & conſignentur & ſuperinde eadem judicia ſive final' decreta prefat' Cancellar' noſtro Magnæ Britanniæ preſententur & libentur Quodq; nulla eorundem judiciorum ſive final' decretorum irrotulentur aut quovis modo execut' ſint antequam idem Cancellar' noſter Magnæ Britanniæ ea manu ſua propria ſilit' conſignet Et quod he litere noſtre paten' durabunt & permanebunt in pleno robore & effectu donec alit' per al' literas noſtras patentes huic Commiſſion' ſuperſederi mandat' foret aut per dictum Cancellar' noſtrum Magnæ Britanniæ in plena Cur' determinari decret' & irrotulat' erit. *In cujus rei teſtimonium* has literas noſtras fieri fecimus patentes Teſte meipſo apud Weſtm' Viceſimo die Januarij Anno rni' nri' Octavo.

Per ipſem Regem

WRIGHTE.

Mr. Serj. *Pengelly.* My Lords, we don't apprehend it neceſſary to read all the others over; we ſhall deliver them in; unleſs it be deſired by the noble Lord. My Lords, we now beg leave to call Mr. *Meller*, who hath executed the Office of a Maſter in Chancery for ſeveral Years. He will give your Lordſhips ſome Account of the Nature and of the Manner of Execution of that Office, in ſupport of what the Commons have charged.

Mr. *John Meller* ſworn.

Mr. *Lutwyche.* My Lords, We deſire Mr. *Meller* may be asked whether he hath executed the Office of a Maſter in Chancery, and how long, and what is the Nature of that Office?

L.d. Ch. Juſt. *King.* Sir, you hear the Queſtion?

Mr. *Meller.* My Lords, according to the beſt of my Remembrance, I was admitted a Maſter the latter End of the Year 1708, and continued ſo till *July*, 1720. The general Nature of the Office is, to digeſt and ſum up thoſe Matters which are ordered upon Hearing to be referred to us, by way of Report: That is the general Buſineſs. There is a further Buſineſs, when Bills of Coſts are to be taxed, they are taxed and adjuſted by us what is to be paid. I don't recollect any more particular Buſineſs.

Mr. *Lutwyche.* I deſire he may be asked, for whoſe Service and Uſe thoſe Reports are made?

Mr. *Meller.* Thoſe Reports are made for the Uſe of the Suitors of the Court. 'Tis to ſtate the Facts that the Lord Chancellor has referred to the Maſter that are too tedious for the Court to look into.

Mr. *Lutwyche.* To whom are they returned and directed?

Mr. *Meller.* Theſe Reports are made to the Court, to the Lord Chancellor, or the Maſter of the Rolls. They have theſe Reports, and make a final Order upon them.

E. of *Macclesfield.* I deſire he may be asked, when Reports of the ſeveral Matters referred to the Maſter to conſider of, which would take up too much Time of the Court to ſettle, are made, whether thoſe Reports of the Maſter are at all concluſive? Or what is the Method in caſe the Parties don't acquieſce?

Mr. *Meller.* My Lords, the Report is only to ſtate the Facts to the Court; and till the Report is confirmed by the Court, what the Maſter hath reported has no Effect. So that I apprehend it is only to lay the State of the Matter before the Court: If what the Maſter reports, ſeems agreeable to the Court, then they confirm it; if not, they vary it, or ſometimes ſend it back again to the Maſter for his further Conſideration.

Mr. *Com. Serjeant.* My Lords, I deſire that Mr. *Meller* may inform your Lordſhips, if any Perſon apprehends the Facts miſtaken, whether they have not an Opportunity of rectifying this Report of the Maſter.

Mr. *Meller.* My Lords, ſo far as I apprehend, the Rule of the Court is this, when a Report is drawn up, the Parties on both Sides have Liberty to object to that Report before the Maſter; and whatever they put in by way of Objection before the Maſter, they may ſpeak to thoſe ſeveral Points when the Report comes before the Court.

Mr. Serj. *Probyn.* What are the Matters that are generally referred to the Maſters by the Court?

Mr. *Meller.* The Chief Matters are the ſtating of Accompts.

Mr

Mr. *Strange.* My Lords, I beg leave to ask the Witneſs this Queſtion. Whether any Matters of Judgment are at any time referred by the Court to the Maſter?

Mr. *Meller.* The Nature of Reports requires ſome Concluſion upon them, to be given by the Maſters according to the beſt of their Opinion. But the Court gives a Sanction to thoſe Reports.

Mr. *Strange.* Whether in any one Inſtance, the Judgment of the Maſter is final to the Suitor?

Mr. *Meller.* I will recollect, and give your Lordſhips the beſt Account that I can remember as to that. I think when a Maſter has taxed a Bill of Coſts, there is a Subpœna taken out for the Coſts upon the Maſter's Report, without going to the Court. I am not ſure.

Mr. *Com. Serjeant.* When Exceptions are taken to a Maſter's Report, doth the Maſter or the Court paſs a Judgment upon them?

Mr. *Meller.* The Method is this, when a Report is drawn up, a Copy is given to both Sides, and each Side puts in ſuch Objections to it as they think proper; the Maſter goes through thoſe Objections, and having gone through them, he forms an Opinion upon the whole. Then it goes to the Court, and the Parties have Liberty to go upon thoſe Objections before the Court, who finally determine.

Mr. *Com. Serj.* I deſire, my Lords, that Mr. *Meller* may acquaint your Lordſhips who preſided in the Court when he came in?

Mr. *Meller,* My Lord *Cowper*, I take it, was then Chancellor; it was in the Year 1708, or the Beginning of 1709.

Mr. *Com. Serj.* We deſire to know, whether he gave any Money when he came into the Office, and to whom?

Mr. *Plummer.* We have called this Gentleman to give an Account of the Nature of the Office of a Maſter in Chancery, we are not come to that Matter of giving of Money; we ſubmit whether it is neceſſary to enter into that Queſtion now?

Mr. Serj. *Probyn.* If this Gentleman is to be called again, we beg Leave to reſerve that Queſtion till they come to that Part of the Charge.

Mr. *Plummer.* My Lords, I have another Queſtion to ask: It has been asked, whether the Determination of a Maſter in Chancery is final? I deſire it may be asked, if the Maſter in Chancery makes a Report, to which there is no Exception, whether the Decree in Chancery is not according to that Report?

Mr. *Meller.* I take it, after the Maſter has made a Report, and there is no Exception to it, that Report is firſt confirmed *niſi*, and then it is confirmed abſolutely upon a ſecond Motion.

Mr. *Lutwyche.* My Lords, I deſire he may be asked another Queſtion: If there be a Reference concerning an Anſwer which is alledged inſufficient, and the Maſter reports it inſufficient, whether it is not final and concluſive, unleſs the Party takes Exception to ſuch Report?

Mr. *Meller.* Unleſs the Party takes Exception, 'tis looked upon as final: For then he ſubmits and puts in a farther Anſwer, and then the End of referring it to the Maſter is anſwered: But the Party may except if he pleaſes.

Mr. *Lutwyche.* As to the taxing of Coſts, whether when the Coſts are taxed to a particular Sum, that is not final and concluſive, unleſs the Party makes Application to the Court?

Mr. *Meller.* I apprehend I did anſwer that before. The Maſter, after he has taxed the Bill of Coſts, the Clerk in Court, as I take it, makes out Subpœnas for Coſts of courſe: But I cannot ſpeak to that ſo well as the Clerks in Court; but I take that to be the Practice.

Earl of *Abingdon.* I would be glad to be informed in this Point: Suppoſing a Sum of Money to be laid out upon a Purchaſe or Mortgage, whether the Titles of thoſe Eſtates are not commonly referred to a Maſter, and whether the Maſter does not judge of or determine thoſe Titles?

Mr. *Meller.* In that Caſe, I can only ſpeak to what came before myſelf. When there was an Order to put Money out upon a Mortgage, the firſt Step I took was, I ſent the Title-Deeds to ſome able Counſel; when I had his Opinion, I uſed the beſt of my Judgment to inform myſelf: If I found no Objection, then I thought I was obliged to allow the Security, and accordingly made my Report of Allowance; and then as Maſter ſet my Hand to the Side of the Deed.

Mr. *Lutwyche.* Another Queſtion I would beg Leave to ask. Tho' it is well known, yet it is fit it ſhould appear from the Witneſs, and that is, Whether the Maſters don't ſit upon the Bench with my Lord Chancellor in open Court in *Weſtminſter-Hall* every Term?

Mr. *Meller.* My Lords, in *Weſtminſter-Hall* three Maſters are required to attend the Chancellor; at his own Houſe two; and the like at the *Rolls.*

Mr. *Com. Serj.* If the Gentlemen have done, we beg Leave to ask one Queſtion: Whether even in the Caſe of Coſts, if the Parties are diſſatisfied, Application is not made to the Court (tho' not by way of Exception, yet by Motion) to refer it back again?

Mr. *Meller.* In the Caſe of Coſts, it hath been a very rare thing to apply to the Court. Some Inſtances there have been, I believe, but few.

Mr. *Com. Serj.* I beg Leave the Maſter would inform your Lordſhips, whether in the Caſe of Titles, if there happens any Difference in the Opinion of the Parties, whether they apply to the Court, or are concluded by the Opinion of the Maſter?

Mr. *Meller.* I never knew, during the Time that I was in the Office, that any Title was ever conteſted before the Court; I mean in my own Caſe.

Mr. *Com. Serj.* Whether or no he knows any Caſe where the Parties have differ'd in Opinion about a Title, that the Maſter's Opinion has concluded the Parties?

Mr. *Meller,* I don't know, while I was in the Office, that there was ever any Objection before me in the Caſe of a Title.

Mr. *Robins.* Give me Leave to ask one Queſtion: You ſay three Maſters ſit with my Lord Chancellor at *Weſtminſter*, two at his own Houſe: I deſire to know what they do there, whether they ſit as Aſſiſtants?

Mr. *Meller.* My Lords, I don't know that ever their Advice was asked.

Dr. *Sayer.* My Lords, I would ask whether they ever interpoſed by way of Judgment, or took upon them to act as Judges?

Mr. *Meller.* My Lords, I think not, I don't remember any Inſtance of it.

Mr. *Strange.* My Lords, I deſire he may be asked, whether what the Maſter ever does is confirmed of courſe, or is there not a Motion for that purpoſe?

Mr. *Meller.* I thought I mentioned that before: I ſhall repeat it again. There is firſt a Motion to confirm *niſi Cauſa*; and upon the ſecond Motion, unleſs there is Cauſe ſhewn, it is confirmed.

Mr. *Strange.* My Lords, I deſire he may be asked, if there is not an Affidavit of Service of the firſt Order?

Mr. *Meller.* I believe there is; but that is the Buſineſs of the Sollicitor.

Mr. *Strange.* My Lords, I beg Leave he may be asked one Queſtion more, Whether there is not a Certificate alſo from the Regiſter that no Cauſe is ſhewn?

Mr *Meller.* My Lords, I can't ſpeak particularly as to that; It is a Buſineſs that does not lie before the Maſter in his Office: I believe in many Caſes the Regiſter certifies.

Dr. *Sayer.* We will trouble your Lordſhips with no more Queſtions except this one; that is, Whether we ſhall ſee Mr. *Meller* again? For if we are to take our Leave of him now, we ſhould offer ſome other Queſtions before he departs.

Mr. Serj. *Pengelly.* My Lords, I can't tell whether the Managers will have any Occaſion to call him again; but he ſhall ſtay here to attend, in order to be called when he is wanted, either by the Noble Lord or any other Perſon. We don't think fit to trouble your Lordſhips with any other Evidence as to that Matter. Their Authority in Court appears by the Commiſſions that have been produced. It is not ſaid in the Introduction to the Articles, that the Maſters are to comptroll the Lord Chancellor, but to aſſiſt him in the Adminiſtration and Execution of Juſtice, of which we think we have produced the fulleſt Proof; and beg Leave to proceed to another Part of our Evidence, that which relates to the Profits of the Office of Lord Chancellor. The ordinary Profits, not to mention the extraordinary ones, which have been made by the Noble Lord within the Bar, I think may be computed to amount to 8000 *l.* a Year, or thereabouts; ſo that there is no Occaſion to uſe other Means. But not to enter into them all, we ſhall only beg Leave to call one Witneſs to prove one groſs annual Sum of 1500 *l.* a Year paid out of the *Hanaper-Office.* My Lords, we deſire Mr. *Pynſent* may be asked, for what annual Sum he accompted to the late Lord Chancellor out of the *Hanaper-Office*, during his time of being in the ſaid Office, how much he has paid him?

Mr. *Com. Serj.* My Lords, I beg Leave to oppoſe that Queſtion. I believe there is no Payment from the Crown but what is always upon Record; and therefore that being a Matter of a higher Nature, they ought to produce thoſe Records, and not examine Witneſſes *viva voce* to it.

E. of *Macclesfield.* I believe this Gentleman is right in his Objection in Point of Law. But however, as this Perſon is the proper Officer, and I believe an honeſt Man, I will not inſiſt upon the Nicety.

Mr. Serj. *Pengelly.* We deſire to know how much a Year he has paid to the impeached Lord out of the *Hanaper-Office?*

Mr. *Pynſent.* I have no Voucher with me; but as far as I can charge my Memory, 'tis about 13 or 1400 *l.* a Year.

E. of *Macclesfield.* If he had had his Memorandum with him, I was willing he ſhould give your Lordſhips an Account of that Matter; but if he ſpeaks only by an uncertain Memory of it, I hope I ſhall not be bound by it, eſpecially when he himſelf aſſigns the Want of his Vouchers as a Reaſon why he cannot be certain.

Mr. Serj. *Pengelly.* My Lords, we deſire he may be asked, How much he can take upon him to ſay he has paid? It is not material whether by Warrant or Special Direction: It is only a Queſtion of Fact, whether he can be certain to a Sum, either 13 or 1400 *l.* a Year, or other Sum?

Mr *Pynſent.* I can ſay above 1000 *l.* a Year. If I had my Vouchers here, I could be more certain.

Mr *Com. Serj.* The Noble Lord waved the Objection, upon a Suppoſition that he had a certain Account. As he has not, I muſt beg Leave to inſiſt upon the Objection that I made againſt the Legality of the Proof.

Mr. *Lutwyche.* We only ask in this Caſe to a Fact, what he paid to him; and I will add this further, for what time?

Mr Serj. *Probyn.* My Lords, we muſt inſiſt upon our Objection. The Witneſs ſays he is uncertain how much he has paid: He ſays he has Vouchers which will ſhew the particular Sums he has paid; and ſince it is in their Power to produce thoſe Vouchers, we muſt ſubmit it that they ſhall produce the beſt Evidence they have in their Power to give, and that the Receipts and Vouchers ſhall be produced.

Mr *Com. Serj.* The Anſwer of the Honourable Managers to the Objection, is no Anſwer. They ſay 'tis a Matter of Fact; but that Matter of Fact is Matter of Record: It muſt be proved by the Record, becauſe the Law expects the higheſt Proof to be made that can be, even in trifling Caſes, and much more when the Honour of ſo great a Lord is in queſtion.

Mr Serj. *Probyn.* I deſire to know if there is not conſtantly a Receipt given upon every Payment?

Mr *Pynſent.* Yes, and thoſe Receipts are carried into the Auditors Office, and there they reſt.

Mr Serj. *Probyn.* Then they can be come at?

Mr *Pynſent.* Yes, they are carried in yearly.

Mr *Sol. General.* My Lords, I did not expect this Objection: But we muſt ſubmit it whether there is any Foundation for it. If the Matter of Record be inſiſted on, only with reſpect to the Receipt given, there is no need of it: Better Evidence cannot be given to prove Payment, than the Man who paid it. The common Evidence to prove Payment of Money, is to produce

duce a Man to ſwear that he paid that Money. No better Evidence can be given; and tho' a Receipt is given, yet when a Perſon proves he paid the Money, he need not produce the Receipt: It is better Evidence than the Receipt: A Receipt may be given without Payment. Therefore we apprehend that the Witneſs's Proof of the Payment, is ſufficient to prove this Matter of Fact.

Mr. *Com. Serj.* I apprehend there is no Money either received or iſſued out by the Crown, but what appears by Record. It is not only thoſe Receipts that is the Strength of the Objection; but when there are Matters uncertain, and the Witneſs ſays he can't declare what it was, whether upon that Foundation your Lordſhips won't expect a certain Evidence, not only from the Nature of the Thing, but from the preſent Circumſtances of this Caſe, when the Witneſs declares that he cannot remember it?

Mr *Strange*. My Lords, I wonder to hear it ſaid, that a Perſon who ſwears to the Payment of Money, is the moſt certain Evidence. He may be miſtaken, the Receipt cannot. Therefore we muſt ſubmit it, as they have opened it, whether this is the beſt Evidence?

Mr *Lutwyche*. My Lords, I wonder your Lordſhips ſhould be troubled with any thing of this kind, in order to prove a Salary of 1500 *l.* a Year belonging to the Noble Lord's Office, when we ask only to the Quantum of the Sum which he did receive from Mr. *Pynſent*: The Queſtion is, whether we ſhall be admitted to ask that Queſtion? It is admitted that the Witneſs paid the Salary: All the Queſtion is, what he paid?

E. of *Macclesfield*. My Lords, I am ſorry your Lordſhips Time ſhould be taken up about a thing of this kind. When the Objection was firſt made by my Counſel, which I apprehend is right, I ſtood up to acquaint your Lordſhips, that I did not inſiſt on the Nicety of it. This Gentleman uſed to pay me Money, and I believe he is a very honeſt Gentleman; but when he comes to ſay he is not ſure how much, and they were working him up to a higher Pitch, and theſe Gentlemen, for ought I know, or their Sollicitor, may have the Receipts in their Pockets, I thought it was then high time to ſtop them. This Gentleman did ſay it was more than 1000 *l.* My Lords, I admit it, I believe it to be 1100 *l.* a Year, or thereabouts: If I knew exactly, I would tell it, I never intended to diſpute the Matter.

Mr *Weſt*. I would not have your Lordſhips imagine that the Commons are capable of working up a Witneſs. It is unworthy of the Commons of *Great Britain*, of the Gentlemen appointed Managers in their Behalf; it is impoſſible that they ſhould have any View but the Truth of the Fact, and the Juſtice of the Cauſe. The Queſtion asked was only what it was he paid; it was not endeavouring to work him up to any thing. If this was a Queſtion relating to the Crimes charged upon his Lordſhip, I ſhould not have been ſo much ſurprized; but this is only an Aggravation contained in the Preamble. I think the litigating the Point is as great an Aggravation, as the proving the Payment of the Money.

E. of *Macclesfield*. My Lords, I did not intend any Reflection upon the Commons; nor did I ſay any thing which amounts to it. I did ſay the Sollicitor might have the Receipts, I don't know what they have in their Hands. The learned Gentleman that ſpoke laſt, ſays 'tis not a Charge, only an Aggravation: If it be an Aggravation, ſhould it not be proved, and legally proved? But I have been ready to make this Matter eaſy, for I agreed it to be as much as their own Witneſs can with any Certainty ſay it was, and I don't think it to be any Aggravation; and therefore told your Lordſhips I *believed* it might be 1100 *l.* a Year, or thereabouts, not being willing to take up any more of your Lordſhips time about it.

Mr. Serj. *Pengelly*. My Lords, the Managers for the Houſe of Commons do not think it ſo material whether it be 11 or 1500 *l.* a Year. We will take the Noble Lord's Admiſſion: And we apprehend as it is 1100 *l.* a Year, it is a reaſonable Addition to the Salary of his Office.

E. of *Macclesfield*. I only would ask this Queſtion, Do you remember what the Chancellor's Annual Salary is?

Mr. *Pynſent*. No, I do not.

E. of *Macclesfield*. That is Part of the Particular that makes up the 1100 *l. per Annum?*

Mr. *Pynſent*. I think it is ſo.

E. of *Macclesfield*. Is it not 300 *l. per Annum?*

Mr *Pynſent*. I think it is thereabouts.

Mr *Com. Serj*. My Lords, I deſire he may be asked, whether or no this 1100 *l.* a Year hath been uſually allowed to the preceding Lords Chancellors?

Mr *Pynſent*. I take it for granted that it was ſo.

Mr Serj. *Pengelly*. My Lords, we ſhall now proceed to call our Witneſſes in Support of the Ninth Article, that being a diſtinct Particular, relating to a Sum not at all involved in the Queſtions touching the Maſters; and, as we apprehend, received by the Noble Earl under Circumſtances of the greateſt Aggravation that is poſſible; abuſing the Royal Authority, or that Share of it which the Noble Lord enjoyed at that time when he was one of the Lords Juſtices. Therefore we give Preference to that Article, and deſire Mr. *Thomas Bennet*, whom I ſee in your Lordſhips Houſe, may be ſworn and examined.

Mr. *Thomas Bennet* ſworn.

Mr Serj. *Pengelly*. My Lords, Mr. *Bennet* was the Perſon who was poſſeſſed of the Office of the Clerk of the Cuſtodies, at the time of the Reſignation of it for the Benefit of Mr. *Hamerſley*, who has now a Patent. We have the Patent here; and if that be read, it will more fully acquaint your Lordſhips with the Nature of the Office, and then we ſhall acquaint your Lordſhips with the Nature of the Tranſaction.

The Patent begun to be read.

'Teſte, *&c.* 5^to^ Septemb' An. 10 *Georgii* Regis.

Mr Serj. *Pengelly*. Tho' the Noble Lord's Name be not mentioned in the Patent, yet it is ſufficiently known from the Date and Time of

of it, that it was when the Noble Lord was one of the Lords Juſtices, and had the Cuſtody of the Seals, and that at that time he affixed the Seals to this Patent.

Then the Patent was begun again to be read.

E. of *Macclesfield*. My Lords, I beg Pardon for interrupting, I don't know whether they think it of any particular Uſe to read it through; if not, for ſaving your Lordſhips time, I admit that a Grant was made of the Office to Mr. *Hamerſley*, on the Surrender of Mr. *Bennet*.

Mr Serj. *Pengelly*. My Lords, as it is neceſſary to ſhew the Reſignation of Mr. *Thomas Bennet*, ſo likewiſe the Nature of the Office; and therefore to the end that may be the better ſeen, we beg Leave the Patent may be read.

Clerk reads.

'GEORGIUS Dei Gratia, Magnæ Britanniæ, Franciæ & Hiberniæ Rex, Fidei Defenſor, &c. Omnibus ad quos preſentes literæ noſtræ pervenerint ſalutem. Cum nos per Literas noſtras Patentes ſub Magno Sigillo noſtro Magnæ Britanniæ confectas geren' dat' apud Weſtm' viceſimo die Martij, Anno Regni noſtri tertio pro nobis Heredibus & Succeſſoribus noſtris Dederimus & Conceſſerimus Dilecto & fideli noſtro Thomæ Bennet Armigero Officium Clerici ad Scribend' & Conficiend' omnia & ſingula Bria de diem clauſit extremum, & Mandamus & Commiſſiones ad inquirend' poſt mortem & de Ideotis & Lunaticis & ad melius inquirend' inde & ſuperſed' eorundem ac omnia al' Bria & Proceſs' eorund' ac omnia al' Bria de Proceſs' cujuſcunque Generis Nominis Naturæ vel Speciei eſſent vel forent que ante tum de vel nuper in Cur' Wardor' & Libationum aliquor' Predeceſſor' noſtror' antetunc Regum vel Reginar' Angl' per Warrant' ibidem dum eadm' Cur' ſtetit & fuit in Uſu & Vigore fact' & Conceſs' aſſignat' vel appunctuat' fuerant, vel fieri concedi aſſignari vel appunctuari conſuerant vel debuerant ac de vel in Cur' noſtra Cancellar' vel aliquor' Predeceſſor' noſtror' antetunc Regum vel Reginarum Angl' ſub Magno Sigillo Angl' impetrat' & perſecut' fuerant vel impetrari & proſequi conſueverant vel debuerant ac oies & ſingul' Literas Paten' de Cuſtod' Corporum omnium Wardor' Idiotor' & Lunaticor' noſtror' Hered' & Succeſſor' noſtrorum & de Maritag' eorund' Wardor' ſub Magno Sigillo Magnæ Britanniæ impetrand' & proſequend' necnon omnia al' Bria Commiſſiones & proceſs' cujuſcunque Generis Nominis Naturæ vel Speciei eſſent vel forent de vel in Cur' noſtra Cancellar' Hæred' & Succeſſor' noſtrorum ſub magno Sigillo nro Magnæ Britanniæ Heredu' vel Succeſſorum noſtrorum premiſſa predicta ſeu eorum aliqua tangen' vel concernen' fiend' concedend' impetrand' ſeu proſequend'. HABEND' tenend' gaudend' & exercend' predictum Officium & omnia & ſingula premiſſa predicta ſuperius ſpecificat' prefat' Thomæ Bennett per ſeipſum vel per ſufficientem Deputat' ſuum ſive Deputatos ſuos ſufficientes a die dat' prerecitat' Literarum noſtrarum Patentium ad Termin' & pro Termino vitæ naturalis ipſius Thomæ Bennett una cum omnibus predict' profic' & advantag' ad inde ſpectan' prout per eaſdem Literas Paten' (inter al') in eiſdem content' relatione inde habita plenius liquet & apparet cumque præfat' Thomas Bennett per quoddam Scriptum ſuum ſub Manu & Sigillo ſuis ſigillat' geren' Dat' nono die Auguſti, Anno Regni noſtri decimo, ac in Cur' Cancellar' noſtra debito modo Irrotlat' Officium & premiſſa predicta ac tot' ſtatum jus Titulum & intereſſe ſua in eiſdem una cum dictis recitat' Literis noſtris Patentibus Cancelland' in Manus noſtras ſurſum reddiderit. *Quam* quidem ſurſum redditionem nos acceptavimus ac per preſentes acceptamus *Sciatis modo* quod nos de Gratia noſtra ſpeciali ac ex certa Scientia & mero motu noſtris *Dedimus* & conceſſimus ac per preſentes pro nobis Heredibus & Succeſſoribus noſtris *Damus* & concedimus dilecto & fideli noſtro Hugoni Hamerſley de Interiori Templo Londin' Armigero dictum Officium Clerici ad ſcribend' & conficiend' omnia & ſingula Bria de diem clauſit extremum & Mandamus & Commiſſiones ad inquirend' poſt mortem & de Idiotis & Lunaticis & ad melius inquirend' inde & ſuperſed' eorund' ac omnia al' Bria & Proceſs' eorund' ac omnia al' Bria & Proceſs' cujuſcunque Generis Nominis Naturæ vel Speciei ſint vel fuerint quæ antehac de vel nuper in Cur' Wardorum & Liberationum aliquorum Predeceſſorum noſtrorum nuper Regum vel Reginarum Angl' per Warrant' ibidem dum eadem Cur' ſtetit & fuit in Uſu & Vigore fact' conceſs' aſſignat' vel appunctuat' fuerunt vel fieri concedi aſſignari vel appunctuari conſueverunt vel debuerunt ac de vel in Cur' noſtra Cancellar' vel aliquorum Predeceſſorum noſtrorum nuper Regum vel Reginarum Angl' ſub Magno Sigillo Angl' impetrat' & proſecut' fuerunt vel impetrari & proſequi conſueverunt vel debuerunt ac omnes & ſingul' Literas Paten' de Cuſtodia Corporum omnium Wardorum Idiotorum & Lunaticorum noſtrorum Hæred' & Succeſſor' noſtrorum & de Maritag' eorund' Wardor' ſub Magno Sigillo Magnæ Britanniæ impetrand' & proſequend' necnon omnia al' Bria Commiſſiones & proceſs' cujuſcunque Generis nomis Naturæ vel Speciei ſint vel fuerint de vel in Cur' noſtra Cancellar' Heredum & Succeſſorum noſtrorum ſub Magno Sigillo noſtro Magnæ Britanniæ Hered' vel Succeſſorum noſtrorum premiſſa predicta ſeu eorum aliqua tangen' vel concernen' fiend' concedend' impetrand' ſeu proſequend' ac ipſum Hugonem Hamerſley Clericum & Officiarium noſtrum Hered' & Succeſſor' noſtrorum ad ſcribend' & conficiend' omnia & ſingula predicta Bria Commiſſiones proceſs' ſuperſed' Literas Paten' ac omnia & ſingula cætera premiſſa ſuperius ſpecificat' de vel in dict' Cur' Cancellar' noſtra ac Hered' & Succeſſor' noſtror' impoſterum de tempore in tempus concedend' proſequend' ſeu quoviſmodo impetrand' *Ordinamus*, *Conſtituimus*, *Erigimus* & Stabilimus per preſentes *Habend' Tenend' Utend' Gaudend' Exercend' Fungend'* & Adminiſtrand' predict' Offic' & omnia & ſingula premiſſa predicta ſuperius ſpecificat' prefat' Hugoni Hamerſley per ſeipſum vel per ſufficientem Deputatum ſuum ſive Deputatos ſuos ſufficientes a confectione harum literarum noſtrarum Patent' ad Terminum & pro Termino Vitæ naturalis ipſius Hugonis Hamerſley una cum omnibus & ſingulis Feod' profic' commoditat' emolument' ju-

'ribus

' ribus Privileg' & al' rebus quibuſcunque modo ' vel antehac uſitat' pro premiſſa vel eorum aliqua ' recept' ſeu eiſdem vel eorum alicui pertinen' inciden' vel incumben' quoviſmodo adeo plene libere & integre ac in tam amplis modo & forma ' prout prefat' Thomas Bennett, vel aliquis alius ' ſive aliqui alii predictum Officium & cætera premiſſa ſeu eorum aliqu' antehac habentes vel ' exercentes habens ſeu exercens habuerunt exercuerunt perceperunt & gaviſi fuerunt habuit ' exercuit percepit & gaviſus fuit aut habere exercere percipere aut gaudere debuerunt aut debuit in & pro Exercitio ejuſdem Officii & cæterorum premiſſorum. Et hoc abſque computo ' ſeu aliquo alio proinde nobis Heredibus vel Succeſſoribus noſtris reddend' ſolvend' vel faciend' *Volumus* etiam ac per preſentes pro nobis Heredibus & Succeſſoribus noſtris concedimus prefat' Hugoni Hamerſley quod ipſe cuſtodiet intrabit & tranſcribet omnes & ſingulos Ordines Reportationes & comput' fact' declarat' & perfect' ſive faciend' declarand' & perficiend' tangen' vel concernen' dict' Idiot' vel Lunatic' & ſtat' eorund' vel eorum aliquorum vel alicujus *Volumus* etiam quod nullus alius Clericus Cancellariæ noſtræ Hered' vel Succeſſor' noſtror' nec aliquis alius ſive aliqui alii cum Scriptur' Confectione ſeu Compoſitione predicorum Briorum Commiſſion' proceſs' Literarum Paten' vel cum Cuſtodia Intracone & Tranſcriptione predict' Ordin' Reportation' & computorum aut al' premiſſorum aut alicujus eorundem ullo modo ſe intromittat ſeu intromittant ſine aſſenſu & conſenſu ipſius Hugonis Hamerſley. Et quod idem Hugo Hamerſley aut Deputat' ſuus ſive Deputat' ſui ſufficien' in ' hac parte aſſignat' ſive aſſignand' Omnia & ſingula ' predicta Bria Commiſſiones Literas Paten' Ordinationes Certification' Compoſition' & cætera premiſſa de vel in dict' Cur' Cancellar' noſtra ac Heredum & Succeſſorum noſtrorum proſequend' conficiend' impetrand' cuſtodiend' intrand' vel tranſcribend' ſcribere conficere cuſtodire intrare & tranſcribere poſſint & quilibet eorum poſſit. *In cujus* rei Teſtimonium has Literas noſtras fieri fecimus Patentes ' Teſtibus Willielmo Archiepiſcopo Cantuar' & ' cæteris Cuſtodibus & Juſticiariis Regni noſtri ' apud Weſtmonaſterium quinto Die Septembris, ' Anno Regni noſtri Decimo.

Per bre' de privato Sigillo,

COCKS.

Mr. Serj. *Pengelly.* The Reading of theſe Letters Patents ſhews, that this Office is in the Gift of the Crown: It likewiſe ſhews, that the Reſignation of Mr. *Tho. Bennet* was for the Benefit of Mr. *Hamerſley*, for that is recited in the Letters Patents themſelves. Now, my Lords, we ſhall ſhew your Lordſhips upon what Conſideration or Bargain that Reſignation and new Grant were made.

Mr. *Com. Serj.* I beg Leave to make an Objection to that: The Foundation of this Article is a corrupt Agreement for the Reſignation of an Office accepted by the Lord Chancellor. Now, in the Letters Patents in general, a Reſignation is taken Notice of; but they ought to make it appear, That his Lordſhip's Permiſſion or Acceptance of it is neceſſary. The Reſignation is not made to the Lord Chancellor: Therefore we hope it ſhall not, by way of Concluſion and Implication, be an Evidence to prove this Reſignation to be accepted or procured by him. The Reſignation was in fact made without his Privity; and the Reſignation itſelf is of Record, and muſt be proved by Record.

Mr. *Sol. Gen.* My Lords, I can hardly think myſelf at your Lordſhips Bar, by the Objections which are made by the Counſel for the noble Lord. They object before they hear us: They object we cannot prove the Reſignation to the Earl: When we have produced our Proof, then they will ſee whether it be ſufficient: 'Tis time enough for them to make the Objection then. If we are to be objected to upon every Witneſs we call, before we have asked them one Queſtion, I am afraid a great deal more Trouble will be given your Lordſhips than we are willing to give. We are firſt to ask our Queſtions; if we ask an improper Queſtion, they may object to the Queſtion: Or, if the Anſwer don't prove our Charge, they may obſerve on it when it is given. I little expected this Method at your Lordſhips Bar.

Lords. Go on, go on.

Mr Serj. *Pengelly.* We don't apprehend there is any Occaſion to enter into this Objection. It is a Reſignation to the Crown, but through the Hands of the Lord Chancellor: He is the Lord that puts the Seal to the Inſtrument: But if further Evidence be neceſſary, they muſt object to that when we have gone through the Proof. Therefore we beg Leave to ask Mr. *Tho. Bennet.*

Mr. *Lutwyche.* I thought they would have objected to our asking Mr. *Bennet* any Queſtions at all.

Mr. *Onſlow.* It is rather an Obſervation upon our Evidence, which will be more proper for them when they come to make the noble Lord's Defence.

Mr. Serj. *Pengelly.* We beg Leave to ask Mr. *Bennet*, what Application he made for Liberty to reſign this Office, and for Mr. *Hammerſley* to be admitted?

Mr. *Tho. Bennet.* My Lords, as ſoon as I was admitted a Maſter of the Court of Chancery, which was the 3d of *June*, 1723, I thought it inconſiſtent to hold this Office of the Clerk of the Cuſtodies, which I had before; and therefore I intended to ſurrender it to ſome Perſon that was proper: And after I had found Mr. *Hamerſley*, and made an Agreement with him, I applied to Mr. *Cottingham*, then Secretary to my Lord Chancellor. I told him I was poſſeſſed of an Office in the Gift of the Crown, and was willing to ſurrender, and was going to apply to a Secretary of State to get the King's Leave to ſurrender for the Benefit of Mr. *Hamerſley*. I told him that the Office being in the Court of Chancery, the Secretary of State would naturally ask my Lord Chancellor, whether the Perſon I propoſed was well-affected to the Government, and qualified for the Place: And therefore, for that Reaſon, I thought it my Duty to acquaint my Lord Chancellor with my Intention, and who the Perſon was I intended to ſucceed me. I deſired Mr. *Cottingham* to acquaint my Lord Chancellor that Mr. *Hamerſley* was the Perſon. Mr. *Cottingham* replied, he would acquaint my Lord Chancellor, and I ſhould have an Anſwer as ſoon as poſſible. He appointed me to meet him the next Day, when he told me he had acquainted my Lord Chancellor

who the Perſon was, and that my Lord Chancellor ſaid he had not any Knowledge of him. I told Mr. *Cottingham* he might have acquainted his Lordſhip that he knew him, for he lived the next Door to him: He is a Gentleman at the Bar well known; and I do aſſure you he is in the Intereſt of the Government. Says Mr. *Cottingham*, my Lord Chancellor don't know him, nor do I. I was ſurprized at that. But however, ſaid he, Mr. *Bennet*, there is a Preſent expected by my Lord Chancellor, and if I made that Preſent, the thing might be made eaſy, and my Lord Chancellor would do what I deſired; that is, to acquaint the Secretary of State, that Mr. *Hamerſley* was a Perſon well affected to the Government; and that I deſired he might ſucceed me in my Place. Mr. *Cottingham* ſaid, there muſt be a Preſent. On this, I told Mr. *Cottingham*, that it was not uſual to give any Preſent upon this Occaſion; that, in my own Caſe, when I came in, I gave none to my Lord *Cowper*, and my Brother told me that he gave none; and that at his Coming in, he asked Lord *Cowper* if any thing was due to him, and my Lord *Cowper* denied that any thing was due, and abſolutely refuſed any thing: Beſides, ſaid I, it is very hard for my Lord Chancellor to ask or accept any thing from me, becauſe I ſo lately paid him ſo great a Sum as Fifteen hundred Guineas for my Maſter's Place; but if he will have it, I will give him One hundred Guineas. He ſaid he would acquaint my Lord Chancellor with it; and the next day, or the day after, he told me that my Lord Chancellor would accept of that; but it was a very ſmall Preſent, and it was a Favour my Lord accepted it; and my Lord would ſend over to *Hanover* for the King's Warrant, and I need have no further Trouble beſides paſſing the Patent.

Mr. Serj. *Pengelly*. My Lords, I deſire he may be asked, whether he paid the One hundred Guineas to Mr. *Cottingham*, and in what manner?

Mr. *Tho. Bennet*. I did pay it, I think it was in a Bank Bill of 105 *l.*

Mr. Serj. *Pengelly*. Do you remember at what time?

Mr. *Tho. Bennet*. It was long before the Reſignation: For ſome conſiderable time after, Mr. *Cottingham* asked me what I meant that I did not paſs the Patent, for the Warrant was come over. I ſaid I had employ'd Mr. *Tench* to do it; but however I would ſpeak to him again; which accordingly I did, and Mr. *Tench* paſſed the Patent, and I paid him 64 *l.* 17 *s.* 0 *d.* the Fees for paſſing the Patent.

Mr. Serj. *Pengelly*. Was that over and above the One hundred Guineas?

Mr. *Tho. Bennet*. Yes, my Lords.

Mr. Serj. *Pengelly*. Was there any Deduction upon the Payment of the One hundred Guineas?

Mr. *Tho. Bennet*. None at all.

Mr. *Lutwyche*. My Lords, I deſire he may be asked, how long this was after he was admitted a Maſter in Chancery?

Mr. *Tho. Bennet*. I believe it was about ſix Weeks. I was admitted a Maſter in Chancery the Beginning of *June*, and the latter End of *July* following, I ſurrender'd my Office of Clerk of the Cuſtodies.

Mr. Serj. *Pengelly*. We have done with Mr. *Bennet*.

Mr. Serj. *Probyn*. If the Gentlemen have done with him, we beg that he may be asked a few Queſtions on behalf of my Lord *Macclesfield*. What was it you deſired Mr. *Cottingham* to ſay in your Favour to my Lord *Macclesfield*?

Mr. *Tho. Bennet*. I deſired Mr. *Cottingham* to acquaint my Lord Chancellor, that I intended to apply myſelf to the Secretary of State for Leave to ſurrender the Place of Clerk of the Cuſtodies, and to beg the Favour, that if the Secretary of State ſhould enquire of him after the Abilities and Circumſtances of Mr. *Hamerſley*, he might aſſure the Secretary of State, that he was a Man qualified for the Place, and well affected to the Government.

Mr. Serj. *Probyn*. Was that all?

Mr. *Tho. Bennet*. I think that was all.

Mr. Serj. *Probyn*. Was that all that Mr. *Cottingham* told you he had asked?

Mr. *Tho. Bennet*. I don't remember any thing more, but only Mr. *Cottingham* returned for Anſwer, my Lord did not know Mr. *Hamerſley*, and I muſt make a Preſent, and then what I deſired would be complied with.

Mr. Serj. *Probyn*. I think you ſay you had ſome Treaty with Mr. *Hamerſley* about the Surrender of your Office?

Mr. *Tho. Bennet*. Yes.

Mr. Serj. *Probyn*. Had you come to any Agreement with him for the Office, if you could procure a Surrender and Admittance?

Mr. *Tho. Bennet*. Yes.

Mr. Serj. *Probyn*. Then I deſire to know what Sum of Money he was to pay you for that Office, if you could procure him to be recommended?

Mr. Serj. *Pengelly*. We hope the Counſel will not ask ſuch a Queſtion.

Mr. *Sol. Gen*. It is not ſo proper for us to object: The Objection is to come from him: We may tell him that he is not bound to anſwer ſuch a Queſtion, unleſs he pleaſes.

Mr. *Tho. Bennet*. I deſire to be excuſed anſwering a Queſtion that is not material on one Side or the other.

Mr. Serj. *Probyn*. I hope it will be thought reaſonable, that he ſhould inform your Lordſhips, what was the Conſideration that induced him to ſurrender his Office, or what Money he was to have?

Mr. *Tho. Bennet*. I might have ſurrendered that Office without receiving any Money for it; whether I gave it, or whether I ſold it away, is not material.

Mr. *Strange*. I deſire to know whether he gave it away.

Mr. *Weſt*. The Queſtion is only to induce him to accuſe himſelf of a Fact which may be prejudicial to him, and it hath no Influence on the Queſtion before your Lordſhips; which is not, whether this Gentleman had a Right to give away or ſell his Office, but whether the Earl of *Macclesfield* corruptly took Money.

Mr. *Sol. Gen*. It is our Duty that he ſhould not be ſurprized into a Queſtion that may ſubject him to Puniſhment: It is not properly an Objection from us; but we ought to let him know, that an Anſwer to the Queſtion may ſubject him to a Proſecution. If he thinks fit to anſwer, we have nothing to ſay to it.

Mr. *Plumner*. I have another Objection to the putting of this Queſtion. I perceive the Counſel intend to draw out this Tryal to an exceſſive Length; I hope your Lordſhips, for your own

Sakes,

Sakes, will not permit this Queſtion to be anſwered?

Earl of *Abingdon.* If this Point be inſiſted on on both Sides, it cannot be avoided but they muſt withdraw: But I hope the Counſel for the noble Lord will conſider very well of it, before they give your Lordſhips or the Managers that Trouble: For if your Lordſhips ſhould judge the Queſtion unreaſonable, it would throw a Diſgrace upon themſelves, and be at leaſt of no Service to the noble Lord that is impeached.

E. of *Macclesfield.* I humbly apprehend this Queſtion to be extremely material, as that Circumſtance of his having made this Preſent of One hundred Guineas out of Two thouſand, perhaps, which he received for ſurrendring the Place, muſt ſet this matter in a different Light than it would appear in, if nothing elſe had been done but the bare paying of the One hundred Guineas; but ſince I perceive it to be your Lordſhips Senſe that he ſhould not be asked the Queſtion, I therefore decline inſiſting on it.

Dr. *Sayer.* My Lords, I beg Leave to ask Mr. *Bennet* this Queſtion: He was pleaſed to ſay that he gave a Hundred Guineas. Now I deſire it may be asked of him, Whether he gave it to permit him to reſign, or to give a Recommendation of Mr. *Hamerſley*, or what elſe. That he would pleaſe to explain it, what it was given for.

Mr. *Tho. Bennet.* I have ſaid it twice; but I will repeat it again. I ſaid that it was that my Lord Chancellor might recommend the Perſon to the Secretary of State; for I apprehended it was not in my Lord's Power or Gift: He might have done it without taking any Money.

Dr. *Sayer.* With regard to this 64 *l.* odd Money, what was that paid for? Whether to the Great Seal only, or for the whole Fees in paſſing the Patent through all the Offices?

Mr. *Tho. Bennet.* It was paid to Mr. *Tench* the Clerk of the Patents, who paſſed this Patent through all the Offices; and the Great Seal was included in it as I apprehend.

Dr. *Sayer.* I ask who this Mr. *Tench* is, whether he is an Officer belonging to the Great Seal, under the Lord Chancellor?

Mr. *Tho. Bennet.* He is Clerk of the Patents; I do not know who he belongs to.

Mr. *Robins.* My Lords, I deſire he may be asked, Whether Mr. *Cottingham* told him, that the Lord *Macclesfield* inſiſted upon any particular Sum?

Mr. *Tho. Bennet.* Mr. *Cottingham* told me, that my Lord inſiſted upon One hundred Guineas; and I argued the Unreaſonableneſs and Hardſhip of it.

Mr. *Com. Serj.* My Lords, I deſire Mr. *Bennet* may acquaint your Lordſhips, whether ever he made any Application to the noble Lord for Permiſſion to reſign?

Mr. *Tho. Bennet.* I never ſpoke to my Lord myſelf.

Mr. Serj. *Pengelly.* If the Gentlemen have done with him, we beg Leave to explain this Matter, and to ask him upon what Account it was that Mr. *Cottingham* from my Lord *Macclesfield* ſaid a Preſent was expected?

Mr. *Tho. Bennet.* I can't ſay what was Mr. *Cottingham*'s Reaſon; but he ſaid my Lord Chancellor did not know Mr. *Hamerſley*; and then he went on, and ſaid, a Preſent was expected. I apprehended, Mr. *Cottingham* took it, that I could not do it without my Lord Chancellor's Conſent.

Mr. Serj. *Pengelly.* I deſire he may be asked, Whether the Hundred Guineas was paid for a Recommendation of Mr. *Hamerſley*, or that the Whole of procuring the Warrant for the Patent was to be done for it?

Mr. *Tho. Bennet.* Mr. *Cottingham* aſſured me, I need have no farther Trouble about it, if I would pay the Hundred Guineas: He would get the King's Warrant; and I ſhould have no farther Trouble, but paſſing the Patent.

Mr. Serj. *Pengelly.* My Lords, I deſire he may be asked, whether he depended upon theſe Aſſurances, or whether he made Application to any body elſe?

Mr. *Tho. Bennet.* I never made any other Application; and I told Mr. *Cottingham*, if any Accident happen'd of Death, &c. before the Warrant came over, I hoped my Lord Chancellor would return the Hundred Guineas; and he ſaid, Surely ſo.

Mr. Serj. *Pengelly.* I beg Leave to obſerve, that the Patent proves that this corrupt Bargain was executed.

Mr. *Lutwyche.* I deſire he may be asked, whether Mr. *Cottingham* delivered to him the Sign-Manual, or whether Mr. *Cottingham* got the Patent paſſed?

Mr. *Tho. Bennet.* I never ſaw the Sign-Manual. He delivered it, as I believe, to Mr. *Tench*.

Mr. *Lutwyche.* Did Mr. *Cottingham* give you Notice when the Sign-Manual came over?

Mr. *Tho. Bennet.* Yes, he did give me Notice it was come over, and was very angry I did not go about it.

Mr. *Com. Serj.* I deſire Mr. *Bennet* may give your Lordſhips an Account what Time it was?

Mr. *Tho. Bennet.* About the latter End of *July*.

Mr. *Com. Serj.* I deſire he may be asked, whether he had not made Application to the *Secretary's-Office*?

Mr. *Tho. Bennet.* No, I had not made any Application at all.

Mr. Serj. *Probyn.* Did you never make any Application to any other Perſon, either before or after?

Mr. *Tho. Bennet.* I am poſitive I did not.

Mr. Serj. *Probyn.* Did you ever ſay about that time, that you had made Application to any other Perſon?

Mr. *Tho. Bennet.* No, I don't remember that I did.

Mr. Serj. *Probyn.* No; did you never make Application to any body elſe?

Mr. *Tho. Bennet.* I never told any body, to the beſt of my Knowledge and Belief, I am very confident I never did.

Mr. Serj *Pengelly.* My Lords, if they have done with this Witneſs, we beg Leave to call Mr. *Cottingham*, who was an Agent, and paid over this Money to my Lord *Macclesfield*.

Mr. *Peter Cottingham* ſworn.

Mr. Serj. *Pengelly.* My Lords, we only call Mr. *Cottingham* to acquaint your Lordſhips when he paid over theſe Hundred Guineas to my Lord *Macclesfield*.

Mr. *Cottingham.* In *July* I think it was.

Mr. Serj. *Pengelly.* How long after you received it from Mr. *Tho. Bennet*?

Mr.

Mr. *Cottingham.* I believe I paid it over that Day, or the Day after.

Mr. Serj. *Pengelly.* I desire he may be asked, how long before the Patent was passed?

Mr. *Cottingham.* I can't tell, because I can't certainly say when the Patent passed.

Mr. *Lutwyche.* We desire to ask him, whether it was that Year when the King was beyond Sea?

Mr. *Cottingham.* I think, my Lords, it was; it was in *July* 1723.

Mr. *Com. Serj.* If the Gentlemen of the House of Commons have done with him, I beg that he would give your Lordships an Account what Discourse he had with Mr. *Bennet?*

Ld. Ch. Just. *King.* You hear the Question?

Mr. *Cottingham.* Mr. *Tho. Bennet* told me he had agreed with Mr. *Hamersley* for the Place of the Clerk of the Custodies; and that he did not think it convenient to keep two such considerable Places which depended upon his own Life only; that is, the Master's Place, which he had before purchased, and this. He told me he had disposed of this Place to Mr. *Hamersley*, in order to reimburse himself Part of the Money he had paid to Mr. *Hiccocks* for his Master's Place that he had purchased of him, and for that Reason he did not care to keep both.

Mr. *Com. Serj.* Did he tell you how much he had disposed of it for?

Mr. *Cottingham.* No, he did not.

Mr. *Com. Serj.* My Lords, I desire Mr. *Cottingham* may be asked what it was Mr. *Bennet* desired him to request of my Lord *Macclesfield?*

Mr. *Cottingham.* To the best of my Remembrance, he said, he hoped that his Lordship would accept of a Hundred Guineas, because he had received from him so lately a Present for his Master's Place; and he desired his Lordship to forward his Petition to his Majesty.

Dr. *Sayer.* Was this on the first Application?

Mr. *Cottingham.* Yes; he never made but one Application to me.

Dr. *Sayer.* It is of Consequence; and therefore I desire it may be asked, whether at the first time he apply'd, he made this Offer of One Hundred Guineas?

Mr. *Cottingham.* He did, and I paid it over to my Lord *Macclesfield.*

Dr *Sayer.* I desire Mr *Cottingham* may be asked, whether he knew Mr *Hamersley* before this time?

Mr *Cottingham.* I knew him very well, he was my next Door Neighbour both in Town and Country.

Dr *Sayer.* Did you tell Mr *Bennet* you did not know him?

Mr *Cottingham.* No, I never told him so, it was impossible I should; he was my next Door Neighbour both in *Bell-yard*, and at *Hampstead.*

Dr *Sayer.* What Character had Mr *Hamersley?*

Mr *Cottingham.* A very good one.

E. of *Macclesfield.* When you first spoke to me of this matter, what did you tell me?

Mr *Cottingham.* I told your Lordship Mr *Hamersley* was my next Door Neighbour both in Town and Country; and that he was a Gentleman of as unquestionable a Character as any at the Bar; and your Lordship was pleased to depend upon me for his Character.

Mr *Strange.* He is pleased to say Mr *Bennet* did not inform him what Agreement was made between him and Mr *Hamersley.* But did not he say on what Account he resign'd?

Mr *Cottingham.* He told me he surrendred the Office, to reimburse himself the Money he had paid to Mr. *Hiccocks* for his Office.

Mr. *Strange.* What Office was that?

Mr. *Cottingham.* The Master's Office.

Mr. *Strange.* Did he mention that?

Mr. *Cottingham.* Yes, he did mention it.

Mr. Serj. *Pengelly.* If they have done, we beg leave to ask Mr. *Cottingham*, since he informed my Lord of the Circumstances of Mr. *Hamersley*, whether he acquainted my Lord of Mr. *Hamersley* before or after the time he paid the 100 Guineas?

Mr. *Cottingham.* I acquainted his Lordship before.

Mr. Serj. *Pengelly.* I beg leave to ask another Question. If this Gentleman can inform your Lordships upon what Account it was, he received the 100 Guineas from Mr. *Bennet?*

Mr. *Cottingham.* I received the 100 Guineas upon Account of his Surrender of his Office.

Mr. Serj. *Pengelly.* We beg leave to ask another Question. Whether before he agreed with Mr. *Bennet*, he had informed my Lord *Macclesfield* of any Proposal, or what was to be expected?

Mr. *Cottingham.* No, I don't remember I did. All that passed on that Occasion was, Mr. *Bennet* said he was willing to give 100 Guineas, and he hoped his Lordship would not insist upon more.

Mr. Serj. *Pengelly.* I beg he may be asked another Question. Whether when he came back from my Lord *Macclesfield* to Mr. *Bennet*, with the Account of the Acceptance of the 100 Guineas, whether he did not tell Mr. *Bennet* he ought to take it as a favour that his Lordship accepted so little?

Mr. *Cottingham.* I can't remember, but I think I did not.

Mr. Serj. *Pengelly.* Can you say you did, or you did not?

Mr. *Cottingham.* To the best of my Remembrance I did not.

Mr. Serj. *Pengelly.* We desire he may inform your Lordships what Answer he brought to Mr. *Bennet* from my Lord *Macclesfield?*

Mr. *Cottingham.* The Answer my Lord *Macclesfield* ordered me to give to Mr. *Bennet*, was, that he agreed to accept of the 100 Guineas according to his Proposal.

Mr. Serj. *Pengelly.* Whether was this Offer of the 100 Guineas the first time, or after Mr. *Cottingham* had spoken to my Lord *Macclesfield* about it?

Mr. *Cottingham.* Mr. *Bennet* proposed to me to give the 100 Guineas before I spoke to my Lord about it.

Mr. Serj. *Pengelly.* Whether it was the first Time he offered the 100 Guineas, or some time after.

Mr. *Cottingham.* He offered the 100 Guineas the first time.

Mr. Serj. *Pengelly.* Whether Mr. *Cottingham* did not say the first time, that something was expected?

Mr. *Cottingham.* I believe I did say the Great Seal would expect something.

Mr. *Lutwyche.* Mr. *Cottingham* says he believes he did say something was expected. Then I desire to refresh his Memory, and that he would acquaint your Lordships whether that was mentioned before the 100 Guineas were offered?

Mr.

Mr. *Cottingham.* No, not as I remember.

Mr. *Lutwyche.* What did you ſay on that Occaſion?

Mr. *Cottingham.* I ſaid on that Occaſion, as he offered 100 Guineas, I told him my Lord was willing to accept of it.

Mr. *Lutwyche.* I am ſpeaking of the firſt Diſcourſe he had with him, I think he does recollect that he ſaid my Lord expected ſomething on the Account of this Office?

Mr. *Cottingham.* The firſt Diſcourſe when that was mentioned, I told him my Lord expected ſomething to be paid by way of Compliment.

Mr. *Lutwyche.* Was that the firſt Diſcourſe?

Mr. *Cottingham.* The firſt that I remember.

Mr. *Lutwyche.* I beg another Queſtion. If Mr. *Cottingham* told Mr. *Bennet* that my Lord expected ſomething by way of Compliment, how came Mr. *Cottingham* to know that?

Mr. *Cottingham.* Mr. *Bennet* asked me if I believed his Lordſhip would not expect a Compliment? I told him I believed his Lordſhip would, and then he ſaid he would give 100 Guineas.

Mr. *Lutwyche.* Had you any Diſcourſe with my Lord *Macclesfield* before?

Mr. *Cottingham.* No, none at all. I told him it was uſual to make a Preſent; and then he told me he was willing to give 100 Guineas.

Mr. *Plummer.* I know Mr. *Cottingham* is a very honeſt Gentleman. I deſire to ask him, if Mr. *Bennet* did not then tell him, that when his Brother was admitted, my Lord *Cowper* would take nothing?

Mr. *Cottingham.* He did not upon the Oath I have taken, this is the firſt Word I heard of it: I did not know whether his Brother paid any thing or nothing.

Mr. Serj. *Pengelly.* There is ſome little Variation, tho' not material, between Mr. *Bennet* and Mr. *Cottingham*; we beg that Mr. *Bennet* may come to the Bar again.

E. of *Macclesfield.* My Lords, I don't oppoſe Mr. *Bennet's* coming to the Bar again; but I think it is very extraordinary for Perſons to produce Witneſſes to confront their own Witneſſes.

Mr. *Lutwyche.* We do it, to confirm the Teſtimony of our Witneſs.

Mr. Serj. *Pengelly.* In an Affair of this Nature it is impoſſible to produce direct Evidence, without producing the Agent employed. Mr. *Cottingham* was the Agent made uſe of by the Chancellor, and we beg leave to ask of Mr. *Bennet* what Anſwer Mr. *Cottingham* brought or ſaid he brought from my Lord Chancellor relating to this Affair.

Mr *Tho. Bennet.* When Mr *Cottingham* went from me to my Lord Chancellor, there was not a Word of Money mentioned the firſt time. I would not ſo much as put it into his Head; and he returned to me the next Day, and told me my Lord Chancellor inſiſted upon a Preſent. Then I ſaid it was very hard, and I would give my Lord 100 Guineas if it muſt be ſo.

Mr Serj. *Pengelly.* Was it not at the ſecond Meeting that he inſiſted on a Preſent to my Lord?

Mr. *Tho Bennet.* At the ſecond Meeting. At the firſt time he did not, becauſe there was no mention made of Money.

Mr. *Cottingham.* All that Mr *Bennet* ſaid to me on that Occaſion was, that in regard a Compliment of 1500 Guineas had been ſo lately given to his Lordſhip, he hoped his Lordſhip would take no more of him than 100 Guineas.

E. of *Macclesfield.* Theſe Gentlemen are pleaſed to differ in their Evidence. I would ask Mr *Bennet* a ſecond time, whether Mr *Cottingham* told him that he did not know Mr *Hamerſley.*

Mr. *Tho. Bennet.* I am ſure Mr. *Cottingham* told me that my Lord Chancellor did not know him, and I think he told me that he did not know him. That made me ſay, why, Sir, that is ſtrange you ſhould not know him, when he lives the next Door to you!

E. of *Macclesfield.* Before, he ſaid Mr *Cottingham* ſaid he did not know Mr *Hamerſley.* I think he told your Lordſhips ſo, that he did not know him.

Mr *Tho. Bennet.* It is impoſſible to ſwear to a Converſation at ſo great Diſtance.

E. of *Macclesfield.* You are not poſitive?

Mr *Tho. Bennet.* I am not poſitive.

E. of *Macclesfield.* Then, if he is not poſitive whether Mr *Cottingham* told him ſo, I deſire he may be asked whether he is poſitive that he anſwered Mr *Cottingham,* why Sir that is very ſtrange that you ſhould not know him, when he lives the next Door to you?

Mr *Tho. Bennet.* I am as poſitive of the one as of the other. This Converſation paſſed between us, as near as I can remember.

Mr *Cottingham.* It is very ſtrange I ſhould ſay ſo of my very next Door Neighbour, and a Gentleman at the Bar.

Mr. *Thomas Bennet.* Therefore I wondered at it.

Mr. *Lutwyche.* There is but one thing more relating to this Article. It is very well known that his Lordſhip was one of the Lords Juſtices.

Mr. *Cottingham.* It is very ſtrange ſure, Mr. *Bennet,* that I ſhould not know him. He is a Gentleman at the Bar, I ſee him every Day at *Weſtminſter-Hall.*

Mr. *Tho. Bennet.* That was the Wonder I made of it. I might miſtake you; I am ſure you ſaid my Lord did not know him, and I believe you ſaid you did not know him. Mr. *Cottingham* is very deaf, and he might miſtake me.

Mr. Serj. *Pengelly.* My Lords, We apprehend the noble Lord does not put us on the Proof of his Acting as one of the Lords Juſtices.

E. of *Macclesfield.* If Mr. *Delafaye* is there, I deſire he may be called to give an Account of my Acting.

Mr. Serj. *Pengelly.* What I call Mr. *Delafaye* for, is to give an Account of my Lords Acting as one of the Lords Juſtices. If they don't admit it; we muſt call him.

Dr. *Sayer.* My Lords, we deſire he may be called.

Mr. *Delafaye* called.

Mr. Serj. *Pengelly.* We deſire Mr. *Delafaye* may be ſworn.

Mr. *Delafaye* ſworn.

Mr. Serj. *Pengelly.* Since that is inſiſted upon for Form-ſake, which is notorious to the whole Kingdom, we only beg leave to ask Mr. *Delafaye,* whether my Lord Chancellor acted as one of the Lords Juſtices at the Time of this Patent. [ſhewing him Mr. *Hamerſley's* Patent.] Look upon the Date of that Patent.

Mr. *Delafaye.* Yes, my Lords.

Mr. Serj. *Pengelly.* My Lords, we only ask this Witneſs whether my Lord Chancellor, who had then the Cuſtody of the Great Seal, acted as one of the Lords Juſtices?

Mr. *Delafaye.* Yes, my Lords, he did.

Mr Serj. *Probyn.* I beg leave to ask him, whether he knew any thing of Mr. *Bennet's* Petition

being tranſmitted to his Majeſty abroad, and by whoſe Direction?

Mr. Delafaye Mr. *Bennet*'s Petition was tranſmitted to his Majeſty abroad, by the Direction of the Lords Juſtices.

Mr. Serj. *Probyn.* I deſire this Witneſs would inform your Lordſhips, whether in Mr. *Bennet*'s Petition it was deſired that a Grant of his Office ſhould be made to any, and what particular Perſon.

Mr. *Lutwyche.* I think we may reaſonably object to that Queſtion. We are not for troubling your Lordſhips with unreaſonable Objections; but when a Gentleman experienced in the Law ſhall ask Queſtions, concerning written Evidence, we muſt oppoſe that, and ſubmit it to your Lordſhips.

Then the Managers for the Commons acquainting the Houſe, that they had gone through with their Evidence to the Ninth Article, did intend next to proceed to the Fifth, Sixth, Seventh, and Eighth Articles; and alledging it was requiſite their Evidence ſhould be given entire, ſubmitted it to their Lordſhips whether they ſhould now proceed; whereupon, they and all Parties were directed to withdraw, and the Lords Reſolved to proceed further in the Tryal tomorrow at Ten of the Clock in the Forenoon, and adjourned to Nine a Clock tomorrow Morning.

Friday May 7. The ſecond Day.

The Lords being ſeated in their Houſe, and the Managers being come, and the ſaid Earl ſitting on a Stool as before, and his Council at the Bar, Proclamation was made by the Serjeant at Arms as follows.

Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made as on the firſt Day, That all Perſons concerned were to take Notice, that *Thomas* Earl of *Macclesfield* now ſtands upon his Tryal, and they may come forth in order to make good the Charge.

Ld. Ch. Juſt. *King.* Gentlemen of the Houſe of Commons, you may proceed in your Evidence.

Mr. Serj. *Pengelly.* The Managers will now proceed to the Fifth, Sixth, Seventh, and Eighth Articles, being all of the ſame Nature and Kind, relating to the Corrupt taking of Money on the Diſpoſal of the Offices of the Maſters in Chancery. The Queſtion between the Commons and the Lord impeached upon theſe ſeveral Articles, is, the Manner of taking this Money. The Commons Charge the taking of the Money to be by Extortion, and Corruption, and to be drawn out of the Maſters againſt their Conſent; the Lord in his Anſwer inſiſts, that it was freely and voluntarily given, as Preſents, upon their reſpective Admittances. The Managers apprehend that they ſhall give your Lordſhips full Satisfaction, that the Charge of the Commons is true, and that the Manner of taking theſe Sums charged on the Lord, will be ſupported by the Evidence that will be produced. The firſt Witneſs that we ſhall call is Mr. *William Kynaſton* to the Fifth Article.

Mr. *William Kynaſton* ſworn.

Mr. Serj. *Pengelly.* We deſire that Mr. *Kynaſton* may be asked, when he was admitted to be one of the Maſters of the Court of Chancery?

Mr. *Kynaſton.* On the 9th of *Auguſt*, 1721.

Mr. Serj. *Pengelly.* We deſire that he may be asked, concerning the manner of his Admittance, what Tranſactions there were before-hand about it, with whom, and what he gave the Lord Chancellor for his Admiſſion?

Mr. *Kynaſton.* After I had agreed with Mr. *Rogers* for the Purchaſe of his Office, I deſired one Mr. *Baily* to go to Mr. *Cottingham*, my Lord's Secretary, to know what my Lord Chancellor would expect for my Admiſſion into the Office, and treat with him about it. Mr. *Baily* told me it was beſt for me to talk with Mr. *Cottingham* myſelf. So I went to him, and told him my Caſe. He mentioned to me that other Maſters, particularly Mr. *Conway* and Mr. *Borret*, had given Fifteen Hundred Guineas apiece. I propoſed to him One Thouſand Pounds, or One Thouſand Guineas; He ſaid he could not mention it to my Lord Chancellor under Fifteen Hundred. I agreed to give it, but I thought he meant Pounds, and made Preparations for it accordingly; but Mr. *Baily* afterwards telling me that he had ſeen Mr. *Cottingham*, and that he inſiſted upon Guineas, I ſent them to him on the 8th by Mr. *Baily*, and the 9th I was admitted and ſworn.

Mr. Serj. *Pengelly.* What Arguments were made Uſe of by Mr. *Cottingham*, to raiſe the Price from One Thouſand to Fifteen hundred Guineas?

Mr. *Kynaſton.* I don't particularly remember; but either Mr. *Rogers* or Mr. *Cottingham* ſaid it was the oldeſt and the beſt Office.

Mr. Serj. *Pengelly.* Whether any thing was ſaid that the Office was full of Caſh?

Mr. Serj. *Probyn.* We apprehend that a Leading Queſtion.

Mr. *Lutwyche.* It is a proper Queſtion. But however, if they do not like it in thoſe Words, we will put it into another Form. Whether there was any Diſcourſe about the Profits of the Office?

Mr. *Kynaſton.* I don't remember it.

Mr. *Lutwyche.* Was there any Diſcourſe about your being recommended by any one?

Mr. *Kynaſton.* I told him I had the Honour to be known to the late Lord *Bradford*, and deſired to know whether his Recommendation might be neceſſary.

Mr. *Weſt.* What Reaſon did they give you why it was the beſt Office?

Mr. *Kynaſton.* Becauſe it was the Senior Office, and had moſt Cauſes in it.

Sir *Wm. Strickland.* I deſire to know what Anſwer Mr. *Cottingham* gave him, when he ſaid he believed he might obtain that noble Lord's Recommendation?

Mr. *Kynaſton.* I don't remember any he made.

Mr. *Plummer.* Whether any Objection was made by him to the Price upon his coming into the Office, by reaſon of any Deficiency in *Dormer*'s Office?

Mr. Serj. *Probyn.* That Queſtion is liable to the ſame Objection that was made to the former; it is too leading.

Mr. *Sol. Gen.* It is a fair Queſtion, whether any Objection was made by him, on Account of the Deficiency of *Dormer's* Office?

Mr. *Kynaſton.* I mentioned this to Mr. *Rogers*, he made little of it; I mentioned it afterwards to Mr. *Cottingham*, he too ſeemed to make light of it, and ſaid it would be made up. So that I apprehended it would be of no great Conſequence.

Mr. Serj. *Pengelly.* What Reaſon did he give, why he thought his Admiſſion to the Office was not worth Fifteen Hundred Pounds?

Mr. *Kynaſton.* I don't know that I mentioned any thing.

Mr.

Mr. *Lutwyche.* In what manner was the Money paid?

Mr. *Kynaſton.* I did not count it, but the Sum of Fifteen Hundred Guineas was carried in a Bag by Mr. *Baily* to Mr. *Cottingham.*

Mr. Serj. *Probyn.* I deſire he may be asked, whether he had any Diſcourſe with Mr. *Rogers* the former Maſter, about the Value of this Office, before he ſpoke with Mr. *Cottingham*?

Mr. *Kynaſton.* Yes.

Mr. Serj. *Probyn.* How much did he ſay it was worth?

Mr. *Kynaſton.* He ſaid, he uſually made 1700 *l.* a Year of the Office, and ſometimes 2000 *l.* a Year.

Mr. Serj. *Probyn.* I deſire he may be asked, what Sum of Money he gave Mr. *Rogers* for his Place?

Mr. *Kynaſton.* 6000 *l.*

Dr *Sayer.* I deſire this Gentleman may be asked, at what time he paid Mr *Cottingham* this Fifteen hundred Guineas; whether it was before or after his Admiſſion?

Mr *Kynaſton.* Before; I believe it was the 8th or 9th of *Auguſt* in the Morning.

Mr Serj. *Probyn.* I deſire this further Queſtion, whether he paid it out of the Suitors Money, or out of Effects of his own?

Mr *Kynaſton.* It could not be paid out of the Suitors Money, for I was not then admitted.

Mr *Com. Serj.* Whether Mr *Baily*, or any body elſe, concerned in negotiating this Affair, gave any Account of your Subſtance and Ability?

Mr *Kynaſton.* No, I believe not.

Mr *Lutwyche.* If the Gentlemen have done, I beg Leave to ask him one Queſtion, and it is in relation to what he was examined to firſt: He ſaid there was a Diſcourſe, that the Office was worth 1700 or 2000 *l.* a Year. Now, my Lords, I would ask him, how it was Mr *Kynaſton* apprehended theſe great annual Profits did ariſe? whether by the ordinary Profits of the Office, or the making Uſe of the Suitors Money?

Mr *Kynaſton.* I underſtood it of both together.

Mr *Lutwyche.* There hath been one Queſtion asked, as if there was no Colour to ſay this Money was paid out of the Suitors Money: But I would beg Leave to ask another Queſtion to explain that: I think Mr *Kynaſton* ſays, that the Money paid for him by Mr *Baily*, was not out of the Suitors Money, becauſe he was not then admitted; but I would ask, how it was repaid or replaced?

Mr *Kynaſton.* I did not imagine, when I came to Town, that the Place would have come to ſo much: There was 1100 *l.* and 400 *l.* I borrow'd of a Gentleman, one Mr *Rogers* at *Temple-Bar*; and I afterwards accompted with him for that Money, for I kept an Account of the Money of the Court with him.

Mr Serj. *Pengelly.* What Sum of Money was reported to be in your Office, and to go along with the Office as Caſh?

Mr *Kynaſton.* I was told there was about 20,000 *l.*

Mr *Com. Serj.* I deſire to know who told him ſo?

Mr *Kynaſton.* Mr *Rogers.*

Lord *Lechmere.* When the 1100 *l.* and the 400 *l.* was accompted for to the Perſon that firſt lent it, if I did underſtand him right, he ſays he accompted for it, and it was allow'd out of the Suitors Money.

Mr *Kynaſton.* Yes, my Lords, the Money lent me to pay Mr *Cottingham*, I did accompt for that Money out of the Money belonging to the Suitors of the Court: I underſtood it was uſual to do ſo, and that others had done it.

Lord *Lechmere.* My Lords, I would ask him another Queſtion; I think Mr *Kynaſton* talks of 6000 *l.* being paid by him to his Predeceſſor: I would be glad to know in what manner that was paid, and out of what Money or Effects?

Mr *Kynaſton.* My Lords, when I treated with Mr *Rogers*, he mention'd to me what Money he had in his Hands belonging to the Office; and we entred into Articles in relation to my paying him 6000 *l.* for his Place: And when I came up to Town, in order to take the Office, before I went to my Lord Chancellor's, I gave him a Bond for 6000 *l.* This was the 9th, and on the 12th he deliver'd me up the Bond, and paid me 9 *l.* in Money; and I gave him a Receipt for Six thouſand and nine Pounds.

E. of *Strafford.* I deſire he would explain himſelf on that Part; where he ſays, he gave him up his Bond; whether he reckoned the 6000 *l.* to much ſhort of the Suitors Money?

Mr *Kynaſton.* Yes, my Lords, I did.

E. of *Macclesfield.* My Lords, I deſire he may be asked this Queſtion. He ſpeaks of a Gentleman that paid him 1100 *l.* Part of the 1500 Guineas; I deſire he may be asked, whether that Gentleman had any, and what Money of his in his Hands?

Mr *Kynaſton.* My Lords, I had Money in that Gentleman's Hands: When I lived in the Country, he uſed to receive Money for me in Town, on Government Securities, and other Occaſions, and pay as I directed: There was an Accompt Current between us, and I did not then preciſely know what Balance was then in his Hands; but I have caſt it up ſince, and find that there was about 300 or 400 *l.* due to me at that time.

E. of *Macclesfield.* If I apprehend him right, he ſays he had an Accompt current with that Gentleman at that time, and kept Caſh with him.

Mr *Kynaſton.* He uſed to receive and pay Money for me when I was in the Country.

E. of *Macclesfield.* I beg Leave to ask one Queſtion more, if Mr *Kynaſton* did not afterwards keep, with that Gentleman, the Caſh of the Suitors, as well as his own Caſh, promiſcuouſly?

Mr *Kynaſton.* Yes.

Sir *Wm. Strickland.* When was the Fifteen hundred Guineas paid?

Mr *Kynaſton.* On the 8th the Fifteen hundred Guineas was paid, and the 9th I was admitted.

Mr Serj. *Pengelly.* We don't now proceed to examine relating to the manner of Payment for the Offices out of the Suitors Money, becauſe there will be a diſtinct Examination as to that, upon another Article; the preſent Queſtion being only about the Sum paid for the Admiſſion, and not out of what Money, which we don't enter into at preſent.

Mr *Lutwyche.* My Lords, we think it neceſſary to mention this, becauſe otherwiſe it will take up a great deal of your Lordſhips time unneceſſarily, and it will be proper to keep the Evidence entire; and therefore we hope the Counſel on the other Side ſhall be confined to ask ſuch Queſtions only, as are proper to the Article they are upon. My Lords, we deſire Mr *Charles Baily* may be called.

Mr. Charles Baily *ſworn.*

Mr Serj. *Pengelly.* My Lords, I deſire he may be asked, whether he paid any Money, and what Sum to Mr *Cottingham*, and when?

Mr *Baily.* My Lords, a day or two before Mr *Kynaſton* was admitted, I paid Fifteen hundred Guineas,

Guineas, which was given for his Admiſſion. I delivered it in a Bag to Mr *Cottingham*.

Mr Serj. *Pengelly*. For what Uſe was it paid?

Mr *Baily*. I apprehend it was for the Uſe of my Lord Chancellor.

Mr *Lutwyche*. Upon what Account?

Mr *Baily*. For his Admiſſion to the Office, on Mr *Rogers*'s Surrender.

Mr Serj. *Pengelly*. I think he ſays it was paid a day or two before he was admitted.

Sir *Wm. Strickland*. Before the Payment of this Money, what Diſcourſe was there between you and Mr *Cottingham*?

Mr *Baily*. I was requeſted, by Mr *Kynaſton*, to attend Mr *Cottingham*, to know what was expected; and Mr *Cottingham* told me Fifteen hundred Guineas was expected to be paid, as a Sum for Mr *Kynaſton*'s Admiſſion.

Mr Serj. *Pengelly*. If the Counſel for the noble Lord don't ask this Witneſs any thing, we beg Leave to call another Witneſs.

Mr *Com. Serj*. There are ſeveral matters we apprehend proper to be asked now, and yet may fall under the other Article. Whether it is your Lordſhips Pleaſure that we ſhall now ask Mr *Baily* as to the Circumſtances and Character of Mr *Kynaſton*?

Mr *Lutwyche*. My Lords, there is an expreſs Article to that Point; wherefore when we come to that, then is the time.

Mr Serj. *Probyn*. One Queſtion may be proper to be asked before this Gentleman goes, and that is, whether when Mr *Cottingham* told him what was expected on his Admiſſion, he told Mr *Kynaſton* of it?

Mr *Baily*. Yes, Sir, I told Mr *Kynaſton* that Fifteen hundred Guineas was expected.

Mr Serj. *Probyn*. Then I deſire he may be asked, whether Mr *Kynaſton* did not immediately conſent to give it, or what did Mr *Kynaſton* ſay?

Mr *Baily*. Mr *Kynaſton* ſaid he muſt ſubmit to it, and do as Mr *Cottingham* had mention'd, or to that purpoſe.

Mr Serj. *Pengelly*. Whether Mr *Kinaſton* informed him of offering him any leſs Sum, and what?

Mr *Baily*. Mr *Kynaſton* mention'd to me that he thought it had been but 1500 *l.*

E. of *Macclesfield*. How came Mr *Baily* to know it was Guineas?

Mr *Baily*. Becauſe Mr *Cottingham* told me ſo.

Mr *Cottingham* called, but did not immediately appear.

Mr Serj. *Pengelly*. My Lords, we are unwilling to give your Lordſhips Trouble, only beg Leave to take Notice, that Mr *Cottingham* was Secretary to the Lord impeach'd, during the whole Courſe of his Adminiſtration; he is not immediately under the Power of the Managers, but he is under the Obligation of a Summons, and had Notice to attend.

Mr *Cottingham* appears.

Mr Serj. *Pengelly*. My Lords, we deſire he may be ſworn.

Mr *Cottingham* ſworn.

Mr Serj. *Pengelly*. My Lords, we beg Leave to ask Mr *Cottingham* this Queſtion; the Money that he received from Mr *Charles Baily*, whether he paid it over to my late Lord Chancellor, and when?

Mr *Cottingham*. The Money which I received from Mr *Charles Baily*, the Fifteen hundred Guineas, I paid it to my Lord in a day or two I believe, I believe the next day; it was very ſoon after I received it from Mr *Baily*.

Mr Serj. *Pengelly*. Whether he acquainted the Earl of *Macclesfield* that he had received it upon Mr *Kynaſton*'s Admiſſion?

Mr *Cottingham*. Yes, my Lords, I told the Earl of *Macclesfield* that Mr *Baily* had paid me the Money, by the Direction of Mr *Kynaſton*.

Mr Serj. *Pengelly*. How long was that before Mr *Kynaſton* was admitted?

Mr *Cottingham*. I can't ſay juſtly the time, it might be two or three days. There was a day appointed for the Admiſſion of Mr *Kynaſton*, but ſomething happened that he could not be admitted that day.

Sir *Wm. Strickland*. My Lords, I deſire to ask this Witneſs one Queſtion: At that time, whether Mr *Cottingham* can recollect himſelf, if Mr *Kynaſton* did not make an Objection of the great Deficiency that had happened in *Dormer*'s Office?

Mr *Cottingham*. Upon the Oath that I have taken, he did not.

Sir *Wm Strickland*. I deſire another Queſtion, whether he did not tell Mr *Kynaſton* that this was one of the beſt Offices?

Dr *Sayer*. My Lords, I ask your Pardons; I hope they ſhall be confined to the general Queſtion what was ſaid, and not to Particulars.

Sir *Wm. Strickland*. What was ſaid in relation to the Goodneſs of the Office?

Mr *Cottingham*. I did ſay before the Honourable Committee, that when he agreed to give the Fifteen hundred Guineas, I told him that he had purchaſed a very good Office; and I did ſay, that there was a great deal of Buſineſs in it; but I never knew what Money was in the Office, nor do I know it to this day. I own I did ſay before the Honourable Committee, that I told him he had purchaſed a good Office.

Mr Serj. *Pengelly*. Whether was this before or after the Agreement made with Mr *Kynaſton*?

Mr *Cottingham*. I think at the ſame time, juſt after we had ſettled the Compliment to be paid to my Lord *Macclesfield*, I told him he had purchaſed an Office with very good Buſineſs in it.

Mr Serj. *Probyn*. I deſire one Queſtion more, whether he remembers that there was any Mention made of 1000 *l.* or One thouſand Guineas by Mr. *Kynaſton*?

Mr *Cottingham*. No, I remember nothing of it. He asked me what my Lord expected; I told him what my Lord had from the preceding Maſters, he expected the ſame from him: I never heard a Word of 1000 *l.* or One thouſand Guineas, nor knew nothing at all of it. I have given you the beſt Account I can as to the Fact that happened relating to the Agreement: Mr *Baily* may remember more of it; the Fact is above four Years ago.

Mr Serj. *Pengelly*. My Lords, we now beg Leave to proceed to the 6th Article, relating to Mr *Thomas Bennet*, who was admitted the 1ſt of *June*, 1723.

Mr *Thomas Bennet* (ſworn before.)

Mr Serj. *Pengelly*. My Lords, we deſire that Mr *Bennet* may give an Account to your Lordſhips when he was admitted, and upon what Bargain? Give an Account of the whole Treaty.

Mr *Tho. Bennet*. I was admitted the 1ſt of *June*, 1723. and before my Admiſſion, and as ſoon as I had agreed with Mr *Hiccocks* my Predeceſſor, I applied to Mr *Cottingham*; and deſired him that he would acquaint my Lord Chancellor I had agreed with Mr *Hiccocks* for to ſucceed him in his Office, and deſired him to let me know

know my Lord Chancellor's Thoughts, whether he approved of me to ſucceed Mr. *Hiccocks*; ſoon after that, I believe the next Day, or a Day after, he met me, and told me, he had acquainted my Lord with the Meſſage I ſent; he ſaid my Lord expreſſed himſelf with a great deal of Reſpect for my Father Mr. Serjeant *Bennet*, and that he was glad of this Opportunity to do me a Favour and Kindneſs, and he had no Objection in the World to me: That was the Anſwer Mr. *Cottingham* returned; he then mentioned there was a Preſent expected, and he did not doubt but I knew that; I anſwered, I had heard there was, and I was willing to do what was uſual; I deſired to know what it was that was expected, and what would be expected; he ſaid he would name no Sum, and he had the leſs Reaſon to name a Sum to me, becauſe I had a Brother a Maſter, and I was well acquainted with Mr. *Godfrey* who had recommended me, and I might apply to them, and they would tell me what was proper for me to offer. I told him upon that Occaſion I would conſult my Brother and Mr. *Godfrey*; accordingly I did, and I returned to Mr. *Cottingham*, and told him, I had talked with them about it, and their Opinion was a thouſand Pounds (but I believe, I ſaid, I would not ſtand for Guineas) was ſufficient for me to offer. Upon this Mr. *Cottingham* ſhook his Head, and ſaid, that won't do Mr. *Bennet*, you muſt be better adviſed: Why, ſaid I, won't that do, I think it is a noble Preſent: Says he, a great deal more has been given: Says I, I am ſure my Brother did not give ſo much, nor Mr. *Godfrey*, and theſe Perſons, you adviſed me to conſult with, told me it was ſufficient, and I deſire you to acquaint my Lord with the Propoſal: Says he, I dont care to go with that Propoſal, you may find ſome-body elſe to go: Says I, I don't know whom to apply to: Says he further, ſure Mr. *Bennet*, you wont go to lower the Price, (theſe were his very Words, at leaſt, I am ſure that was the Meaning of them) I can aſſure you Mr. *Kinaſton* gave 1500 Guineas. I ſaid that was above 3 or 4 Years ago, and ſince that Time there have been ſeveral Occaſions of lowering the Prices; the fall of Stock hath lowered the Value of Money; and I think I mentioned *Dormer*'s Deficiency, and I did not know what the Conſequence of that might be; and therefore, I thought at this time of Day, when Stock and every Thing was fallen, a thouſand Guineas was more now, than 1500 when Mr. *Kinaſton* gave it. He ſtill inſiſted he did not care to go with that Meſſage: Says I, only acquaint my Lord with it, and if my Lord inſiſts upon more, I will conſider of it: Says he, there is no haggling with my Lord, if you refuſe it, I don't know the Conſequence, he may reſent it ſo far, as not to admit you at all, and you may loſe the Office. Then I began to conſider, and was loth to loſe the Office, and told him I won'd give 1500 *l*, he ſaid Mr. *Kinaſton* had given Guineas. Then I asked whether it muſt be in Gold. He ſaid, in what you will, ſo it be Guineas. In a Day or two after he came and told me, that my Lord was pleaſed to accept of me, and he ſhould admit me aſſoon as Opportunity ſerved, and he would give me Notice. He accordingly gives me Notice about the latter end of *May*; he told me my Lord had fixed a Day for my Admiſſion, and my Father and I went to my Brother *Bennet*'s, and took him up by the Way, in order to pay our Reſpects to my Lord on that Occaſion. We had not been there long, but there was a Meſſage brought to my Houſe, to let me know that my Lord was very ill, and I could not be admitted; but I ſhould know in a little Time when I ſhould: Upon that, I ſaw Mr. *Cottingham* afterwards, and I asked him how my Lord did, and when I ſhould be admitted: Says he, I can't fix the Day; but be in a Readineſs, and I ſhall ſend for you. Accordingly on the 1ſt of *June*, 1723. he ſent, and deſired me to come immediately, and to come alone, and bring no Body with me, for my Lord wou'd ſwear me in that Morning. Accordingly I went, and the firſt Queſtion Mr. *Cottingham* ask'd me was, if I had brought the Money? I told him, to be ſure I ſhould not come without it. He asked what it was in? I told him in Bank Bills, two Bank Bills, one of 1000*l*. and the other 575 *l*. He took them up, and carried them to my Lord: He returned back, and told me my Lord was ready to admit me. I was carried up Stairs, and then ſworn in his Bed-Chamber.

Mr. Serj. *Pengelly*. My Lords, I deſire, if he can remember, he may be asked in what Name thoſe Notes were made payable, or in what manner they were made?

Mr. *Tho. Bennet*. I can't remember the Names the Notes were made payable to, they were ſent for from the Bank for this Purpoſe; but I believe they were feigned Names.

Mr. Serj. *Pengelly*. I deſire he may be asked, why he thinks they were feigned Names, and for what Reaſon the Notes were taken in feigned Names?

Mr. *Tho. Bennet*. The Reaſon was, becauſe I did not think it proper to take them out in the noble Lord's Name, nor in my own Name.

Mr. Serj. *Pengelly*. My Lords, I deſire he may be asked, of whom he received thoſe Bank Notes, whether they were his own, or whether he borrowed them.

Mr. *Tho. Bennet*. I borrowed a Draft upon the Bank of my Brother, he kept his Caſh at the Bank, and he gave me a Draft upon the Bank, and I ſent to the Bank, and ordered the Notes to be made out in feigned Names.

Mr. Serj. *Pengelly*. I deſire he may be asked, whether by his Brother, he means his Brother the Maſter?

Mr. *Tho. Bennet*. Yes, my Brother the Maſter?

Mr. Serj. *Pengelly*. And where did he keep his Caſh?

Mr. *Tho. Bennet*. He kept his Caſh at the Bank.

Mr. Serj. *Pengelly*. I deſire Mr. *Bennet* may inform your Lordſhips what Converſation he had with my Lord *Macclesfield* when he was admitted?

Mr. *Tho. Bennet*. I had no Converſation with him before I was ſworn. At that Time my Lord was in his Bed, and aſſoon as I was ſworn in, my Lord called me to him, ſhook me by the

Hand and wiſh'd me Joy, and ſaid he had a Reſpect for my Father Serjeant *Bennet*, his old Friend and Acquaintance, and the Family; and ſaid he, you are ſworn in by a dying Chancellor. I told him, I hoped his Lordſhip would live a great many Years.

Mr. Serj. *Pengelly*. I deſire Mr. *Cottingham* may be called.

Mr. *Cottingham* called, and appeared.

Mr. Serj. *Pengelly*. My Lords, I deſire Mr. *Cottingham* may be asked, to whom he paid the 1500 Guineas which he received from Mr. *Tho. Bennet*?

Mr. *Cottingham*. I paid it to the Earl of *Macclesfield*.

Mr. Serj. *Pengelly*. Whether he carried it immediately or not, or at what Time?

Mr. *Cottingham*. Mr. *Bennet* brought it to me, as I remember, in a Bank Note of 1500 Guineas, and I gave it to my Lord.

Mr. Serj. *Pengelly*. Whether this was done immediately after you received it?

Mr. *Cottingham*. Yes, my Lords, immediately.

Mr. Serj. *Pengelly*. That is all we ask, my Lords, we only beg leave to obſerve one thing that ariſes from the Anſwer of the Lord impeached to theſe two Articles, which is, that afterwards, and before the Impeachment, he did deliver the Preſent ſo ſent to him by the ſaid *William Kinaſton*, being 1575 *l.* and alſo the Preſent ſo ſent to him by the ſaid *Tho. Bennet*, being the like Sum of 1575 *l.* into the Court of Chancery, in open Court, *&c.*

Mr. Serj. *Probyn*. My Lords, we deſire that Mr. *Cottingham* may be asked one Queſtion, what Converſation there was between him and Mr. *Bennet*, concerning the Payment of this 1500 Guineas?

Mr. *Cottingham*. Mr. *Bennet* told me, that he had agreed with Mr. *Hiccocks* for the ſurrender of his Office. He told me he was a Perſon known to the Earl; but if he wanted a further Character, his Father, Sir *John Bennet*, and his Brother, would give him a further Character. I acquainted the Earl, his Lordſhip told me that he knew Mr. *Bennet*, that he had a good Character, and had married a good Fortune, and the Family were a wealthy Family, ſo that the Earl would oblige him, and admit him. A Day was appointed to admit Mr. *Bennet*; but the Earl falling Sick before the Time came that he was to be admitted, which was, I think, the laſt Day of *Eaſter* Term, 1723, it was then delayed; Mr. *Bennet* was prodigious preſſing to have it done, and ſaid that Mr. *Hiccocks* refuſed to go on with any Buſineſs in the Office; and he had been complimented upon it, the Family knew it, and he was loth to be diſappointed, and he teized me almoſt out of my Life: upon that, I promiſed to ſpeak to the Earl, and aſſoon as the Earl was able to do Buſineſs, it was done.

Mr. Serj. *Probyn*. If you pleaſe to recollect your ſelf, what was the particular Sum Mr. *Bennet* offered?

Mr. *Cottingham*. 1500 Guineas.

Mr. Serj. *Probyn*. Did he talk of any leſs Sum?

Mr. *Cottingham*. Not a Farthing leſs: he asked me what was expected, I told him the Sum Mr. *Kinaſton* had paid, which was 1500 Guineas; and he never offered a farthing leſs.

Mr. Serj. *Probyn*. We deſire Mr. *Cottingham*, that you would recollect your ſelf, and tell us whether he offered 1000, or 1500 Guineas?

Mr. *Cottingham*. I have recollected, and what he offered to me was 1500 Guineas, and I never heard of a Farthing leſs; I never heard a Word of 1000 Guineas.

E. of *Macclesfield*. If your Lordſhips pleaſe, I deſire Mr. *Cottingham* may be asked, what Condition I was in, in reſpect to my Health at that Time?

Mr. *Cottingham*. The Earl at that Time was very ill, Mr. *Bennet* having preſſed to be admitted the firſt Opportunity; I think your Lordſhip fell ill the laſt Day of *Eaſter* Term, 1723. and I meeting with Doctor *Mead*, the Doctor told me, the Earl was in ſo dangerous a Condition, that if his Diſtemper had not a Turn, he thought he could not live 24 Hours. The Doctor and I went and ſupped together; he bid me to be at the Earl's the next Morning; I met him there, and he told me the Earl's Diſtemper had a Turn, and he might get over it: I asked the Doctor, telling him there was a Buſineſs that Mr. *Bennet* preſſed me to do, if it would be ſafe for the Earl to do it. He told me if it did not admit much Thought and much Company, it might be done. I told him it would not admit much Thought or Company, and he ſaid it might be done.

E. of *Macclesfield*. What was the Occaſion that Mr. *Bennet* was deſired to come alone?

Mr. *Cottingham*. The Reaſon was upon the Account of your Lordſhip's Indiſpoſition; and for that Reaſon, I ſent to Mr. *Hiccocks* for his Surrender, becauſe my Lord could not ſee much Company.

Mr. *Strange*. I deſire to ask you, upon whoſe Importunity it was you asked Dr. *Mead* this?

Mr. *Cottingham*. I asked it my ſelf, but it was, becauſe Mr. *Bennet* importuned me ſo: And I remember this Circumſtance, when I went to his Houſe, he had ſomething of the Jaundice, and looked ill. I asked him if he was fit to be admitted: I thought Mr. *Bennet* would not have been ſo eager, if he did not think the Earl had been dying, and that then he would have waited longer.

Mr. *Plummer*. My Lords, if the Gentlemen have done, I deſire to ask one Queſtion; Whether on Occaſion of theſe Maſters Places being vacant, he took Directions from my Lord Chancellor to ſet a Price, or did it of his own Head?

Mr. *Cottingham*. I had no Directions in this matter; but when any Vacancy or Alienation, happened, and they asked me what Compliment I thought would be acceptable, I told them the Compliment that had been before made. I ſpoke it as my own Opinion, and without any Directions from the Earl.

Mr. Serj. *Pengelly*. I deſire he may be asked, whether ever he concluded any Bargain with any of theſe Maſters without his Lord's Approbation?

Mr. *Cottingham*. No, I did not.

Mr. *Onſlow*. I would ask Mr. *Cottingham* one Queſtion, which, I think, he hath not anſwered; I ask whether he had not in general Directi-

ons

ons from the Lord Chancellor, to insist upon, or ask any particular Prices for these Places?

E. of *Macclesfield.* My Lords, I am sorry the learned Gentlemen do not observe their own Rule, in confining their Examinations to such Articles as they go upon, those they have a Right to ask to, and those only; therefore with humble Submission, it is more proper on each Article where they charge me to have insisted upon a Price, to ask to that Price, than to ask these general Questions, whether I did ever direct him to insist upon any Price? It is not that I am afraid of the Question that is put, but I am afraid of its being made a President for giving your Lordships a great deal of unnecessary Trouble.

Mr. *Onslow.* This is proper to this Article, because it charges the Earl with insisting upon Prices. Therefore I desire to know, whether the Earl did ever give any Order to him to insist upon any of these Prices? I hope the Gentleman shall answer the Question.

Mr. *Lutwyche.* We apprehend we are upon a proper Question, on the one Side we say these Sums were insisted upon, and that there was an Agreement made for them; on the other Side the noble Lord in his Answer says, they were Presents, without any Regard to any Agreement, and voluntary, as if there had been no Bargain at all.

Mr. Serj. *Pengelly.* My Lords, we only propose a general Question, which, we apprehend, arises from Mr. *Cottingham's* Examination. When Money is expected, we apprehend it is the same as insisting upon it: Therefore we desire Mr. *Cottingham* may inform your Lordships, whether he insisted upon any of these Prices without Direction from my Lord *Macclesfield?*

Mr. *Cottingham.* The Masters proposed those Sums to me, to make such a Compliment to my Lord, and I acquainted the Earl with it: I did nothing without the Earl's Approbation.

Mr. Serj. *Pengelly.* I desire he may be asked if he did not insist on those Prices?

Mr. Serj. *Probyn.* My Lords, I beg the Question may be confined to some particular Article they are now upon; for as they are now upon two particular Articles, they cannot, according to the Rules they were pleased themselves to lay down, ask any Question, but what relates to them: We therefore desire they may confine themselves to these two Articles. As to any Question they propose to any of the Articles they have opened, let them be as general as they will; but we desire they may confine themselves to those Articles: Otherwise one Question may involve all the Articles together.

Mr. Serj. *Pengelly.* Whether we should now ask to *Bennet* or *Kinaston*, or to those who came after, we are under your Lordship's Direction: But we desire he may be asked, whether from the Direction he received from the Earl of *Macclesfield*, he did not insist on those Sums from *Kinaston* and *Bennet?*

Mr. *Cottingham.* I have told you that they had both voluntarily agreed of their own Accord to give 1500 Guineas, and I told my Lord *Macclesfield* of it.

Mr. Serj. *Pengelly.* I desire he may be asked, whether he did not by Direction of my Lord Chancellor insist upon those Sums, and he would not receive under?

Mr. *Cottingham.* I did not. They asked me what I thought the Earl expected, I told them 1500 Guineas, as I mentioned before; they agreed to give it, and my Lord said he would take it.

Mr. Serj. *Pengelly.* At the Time when the Lord *Macclesfield* agreed to take those Sums, whether he did not insist upon the full of those Sums to be paid?

Mr. *Cottingham.* Yes, he said he would take them.

Mr. *Plummer.* My Lord *Macclesfield* does not disown in his Answer the accepting of a Present in general; but avoids saying what Sum in particular he accepted. Therefore I am apt to think the Instructions, the Secretary had, might be like the Answer: So that it is very proper to ask whether he had not general Instructions, that when any Master's Place was vacant, or like to be vacant, he should insist upon such a Price.

Mr. *Cottingham.* I had not such Instructions. The Gentlemen came and talked to me, and proposed to me the Sum they were willing to give, and I laid it before the Earl: I had no particular Instructions.

Mr. *Plummer.* With Submission, Mr. *Cottingham* has not answered the Question, therefore I beg Leave to ask him further, whether he hath not said elsewhere, that he received particular Directions from my Lord *Macclesfield* to insist upon such a Sum?

Mr. *Cottingham.* I cannot say but I have, and if you name the Masters, I can answer more particularly.

Sir *Wm. Strickland.* I would ask him this Question, whether he has not directly said, that he transacted none of these Affairs without my Lord's Direction?

Mr. *Cottingham.* I own it, I have said so; I own it before your Lordships, that I said that what I did he approved of.

E. of *Macclesfield.* I desire he may be asked this Question, to each distinctly, Whether I so much as knew any thing of the Matter as to any Sum offered by Mr. *Kinaston* or Mr. *Bennet*, till he told me the whole Sum?

Mr. *Cottingham.* No, never.

E. of *Macclesfield.* Whether I had any Discourse about Mr. *Kinaston* or *Bennet*, being admitted, or the Money they should give, till he told me they would give me 1500 Guineas?

Mr. *Cottingham.* No, not any Discourse. I told the Earl what they offered, and he was pleased to accept it.

E. of *Macclesfield.* I beg Leave he may be asked this other Question, since these Gentlemen have gone now into that Matter, whether he did not tell me at the same Time that Mr. *Kinaston* said he would give me 1500 Guineas, that he likewise said, if that was not sufficient I might please myself?

Mr. Serj. *Pengelly.* I hope the Question may be asked general, when they have taken Liberty to interrupt the Managers for asking leading Questions; and hope his Lordship will ask nothing that is leading.

E. of *Macclesfield.* Then I desire he may be asked when Mr. *Kinaston* offered 1500 Guineas, whether he said any Thing concerning any further Sum?

Mr. *Cotting-*

Mr. *Cottingham.* To the beſt of my Remembrance, I ſpeak it doubtfully, I am not certain, Mr. *Kinaſton* told me if the 1500 Guineas would not ſatisfy the Earl, he ſhould ſatisfy himſelf

E. of *Macclesfield.* I deſire to know certainly whether he told me ſo?

Mr. *Cottingham.* I am ſure I did.

E. of *Macclesfield.* What did I ſay thereon?

Mr. *Cottingham.* Your Lordſhip ſaid you would take 1500 Guineas, and you would take no more.

Mr. *Plummer.* I deſire to ask this Queſtion, How Mr. *Kinaſton* came to offer more, or to think the Earl ſo inſatiable that the Earl expected more: I ask Mr. *Cottingham* how he came to offer from Mr. *Kinaſton* more than was asked?

Mr. *Cottingham.* I told you what my Lord *Macclesfield* put to me. I certainly told him ſo. But as to what Mr. *Kinaſton* told me, that I ſpeak doubtfully; it is a conſiderable Time ago; I cannot ſpeak it poſitively, I ſpeak it doubtfully, to the beſt of my Remembrance it was ſo: I told your Lordſhips before.

Mr. Serj. *Pengelly.* My Lords, We ſhall not trouble your Lordſhips with calling any more Witneſſes on this Article, when it appears plainly, that he was intruſted to adjuſt the Prices, and whether they were given to him or my Lord is not material. As to this Article and the Article relating to Mr. *Kinaſton*, we ſhall leave it with this Obſervation, He is pleaſed to ſay in his Anſwer, as to the few Preſents received from Mr. *Kinaſton* and Mr. *Bennet*, that he the ſaid Earl did afterwards and before the Impeachment deliver the ſame into the Court of Chancery, in open Court. All that we beg Leave to put your Lordſhips in Mind of, is, that from your own Journals it will appear, the Impeachment was brought up here the 13*th* of *February* 1724. when my Lord comes to ſhew at what Time he paid the Money, we apprehend it will be ten Days after. The next Article relates to Mr. *Francis Elde.*

Mr. *Elde* called.

Mr. *Lutwyche.* My Lords, we deſire that Mr. *Elde* my be ſworn.

(Sworn accordingly.)

Mr. *Lutwyche.* My Lords, we deſire Mr. *Elde* may be asked when it was he was admitted a Maſter in Chancery?

Mr. *Elde.* My Lords, I was admitted the firſt Day of *February* laſt was twelve Month.

Mr. *Lutwyche.* We deſire he may be asked, whether he applied in Perſon to my Lord *Macclesfield* to be admitted into this Office, and whether it was upon Death or Reſignation?

Mr. *Elde.* Upon the Death of Mr. *William Fellowes* ſome of my Friends came to me, and put it into my Head that this Office might be a proper Office for me, and I took ſome Time to conſider of it. I had ſome Encouragement at the Bar, and was very unwilling to quit it, but after two Days Conſideration I went to my Lord himſelf; I told his Lordſhip an Office was fallen by the Death of Mr. *Fellowes*: if his Lordſhip thought me a proper Perſon. And I ſhould be glad to have it. I was come to wait upon him about it. His Lordſhip ſaid, he had no manner of Objection to me, he had known me a conſiderable Time; and he believed I ſhould make a good Officer.

Mr. *Lutwyche.* What further Diſcourſe was there?

Mr. *Elde.* My Lord at that Time deſired me further to conſider of it, and come to him again: And ſo I did. I went back from his Lordſhip, and I came again in a Day or two, I believe it was the ſecond after I came back from his Lordſhip, and told him I had conſidered of it, and deſired to know if his Lordſhip thought fit to admit me; and I would make him a Preſent of 4 or 5000 *l.* I cannot ſay which of the two I ſaid, but I believe it was 5000 *l.*

Mr. *Lutwyche.* What Anſwer did my Lord return, when you made him that Propoſal?

Mr. *Elde.* My Lord ſaid, Thee and I, or You and I, my Lord was pleaſed to treat me as a Friend, muſt not make Bargains.

Mr. *Lutwyche.* My Lords, we deſire he may be asked, whether my Lord *Macclesfield* ſaid in what Manner he would treat with him, whether in a more beneficial manner than any Body elſe?

Mr. *Elde.* My Lord *Macclesfield* did ſay, that if I was deſirous of having the Office, he would treat with me in a different Manner than he would with any Man living; thoſe were the Words my Lord uſed, to the beſt of my Remembrance.

Mr. Serj. *Pengelly.* After this Anſwer of my Lord *Macclesfield*, that they muſt not make Bargains, what further Application did he make?

Mr. *Elde.* I made no further Application at all, but ſpoke to Mr. *Cottingham*, meeting him in *Weſtminſter-hall*, and told him I had been at my Lord's, and my Lord was pleaſed to ſpeak very kindly to me, and I had propoſed to give him 5000 *l.* Mr. *Cottingham* anſwered, Guineas are handſomer.

Mr. *Lutwyche.* We deſire to know what he paid, and in what Manner, and in what Specie?

Mr. *Elde.* My Lords, I paid my Lord, — I cannot ſay I paid it him, but I paid 5000 Guineas.

Mr. *Lutwyche.* In what Manner? Who did you pay it to?

Mr. Serj. *Pengelly.* After this Agreement with Mr. *Cottingham* to make it Guineas, as being handſomer; we deſire he may inform your Lordſhips what he did purſuant to this, and what he carried with him?

Mr. *Elde.* Upon this I immediately went to my Lord's: I was willing to get into the Office as ſoon as I could. I did carry with me 5000 Guineas in Gold and Bank Notes: I am not certain whether there was 3000 Guineas in Gold or two, but I think there was three, and the Reſidue of the Money was in Bank Notes. This I brought to my Lord's Houſe.

Mr. Serj. *Pengelly.* My Lords, we deſire he may be asked what they were put into, or in what they were carried?

Mr. *Elde.* I had the Money in my Chambers. I could not tell how to convey it; It was a great Burthen and Weight, but recollecting I had a Basket in my Chamber, I put the Guineas into the Basket, and the Notes with them; I went in a Chair and took with me the Basket in my Chair. When I came to my Lord's Houſe I ſaw Mr. *Cottingham* there, and I gave him the Basket, and deſired him to carry it up to my Lord.

Mr.

Mr. Serj. *Pengelly.* What Anſwer did he return?

Mr. *Elde.* I ſaw him go up Stairs with the Basket, and when he came down he intimated to me that he had delivered it.

Mr. *Lutwyche.* My Lords, we deſire he may be asked whether he acquainted Mr. *Cottingham* with what was in the Basket?

Mr. *Elde.* I did not.

Mr. Serj. *Pengelly.* After Mr. *Cottingham* came and acquainted you he had delivered the Basket, how long after that was it before you ſaw my Lord?

Mr. *Elde.* I did not ſee my Lord after that, tillI was ſworn in.

Mr. Serj. *Pengelly.* How long was that after?

Mr. *Elde.* I cannot be poſitive, but it was within a Day, either the ſame Day, or if not, it was the next Day after.

Mr. Serj. *Pengelly.* I deſire he may be asked, when Mr. *Cottingham* returned down Stairs after the Delivery of the Basket, what he ſaid to him about the Time of his being admitted?

Mr. *Elde.* I do not remember he ſaid any Thing to me about my being admitted. I tookthat for granted.

Mr. Serj. *Pengelly.* And when he was admitted, whether he was admitted in the Cloſet or in what Room?

Mr. *Elde.* When I was to be admitted, my Lord invited me to Dinner, and ſome of my Friends with me; and he was pleaſe to treat me and ſome Members of the Houſe of Commons in a very handſome Manner: I was after Dinner ſworn in before them.

Mr. Serj. *Pengelly.* I deſire to ask whether he had the Basket again?

Mr. *Elde.* Some Months after I ſpoke to my Lord's Gentleman, and deſired him if he ſaw ſuch a Basket, that he would give it me back; and ſometime after he did ſo.

Mr. Serj. *Pengelly.* Was any Money returned in it?

Mr. *Elde.* No, my Lords, there was not.

Mr. *Lutwyche.* There is one Thing in the Earl's Anſwer, that he retained only Part of the Preſent ſo made him by Mr. *Elde.* I perceive the Gentlemen of the other Side do not ask any Queſtions about it: if they do not we ſhall go on.

Sir *Wm. Strickland.* I deſire to know what Mr. *Cottingham* did ſay, after he had carried up the Basket and came down again?

Mr. *Elde.* To the beſt of my Remembrance, he ſaid nothing to me, but as I repeated it before, he intimated to me that he had delivered it to my Lord *Macclesfield.* I cannot ſay as to any particular Diſcourſe; but I underſtood that he had delivered it.

Mr. Serj. *Probyn.* My Lords, if they have done with Mr. *Elde,* I would beg Leave to ask him one Queſtion, and that is in Relation to what the impeached Earl ſaid in his Anſwer, that he retained of the Preſent ſent him by the ſaid Mr. *Elde* no more than the Sum of 1850 *l.* We deſire therefore that he may be asked, how much was returned to him of the 5000 Guineas which he at firſt paid?

Mr. *Elde.* 3400.

Mr. *Weſt.* When was that returned again to him?

Mr. *Elde.* In *November* laſt, to the beſt of my Remembrance.

Mr. *Onſlow.* In what Manner was that Money returned to him?

Mr. Serj. *Probyn.* We have not yet done with him. I deſire to know when you went out of Town, and when you returned, and how long after your Return was it repaid?

Mr. *Elde.* It was repaid to me, to the beſt of my Knowledge, within three, four, or five Days after my Return. As ſoon as I came from the Country the Earl took Notice of it, and ſaid that he would repay me: For ſome Time in *May* before, or thereabouts, the noble Lord had taken Notice that he had received this Preſent from me, and he would make me exceedingly eaſy.

Mr. Serj. *Probyn.* This was before you went out of Town?

Mr. *Elde.* Before I went out of Town.

Mr. Serj. *Probyn.* When did you return to Town?

Mr. *Elde.* I returned the 19*th*, 20*th*, or 21*ſt* of *November.*

Mr. Serj. *Probyn.* How ſoon after you came to Town did you ſee my Lord?

Mr. *Elde.* Very ſoon after I came to Town?

Mr. Serj. *Probyn.* What Diſcourſe had you with him about it?

Mr. *Elde.* My Lord told me he would return me my Money again, he did not ſay all, but he would return me my Money; and that he had done it before, had it been convenient.

Mr. Serj. *Probyn.* How ſoon after this Diſcourſe was it, that the Money was returned?

Mr. *Elde.* I believe two or three Days.

Mr. *Onſlow.* If the Gentlemen have done, I deſire he may be asked in what Manner this Money was returned, and by whom?

Mr. *Elde.* After this Diſcourſe my Lord *Parker* ſent for me, my Lord Chancellor was then at *Weſtminſter-hall,* and told me my Lord Chancellor had deſired him to pay t ome 3400*l.* and he did pay it.

Mr. *Lutwyche.* My Lords, if I underſtand Mr. *Elde* right, he ſaid there was ſome Thing mentioned by my Lord of this Kindneſs before he went into the Country. I deſire he may be asked upon what Occaſion he was going into the Country at that Time?

Mr. *Onſlow.* I deſire that he may firſt anſwer in what Manner, by whom, and where, this Money was repaid to him, whether in Money, or Notes, or how?

Mr. *Elde.* To the beſt of my Remembrance it was paid in this Manner, there was 1400 *l.* in Bank Notes, and 2000 *l.* in *India* Bonds.

Mr. *Onſlow.* Who was this paid by?

Mr. *Elde.* By my Lord *Parker.*

Mr. *Onſlow.* Whether he gave any Receipt for the Money, or any Part of it, and to what Effect.

Mr. *Elde.* When my Lord paid me the Money, he ſaid my Lord *Macclesfield* had ordered me to be paid the Money; but his Lordſhip not having ſo much by him; therefore he had ordered him to make it up, and to pay me two thouſand Pounds out of his own Money; and that as 2000 *l.* of it was his own Money, he deſired me to give a Note of the Receipt of it.

Mr. Serj. *Pengelly.* Whether was that Note, a Note for Repayment of the Money, or a Receipt?

Mr. *Elde.* It was not for Repayment, that I remember, but it was an Acknowledgment

of the Receipt of the Money, that I had received ſo much.

Mr. Serj. *Pengelly.* Whether it did not contain a further Acknowledgment, for Repayment?

Mr. *Elde.* Not that I know of.

Mr. Serj. *Pengelly.* Was it ſaid upon whoſe Account the Money was paid?

Mr. *Elde.* Yes.

Mr. Serj. *Pengelly.* We deſire he may be asked, how many Days before he was to produce the Ballance of his Caſh before the Commiſſioners, that he received this Money?

Mr. *Elde.* I cannot ſay how long before, it might be a fortnight or three Weeks; I cannot ſay it was not long before.

Mr. Serj. *Pengelly.* Whether it was not neceſſary for him to make Uſe of this Money, in Order to make up this Ballance?

Mr. *Elde.* I will anſwer that Queſtion as well as I can: I did make Uſe of it to that Purpoſe as having it by me, but I was not ſo poor as to be put to a Neceſſity of ſo doing; I could have had the Money any where of any Body that knew me.

Mr. *Lutwyche.* My Lords, I deſire he may be asked, whether he can remember the particular Time to a Day, when it was repaid him?

Mr. *Elde.* Upon my Oath, I cannot tell the particular Time.

Mr. *Onſlow.* Was it after the Inquiry was directed to be made by the Lords of the Council?

Mr. *Elde.* Yes, my Lords, I was in the Country when the Inquiry was directed to be made, and a Month after.

Mr. *Lutwyche* I mentioned a Queſtion before; Mr. *Elde* was mentioning that my Lord *Macclesfield* had ſaid to him before he went out of Town, that he would make him exceeding eaſy: I deſire he may be asked where he was then going, and upon what Occaſion?

Mr. *Elde.* My Lords, I was going into *Staffordſhire*, where the little Effects I have in the World lie.

Mr. *Lutwyche.* I would know upon what Occaſion?

Mr. *Elde.* I never miſſed going into the Country the Beginning of *Auguſt*, for theſe ten Years paſt.

Mr. *Lutwyche.* Whether there was any particular Occaſion for his going down into the Country at that Time?

Mr. *Elde.* If your Lordſhips are of Opinion that this is a fair Queſtion, I will as fairly anſwer it. I went down to my Houſe, to look into what little Affairs I had there. I called at *Stafford* firſt, and there declared myſelf a Candidate for the Election that was to enſue.

Mr. *Lutwyche.* We deſire he may be asked when he returned?

Mr. *Elde.* I returned about the 19*th* or 20*th* of *November*.

Mr. *Plummer.* Mr. *Elde* ſays, when my Lord *Parker* paid him he had a Note from him, acknowledging the Receipt of the Money: I deſire to know whether that Note was taken up again and when?

Mr. *Elde.* The Note I gave my Lord *Parker*?

Mr. *Plummer.* Yes.

Mr. *Elde.* My Lord *Parker* ſent for me and gave me the Note again. I do not know that I ſaw my Lord *Macclesfield* till after I had ſeen Lord *Parker*, and he had given me up the Note again.

Mr. *Plummer.* I deſire he may be asked, when the Note was delivered up to him?

Mr. *Elde.* That was asked before; I cannot tell the Day.

Mr. *Plummer.* It was never asked here before: The Queſtion I ask is, when the Note was delivered up?

Mr. *Elde.* I do not remember the Day.

Mr. *Plummer.* As near as you can?

Mr. *Elde.* In the Beginning of *December*.

Mr. *Sandys.* I beg leave to ask one Queſtion, he ſays that he applied this Money, which he received of my Lord *Parker*, towards making good the Ballance of his Accompt; whether or no, he did not firſt refuſe to ſwear to the Ballance of that Accompt; and what was the Occaſion of it?

Mr. *Elde.* When I had delivered in my Accompt, the Queſtion I was asked the firſt Time, was propoſed to me, not by any of the Judges who were appointed to inſpect our Accompts, but by Sir *Nathaniel Gould*, who propoſed it in ſuch a Manner, that I could not by any Means take it. He asked me, whether I owed any Thing, and I was to ſwear I owed nothing: I told him I could not ſwear any ſuch thing. I had ſome Arguments with him about the Abſurdity of ſuch an Oath, and ſaid, if I owe a Million of Money, that is nothing to the Purpoſe: There is the Money due on the Ballance of my Accompt, I deliver it to you, I laid the Money upon the Table, and inſiſted upon leaving it with them.

Mr. *Sandys.* Whether that Note was delivered to him after he refuſed to take the Oath?

Mr. *Elde.* It was.

Mr. *Sandys.* Whether that Note was not the Occaſion of his refuſing to take the Oath?

Mr. *Elde.* I cannot ſay but it was an Ingredient in it.

Sir *George Oxenden.* I would be glad to know where this Note is?

Mr. *Elde.* When my Lord *Parker* delivered it to me I lapt it up, and put it in my Pocket: My Lord asked me why I did ſo? I anſwered I would keep it as a Memorandum of my Lord Chancellor's Favour to me; but when I came home conſidering that it would be of no Service, and that it might be hazardous to keep it by me, I tore it.

Dr. *Sayer.* I deſire he may be asked whether he did not look upon himſelf intirely diſcharged from any Demand on Account of that Money, or did think himſelf bound to anſwer it?

Mr. *Elde.* I do not think myſelf bound to anſwer it.

Dr. *Sayer.* Whether he apprehends it to be a free and perfect Gift?

Mr. *Elde.* I do, my Lords.

Mr. *Cottingham* called again.

Mr. Serj. *Pengelly.* My Lords, we left the Basket in the Hands of Mr. *Cottingham*, therefore it is neceſſary that Mr. *Cottingham* inform your Lordſhips what became of it afterwards; what he did with the Basket, after he had it from Mr. *Elde*?

Mr. *Cottingham.* My Lords, I carried it up to my Lord, and ſet it down in his Study.

Mr. Serj. *Pengelly.* What did you ſay to my Lord?

Mr. *Cottingham.* Nothing. Mr. *Elde* ordered me to carry up the Basket, I carried it up, and there I ſet it down, I never ſaw it afterwards.

Mr.

Mr Serj. *Pengelly.* Whether do you remember what Anſwer my Lord *Macclesfield* made at that Time?

Mr. *Cottingham.* None that I remember.

Mr. Serj. *Pengelly.* Whether did he open the Basket?

Mr. *Cottingham.* No. The Basket was covered up, and I ſet it down in my Lord's Cloſet.

Mr. Serj. *Pengelly.* Whether after that Time he appointed any Time for Mr. *Elde* to be admitted?

Mr. *Cottingham.* I think he was admitted that very ſame Day.

Mr. Serj. *Pengelly.* I deſire this Witneſs may be asked, whether he received any Thing from Mr. *Elde*, beſides what was in the Basket?

Mr. *Cottingham.* Not a Farthing, except my Fees: Nor no more of any of the Maſters than my uſual Fees.

Mr. Serj. *Probyn.* We deſire Mr. *Cottingham* may be asked, whether at this Time, when Mr. *Elde* deſired to be admitted into this Office, there was any other Perſon who deſired it, or made any Offer for it?

Mr. *Cottingham.* Mr. *Lucas*, a Gentleman of the *Temple*, was recommended to the Earl by Mr. *Bulſtrode*, who is ſince dead. He had been formerly a Commiſſioner of the Exciſe; his Name was *Whitlock Bulſtrode*. Mr. *Lucas* did tell me upon that Occaſion, if the Earl would admit him, he would give him 6000 *l.* for the Office. I took a Memorandum of it at that Time, and I had it in my Hands four or five Days ago.

Mr. Serj. *Probyn.* When Mr. *Lucas* told you this, whether did you inform the then Lord Chancellor of it?

Mr. *Cottingham.* Yes, I am ſure I did; and the Anſwer he made me was, that Mr. *Elde* was of a Family which were his particular Friends and Acquaintance, for whom he had a great Friendſhip and Value, and that he ſhould have it 1000*l.* cheaper, or leſſer than any Body elſe.

Mr. *Strange.* I deſire he may be asked, whether before Mr. *Elde* was admitted, he did not acquaint the noble Lord, that this Mr. *Lucas* would give 6000 *l*?

Mr. *Cottingham.* Yes, I did.

Mr. Serj. *Pengelly.* I deſire to know whether I underſtand Mr. *Cottingham* right? He ſays, that my Lord would let Mr. *Elde* have it cheaper than any Body elſe: Whether he underſtood by that, that my Lord expected ſome Body elſe would give him more?

Mr. *Cottingham.* My Lord ſaid he would let Mr. *Elde* have it upon the Score of particular Friendſhip and Acquaintance.

Mr. Serj. *Pengelly.* If I heard him right, I ſubmit it to your Lordſhips, whether he did not ſay that Mr. *Elde* ſhould have it 1000 *l.* cheaper than any other Perſon. I ask whether he did not underſtand my Lord *Macclesfield* would have 1000 *l.* more from any other Perſon?

E. of *Macclesfield.* My Lords, I hope I am not to be charged with the Imaginations of this Gentleman; he is asked about his Apprehenſion of my Intention in a Caſe that did not happen. I deſire he may be asked, if he knew what Character Mr. *Elde* had?

Mr. *Cottingham.* A very good one.

E. of *Macclesfield.* I deſire it may be asked, whether he did not know that I had a great Opinion of Mr. *Elde*'s Ability and Integrity?

Mr. *Cottingham.* He was one your Lordſhip had a great Opinion of, and that he was very deſerving. I never heard your Lordſhip expreſs a better Opinion of any Man than of Mr. *Elde*.

Mr. Serj. *Pengelly.* We have done with this Article: The next Article is the 8th. We deſire Mr. *Thurſton* may be ſworn.

Mr. *Mark Thurſton* ſworn.

Mr. Serj. *Pengelly.* My Lords, we deſire that Mr. *Thurſton* may give your Lordſhips an Account when he was admitted into one of the Offices of the Maſters in *Chancery*, and upon whoſe Death?

Mr. *Thurſton.* My Lords, I was admitted into this Office upon the Death of Mr. *Borret*, and the Day of my Admiſſion was the 5th of *Auguſt* laſt.

Mr. Serj. *Pengelly.* I deſire he may be asked, whether before his Admiſſion he had made any Application either to my Lord *Macclesfield* or his Secretary, or any Perſon concerned for him?

Mr. *Thurſton.* My Lords, before my Admiſſion, I did make ſome Application to my Lord Chancellor's Secretary Mr. *Cottingham*; and at that Time I made a Propoſal of making a Preſent of 5000 Guineas, to be admitted into the Office. Mr. *Cottingham* asked me ſeveral Queſtions about my Circumſtances, and what Perſons I could name that would recommend me to his Lordſhip: To which I gave the proper Anſwers, and mentioned ſeveral Gentlemen he knew. After that, I having the honour of being acquainted with my Lord Commiſſioner *Gilbert*, before I took any other Steps, I waited on his Lordſhip, and acquainted him with my Reſolution, and begged the favour of him, that he would take the Trouble to recommend me to my Lord Chancellor, as his Friend, and a fit Perſon for the Office. His Lordſhip did take that Trouble, and waited upon my Lord at *Weſtminſter*, who was then ſitting upon the Bench; and after Notice was ſent him of that Gentleman's being in the little Room behind, his Lordſhip came off the Bench; and ſome Time being ſpent in Converſation between them, I was called in, and kindly recommended by that honourable Perſon; and my Lord *Macclesfield* ſeemed to approve of me upon his Recommendation. But I ſhould acquaint your Lordſhips, that as to that Part of the Tranſaction with Mr. *Cottingham*, he ſaid that he would report thoſe Things to my Lord *Macclesfield*, of my Character and Perſon, though he never reported any Thing back to me again upon it: But I took the next enſuing Steps, by the Intervention of the honourable Gentleman my Lord Commiſſioner *Gilbert*.

Sir *Will. Strickland.* Whether he did not underſtand, that my Lord *Macclesfield* agreed to his Propoſals?

Mr. *Thurſton.* Yes.

Sir *Will. Strickland.* After this Tranſaction with Mr. *Cottingham*, what further Application was made? And why he was not immediately admitted at that Time?

Mr. *Thurſton.* It was not expected by me to be immediately admitted at that Time: Becauſe my Lord Chancellor did not abſolutely determine me to be the Perſon; but ſaid he had ſo good a Character of me, that he believed I ſhould be the Man.

Sir *Will. Strickland.* Whether Mr. *Thurſton*, being uneaſy about the delaying of admitting him, did apply to any other Perſon afterwards?

Mr. *Thur-*

Mr. *Thurſton.* After my being introduced to my Lord Chancellor, there was ſome Time for my Lord's Conſideration. Near a Week after, a Meſſage was ſent me by Mr. *Cottingham*, that my Lord would be ready to admit me ſuch a Day. Before the Day came, I had a Meſſage contradicting it, upon my Lord Chancellor's being engaged to attend the Council on that Day. After that, I expected the Appointment of another Day for that purpoſe; and in the mean Time this Affair had got into the publick News-Papers, as every Thing does, and I was named by every Body to be the Perſon fixed upon; and People reſorted to me to tranſact the Buſineſs of the Office, which I could not do without being duly admitted. And ſhortly after that Time, there was a Report ſpread, that my Lord Chancellor had deſigned to make a Preſent of the Place to ſome Gentleman in the Country, which gave me an Uneaſineſs, and put me upon an Expedient, that ſince I could not have ready Acceſs to ſo great a Perſon as his Lordſhip, I went to *Kenſington* one Morning to wait upon the Counteſs of *Macclesfield*; and upon ſending up my Name, and that I deſired to ſpeak with her, in a ſhort Time I had the honour of ſeeing her, and acquainted her that I was the Perſon that my Lord had promiſed the Office to, and that I could not proceed therein without being ſworn; therefore I deſired her Ladyſhip to interceed with my Lord, that I might be ſpeedily ſworn in. Her Ladyſhip ſaid, ſhe never did meddle in any Affairs of a publick Nature. I uſed ſeveral Arguments with her, as that the Thing was now publick and in Print, that it might be a great Diſappointment to me, and might affect my Character, if my Lord did not think fit to admit me. I laid a good deal of Streſs upon theſe Arguments, and I acquainted her Ladyſhip that I did not expect or deſire to come in without the due Preſent that is always eſteemed the Perquiſite of the great Seal. Then I repeated thoſe other Arguments again, that my Character might be affected by theſe Diſapointments; whereby her Ladyſhip was prevailed upon to promiſe ſhe would write a Letter, and acquaint my Lord Chancellor with it. Before I went away from the Room where I had the honour to be with the Lady, I did leave upon the Table Bank Notes to the Value of 5250 Pounds.

Mr. Serj. *Pengelly.* How were they directed?

Mr. *Thurſton.* I directed them to the Counteſs of *Macclesfield.*

Mr. Serj. *Pengelly.* I deſire he may be asked, how ſoon after this he was admitted?

Mr. *Thurſton.* I believe it was within 2 or 3 Days after at fartheſt, that I was admitted and ſworn into this Office.

Mr. Serj. *Pengelly.* We deſire he may give your Lordſhips an Account who was his Predeceſſor?

Mr. *Thurſton.* Mr. *Borret*, as I acquainted your Lordſhips before.

Mr. Serj. *Pengelly.* We deſire he may acquaint your Lordſhips of the State of the Office as it came into his Hands. What was the Deficiency of the Office, due to the Suitors of the Court, not anſwered by the Effects of Mr. *Borret*, when it came into your Hands?

Mr. *Thurſton.* That is a Queſtion I can't poſſibly anſwer, becauſe I never had thoſe Accompts under my Inſpection. And I dont find the Gentlemen that have, can give an Accompt of it.

Mr. Serj. *Pengelly.* I do not ask to a particular Sum; but whether there was a Deficiency, any Deficiency, and about what Sum?

Mr. *Thurſton.* I do not know any Thing at all about the Matter: I might as well gueſs what a Gentleman is worth that I know nothing of.

Mr. Serj. *Pengelly.* Whether there were Effects ſufficient to anſwer all the Suitors Demands?

Mr. *Thurſton.* I cannot tell; becauſe there was not any particular or exact Accompt taken of it, that is come to my Knowledge.

Mr. Serj. *Pengelly.* Whether the Suitors have been paid the Money left, or depoſited by them in the Hands of Mr. *Borret*?

E. of *Macclesfield.* My Lords, if there be any Order of the Court for their being paid, it will appear, and they may produce thoſe Orders to your Lordſhips: How can they pay without any Order?

Mr. Serj. *Pengelly.* I do not ſpeak of Orders, I only ask whether he knows that the Suitors have been paid?

Mr. *Thurſton.* It is impoſſible for me to have any Knowledge of it, for the Reaſons I gave you before; having had no Inſpection of thoſe Accompts.

Mr. *Lutwyche.* I deſire he may be asked, whether any Effects, or Money, or Caſh, and to what Value, have been transferred to him, as the Effects of Mr. *Borret*?

Mr. *Thurſton.* About 4200 *l.*

Mr. *Lutwyche.* Whether he knows what the Caſh was, that was in Mr. *Borret*'s Hands?

Mr. *Thurſton.* No, my Lords, I do not know.

Mr. Serj. *Pengelly.* I deſire he may be asked, whether he has been applied to by any of the Suitors of the Court, upon the Account of Money depoſited in Mr. *Borret*'s Hands?

Mr. *Thurſton.* I cannot ſay no Body has applied to me for Money due in Mr. *Borret*'s Office, ſeveral Suitors or their Repreſentatives have been inquiring after ſuch Things, who have been ſatisfied with having ſuch an Anſwer as the preſent Circumſtances would furniſh. There were ſome Sums of Money before this broke out paid to Suitors, that was Intereſt Money, and who were repreſented to me as People in Neceſſity, to the amount of 3 or 400 *l.* When this broke out, I then deſiſted Payment, upon the Advice of a great Friend.

Mr. *Lutwyche.* I deſire he would explain himſelf, what he means by ſaying before this broke out?

Mr. *Thurſton.* What I mean was, the Inquiry made into the Maſters Accompts, by his Majeſty's Direction in Council.

Mr. *Lutwyche.* The Sum of Money he paid, I deſire he may be asked who he received that Sum from?

Mr. *Thurſton.* I received it from Mr. *Godfrey*, the Maſter in *Chancery*.

Mr. *Lutwyche.* I deſire he may be asked, whether he knew of any Adminiſtration taken out to Mr. *Borret*, and at what Time?

Mr *Thurſton.* I believe Mr. *Godfrey* and Mr. *Bennet* were deſired to take that Trouble upon them, to look into Mr. *Borret*'s Affairs, by the Lord Chancellor; which they proceeded and took ſome Steps in, till

till they were discouraged from it by the Enquiry that was set on foot. They tell me now, that Administration is granted to Mr. *Paxton*.

Mr. Serj. *Pengelly*. I desire he may inform your Lordships, since he paid the Interest, why he did not pay the Principal?

E. of *Macclef*. I believe it would save your Lordships time, if Mr. Serjeant would ask his Questions in such a manner, as not to imply something which was not admitted, or said by the Witness. The Question supposes a principal Sum demanded; the proper Question is, first to ask if any principal Sum was demanded, and whether it was, or was not paid.

Mr. Serj. *Pengelly*. I apprehend that Mr. *Thurston* says, That Creditors came to him, Suitors of the Court, and he could not pay any more than the Interest; therefore I apprehend they came to him for the Money lodged in the Hands of Mr. *Borret*. Therefore I desire he may be asked, whether any of those Persons that demanded their Money were paid?

E. of *Macclef*. I desire he may be asked, whether any demanded the principal Sum? and by what Order?

Mr. Serj. *Pengelly*. I desire to ask my own Questions; I apprehend I am not to be directed in the asking my Questions by the Lord impeached. I desire to ask what Suitors applied, and what Sums they demanded?

Mr. *Thurston*. The Names of the Suitors I can't recollect, I believe it is not necessary to trouble your Lordships with them. The Sums demanded were only Interest Money. The principal Sum, for which I paid the Interest, to the best of my remembrance, was 700*l*. There was no Demand made of principal Money to be paid. But there might be Enquiries made, I believe, by a noble Peer of this House, which I was so very unfortunate, that I could not inform his Lordship of the State of what he enquired after.

Mr. *Plummer*. Mr. *Thurston* says, he desisted from paying any further Sums, upon very good Advice; I desire to know why, or by whose Advice, he desisted paying?

Mr. *Thurston*. It was upon a prudential Reason I did desist; because when a publick Inquiry was set on foot, I did not know how far I might be affected, in being made answerable my self for it.

Mr. *Plummer*. Whether he had any Suspicion that there was a Deficiency in Mr. *Borret*'s Office?

Mr. *Thurston*. There was a Suspicion that there was not competent Money to satisfy all the Suitors Demands.

Mr. *Lutwyche*. I desire he may be asked, whether there was not an Order for transferring the Effects in Mr. *Borret*'s Hands to him?

Mr. *Thurston*. Upon the Admission of Mevery after, there is an Order of Course signed by the Lord Chancellor, to transfer the Effects to the Successor.

Mr. *Lutwyche*. I ask if any such Order came to him?

Mr. *Thurston*. There did, my Lords.

Mr. *Lutwyche*. Was there any Transfer of the Effects according to that Order?

Mr. *Thurston*. No, there was not a compleat Transfer.

Mr. *Lutwyche*. Why was it not, as usual in the Case of other Masters, that either are removed, and are able to transfer; or in case, upon Death, where their Representatives are able to do it?

Mr. *Thurston*. The Reason it was not done, I conceive, was because it was impracticable, there being no Representative of my Predecessor, no Administration being taken out.

Mr. Serj. *Pengelly*. I desire he may inform your Lordships, whether he was not applied to by a noble Peer of this House concerning some Effects deposited in the Hands of Mr. *Borret*, and what account he then gave him of the State and Situation of the Office?

E. of *Macclef*. I am really very sorry to trouble your Lordships so often. What is it to me what this Gentleman said? He is now upon his Oath, and to give to your Lordships an Account what he knows; but to ask him what he said at such a time, to affect me, I hope they will not insist upon it.

Mr. Serj. *Pengelly*. When he has declared what he said, then there will be another Question, Whether that was true in Fact? And that Question will then affect the impeached Lord.

E. of *Macclef*. If Mr. Serjeant will ask a proper Question first, he may; but he should not ask an improper Thing, because he will ask a proper Question afterwards.

Mr. Serj. *Pengelly*. We apprehend it is proper Evidence to be given, that he gave such an Account of the Office in answer to the noble Lord: Therefore I desire to know what Account he gave to that noble Lord?

E. of *Macclef*. My Lords, I humbly oppose that Question, and desire your Lordships Judgment, whether he is to ask what this Person said?

Mr. *Lutwyche*. I believe the same End may be obtained by asking a Question without Dispute, and to which there can be no Objection; that is, Whether or no he had any Reasons to think that there was a Deficiency in the Office, and what those Reasons were?

Mr. *Strange*. My Lords, we beg leave to oppose that Question: What his private Opinion may be, is no Evidence; he and another may think variously of the same Matter. They are to ask him as to Fact, and not to his Opinion.

Mr. *Plummer*. I have not had the Happiness to be bred a Lawyer, and therefore may be mistaken as to legal Evidence: But surely when your Lordships are examining a Person to the Deficiency of his own Office, none can give a better Account than himself. I desire he would answer what he knows, whether he had the compleat Money of Mr. *Borret*'s transferred to him?

Mr. *Thurston*. The compleat Money of the Office hath not been transferred to me, and for the Reasons I have mentioned to your Lordships; for want of an Administration.

Sir *W. Strickland*. I would beg leave to ask Mr. *Thurston* one Question, and I hope a material one; Whether, on his Admission into that Office, he did not find a great Confusion in it?

Mr. *Thurston*. I can't say that upon my Admission into that Office I found great Confusion in it, because all Papers that came within my View were very regular, and well adjusted to dispatch Business upon.

Sir *W. Strickland*. I desire he may be asked, whether, if he had known the State of this Office, he would have given five thousand Guineas for it?

Mr. *Thurston*. If I had known the State of the Office, and the Consequences of it, as appear at

this time before your Lordships, rather than have given 5000 *l.* for it, I would have given 5000 *l.* to have been without it.

Mr. Serj. *Probyn.* Of the Money he paid or left at the time he mentions, on my Lady *Macclesfield*'s Table, I desire to know if he received any of it back again?

Mr. *Thurston.* I received back again from the Lady *Macclesfield* the Sum of 3250 *l.* in Bank-Notes, the same as I enclosed, when I first left it.

Dr. *Sayer.* Do you know the particular Circumstances of that Transaction, and upon what Occasion the Money came to be return'd? Give a full Account of that whole Transaction.

Mr. *Thurston.* Soon after my Admission, and as soon as I could adjust the Affairs of my Office, it being the latter End of Summer, and little Business stirring, I went into the Country for my Health. The Servant I left in Town, sent me word, that there were several Messages from my Lord Chancellor, that he supposed might be of Importance. As soon as I could conveniently, I returned to *London*, and in a Day or two went my self to my Lord Chancellor's House, and I sent to know what the Occasion of those Messages was. They said, it was not from my Lord Chancellor, but it was a Message from my Lady *Macclesfield*. Upon that I immediately after waited upon her Ladyship. She informed me then, that she did not know that I had left so large a Present with her, as she found it was: And declaring I should be used with Honour, she returned to me 3250 *l.* and the other part she said she would appropriate to her own use.

Mr. Serj. *Probyn.* We desire Mr. *Thurston* may be asked, if there was any notice taken of any Order or Directions from my Lord Chancellor about re-payment of the Money? or whether it was only a Transaction between him and my Lady *Macclesfield*?

Mr. *Thurston.* There was no notice taken of any Orders from my Lord Chancellor; rather an express Desire that my Lord Chancellor should never be acquainted with it.

Mr. *Strange.* I would ask when this Money was restored?

Mr. *Thurston.* The time when the Money was restored, was about the Middle of *October*.

Mr. *Com. Serj.* I desire he may be asked, whether at the time he first applied to Lady *Macclesfield*, he laid down the Paper those Bank Bills were in on the Table, before he received any Answer from my Lady, or afterwards?

Mr. *Thurston.* I laid down the Bank Bills on the Table, to the best of my Remembrance, at the time of my coming away, and taking leave.

Mr. *Com. Serj.* Whether they were inclosed in a Paper?

Mr. *Thurston.* They were inclosed in a Paper, and also sealed up.

Mr. *Com. Serj.* Whether they were opened during the time he was there?

Mr. *Thurston.* No, they were not.

Mr. *Com. Serj.* Or taken up by my Lady during that time?

Mr. *Thurston.* No, my Lords, I don't remember they were.

Mr. *Com. Serj.* Whether he named the particular Sum to her Ladyship?

Mr. *Thurston.* No, my Lords, not in the least. I did not give any Intimation what Sum was inclosed.

Mr. *Strange.* I desire he may be asked, whether he can remember that my Lady did or did not open it, before he went away?

Mr. *Thurston.* To the best of my Remembrance it was not opened, before I went out of the Room.

Mr. *Strange.* I desire he may be asked this further Question, whether he apprehended that my Lady *Macclesfield* was acquainted with the Contents, till after he was gone?

Mr. *Thurston.* I did not apprehend that my Lady *Macclesfield* was acquainted with the Contents of it, till afterwards.

Mr. *West.* Since that Gentleman hath asked concerning his Apprehension, I desire he may be asked another Question of the same kind, which is, Whether he apprehended he should have been admitted, if he had not left the Money?

Mr. Serj. *Probyn.* We submit it to your Lordships, whether that be a fair Question.

Mr. *West.* Really I think it is a proper Question, upon the Foundation of the Question asked before. The former Question was, whether he apprehended my Lady knew what he had left? I ask, whether he apprehended he should have been admitted, if he had not left that Sum?

Mr. *Thurston.* I do not apprehend, that if I had come without the Money, I should have been admitted. But if the Notes had been return'd to me without any other Answer, then I should fully have apprehended that I should not have been admitted.

Sir *John Rushout.* I desire he may be ask'd, whether he had any particular Acquaintance with the Lady *Macclesfield* before?

Mr. *Thurston.* I had not that Honour.

Sir *John Rushout.* Whether he had ever seen her, or been in her Company before?

Mr. *Thurston.* My Lords, I believe I never was.

Sir *John Rushout.* My Lords, we desire he may be ask'd what he apprehends was the Reason of 3250 *l.* being return'd to him?

Mr. *Thurston.* I know not whether I should trouble your Lordships with my Apprehensions, they may not be just; but so far as I could collect from the Lady's Discourse, the Reason was, she thought it too large a Present.

Mr. Serj. *Pengelly.* I desire he may be ask'd, when the 3250 *l.* was return'd, in what Month it was?

Mr. *Thurston.* It was in *October*.

Mr. Serj. *Pengelly.* Whether he can recollect in what time of the Month?

Mr. *Thurston.* I believe it was about the middle of *October*, to the best of my Remembrance.

Dr. *Sayer.* My Lords, we desire he may be ask'd, whether the return of this Money was before or after the then first Seal before *Michaelmas* Term?

Mr. *Thurston.* To the best of my Remembrance, the first Seal was about the middle of *October*, and it was return'd before the first Seal.

Mr. Serj. *Probyn.* My Lords, I desire he may be ask'd, whether there was any Message sent about the returning of the Money, before the Return was made?

Mr. *Thurston.* I have acquainted your Lordships that several Messages past, while I was in the Country.

Mr. *Robins.* When he waited upon my Lady *Macclesfield*, after his Return out of the Country, I desire he may be ask'd, whether she mentioned any Thing to him of the Reason of those Messages?

Mr. *Thurston.*

Mr. *Thurſton.* She mention'd the Reaſon, and ſaid that it was to return the Money, which ſhe ſaid was too large a Preſent, and that ſhe was afraid my Lord Chancellor ſhould come to the Knowledge of it.

Mr. Ser. *Probyn.* I deſire he would inform your Lordſhips, when he went to *Kenſington* to my Lady *Macclesfield*, where my Lord *Macclesfield* was?

Mr. *Thurſton.* When I went to *Kenſington* to my Lady *Macclesfield*, my Lord *Macclesfield* was then engag'd in the Buſineſs of the Court of Chancery, at the latter end of the Sittings, or firſt Seal after *Michaelmas* Term.

Mr. Ser. *Probyn.* In what ſtate of Health was my Lord Chancellor at that time? Had he not continued ſome time before at *London*, and not at *Kenſington*?

Mr. *Thurſton.* My Lord Chancellor, by the Enquiry I made, was at that time in *London*.

Mr. Ser. *Probyn.* How ſoon after your Admiſſion did the Lord Chancellor go into *Oxfordſhire*?

Mr. *Thurſton.* The very Day after my Admiſſion, my Lord Chancellor went into *Oxfordſhire*, as I was informed by one of my Lord's Officers, who came to me that Day upon ſome Buſineſs.

Mr. *Cottingham* again call'd.

Mr. Serj. *Pengelly.* My Lords, I deſire Mr. *Cottingham* may be ask'd, whether upon the Propoſal of 5000 Guineas made to him by Mr. *Thurſton*, he acquainted my Lord *Macclesfield* with it?

Mr. *Cottingham.* I acquainted my Lord Chancellor with the Propoſal made by Mr. *Thurſton* of 5000 Guineas.

Mr. Serj. *Pengelly.* Whether did he approve of it, or reject it?

Mr. *Cottingham.* I am not very certain, whether the Earl did not ſay he would take time to conſider of it. But in the main, according to my Apprehenſion, the Earl ſeem'd to approve of it.

Mr. Serj. *Pengelly.* I deſire he may be ask'd, whether he receiv'd any thing for my Lord *Macclesfield*'s Uſe upon Mr. *Thurſton*'s Admiſſion?

Mr. *Cottingham.* No my Lords, I received nothing but my own Fees.

Mr. Serj. *Pengelly.* If he received nothing, whether he received any Directions from my Lord Chancellor, relating to his receiving, or not receiving any thing from him?

Mr. *Cottingham.* The Earl was pleaſed to tell me, he had a Deſign to have given that Place to Dr. *Sayer*, but he was at that time in the Country, out of Town, at *Durham*: He proceeded ſo far as to order me to take no Money of Mr. *Thurſton*.

Mr. Serj. *Pengelly.* When was that?

Mr. *Cottingham.* Very ſoon before he was admitted.

Mr. Serj. *Pengelly.* My Lords, we ſubmit this as Evidence of the Lord's knowing of the Receipt of this Preſent of 5000 Guineas.

Mr. *Lutwyche.* My Lords, I deſire to know of Mr. *Cottingham*, whether my Lord *Macclesfield* had any Acquaintance with Mr. *Thurſton* before this Propoſal?

Mr. *Cottingham.* I can't ſay as to that, whether he had or had not; I believe he had not, as I apprehend.

Mr. *Plummer.* I deſire he may be ask'd one Queſtion, whether he made any difficulty of accepting his Fees on Mr. *Thurſton*'s Admiſſion?

Mr. *Cottingham.* Yes I did.

Mr. *Plummer.* And why?

Mr. *Cottingham.* The Earl ordered me to take no Money of him. Upon that general Order I made a little difficulty, and told him of it; the anſwer he made me was, why ſhould I make any difficulty when he had been thus generouſly dealt with by my Lord Chancellor?

Sir *W. Strickland.* Whether at that time, when he firſt mention'd the 5000 Guineas, it was not a Day or two before his Admiſſion?

Mr. *Cottingham.* I believe it was a Day or two before his Admiſſion.

Mr. Serj. *Pengelly.* My Lords, we have done with Mr. *Cottingham*.

Mr. Serj. *Probyn.* Since the Name of Dr. *Sayer* is mentioned on this Occaſion, whom the noble Earl declared he would compliment with the Place that fell vacant, I deſire this Witneſs may be asked, whether that was a real Compliment to Dr. *Sayer*, or whether Dr. *Sayer* made any Application, or was to give any Thing for it?

Mr. *Cottingham.* I believe, if Dr. *Sayer* had been then in Town, my Lord would really have made him a Compliment of it without any Preſent. My Lord told me Dr. *Sayer* was his particular Friend, and he had a great Value and Reſpect for him.

Mr. *Plummer.* My Lords, I beg leave to ask a Queſtion upon that Queſtion. He ſays he thought my Lord *Macclesfield* would have given it him for nothing; I ask him if he then thought he gave it Mr. *Thurſton* for nothing?

Mr. *Cottingham.* The Anſwer I can make to that Queſtion is, that I did not apprehend my Lord was ſo well acquainted with Mr. *Thurſton*, as to give it him for nothing.

Dr. *Sayer.* I deſire he may be ask'd, whether he did not repreſent to the Earl of *Macclesfield*, that there was a neceſſity for the immediate putting a Maſter into that Office, for the diſpatch of Buſineſs?

Mr. *Cottingham.* I did repreſent it to the Earl, that it was neceſſary to put ſomebody into the Office, for ſeveral Practicers had been with me about their Affairs in that Office, and otherwiſe the Buſineſs might be transferred to another Office, which would have been a great Prejudice. Upon that the Earl ſaid Mr. *Thurſton* ſhould be admitted.

Mr. Serj. *Probyn.* Whether you had not Application from the Suitors themſelves, and whether there was not a Clamour from them on account of the ſtop it put to Buſineſs?

Mr. *Cottingham.* Yes there was; it happened to be in the long Vacation, and ſomething I told the Earl muſt be done, there was an abſolute Neceſſity to come to ſome Reſolution or other in the Matter.

Mr. Serj. *Pengelly.* In this Article, as an Aggravation, it is alledg'd, that Mr. *Borret* died inſolvent: We beg leave to call ſome Witneſſes to give an Account of the State of the Office at his Admiſſion, and afterwards at the time of his Death.

Mr. *Meller* called.

Mr. Serj. *Pengelly.* My Lords, we deſire Mr. *Meller* may be ask'd, what Sums in Caſh and Effects he delivered over to Mr. *Borret*, at the time of his coming into the Office?

Mr. *Meller.* My Lords, I take it to be about 120000*l.* I refer myſelf to the Account given in

to

to the Judges and Directors of the Bank, and ſigned by my Hand.

Mr. Serj. *Probyn.* My Lords, we ſubmit it, whether this is regular, to examine to an Accompt *Viva Voce*, which Accompt hath been reduc'd into writing?

Mr. Serj. *Pengelly.* Surely the Witneſs may make uſe of his own Papers to refreſh his Memory.

E. of *Macclef.* I don't know what theſe Gentlemen intend. They are reading a Charge againſt Mr. *Borret*, to ſhew what was delivered over to him at the time he came into the Office. Is it expected I ſhould be able to give an Account what was paid to him, or by him, while he was Maſter? that I ſhould give an account of his Eſtate, and Effects, what it is, and if there was ſufficient to pay in his Hands, or not? If theſe Gentlemen had any Order of the Court, in which this had been fixed and ſettled, that might have been ſomething. It is impoſſible for me to enter into it. — It appears he died inteſtate, Adminiſtration was not granted till a great while after his Death; not till very lately: What account hath been taken of his Effects I don't know, nor can any way ſhew. They are beginning with an Account which I apprehend is not a proper Evidence to be given as againſt me, to prove that this Gentleman had not Effects ſufficient to anſwer the Demands upon his Office.

Mr. Serj. *Pengelly.* My Lords, This Evidence relates to an Accompt delivered in by the Approbation of the Lord impeached, on the Enquiry made before the Lords of the Council. As this Accompt was delivered in before them, we apprehend ſo far it is a proper Evidence, and a Foundation for a farther Enquiry, how much of it remains in the Office: We ſhall ask other Perſons afterwards as to the Deficiency. All the uſe we now make of it, is, to ſhew the groſs Sum that was at firſt transferred over to him.

E. of *Macclef.* My Lords, If they mean only to ſatisfy your Lordſhips Curioſity, by ſhewing how great a Sum there was in that Office, I think it is of no great Importance.

Mr. *Lutwyche.* All that we endeavour to prove now, is, what was very notorious at the time of Mr. *Borret*'s Death; that there was a great Deficiency, and that he died inſolvent, and the Earl goes a great way in this matter in his own Anſwer. He ſays in his Anſwer, That on the Death of Mr. *Borret*, he deſired Mr. *Godfrey* and Mr. *Bennet* to enquire into his Effects, and to enter a proper Caveat in the Prerogative Court, to prevent Adminiſtration being granted to any Perſon who might embezzle the ſaid *Borret*'s Eſtate, and to obtain Adminiſtration to be granted to them for the benefit of the Suitors of the Court. This goes a good way, I apprehend, to incline your Lordſhips to believe, that there were thoſe Steps uſed, which are unuſual in the caſe of a Man's Solvency. Therefore what we would ask to, is, that the Witneſs would give an account of what he knows concerning the Deficiency in this Office, or give an account of ſuch Circumſtances, as may induce your Lordſhips to believe there was ſuch a Deficiency.

Mr. *Com. Serj.* If the Gentlemen who appear on the behalf of the Houſe of Commons think fit to rely upon our Anſwer, they may do it.

Mr. *Sol. Gen.* I think Mr. *Meller* hath proved that he transferred 120,000 *l.* to Mr. *Borret*; we will now go on and prove the Deficiency.

Mr. *Com. Serj.* Mr. *Meller* hath ſpoke *Viva Voce*, in a matter which we apprehend is capable of much better Proof; therefore we hope what he has ſaid ſhall not go for Evidence. There muſt have been a Schedule, and he has the counterpart of that Schedule, by which the Effects were deliver'd over.

Lord *Trevor.* Mr. *Meller* hath a Paper in his Hand, I deſire to know what that Paper is?

Mr. *Meller.* The Paper I have before me is the very Account of the Money delivered to Mr. *Borret*, and the ſeveral Times when; it is made by way of Schedule. There is another Paper by way of Abſtract. I drew them together at the time I delivered it to the Judges. I had not time to draw out the full Account, and therefore I made an Abſtract, both which are ſigned.

E. of *Macclef.* The noble Lord asked the Queſtion exceeding proper. The Queſtion asked is, What this Paper was? Perhaps it is the very Accompt Mr. *Borret* and he made up between them, and ſigned. I ask therefore, Whether it is the Accompt between them, or whether it is an Accompt of his own drawing up ſince?

Mr. *Meller.* This is the Accompt I drew up from my Books, of which Mr. *Borret* had a Duplicate. I verified all theſe *Items*, and likewiſe proved the Payment of the Money by Goldſmiths and Bank Notes.

Mr. *Sol. Gen.* We apprehend that this is as full Evidence as can be laid before your Lordſhips.

Mr. Serj. *Probyn.* We ſubmit it, whether your Lordſhips are of Opinion that this is proper Evidence. Mr. *Meller* hath been propoſing a Paper, which is not the original Accompt delivered; it is not the Book, but a Copy of the Book taken out, and given in Evidence in another Place: Now he would by this Evidence, ſigned by himſelf, charge Mr. *Borret* with Money delivered over to him; but as it is an Accompt only ſigned by Mr. *Meller*, we ſubmit it, whether it can be a Charge upon the Repreſentative of *Borret*, and conſequently if it can be any Evidence at all?

Mr. Serj. *Pengelly.* We beg leave to inſiſt upon it as proper Evidence. When a Perſon makes up an Accompt of his own Hand Writing, and draws it up, and ſwears that to be a true Accompt upon his own Knowledge, whether this is not proper Evidence?

E. of *Macclef.* This Gentleman has really given his Evidence, though it was objected to: It will be a proper Enquiry hereafter, when we come to conſider the Evidence that hath been given, whether it be good Proof of what it is brought for?

Dr. *Sayer.* We ſhall reſerve our Objection to the laſt.

Mr. *Soll. Gen.* They may reſerve what Obſervations they pleaſe; it is an Objection to be made now, or not at all.

Lord *Lechmere.* It would be of ſome Service to prevent miſpending your Lordſhips Time, if the noble Lord would diſtinguiſh between Objections and Obſervations; for a great deal of Time has been taken up in Obſervations on Evidence, which are proper afterwards on the Defence.

Mr. *William Thompſon* called.

Mr. Serj. *Pengelly.* Mr. *Thompſon* is one of the Gentlemen, who by the conſent of the Lord within the Bar, as well as of the reſt of that Committee, did examine into the Accompts of the Maſters in Chancery; and we beg leave to ask him, In the Accompt delivered in before the noble Lord himſelf

ſelf, what appeared to be the Deficiency upon Mr. *Borret's* Account?

E. of *Maccleſ.* If it does appear by thoſe Accounts, thoſe Accounts may be produced before your Lordſhips, and your Lordſhips may be Judges; but I beg they may not inſiſt upon this Gentleman giving his Opinion, in order to affect me with his Collections or Inferences upon them.

Mr. *Sol. Gen.* The Original Accompts are here. They are on your Lordſhips Table. It will be proper to examine this Gentleman as to that.

Mr. *Plummer.* I beg leave to make one Obſervation, and I believe it may prevent my ſpending your Lordſhips time. They make an Objection to this Evidence, as if your Lordſhips were going to try how the Deficiency was made up; whereas your Lordſhips are only trying whether there was or was not a Deficiency.

E. of *Maccleſ.* If the Accompts are before your Lordſhips, and lye upon your Lordſhips Table, and he only declares to your Lordſhips his Obſervations on thoſe Accompts, for your Lordſhips Eaſe, and to ſave you ſome Trouble, I have no Objection to it.

Mr. Serj. *Pengelly.* Upon the ſtating the Accompt, which we apprehend is a matter of Evidence, when a Gentleman computes the Sum on one Side, and the Sum on the other Side, we deſire to know what appears to Mr. *Thompſon* to be the Deficiency?

Mr. *Thompſon.* I can't rely upon my Memory for the Sum, but I have in my Hand a Report made to the Committee of Council, that I ſigned with my Name; by which it appears, that Mr. *Meller* at ſeveral times, paid to Mr. *Borret* 120000 *l.* That Mr. *Borret* paid out to the ſeveral Suitors 77485 *l.* and I find the Charge remaining on Mr. *Borret's* Office unpaid to the Suitors, is 42515 *l.* Theſe are the Sums that upon Examination of the Accompts we find to be right.

Dr. *Sayer.* If the Gentlemen that are Managers for the Houſe of Commons have done, we beg leave to ask Mr. *Thompſon* this Queſtion, whether on the making up of theſe Accounts any Executor or Adminiſtrator of Mr. *Borret* was preſent?

Mr. *Thompſon.* When we examined the Accounts, we underſtood there was no Repreſentative of Mr. *Borret*; and I think it is put in the *Report*, that we could get no Account but from his Clerk, Mr. *Godfrey* and Mr. *Bennet*, two Maſters in *Chancery*.

Mr. *Com. Serj.* What Books was it he formed thoſe Accounts from?

Mr. *Thompſon.* The firſt Charge, or the Charge from Mr. *Meller* on Mr. *Borret*, was taken from Mr. *Meller's* Account. The 77485 *l.* paid out, was an Account from Mr. *Borret's* Books, made up by his Clerk, under the Inſpection of Mr. *Godfrey* and Mr. *Bennet*.

Mr. *Com. Serj.* I deſire he may be asked, whether he himſelf knew thoſe to be Mr. *Borret's* Books, or only by Relation from other Perſons?

Mr. *Thompſon.* Only by Relation from his Clerk.

Mr. *Com. Serj.* Then, with Submiſſion, they muſt go further before the Ballance can be taken notice of. They muſt eſtabliſh that theſe Books are Mr. *Borret's* Books.

Mr. *Sol. Gen.* We have done with Mr. *Thompſon*.

Mr. Serj. *Pengelly.* We hope the Council for the Earl impeached, will be pleaſed to read his own *Anſwer*, wherein he owns that Mr. *Godfrey* and Mr. *Bennet*, were employ'd by himſelf to take the Effects of Mr. *Borret* into their Cuſtody.

E. of *Maccleſ.* If I apprehend Mr. *Thompſon*, he ſays, the Charge is taken from the Account given by Mr. *Meller* himſelf. I deſire to know, whether Mr. *Meller* was not called upon to diſcharge himſelf of the Money he had in his Hands, before he ſurrender'd to Mr. *Borret*, and whether that was not the Occaſion of his being there?

Mr. *Thompſon.* I apprehend Mr. *Meller* was ſent for, in order to know the State of the Office at the time he left it.

E. of *Maccleſ.* So he gave an Account how it ſtood at the time of quitting the Office, and what he paid over to Mr. *Borret*?

Mr. *Thompſon.* I apprehend he did ſo.

Mr. Serj. *Probyn.* I deſire Mr. *Thompſon* may be ask'd, whether the 77485 *l.* Diſcharge, was taken from the Relation of Mr. *Godfrey* and Mr. *Bennet*, or from the Books themſelves; or whether he did examine the Books himſelf?

Mr. *Thompſon.* I went through every Particular of Mr. *Meller's* Accompt; as to the other, my Memory does not ſerve me to anſwer particularly.

E. of *Maccleſ.* Whether they did not report at that time, they could not take the Accompts perfectly for want of an Adminiſtrator?

Mr. *Thompſon.* I believe, my Lords, we might do ſo, and I believe if the Report is turn'd to, it will appear ſo. I don't mention theſe Sums as an exact Accompt, they were the beſt Accompts we could get?

Dr. *Sayer.* The Queſtion I would trouble your Lordſhips with, becauſe it is of great Conſequence, is, whether the Accompt of 120,000 *l.* which lies as a Charge upon Mr. *Borret's* Office, is not the Accompt which Mr. *Meller* is to diſcharge himſelf by, and of thoſe Effects for which he otherwiſe remains reſponſible?

Mr. *Thompſon.* How far Mr. *Meller* is to diſcharge himſelf, I am no competent Judge. This is the Accompt that the Office, as I apprehend, ſtood charg'd with.

Dr. *Sayer.* To put the Queſtion ſhorter. Whether it is the Accompt of Mr. *Meller*, as Predeceſſor in the Office to Mr. *Borret*?

Mr. *Thompſon.* I apprehend it ſo.

Mr. *Plummer.* Whether Mr. *Meller* did not produce Receipts for Mr. *Borret*, for this whole Accompt?

Mr. *Thompſon.* To the beſt of my Remembrance, Mr. *Meller* did produce Vouchers for every Article ſet down in his Accompt.

Mr. Serj. *Probyn.* I deſire he may be ask'd, whether there were any Proofs made of theſe Vouchers?

Mr. *Thompſon.* What the Gentleman means by Proofs, I don't know. They were Receipts under Mr. *Borret's* own Hand for the whole Sum.

Mr. *Com. Serj.* I deſire he may be ask'd, whether he is acquainted with Mr. *Borret's* Hand-Writing, or whether there was any Proof made of it?

Mr. *Thompſon.* Mr. *Borret's* Clerk was there, and affirm'd every Receipt to be Mr. *Borret's* Hand-Writing.

Mr. *Com. Serj.* I would ask, if there was any Oath made, or if it was only upon his Word?

Mr. *Thompſon.* If your Lordſhips will give me leave to have recourſe to the Report, I will recollect myſelf. I can't ſay whether Mr. *Borret's* Clerk was ſworn or no, I think he was; I don't find it ſet down in the Report.

Mr. *Lutwyche.* I would beg leave to ask this

Queſtion. This Report, that is ſign'd by him as one of the Committee, whether it was laid before the Council, and to whom delivered in, in order to be laid before the Council?

Mr. *Thompſon.* This very Report was delivered by Mr. *Baron Gilbert*, to the Committee of Council.

E. of *Macclef.* I hope it is the ſame that is before your Lordſhips, if it is not, I can't tell what to ſay to it.

Mr. Serj. *Pengelly.* This is the Original Report, of which your Lordſhips have a Copy on your Lordſhips Table.

E. of *Macclef.* I deſire it may be delivered in and lye upon the Table.

Mr. Godfrey *called.*

Mr. *Sol. Gen.* We deſire Mr. *Godfrey* may be ask'd, whether upon the Death of Mr. *Borret*, he was directed to take an Account of the State of his Office?

Mr. *Godfrey.* Upon the Death of Mr. *Borret*, my Brother *Bennet* and I, were deſired by my Lord *Macclesfield*, to look into the Affairs of Mr. *Borret's* Office, and ſee how the Accompt ſtood; and likewiſe to ſee what Securities were in the Bank, in the Exchequer, and Eaſt-India Company, and other Funds. Accordingly, I went to the Bank, and to the Eaſt-India Houſe, and took an Account of what I found ſtood in his Name there. I believe Mr. *Bennet* will ſatisfy your Lordſhips, he went to the Exchequer and other Places. I applied firſt to the Bank, to Mr. *Hanger*, who was then Deputy Governour, and he was ſo kind to ſend an Officer to ſearch the ſeveral Books, and I had this Accompt: There was in Mr. *Borret's* Name 1000 *l.* in 5 *l. per Cent* Annuities, 1000 *l.* Bank Stock. And then I went to the Eaſt-India Houſe, and there was 240 *l.* Eaſt-India Stock in his Name. This was all the Account I took.

Mr. *Sol. Gen.* In what State was the Office in General?

Mr. *Godfrey.* I did not look over the Office Books. I believe Mr. *Bennet* who was with me took that Charge upon him: I believe he is capable of giving you an Account. I did not ſee the Office-Books at all. But upon my talking with Mr. *Bennet* about it, he found there was more Stock and Security in Mr. *Borret's* Name in the ſeveral Funds, than he could find him charg'd with in the Books of the Office.

Mr. Serj. *Pengelly.* When Mr. *Thompſon* and the other Gentlemen enquired into the particular Effects, whether, when he appear'd there, the Accompt he gave in was a true Accompt?

Mr. *Godfrey.* To the beſt of my knowledge, in relation to Mr. *Borret's*, it was.

Mr. *Sol. Gen.* I deſire one Queſtion more, whether it is uſual to enquire into the Effects of a Predeceſſor, unleſs there is reaſon to ſuſpect a Deficiency?

Mr. *Godfrey.* I don't know whether it is uſual, but it is extreamly neceſſary. When this Gentleman was expiring in ſuch an Office, having no Friends in Town, nor any intimate acquaintance beſides myſelf to take care of his Effects; I thought I ought to take ſome care, that his Office ſhould not be plundered; and that was the only Reaſon that induced me to take care of his Effects, that they might not be embezzled.

Mr. Serj. *Pengelly.* Whether they did not find the Office in great Confuſion?

Mr. *Godfrey.* In that part of his Office which was at his Chambers in the Temple, we found his Papers in great Confuſion, lying without any Method or Order. We collected them as well as we could, and what Things we found of Value or belonging to the Suitors, as Goldſmith's Notes, Notes under Hand for Money, we put them upon a File; and that File, together with other little Moveables we found belonging to him, as Rings and a Watch, were all put in a Bag, and ſealed up by Mr. *Bennet* and myſelf, Mr. *Grant*, who was Mr. *Borret's* Lady's Father, and Mr. *Grant* the Clergyman, who was his Lady's Uncle, and put them into a Trunk and lock'd them up; and they are now at my Houſe.

Sir *W. Strickland.* I would ask him whether the next of Kin did not refuſe to take out Adminiſtration, becauſe of the Deficiency?

Mr. *Com. Serj.* Here can be no Anſwer, but yes or no, I hope Gentlemen will not ask ſuch Queſtions.

E. of *Macclef.* I deſire he may be ask'd, whether any Advice was given concerning taking out, or not taking out Adminiſtration?

Mr. *Godfrey.* Mr. *Grant* the Uncle, ſaid, that he was a Creditor of Mr. *Borret's*, by Bond (which indeed I was ſurpriz'd to hear, I did not think he owed any Man a Shilling;) between 6 and 700 *l.* and being ſo great a Creditor, he thought if he took out Adminiſtration he ſhould be paid firſt. I told him, as Mr. *Borret* had been in an Office of great Weight, and there was a great Truſt, I could not tell how Matters ſtood in the Office; and if there ſhould prove a Deficiency, I believed he would involve himſelf in taking out Adminiſtration, in much more trouble than he was aware of.

Sir *W. Strickland.* I deſire he may be ask'd, if he did not apprehend there would be ſuch Deficiency?

Mr. *Godfrey.* I did not apprehend at that time there would be any Deficiency. He had been in the Office about four Years, he had had Opportunities of re-imburſing himſelf: He had a handſome Fortune of his own when he came in, and had with his Lady 3000 *l.* Therefore I was under no apprehenſion that there would be a Deficiency.

E. of *Macclef.* I beg leave I may ask Mr. *Godfrey*, whether he was acquainted very well with the Affairs of Mr. *Borret*, and knew his Circumſtances?

Mr. *Godfrey.* I have had ſome Years acquaintance with Mr. *Borret*. As to his real Eſtate, I was not perfectly acquainted with it, I had it only by common Relation, that he had an Eſtate of about 400 *l.* a Year, or rather better; but I don't know it of my own Knowledge.

E. of *Macclef.* As to his real Eſtate, you ſay you don't know it of your own Knowledge; whether are you particularly acquainted with his perſonal Eſtate?

Mr. *Godfrey.* No my Lords.

E. of *Macclef.* I deſire Mr. *Godfrey* to inform your Lordſhips, what he ſaid to me after Mr. *Borret's* Death, whether there would be a Loſs or not a Loſs in Mr. *Borret's* Office?

Mr. *Godfrey.* I can't at preſent remember what Diſcourſe paſſed between the noble Earl and my ſelf upon the death of Mr. *Borret*. I believe I might ſay, and it was my Opinion, that there would be no Deficiency. I have heard his Eſtate was ſuch, and I knew very well that his Lady's Fortune was

ſo

ſo much, and that he diſpoſed of a Place, which was the Filazer of *Yorkſhire*; for which he had, as I have been inform'd, 4200 *l.* And theſe were the Reaſons that induced me to believe there wou'd be no Deficiency; and I knew very well that I cou'd ſay of my own Knowledge, Mr. *Borret* lived at no extravagant rate; for I am ſure all the Time he was a Maſter, and in Town, he never ſpent 200 *l.* a Year.

Sir *W. Strick.* He ſays, he has heard he had 400 *l.* a Year in Land: Does he not as well know that that Eſtate was ſettled upon his Family and Children?

Mr. *Godfrey.* I have heard, that upon his Marriage, ſome part of it was ſettled, but whether all be ſettled, or not, I can't tell.

E. of *Maccleſ.* It ſeems this Gentleman ſays, he did not ſpend 200 *l.* a Year. How came you to imagine that he ſhould ſpend no more than 200 *l.* a Year?

Mr. *Godfrey.* He told me ſo.

E. of *Maccleſ.* Where was his Family?

Mr. *Godfrey.* In the Country.

E. of *Maccleſ.* With whom?

Mr. *Godfrey.* With his Lady's Father; and when he was in Town, he had private Chambers in the *Temple*, and only kept one Servant, and one Horſe.

E. of *Maccleſ.* I deſire he may be asked, whether he did not once intend and propoſe himſelf to take out Adminiſtration to Mr. *Borret*, and if he did not take ſome ſteps towards it?

Mr. *Godfrey.* I had ſo great a concern for the Office, and the Securities not being transferred to a proper Hand, that I was willing to take out Adminiſtration, rather than there ſhould be any clamours on account of the neglect of Buſineſs in the Office. But, my Lords, upon conſidering the Matter, I did not apprehend that I was ſo fit a Perſon for that purpoſe. I was not very young my ſelf, I had two Children, and thoſe young: I apprehended that if I ſhould drop off before things were ſettled, the Caſe might be ſtill the ſame as I found them: Therefore, I deſired I might have ſomebody joyned with me in this troubleſome Affair, for I did foreſee a good deal of trouble in it. However, I ſaid I was willing to engage in it, if my Brother *John Bennet* were joyned with me, rather than there ſhould be any clamour upon the Office; and I perſwaded him to do the ſame; and accordingly, I went down to the Commons, to ſee if Adminiſtration could be granted to us two. The Relations in the Country, and thoſe People concerned for them, were very willing that Adminiſtration ſhould be granted to Mr. *Bennet* and my ſelf; and accordingly Proceſs was ſent to cite the Children; and that done, as I am inform'd, Sentence was given, that I and my Brother *Bennet* ſhould have the Adminiſtration. But then this unhappy enquiry coming out, we did not know what Situation we might be in, and for that Reaſon I declined it.

E. of *Maccleſ.* Has Mr. *Borret* a Wife living, or is ſhe dead?

Mr. *Godfrey.* His Lady died a Month before him.

E. of *Maccleſ.* What age are his Children?

Mr. *Godfrey.* The eldeſt is about three Years old, and the youngeſt about two, as I am informed; I never ſaw them.

Mr. John Bennet *was called and ſworn.*

Sir *W. Strickland.* The Queſtion I deſire he may be asked is, whether he did not, upon the enquiry into the Affairs of Mr. *Borret*'s Office, apprehend that there was a Deficiency.

Mr. *J. Bennet.* I did hear it reported that there would be a great Deficiency in that Office, at the Time I was deſired by my Lord *Macclesfield* to look into it; and I was likewiſe informed ſoon after, that there was like to be no Deficiency.

Sir *W. Strickland.* I deſire he may be asked, how he found it?

Mr. *J. Bennet.* I found his Papers and Accompts in the utmoſt Confuſion. His Accompts were moſtly in looſe Papers: There was one Book indeed, but that extended no farther than to the *Chriſtmas* before his death, which was near three quarters of a Year before he died. Mr. *Godfrey* deſired I would join with him in taking out Adminiſtration; after a good deal of importunity I did conſent.

Sir *W. Strickland.* I deſire one Queſtion more. He ſays he was informed ſoon after, there was like to be no Deficiency in the Office. I deſire to know, whether he did inform the Earl of *Macclesfield* there was like to be no Deficiency?

Mr. *J. Bennet.* No, I did not, but I did inform him, that there was not ſo great a Deficiency as was reported, which was 25 or 30000 *l.* I cou'd make no regular Computation, every thing was in the utmoſt Confuſion, as I acquainted my Lord.

E. of *Maccleſ.* I deſire he may be asked, whether he did not inform me, that he found more Stock in *Borret*'s Name, in the Books of the ſeveral Companies, than he could find charged upon him in the Office?

Mr. *J. Bennet.* Not to my Remembrance; for I did not look into the Stocks of the Companies, that was Mr. *Godfrey*'s Buſineſs.

E. of *Maccleſ.* You, then look'd into his Books?

Mr. *J. Bennet.* I did ſo.

E. of *Maccleſ.* Then upon your looking into his Books, and Mr. *Godfrey*'s looking into the Companies Books, and comparing them together, I deſire you would inform my Lords, whether you did not take more to be in his Name, than he was charged with in the Books of the Office?

Mr. *J. Bennet.* Upon Mr. *Godfrey*'s Accompt there appeared, upon caſting it up, to be more Stock in his Name than the Securities he was anſwerable for to the Court.

E. of *Maccleſ.* He has ſaid, he could not tell what the Deficiency would be, becauſe he could not make up a regular Accompt; I deſire he may be asked, whether he did not tell me that he believed there would be no Deficiency?

Mr. *J Bennet.* No, I did not.

E. of *Maccleſ.* Did you not upon your Oath?

Mr. *J. Bennet.* After Mr. *Borret*'s death, I did ſay to ſeveral People, when they were clamorous (but whether I ſaid ſo to my Lord *Macclesfield*, I can't tell) that upon the beſt Accompt I could make of his confuſed Affairs, there would be a Deficiency of 4 or 5000 *l.* and I believed not more.

Mr. *Com. Serj.* Tho' Mr. *Bennet* did not look into the Books of the publick Companies; yet whether he did not examine at the Exchequer upon that Occaſion?

Mr. *J. Bennet.* Yes.

Mr. *Com. Serj.* I deſire he may be asked, whether he did not tell Mr. *Godfrey* afterwards, that upon what appear'd, there would be no Deficiency?

Mr. *J. Bennet.* No.

Mr. *Plummer.* Mr. *Bennet* has ſaid, upon comparing the Books, he found more Stock in Mr. *Borret*'s

Borret's Name, than he was charged with to the Court. I desire he may be asked, if he found more Stock than the Money and the Effects he was charged with to the Court?

Mr. *J. Bennet.* No my Lords, the best Calculation I could make, was, that there was near 4 or 5000*l.* Deficient.

Mr. *Serj. Pengelly.* We shall leave this Article, with this Observation, that Mr. *Borret* died insolvent, and a debtor to the Suitors of the Court, of which we have given full Evidence; and that Mr. *Thurston* was admitted into that Office by the Earl Impeach'd, without procuring satisfaction to the Suitors of the Court, or Security for their Debts: If that was done, it lies upon the noble Lord to prove it.

Mr. *Onslow.* My Lords, The *Commons* having made good that part of their *Impeachment*, by which the *Earl of Macclesfield* stands *charged* with *extorting* many great, and extravagant Sums of Money, for the admission of several of the Masters of the Court of Chancery into their respective Offices: We shall now proceed, my Lords, to support the *Eleventh* and *Twelfth* Articles, which contain many *corrupt Practices*, used by the said Earl, to advance and encrease the illegal Gain, arising to himself from the Sale and Disposal of those Employments.

The *Eleventh* Article charges him, *my Lords*, with admitting several Persons to those Offices, who at the Time of their Admission, were of *small Substance and Ability*, and highly unfit for so *great* a Trust, as by the nature of their Employments at that Time, was to be placed in 'em.

The Masters in Chancery, *my Lords*, have of late Years, been the *Treasurers* of that Court. The *Repository* of the Money and the Effects brought into the Court, brought there *my Lords*, not by the *choice* and *consent* of the Parties concerned, but by the *compulsion* of the Court, under the Faith of a better Security: But so, *my Lords*, has it fallen out, that this pretended Security, has served only to *delude* the Suitors of the Court, into a false Quiet, whilst their Estates have been made a Prey to infamous *Stock-jobbers*, and wantonly *wasted*, by some of 'em, to support the extravagancy of their living.

The Fortunes, *my Lords*, of *Orphans* and *Lunaticks*, are from the Compassion of our Government, a part of the Care of the Court of Chancery; and have been lodged in the Hands of the Masters, as a Place of *Sanctuary*, till the Owners should become capable of managing their Estates themselves: When They come, *my Lords*, to require their Fortunes, He, who was the *Supreme Judge* in a Court established for their Relief: *He*, who was the Great *Guardian* of Infants and Lunaticks, will be found to have *suffer'd* an advantage to be taken of the *weakness* of the *One*, and the *misery* of the *Other*, to render their *helpless condition* a means of their *Ruin*, instead of their *Protection*.

This, *my Lords*, is the nature of the *Trust* reposed in the Masters of the Court of Chancery, and This the *Use* they have been permitted to make of it. The *Greatness* of the Trust, will shew your Lordships, what Precautions a Lord Chancellor ought to have taken, as to the Officers admitted into these Employments; and the *Abuse* of this Trust, will demonstrate how little His *care* has been, whose Duty it was to provide Persons of Integrity, and responsible Men for the execution of these Offices; but *who*, my Lords, unfortunately for the Suitors, and to the dishonour of the publick Justice of the Kingdom, *presided* seven Years in the Court of Chancery; in which Time, a *deficiency* of above *fourscore thousand Pounds*, has happened upon the Masters *He* admitted; and what perhaps may be worthy of *your Lordship*'s particular Notice, of the *six* Masters on whom there appears to be a Deficiency, *Four* of them were admitted by *Him*. If our Evidence, *my Lords*, as to this Article, rested only on the Proof of these Deficiencies, it would, we apprehend, be sufficient to evince what the Commons have here alledged, That Persons of small Substance and Ability, have, by the *Earl* at the Bar, been preferred to be Masters of the Court of Chancery. But, *my Lords*, to bring this Charge still nearer to the *Earl*, We have it in Proof, and strongly so, That little or no *inquiry* was ever made by Him, into the *Characters* and *Circumstances* of Those He admitted into these Offices. That in fact, my Lords, they were Men of very mean Fortunes. No Security ever required of Them; which still made it the more necessary, that their own Ability should be thoroughly *looked into* and *well approved*. We shall show your Lordships, That they were entrusted, some of 'em, with *forty*, *sixty*, one of 'em, I think, to the amount of a *hundred thousand Pounds* in Cash and Securities; and yet, *my Lords*, no other Use was made of This, but to *enhance* the *Price* of the Office, when it was to be *Sold* and Barter'd for the benefit of the *Earl*. The Argument used, to bring up any Person to the *Rate* the Earl *insisted* on, was the largeness of the Sum to be transferr'd to the Purchaser. The *Temptation* generally succeeded. The *Reason* your Lordships will easily imagine; and when the *Price* was thus agreed upon, no other Qualification was required, the Person stood right in the *Earl*'s Opinion, and was thought proper to be *Associated* to him.——— Were it only that, my Lords, the Commons would not have troubled your Lordships with this Article, ——but to be *Associated* to him in the Administration and Execution of Justice, and to be *entrusted* with the Fortunes of whole Families, whose only support, perhaps, depended on the Ability and Integrity of these Men: How well, *my Lords*, the *Earl* consulted in the appointment of these Officers, the *Honour* of that publick Justice They were to *assist* him in: What *Regard* He has had for the *Interest* of Those, whose Estates He thus flung into their Hands, The Evidence we shall produce to *your Lordships*, and your own Observations upon it, will abundantly show, notwithstanding his flat denial of this part of the Charge.

I will trouble *your Lordships* but with one particular more in this Article, and it is what the Article concludes with. A remarkable *Declaration* by the *Earl*, of the Ability, and other Qualifications of the Masters, particularly those promoted by him; and this happened, my Lords, upon as remarkable an *Occasion*. A very honourable Person, then a *Judge* also in that Court, and now justly at the Head of it, having seen with Indignation, the *Havock* that was making of the Effects of the Suitors; out of compassion to them, and from a Zeal for Justice, endeavour'd to put some stop to it, in an instance that came within his Cognizance. An Order was made by him, my Lords, on one of the Masters, to allow some Profit to a Suitor arising from her own Money, which the Master designed as it was thought, to have sunk to his own Use. The Master thought himself aggrieved, and fled for Redress to his *Pa-*

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trin, the then *Lord Chancellor*, the *Earl* now under your Lordships Consideration; and he was secure in so doing, for the Order was immediately discharged; and then it was, my Lords, to obviate the Clamours that were breaking out from all sorts of People against the Masters, that the *Earl* did in open Court, then sitting as *Lord Chancellor*, in his *Judicial Capacity*, declare, that the present Masters were Men of as great Probity, Fortunes, and Abilities, as any set of Masters that ever were in that Court; and that he had had the Satisfaction of putting in most of them himself. As this, my Lords, was spoken in general of them all, but with a peculiar Regard to those he had admitted; the Commons have laid it to be to the manifest *Deceit* and *Injury* of the Suitors of the Court, which they are justified in doing, by the Thing it self being *false*, by the Proof we have, *my Lords*, that the *Earl* must know it to be *false*, and by the Resemblance it bears to that Series of other mean *Artifices* he had long been practising to give a *counterfeit* Credit to these *corrupt* Officers. A Credit, *my Lords*, he was soon to receive some *Benefit* from; for the Witness will inform *your Lordships*, that a Vacancy of a Master in Chancery happened the Day before this *significant* and *memorable* Declaration was made.

My Lords, The Commons have made this Article a part of their *Charge* against the *Earl of Macclesfield*, as being the great Source of the *Evil* that is likely to befal the unhappy *Sufferers* in the Court of Chancery; and as it was the *Means* he made use of to draw to himself those extravagant Sums of Money we have proved him to have received: For Men of small Fortunes, *my Lords*, as they have more Temptations, so they run less hazard than others in preying upon Money that is entrusted with them; and it is this, *my Lords*, that encourages such Men to give exorbitant Rates for Employments which afford them those Opportunities.

Thus, *my Lords*, I have opened to *your Lordships* the Substance of the *Eleventh* Article, and the nature of our Proof upon it. The *Twelfth* Article will be opened and enforced to *your Lordships* by the Gentleman who is to come after me. I shall therefore detain *your Lordships* no longer than to make this one Observation, That as the Office of a Master in Chancery is of great *Trust* and *Importance*, that as these Officers are appointed to this Trust by the *sole Discretion* of the Lord Chancellor; and that the Effects of the Suitors of the Court are deposited in their Custody, by his *immediate* Orders, which he might have plac'd in *safer* Hands if he had thought fit; he becomes by all this in the nature of a *superior Trustee* for, and is therefore justly *answerable* to the Suitors for the Behaviour of these *Men*. So, *my Lords*, in some Degree may the Publick be thought *answerable* for him; which makes his Guilt without Measure, who has thus brought a Disgrace upon his Country, by prostituting one of its highest Courts of Justice to his own *Avarice and Corruption*, to the *Rapine* and *Corruption* of his inferior Officers, and to the *Undoing* of those, who, by the Constitution of the Kingdom, have been forced into his Power.

Mr. *Palmer*. My Lords, The Gentleman that spoke last has fully opened the Evidence of the Eleventh Article, and has shewn to your Lordships, that for his own private and illegal Gain, the impeached Lord did commit the Money and Effects of the Suitors, to Men no way of Substance sufficient for so great a Trust. The Twelfth Article will lay before you a most corrupt Practice, used without Controul, while the Earl was Chancellor, by which this illegal Gain was immediately created; and whereby those Masters of whom the Commons complain in the preceding Article, were tempted and enabled to buy their Offices at extravagant Prices.

Your Lordships will see what Methods were used on the Admission of Masters in Chancery: Great Sums were paid for the Surrenders and Admissions, and those Sums were taken from the Money of the Suitors; sometimes the Purchase-Money was borrowed; but after Admission, repaid from the Cash of the Office; sometimes the Value of the Purchase was left in the surrendring Master's Hands: Whatever different ways were taken at the beginning, they all tended to this; the Suitors were to make the Purchaser easy, and People were perswaded to bid high, by being told how easily the largest Sums could be raised.

It was a common Recommendation to a Purchaser, to tell him how much Cash was in the Office; and that he need not be afraid to make any Contract good, Money would be ready as soon as he was admitted: Your Lordships will see the Consequences of such Recommendations. Masters did offer, and give more than they could be presumed they were worth, the Suitors Money was at Hand to make good the Bargain; and these are the Masters in whose Offices appear the greatest Deficiencies.

It will appear to your Lordships, that Mr. *Kinaston*, and Mr. *Thomas Bennet*, procured their Places in this manner. Mr. *Kinaston* discharged a Bond of Six Thousand Pounds to his Predecessor, by giving a Receipt of the same Value. Mr. *Bennet* gave a Receipt to his Predecessor for Ten Thousand Pounds; both acknowledged a Transfer of so much of the Suitors Money, the one received but Nine Pounds, and the other Fifteen Hundred, the rest was kept back as part of the Price of their Office, and is now a part of their Deficiencies. How great their Deficiencies are, may be observed to your Lordships; Mr. *Bennet*'s is near Ten Thousand Pounds, and Mr. *Kinaston*'s above Twenty Thousand.

This is the Practice, the impeached Lord, in his Answer, declares himself totally ignorant of, and is what the Commons declare he knew, connived at, and encouraged; and as they have been always careful to aver nothing but what they are satisfied will be fully maintained, this Article will be supported by Proofs, that the impeached Lord was well informed of what he now denies the Knowledge of; that it was the Subject of his Discourse, and that he feared, and endeavoured to prevent a Discovery.

And your Lordships will find him observing on the Accounts of some of the Masters, as they were given in on the late Enquiry, *That they were given in in the worst Manner; That they should convince the World that they paid for their Places out of the Suitors Money; and, That they would at last discover what he had always, when asked, taken care to deny.*

The impeached Lord admits, in his Answer, that he never caused any Schedules to be made of the Suitors Effects, to be transferred over to succeeding Masters: That it was what his Predecessors ne-

ver did before him, and that if the Conſequences alledged by the Commons, have ariſen from this Practice, or the not ordering ſuch Schedules, he thinks he is not Criminal.

My Lords, the Charge of the Commons is general, that he knew the Abuſe, and took no Care to reform it; if he had taken Care that the Effects of the Suitors ſhould have been transferred by Schedule; if he had appointed any one to overlook the Transfer; if he had taken any Method at all to be aſſured that the Effects of the Suitors were duly made over according to this Order of Transfer, the Commons would not have charged as they have done, and perhaps he had not at this Time appeared ſo nigh your Lordſhips Bar.

But if the impeached Lord thinks he is juſtified by ſaying, it was not his Duty, and therefore the Omiſſion no Offence: The Commons aver in their Article, that it is the Duty of the Chancellor of *Great Britain*, to ſuperintend the Maſters and their Accounts; and it is ſubmitted to your Lordſhips, whether he is not Criminal, if he ſuffers Money depoſited by the Orders of his Court in the Hands of the Maſters, to be without Order, conveyed or left in private Hands.

I ſhall ſay no more to your Lordſhips on this Article, but leave the Proof of it to the Evidence.

Mr. Serj. *Pengelly*. My Lords, the Proof in ſupport of theſe Articles, will go to them both promiſcuouſly. In the firſt Place we beg leave to ſhew to your Lordſhips, the ſeveral Orders of Court, which ſtate the deficiencies of ſeveral Maſters.

Mr. *Ralph Paxton* Sworn.

Mr. Serj. *Pengelly*. We deſire he may be aſked, whether the Papers he produces, are true Copies of the Orders Examined by the Books in the Office.

Mr. *R. Paxton*. My Lords, they are true Copies, I Examined them.

Lords Com. *Ordo Curiæ*.

Veneris 29. *Die Januarii*, 1724.

WHEREAS, by an Order made by the Rt. Hon. the late Lord High Chancellor of *Great Britain*, the *Seventeenth* Day of *December* laſt, it was (*inter al'*) ordered, That the Bank Notes, and other Effects therein ſpecified, produced before Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, Sir. *Nath. Gould*, Mr. *Thomſon*, and Mr. *Hanger*, three of the Directors, and one of them Deputy-Governour of the Bank of *England*, by the ſeveral Maſters of this Court, upon the Examination of their Accompts, for or towards anſwering the Ballance of Caſh admitted by their ſaid Accompts, to remain in their reſpective Hands belonging to the Suitors of this Court, ſhould be depoſited in ſeveral Cheſts, and that then the ſaid Cheſts ſhould be locked up and left in the Cuſtody of the Bank of *England*, in ſuch manner as by the ſaid Order is provided: And whereas, the Maſters had in their ſeveral Accompts, given in Particulars of Stock and of Annuities, transferrable in the Books of the ſeveral Companies, ſtanding in their Names, which belonged to the ſeveral Suitors of this Court, or as their own proper Stock and Annuities, by which part of the Ballance of Caſh in their Hands might be made good, or ſecured. It was further ordered, That they ſhould each of them forthwith, deliver into the reſpective Companies, a Declaration in writing, wherein ſuch Stock in each reſpective Company, or the Annuities there transferrable, as by their reſpective Accompts appeared to belong to the Suitors of the Court, and likewiſe the Stock and Annuities by them reſpectively propoſed towards making good or ſecuring their Ballance of Caſh, or ſo much thereof as ſhould equal the Ballance of their ſaid Accompts; in Caſe they had in their Names, more than ſufficient for that purpoſe ſhould be declar'd to be upon Truſt to attend the Orders of this Court: And it was further ordered; That the ſaid ſeveral Maſters, ſhould forthwith give to the ſaid Mr. Baron *Gilbert*, their Poſt Accompts of their Receipts and Payments ſince the former Accompts; and by a ſubſequent Order of the 21ſt Day of the ſaid *December*, It was ordered, That the ſeveral and reſpective Maſters, whoſe Effects ſo ordered to be ſecured, did not amount to the whole Ballance of Caſh admitted by their Accompts to be in their Hands, ſhould forthwith ſecure the reſt of the Ballance of the Caſh appearing to be due on their reſpective Accounts, by depoſiting in like manner Bank Notes, or other Effects to the Amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties to be approved of by Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, or any two of them, for duly anſwering from Time to Time as this Court ſhould direct, ſuch Sum and Sums as the remaining Deficiencies of their ſaid reſpective Ballances amount unto. And whereas, Mr. *Edward Conway*, one of the Maſters of this Court, did, on the Nineteenth Inſtant, attend the Right Hon. the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*, and acknowledge that he was Debtor to the Suitors of the Court on the Ballance of his Caſh Accompt, the Sum of 13039 *l.* 4 *s.* 4 *d.* ½. and that he had brought into the Cheſt the Sum of 3000 *l.* only, ſo that he remains Debtor on the ſaid Caſh Ballance, the Sum of 10039 *l* 4 *s.* 4 *d.* ½. and that ſince making the ſaid former Orders, he had ſold 3500 *l.* South Sea Stock, in the Cauſe between the Lord and Lady *Faulconberg*, which was intended a Security for the Sum of 3425 *l.* and that he had ſince paid off only the ſum of 2593 *l.* 9 *s.* 3 *d.* purſuant to the Orders of this Court in that Cauſe, ſo that there remained the Sum of 831 *l.* 10 *s.* 9 *d.* in his Hands, to be applied to the Parties concerned in that Cauſe; and that he had ſince ſold 2000 *l.* South Sea Annuities Stock, part of the Sum of 17950 *l.* South Sea Annuities Stock, belonging to the Suitors of the Court in ſeveral Cauſes, which he ought to re-place. Their Lordſhips did thereupon order, That the ſaid Mr. *Conway*, ſhould in a Week, depoſite the Sum of 10039 *l.* 4 *s.* 4 *d.* ½. and alſo the ſaid Sum of 831 *l.* 10 *s.* 9 *d.* belonging to the ſaid Cauſe of *Faulconberg* and *Faulconberg* in Bank Notes, or Money in his Cheſt at the Bank of *England*, and alſo ſhould replace the ſaid Sum of 2000 *l.* South Sea Annuity Stock, or that he ſhould enter into a Recognizance of 26000 *l.* with two ſufficient Sureties to be approved of by one of the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*, for anſwering the ſaid Sums, and replacing the ſaid 2000 *l.* South Sea Annuity Stock, in ſuch

ſuch Manner, as this Court ſhould direct: And this Court being Yeſterday inform'd by Mr. *Attorney General*, on behalf of the Suitors of this Court, that the ſaid Mr. *Conway* had not depoſited either of the Sums aforeſaid, or entered into a Recognizance with two Sureties, as by the ſaid Order he was directed: It was thereupon order'd that he ſhould on this Day attend the Court, to ſhew Cauſe why he did not yield Obedience to the ſaid Order. And he now attending accordingly, and admitting that he had not depoſited either of the Sums aforeſaid, nor replaced the ſaid 2000 *l.* South-Sea Annuity Stock, or given Security with two Sureties, as by the ſaid Order is required: And whereas he did formerly upon Examination of his Accompts, produce to the Perſons who inſpected the ſame, Bank Bills and Notes, ſufficient to make good the ſaid Sum of 13039 *l.* 4 *s.* and 4 *d.* ½: Being the whole Ballance of his Caſh Accompts, but had only depoſited 3000 *l.* part thereof, in purſuance of the ſaid Order: And it being ſeveral times demanded by the Court, whether he did know or remember the Names of the Perſon or Perſons from whom he had the ſaid Bank Notes, or any of them, or did know or remember the Names of the Perſon or Perſons to whom he had ſince paid or delivered them, or any of them, he declined giving any direct Anſwer to the ſaid Queſtion relating to his own proper Knowledge and Remembrance, but upon Oath ſaid, it was impoſſible for him to anſwer the ſame; whereupon, and upon hearing of Mr. *Attorney General* and Mr. *Sol. Gen.* on Behalf of the Suitors; and what was farther inſiſted on, this Court doth declare, that the ſaid Mr. *Conway* is guilty of very high Contempts, and doth therefore order, that the ſaid Mr. *Conway* do, for his ſaid Contempts, ſtand committed to the Priſon of the *Fleet*; and that for making Proviſion for the Execution of his Office, and that no Prejudice may happen to the Suitors of the Court by reaſon of the ſaid Commitment, he do, in the Cuſtody of the Warden this Afternoon, deliver all his Books and Papers belonging to his Office, unto Mr. *Holford* one other of the Maſters of this Court, who is to act therein as he the ſaid Mr. *Conway* ought to have done during his Commitment; and the Clerk of Mr. *Conway* is to be at Liberty, if he thinks fit, to attend Mr. *Holford* therein, and Mr. *Conway* is at Liberty from time to time to make ſuch Propoſals to the Court for making good his Deficiency as he ſhall think proper.

R. P. *Examin'd 6th of* May, 1720, *by Book of Entries, Cur' Canc' Letter* B.

Lords Com. *Ordo Curiæ.*

Mercur. tertio Die Febr. *Ann. Regni Georgii Regis undecimo.*

WHereas, by an Order of the 29th of *Jan.* laſt, for the Reaſons therein contain'd, it was ordered that Mr. *Thomas Bennet*, one of the Maſters of this Court, ſhould, then ſitting the Court, give his own Recognizance to be taken by Mr. *Holford*, one other of the Maſters of this Court in the Penalty of 18150 *l.* conditioned to anſwer and pay the Sum of 9075 *l.* therein mention'd, in ſuch Manner as this Court ſhould direct; and that upon his ſo doing, the time for his performing of an Order of the 12th of *Jan.* laſt, for depoſiting the ſaid 9075 *l.* or procuring two or more Sureties, to enter into a Recognizance of the Penalty aforeſaid, as in the ſaid Order is mentioned, ſhould be inlarg'd till this Day: And if he ſhould procure ſuch Sureties to enter into ſuch Recognizance, he was firſt to give the Names of the intended Sureties to Mr. *Paxton* (Soll. on behalf of the Suitors of this Court) to the end he might enquire after their Abilities; and the ſaid Mr. *Thomas Bennet*, was this Day to attend the Right Honourable the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*, when ſuch farther Order ſhould be made as ſhould be juſt. And the ſaid Mr. *Thomas Bennet* this Day attending their Lordſhips, in the Preſence of Mr. *Attorney General*, and Mr. *Sollicitor General*, on behalf of the Suitors of the Court; and the ſaid Mr. *Thomas Bennet*, now delivering into Court a Particular of ſeveral Eſtates which he propoſed to aſſign and convey as the Court ſhall direct, in truſt for the Suitors of the Court, and ſubmitting to be examined upon Interrogatories, for Diſcovery of all other Eſtate he has both Real and Perſonal, and that the ſame ſhall be alſo aſſigned and conveyed to the ſame Truſt: Their Lordſhips do therefore Order, that the time for the ſaid Mr. *Thomas Bennet*'s giving his Recognizance with two or more Sureties in the Penalty aforeſaid, be enlarged untill *Wedneſday* next, at which time the ſaid Mr. *Thomas Bennet* is to attend in Court, when ſuch farther Order ſhall be made as ſhall be juſt. But in the mean time, he is to aſſign and convey the ſeveral Eſtates by him now propoſed, unto the ſaid Mr. *Holford*, as he, the ſaid Mr. *Holford* ſhall approve and direct, and is alſo within that time to produce and leave with the ſaid Mr. *Holford*, all Deeds and Writings in his own Hands relating thereto; and ſo far as he is able to procure the Mortgages and Annuitant, to produce and leave with the ſaid Mr. *Holford*, the ſeveral Deeds and Writings in their reſpective Hands relating to the ſaid Perſons. And the ſaid Mr. *Thomas Bennet* is alſo within the ſame time to be examined upon Interrogatories, before the ſaid Mr. *Holford*, for diſcovery of all other, his real and perſonal Eſtates, and is alſo to aſſign and convey the ſame to the ſaid Mr. *Holford*, as he ſhall approve and direct. And what Eſtates ſhall be by him, the ſaid Mr. *Thomas Bennet* ſo aſſigned and conveyed to the ſaid Mr. *Holford*, as aforeſaid, the ſame are to be upon Truſt for the Suitors of the Court, as the Court ſhall direct; and the ſaid Mr. *Paxton* is forthwith to prepare and lay Interrogatories before the ſaid Mr. *Holford* for the Purpoſe aforeſaid.

R. P. *Examined 6th of* May, 1725. *by Book of Entry, Cur' Canc' Letter B.*

Ordo

Ordo Curiæ

Martis Decimo Nono Die Januarii, 1724.

WHereas, by an Order made by the Right Honourable the Lord High Chancellor of *Great Britain*, the ſeventeenth Day of *December* laſt, it was (amongſt other things) ordered, that the Bank Notes and other Effects therein ſpecified, produced before Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, Sir *Nathaniel Gould*, Mr. *Thompſon*, and Mr. *Hangar*, three of the Directors, and one of them Deputy Governour of the Bank of *England*, by the ſeveral Maſters of this Court, upon the Examination of their Accompts, for, or towards anſwering the Ballance of Caſh admitted by their ſaid Accompts to remain in their reſpective Hands belonging to the Suitors of this Court, ſhould be depoſited in ſeveral Cheſts, and that then the ſaid Cheſts ſhould be lock'd up and left in the Cuſtody of the *Bank* of *England*, in ſuch manner as by the ſaid Order is provided. And it was further ordered, that the ſaid ſeveral Maſters ſhould forthwith give to the ſaid Mr. Baron *Gilbert*, Poſt Accompts of their Receipts and Payments ſince their former Accompts. And by a ſubſequent Order of the one and twentieth Day of the ſaid *December*, it was ordered, that the ſeveral and reſpective Maſters of this Court, whoſe Effects ſo ordered to be ſecured, did not amount to the whole Ballance of the Caſh admitted by their Accompts to be in their Hands, ſhould forthwith ſecure the reſt of the Ballance of the Caſh appearing to be due on their reſpective Accompts, by depoſiting in like Manner, Bank Notes, or other Effects, to the Amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties, to be approved by Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, or any two of them, for duly anſwering from time to time, as this Court ſhould direct, ſuch Sum and Sums, as the remaining Deficiencies of their ſaid reſpective Ballances amount unto. And Mr. *Edward Conway*, one of the Maſters of this Court, this Day attending the Lords Commiſſioners for the Cuſtody of the *Great Seal* of *Great Britain*, and acknowledging that he was Debtor to the Suitors of the Court on the Ballance of his Caſh Account, in the Sum of thirteen Thouſand and thirty nine Pounds four Shilling and four Pence half Penny; and that he had brought into the Cheſt the Sum of three thouſand Pounds only, ſo that he remains Debtor on the ſaid Caſh Ballance, the Sum of ten Thouſand and thirty nine Pounds four Shillings and four Pence Half Penny; and that ſince the making the ſaid former Orders, he has ſold three Thouſand five Hundred Pounds South-Sea Stock, in the Cauſe between the Lord and Lady *Faulconberg*, which was intended a Security for the Sum of three Thouſand four Hundred and twenty five Pounds; and that he hath ſince paid off only the Sum of two Thouſand five Hundred and ninety three Pounds nine Shillings and three Pence, purſuant to the Orders of this Court in that Cauſe; ſo that there remains the Sum of eight Hundred and thirty one Pounds ten Shillings and nine Pence, in his Hands, to be apply'd to the Parties concern'd in that Cauſe; and that he has ſince ſold two Thouſand Pounds South Sea Annuity Stock, part of the Sum of ſeventeen Thouſand nine Hundred and fifty Pounds South Sea Annuity Stock, belonging to the Suitors of the Court in ſeveral Cauſes, which he ought to replace: Their Lordſhips do thereupon Order, that the ſaid Maſter *Conway*, do in a Week, depoſite the ſaid Sum of ten Thouſand and thirty nine Pounds four Shillings and four Pence Half Penny, and alſo the ſaid Sum of eight Hundred and thirty one Pounds ten Shillings and nine Pence, belonging to the ſaid Cauſe of *Faulconberg* and *Faulconberg*, in Bank Notes or Money, in his Cheſt at the Bank of *England*; and alſo do replace the ſaid Sum of two Thouſand Pounds South Sea Annuity Stock; or that he do enter into a Recognizance of twenty ſix Thouſand Pounds, with two ſufficient Sureties to be approved of by one of the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*, for anſwering the ſaid Sums, and replacing the ſaid two Thouſand Pounds South Sea Annuity Stock, in ſuch Manner as this Court ſhall direct.

Tho. Parnell, Dep. Reg,

R. P. *Examin'd 6th of* May, 1725. *with Book of Entries, Court. Canc' Letter B.*

Ordo Curiæ

Mercurii Viceſſimo Die, Januarii. 1724.

WHereas by an Order made by the Right Honourable the late Lord Chancellor of *Great Britain*, the ſeventeenth day of *December* laſt, it was (among other Things) ordered, That the Bank Notes, and other Effects therein ſpecified, produced before Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*; and Sir *Nathaniel Gould*, Mr. *Thompſon*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governour of the Bank of *England*, by the ſeveral Maſters of this Court, upon the Examination of their Accounts, for or towards anſwering the Ballance of Caſh admitted by their ſaid Accounts to remain in their reſpective Hands, belonging to the Suitors of this Court, ſhould be depoſited in ſeveral Cheſts, and that then the ſaid Cheſts ſhould be locked up and left in the Cuſtody of the Bank of *England*, in ſuch manner, as by the ſaid Order is provided. And it was further ordered, That the ſaid ſeveral Maſters ſhould forthwith give to the ſaid Mr. Baron *Gilbert* Poſt Accounts of their Receipts and Payments ſince their former Accounts. And by a ſubſequent Order of the one and twentieth day of the ſaid *December*, It was ordered, That the ſeveral and reſpective Maſters of this Court, whoſe Effects ſo ordered to be ſecured, did not amount to the whole Ballance of the Caſh admitted in their Accounts to be in their Hands, ſhould forthwith ſecure the reſt of the Ballance of Caſh appearing to be due on their reſpective Accounts, by depoſiting, in like manner, Bank Notes, or other Effects, to the amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties,

ties, to be approved by Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, or any two of them; for duely Anſwering from Time to Time, as this Court ſhould direct; ſuch Sum and Sums as the remaining Deficiencies of their ſaid reſpective Ballances amounted unto; And Mr. *Kinaſton*, one of the Maſters of this Court, being this day preſent before the Right Honourable Sir *Jeffery Gilbert*, Knight, one of the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*, and being examined touching the Money and Effects for which he was anſwerable to the Suitors of the Court, did admit, that the Sum of thirty one thouſand nine hundred and fifty four Pounds, fifteen Shillings and a Farthing, was the Caſh Ballance in his Hands, due to the Suitors; and that he had depoſited in his Cheſt at the Bank, the Sum of four thouſand ſix hundred and eighty ſix Pounds, one Shilling and nine Pence, in purſuance of the Order of the ſeventeenth of *December* aforeſaid; and that he had declared a Truſt of three hundred Pounds South-Sea Stock for the Suitors, which at the preſent valuation is three hundred and ſixty Pounds; ſo that there remains the Sum of twenty ſix thouſand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, deficient and unſecured to the Suitors of the Court; and propoſed towards Satisfaction thereof, to Aſſign over a Debt of twenty thouſand eight hundred and fifty Pounds, owing to him from Mr. *Delahaye*, in ſuch manner as ſhould be thought proper for the Benefit of the Suitors: But alledged that he was not to be charged with the Sum of ſeven thouſand five hundred and ſeventy five Pounds, mentioned in his Accounts to be part of the aforeſaid twenty ſix thouſand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing. Whereupon their Lordſhips conſidering what was alledged by him, were of Opinion, That he was anſwerable to the Suitors of the Court for the ſaid Sum of ſeven thouſand five hundred and ſeventy five Pounds; and do therefore Order, That the ſaid Mr. *Kinaſton* do, in a Week, depoſit the ſaid Sum of twenty ſix thouſand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, in Money or Bank Notes, in his Cheſt at the Bank of *England*, or enter into a Recognizance in the penalty of fifty three thouſand eight hundred and ſeventeen Pounds, with two or more Sureties, to be approved of by one of the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*, to Anſwer and Pay the ſaid Sum of twenty ſix thouſand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, in ſuch manner as this Court ſhall direct.

Tho. Parnell,
Dep. Reg.

R. P. *Examined the 6th of* May, 1725. *by the Book of Entries.* Cur' Cance' *Letter B.*

Mr. *Sol. Gen.* The Managers for the Houſe of Commons lay before your Lordſhips theſe Orders, to ſhew, that the ſeveral Maſters therein mentioned, were deficient. It will be incumbent on the noble Lord to ſhew; that when they were admitted, they were of Ability proper for ſuch a Truſt. We now proceed upon the Declaration that was made on the 21ſt of *January* laſt was twelve-Month, and deſire that Mr. *Waller* may be called.

Mr. *Waller* Sworn.

Mr. *Sol. Gen.* My Lords, we deſire he may be ask'd, whether he applied to my Lord Chancellor upon an Order made by his Honour the Maſter of the Rolls, relating to Mr. *Conway*; and what it was my Lord Chancellor ſaid on that Occaſion?

Mr. *Waller.* In *July* 1723. I had Directions from my Client, to apply to Mr. *Conway*, to lay out upon *South-Sea* Annuities the Sum of 4000 *l.* that had been brought before him in a Cauſe between Mr. *Davenant* and my Lord *Cardigan*. The Maſter told me at firſt, he would take Care of it. Upon further Application, he ſaid the Order had directed another Sum of Money ſhould be brought before him in the ſame Cauſe, and that he could not put out the one without the other. Upon this, I applied, by Petition, to the Maſter of the Rolls, praying, that Mr. *Conway* might be oblig'd to put out the Money, and that he might anſwer Intereſt for it after he had had it a reaſonable Time in his Hands. Upon that, the Maſter of the Rolls directed he ſhould lay out the Money immediately.

Mr. Serj. *Probyn.* I beg your Lordſhips Pardon for interrupting this Witneſs. In the manner he is going on, your Lordſhips obſerve, he is taking Notice of Orders, Petitions, Acts of the Court, and this he gives upon his Memory. We think theſe ought to be produced.

Mr. *Sol. Gen.* If they are deſirous to entertain your Lordſhips with them, we have them all here. We only make uſe of them to let in the Declaration of the noble Lord.

E. of *Macclef.* If that be all the Uſe, there is no need to produce theſe Orders: But if they are to introduce Evidence with relation to the Merits of the Caſe, it is proper to have them produced.

Mr. *Sol. Gen.* We don't diſpute the Juſtice of the Order then made, but ask the Occaſion of it; and all we deſire is what was declared, and what was the Occaſion of the Declaration.

Mr. Serj. *Pengelly.* The Managers don't enter into the Conſideration whether the Order is juſt, or no. All they repreſent to your Lordſhips, is the Occaſion of this Declaration. Whether a Man acts juſtly, that detains Money, and does not pay it out when he ought to do it, that we leave to another Determination. But what we ask now, is the Declaration of the Earl of *Macclesfield*, and the Occaſion of it.

Mr. *Waller.* Upon the Petition to the Maſter of the Rolls, he made an Order to put the Money out, and that the Maſter ſhould pay ſome Intereſt. On this, he applied to my Lord Chancellor, to diſcharge this Order. My Lord, upon that Occaſion, ſaid, the Maſter was not to blame, and that the then Maſters were a Set of Maſters of as great Probity, Ability, and Fortune, as ever had been before; and that his Lordſhip had had the Satisfaction of having put in moſt of them himſelf. I can't ſay that theſe were the very Words, but it was to this Effect.

Mr. *Sol. Gen.* When, at what Time was this?

Mr. *Waller.* This Declaration was made the 21ſt of *January*, 1723.

Mr. *Sol. Gen.* Where was it?

Mr. *Waller*. In Court, at my Lord's Houſe in *Lincoln's-Inn-Fields*, where he uſually ſat.

Mr. *Sol. Gen.* Was there at that time any Vacancy of any Maſter's Office; and how long did that Vacancy happen before?

Mr. *Waller*. Mr. *Fellowes* died either the Day before, or the Day but one before.

Mr. *Sol. Gen.* Was there any Obſervations made at that Time of any Perſon in Court that took notice of what was ſaid?

Mr. *Waller*. One of the Counſel took Notice of ſomebody taking Notes, and ſaid he believed it would be in the *Amſterdam* Gazette in a ſhort Time; or to that Purpoſe. My Lord Chancellor asked who he was?

E. of *Macclef*. I deſire he may tell your Lordſhips, when Application was made to me by way of Complaint of it, what it was I ſaid at that Time?

Mr. *Waller*. I don't remember.

E. of *Macclef*. Pray recollect your ſelf, if I did not ſay it was right, and they had a Right to take Notes there.

Mr. *Waller*. I don't remember that you did.

E. of *Macclef*. Did I make no Anſwer?

Mr. *Waller*. Not as I remember.

Mr. Serj. *Probyn*. I deſire he may be ask'd, whether he kept any Notes or Memorandum of the Words that were then ſaid?

Mr. *Waller*. No, my Lords.

Mr. Serj. *Probyn*. How does he then come to remember the very Words?

Mr. *Waller*. Since my Lord *Macclesfield*'s Counſel will have it, I muſt acquaint your Lordſhips, that it ſtruck me with ſo much Aſtoniſhment to hear ſuch a Declaration made on the Maſters, which moſt People thought they did not deſerve, that indeed I could not but remember it, and have remembred it ever ſince.

Mr. Serj. *Pengelly*. We have ſeveral other Perſons who were preſent at this Time, when this Declaration was made; but we apprehend it was ſo publick, ſo notorious, and has been ſo diſtinctly proved by a Perſon preſent, that it will be unneceſſary to call further Evidence to it.

Mr. *Sol. Gen.* We beg leave to trouble your Lordſhips as to one Circumſtance, to aſcertain the Death of Mr. *Fellowes*: We have one of Mr. *Fellowes*'s Servants here.

Edward Ange ſworn.

Mr. *Sol. Gen.* We deſire he may be ask'd, whether he was a Servant to Mr. *Fellowes*?

Mr. *Ange*. I was a Clerk in Mr. *Fellowes*'s Office, at the Time of his Death, and many Years before.

Mr. *Sol. Gen.* When did he die, what Day?

Mr. *Ange*. Upon the 19th of *January*, 1723.

Mr. *Sol. Gen.* It was the 21ſt that the Declaration was made, ſo that it ſeems that it was neceſſary; and ſuch a Declaration was wanting at that Time to keep up the Price of the Office.

Mr. *Lightboun* called.

Mr. *Sol. Gen.* We deſire Mr. *Lightboun* may be ask'd, whether he gave any Intimation to the Earl of *Macclesfield*, that the Circumſtances of ſome of the Maſters were ſuſpicious, before the 21ſt of *January* was twelve-month?

Mr. *Lutwyche*. I deſire Mr. *Lightboun* would give your Lordſhips an Account what Diſcourſe he had concerning the Maſters with the Earl of *Macclesfield*.

Mr. *Lightboun*. I can't ſay I acquainted him with my ſuſpecting any of the Maſters by Name, being deficient, but I told him in Converſation, that as a Deficiency had happened in Mr. *Dormer*'s Office, the like Accident might happen in others; and that it might be proper for his Lordſhip to take ſome meaſures to prevent the like for the future, if poſſible.

Mr. *Lutwyche*. In the Year 1723. Whether had you any Diſcourſe with my Lord Chancellor relating to the Circumſtances of any of the Maſters, or about any Propoſals of Security to be given by them?

Mr. *Lightboun*. In the Year 1723. I had ſome Converſation with my Lord upon that Subject, and it was upon the Occaſion of my Lord's ſending for me to know why I had not complied with a Propoſal of the Maſters, to pay 500 *l.* towards making good Mr. *Dormer*'s Deficiency. I ask'd, whether it was his Lordſhip's Propoſal, or whether it was a Propoſal from ſome of the Maſters. My Lord ſaid, it was mention'd by the Maſters, and he approv'd of it; and as the reſt had complied, he hoped I would.

Mr. *Sol. Gen.* You need not now give a particular Account of this; this will be proper on another Occaſion; that I deſire to ask you now, is only in general, whether before the 21ſt of *January* 1723. you had any Converſation with my Lord about the Deficiency of the Maſters, and that there was Reaſon to ſuſpect a Deficiency in ſome of the Maſters?

Mr. *Lightboun*. I did not mention any particular Perſon, but only that an Accident had lately happen'd, and as it had happen'd, it might happen again; but I was far from mentioning any Maſter by Name, for I might thereby have made my ſelf liable to an Action.

Mr. *Sol. Gen.* We don't deſire to ask him whether he mention'd any particular Maſter, but only in general, whether he did not ſay he had Grounds to ſuſpect ſome of them? The Queſtion is in general.

Mr. *Com. Serj.* The Queſtion was firſt ask'd in general, but the Anſwer not coming out to their Satisfaction, they now apply it to a particular Fact, to which the Anſwer required is only Yea and No. This we apprehend not to be altogether ſo regular, we therefore deſire the Queſtion may be asked in other Terms.

Mr. *Sol. Gen.* My Lords, I will ask the Queſtion in general, whether he gave any Intimation in general, that there might be a Suſpicion of the Maſters?

Mr. *Lightboun*. I did in general acquaint my Lord, as this Accident had happen'd, I did not know how ſoon it might happen again. The Year 1720. had made great Havock, and I did not know what Effect it might have had amongſt us.

Mr. Serj. *Pengelly*. I deſire Mr. *Lightboun* may be ask'd, whether he can recollect that he had any Diſcourſe with my Lord *Macclesfield* to that Effect at any other Time before *January* 1723.

Mr. *Lightboun*. My Lords, I can't confine my ſelf to a particular Time. I have had the Honour of many Converſations with my Lord *Macclesfield* on this Subject, and what paſſed at one particular Time

Time more than another, I can't remember I have often had the Honour to hear his Lordſhip mentioning the Methods which he thought of, to prevent it, and to propoſe ſuch Methods as I thought of, but I can't tell all the particular Times.

Mr. Serj. *Pengelly.* I deſire he may be ask'd, whether from the Converſation which paſs'd between the Earl of *Macclesfield* and himſelf, it appear'd to him, that the Earl had any Suſpicion of a Want of Subſtance in the Maſters?

Mr. *Lightboun.* My Lord, when I mention'd it, ſeemed unwilling to think ſo. He ſaid he hoped not; he hoped there was no manner of Danger, they were all recommended to him for Men of Fortunes, or to that Effect. Latterly, this laſt Year, when my Lord was talking of this Matter, he ſeemed to think there was a Neceſſity that there ſhould be an enquiry into this Affair: and when the Maſters were ordered to bring in their own Accompts, I remember I told my Lord I queſtioned if they were able to do it. My Lord ſaid he hoped it, and wiſh'd it.

E. of *Abington.* If Mr. *Lightboun* be left to his own Diſcretion, to relate without Interruption whatever he can recollect that paſſed between him and Lord *Macclesfield* before *January* 1723. when this Declaration was made in Court, it may give your Lordſhips a fuller Light and Satisfaction.

Mr. *Lightboun.* I don't remember to have had any particular Converſation about the Abilities of the Maſters, farther then I have mentioned to your Lordſhips. I have told you that I did give ſome Hints in a doubtful Manner, that I was diſſatisfied; but it would very ill have become me to have mentioned particular People whom I was doubtful of.

Mr. Serj. *Pengelly.* My Lords, we proceed now to examine ſome Witneſſes upon the Article relating to the Maſters coming in, and in what manner the Money was paid upon their Admiſſion, either on a Surrender, or Death of a former Maſter; and out of what Fund that Money was paid. We beg leave to call Mr. *Kinaſton.*

Mr. *Kinaſton* called.

Mr. Serj. *Pengelly.* We beg leave he may be ask'd, in relation to his Treaty with Mr. *Rogers*, when he came into his Office? and in what Manner the Money paid for the Office was raiſed?

Mr. *Kinaſton.* It was in *May* 1721.

Mr. *Com. Serj.* Before Mr. *Kinaſton* anſwers to this, we hope the Managers ſhall intimate to your Lordſhips, that they have Evidence to apply this to the Lord who now ſtands accuſed; otherwiſe a bare Diſcourſe between Mr. *Rogers* and Mr. *Kinaſton*, cannot affect the Earl of *Macclesfield.*

Mr. *Lutwyche.* I apprehend this Interruption is very unneceſſary, It is the firſt part of the Article we are going to prove, that it was a Practice among the Maſters in Chancery, to pay the Money for their Places out of the Suitors Money; and that though the Chancellor had good reaſon to ſuſpect or know this, yet he applied no Remedy or Redreſs, but let it go on for his own Benefit: Therefore we muſt begin with the firſt part of the Article. They are not to examine and ask the Managers, whether they have any Proof of the latter part of the Article; we are beginning with the firſt part of the Article, and then ſhall bring it home to the noble Lord.

Mr. *Sol. Gen.* We ſhall prove the whole, that there was ſuch a Practice, and that it is reaſonable to think the noble Lord knew it, or had reaſon to ſuſpect it, and did not prevent it. We muſt firſt begin with the Practice.

Mr. Serj. *Pengelly.* My Lords, we deſire he may give your Lordſhips an Account of the Methods taken at the time he came into the Office, of ſelling and paying for thoſe Offices, and in what Manner the Agreement for his Office was tranſacted?

Mr. *Kinaſton.* My Lords, I treated with Mr. *Rogers* for the Sale of his Place in *May* 1721. I did underſtand them, and had heard before, that the Method was, that they retained ſo much of the Money belonging to the Office for their Places; and that ſuch had been the Practice. I did agree with him, and entered into Articles to pay him 6000 *l.* for his Place. I went for ſome time into the Country, and when I was there, he wrote to me, and told me that he deſigned to reſign the Place on the 9th of *Auguſt.* I did come up to Town, and on the 9th of *Auguſt* I gave him a Bond for 6000 *l.* Then I went with him to my Lord *Macclesfield*, and was ſworn in Maſter. There was a general Order for him to deliver over the Effects and Securities to me; after this, he delivered up the Bond which I had given him, and retain'd ſo much Money belonging to the Suitors of the Court, as amounted to 6000 *l.* He paid me nine Pounds, and delivered me up my Bond, and I gave him a Receipt for 6009 *l.*

Mr. Serj. *Pengelly.* I deſire to know what was paid for his Admiſſion?

Mr. *Kinaſton.* 1500 Guineas were paid to Mr. *Cottingham* by Mr. *Baily.*

Mr. Serj. *Pengelly.* How was it repaid?

Mr. *Kinaſton.* In *February* afterwards, I ſtated an Account with the Perſon that was my Caſh-Keeper and kept my Money, in relation to the Money receiv'd and paid, and he charged me with the 1575 *l.* and deducted it out of the Money of the Suitors which he had received.

Mr. Serj. *Pengelly.* I deſire he may be asked, how much Caſh, what Sum of Money, came to his Hands from Mr. *Rogers?*

Mr. *Kinaſton.* Something above 20000 *l.*

Mr. Serj. *Pengelly.* I deſire he may be asked, whether when theſe Effects were by the Order of Transfer delivered from Mr. *Rogers* to him, there was any Perſon preſent on behalf of my Lord *Macclesfield*, to ſee them delivered over?

Mr. *Kinaſton.* No.

Mr. Serj. *Pengelly.* Was there any Account demanded of him afterwards, either by my Lord Chancellor or his Agent, of the *Quantum* of the Effects or Caſh?

Mr. *Kinaſton.* I don't remember there ever was.

Mr. Serj. *Pengelly.* I beg leave to ask, whether at that Time he had Money enough of his own to pay Mr. *Rogers* 6000 *l.* for his Place, and 1500 Guineas to my Lord *Macclesfield* for his Admiſſion?

Mr. *Kinaſton.* Yes, I believe I had more Money at that time, but it was out upon Security; I was worth more.

Mr. Serj. *Pengelly.* What was his Inducement to come into this Office?

Mr.

Mr. *Sol. Gen.* Or, I would ask it in other Words, whether the eaſineſs of his paying for his Place was not one Thing that induc'd him to Purchaſe?

Mr. *Kinaſton.* Yes, I believe it was one Inducement to me to purchaſe the Place.

Sir *Wm. Strickland.* I beg leave to ask another Queſtion. Mr. *Kinaſton* ſays he had more Money of his own at that Time, but I deſire to know, whether he could have paid 7575 *l.* which he gave for his Office, unleſs he had paid it out of the Suitors Money?

Mr. *Kinaſton.* No, I could not have paid the whole.

Mr. Serj. *Probyn.* If the Gentlemen have done, I deſire he may be asked, what Money he had of his own at that Time, either in Caſh, or in his Bankers Hands, or in Security?

Mr. *Kinaſton.* I really cannot tell, I believe I might have between 2 and 3000 *l.*

Mr. Serj. *Probyn.* How much can you take upon you to ſay you had?

Mr. *Kinaſton.* Really I cannot tell.

Mr. Serj. *Probyn.* Speak to the neareſt you can.

Mr. *Kinaſton.* I believe I had about 2000 *l.* very near three in Money and Effects.

Mr. Serj. *Probyn.* What other Eſtate had you? Had you any real Eſtate?

Mr. *Kinaſton.* I had an Eſtate ſettled upon me at my Marriage, no other Eſtate.

Mr. Serj. *Probyn.* I deſire you to give an Account, whether you had any other perſonal Eſtate?

Mr. *Kinaſton.* No, I do not remember I had, except you reckon Timber ſuch.

Mr. *Com. Serj.* I deſire, my Lords, he may be asked, what the annual value of his real Eſtate was?

Mr. Serj. *Pengelly.* I ſubmit, whether he be obliged to tell his whole Circumſtances?

Mr. *Kinaſton.* I am very willing to tell, it was about 400 *l.* a Year.

Mr. *Com. Serj.* Whether he had not his Eſtate without Impeachment of Waſt?

Mr. *Kinaſton.* Yes.

Mr. *Serj. Probyn.* Of what Value might the Timber be?

Mr. *Kinaſton.* I was once bid 2500 *l.* for it, but now they know I have an occaſion to ſell, they will not give me ſo much.

Mr. *Serj. Pengelly.* I beg leave he may be asked, whether at that Time his Father was living?

Mr. *Kinaſton.* Yes, he was at the Time of my purchaſing the Place.

Mr. *Serj. Pengelly.* As the Caſh was above 20000 *l.* of what Value were the Securities?

Mr. *Kinaſton.* Really I cannot tell, I have given in an Account of the Effects.

Mr. *Serj. Pengelly.* About what Sum?

Mr. *Kinaſton.* I have given it in in my Accounts what it was.

Mr. *Serj. Pengelly.* To what Sum doth the whole both in Caſh and Securities amount?

Mr. *Kinaſton.* I believe under 50,000 *l.* about 46000 *l.*

Mr. *Serj. Pengelly.* The Securities as well as the Caſh?

Mr. *Kinaſton.* I mean the Securites and the Caſh together.

Mr. *Serj. Pengelly.* Upon this Evidence, we ſubmit it to your Lordſhips, whether the Timber upon his Eſtate was a proper Security for 50,000 *l.* to be put into his Hands.

E. of *Macclef.* He now repreſents his Eſtate to be 400 *l.* a Year. How was it reputed?

Mr. *Kinaſton.* I believe about 500 *l.* per Annum.

Mr. *Plummer.* I deſire to ask him, whether if he had felled every ſtick of Timber on his Eſtate, that and his perſonal Eſtate would have paid what he was to give for his Maſter's Place?

Mr. *Kinaſton.* No, it would not.

Mr. *Serj. Pengelly.* My Lords, We make Uſe of this as a Proof of the former Article.

Mr. *Thomas Bennet* called.

Mr. *Serj. Pengelly.* My Lords, We deſire he may be asked in what manner the Transfer of his Office was tranſacted, and how the Money was paid for his Maſters Place?

Mr. *Tho. Bennet.* My Lords, When I treated with Mr. *Hiccocks* about the Surrender of his Office, one of the firſt Things he told me was, that I need raiſe no Money to come into this Office, for whatever Money we agreed for, ſhould be deducted out of the Money to be paid over to me, which I underſtood to be the Money belonging to the Suitors of the Court.

Mr. *Serj. Pengelly.* What was done in purſuance of this?

Mr. *Tho. Bennet.* This encouraged me to go on and proceed, in order to come into this Office, I ſuppoſed this to be the Practice, elſe I had not gone in.

Mr. *Serj. Pengelly.* Whether that was generally reputed to be the Practice?

Mr. *Tho. Bennet.* I own I thought ſo. I was a younger Brother, and had not Money enough of my own to come into that Office.

Mr. *Serj. Pengelly.* We beg leave, that he may inform your Lordſhips how much he was to pay, and how it was raiſed and paid?

Mr. *Tho. Bennet.* The Sum I agreed to pay Mr. *Hiccocks* was 7500 *l.* and the Sum to my Lord Chancellor was 1500 Guineas, which is 9075 *l.*

Mr. *Serj. Pengelly.* We hope that he ſhall inform your Lordſhips how it was raiſed and paid.

Mr. *Tho. Bennet.* As to the 1500 Guineas, I acquainted your Lordſhips I borrowed it of my Brother, and the next Day returned it him again out of the Money I received of Mr. *Hiccocks.* As ſoon as I was admitted, I went to Mr. *Hiccocks*, and demanded of him the Suitors Effects. He paid me 1500 *l.* and told me I muſt give a Receipt for 9000 *l.* I told him, it was hard to have no more Money paid me, when he told me there was much more Caſh in the Office, and that I had given my Lord *Macclesfield* more than he had offered to pay me: He ſaid, he ſhould pay me more afterwards, but he inſiſted on my taking of this now, ſo I took the 1500 *l.* and gave him a Receipt for 9000 *l.*

Mr. *Serj. Pengelly.* I deſire he may be asked, whether upon any Occaſion he had any Diſcourſe with the Earl of *Macclesfield* relating to the method of his coming in, or about the re-payment of the 1500 Guineas he paid him.

Mr. *Tho. Bennet.* In order to give an account of this, I muſt acquaint your Lordſhips of the occaſion of my waiting on his Lordſhip. Mr. *Holford* told me, that my Lord Chancellor had ſent to him, and deſired that he or my Brother *John Bennet* would endeavour to accommodate matters between Mr. *Hiccocks* and my ſelf, on occaſion of the Deficiency of my Accounts. Mr. *Holford* ſaid he did not care to go, but my Brother did go to Mr. *Hiccocks.* He would do nothing, no Accommodation could be made; but my Brother told me that my Lord Chancellor would pay back to me the 1500 Guineas which he had received, ſo the matter with Mr. *Hiccocks* might be accommodated.

Mr. Serj.

Mr. *Serj. Pengelly.* When was this?

Mr. *Tho. Bennet.* It was about the time of our giving in our Accompts.

Mr. *Serj. Pengelly.* Was it before *Chriſtmas*, or after?

Mr. *Tho. Bennet.* It was before *Chriſtmas* laſt, in *December*, I think about the 7th of *December*. Upon that I asked my Brother, whether I might depend upon it, that my Lord Chancellor would pay back the 1500 Guineas? And he ſaid, Yes, he had it from his Lordſhip; and he did aſſure me I might depend upon it; but he ſaid nothing could be done with Mr. *Hiccocks*. Then I deſired them to acquaint my Lord with it; they both declined it, and deſired I would go my ſelf upon this Occaſion. I went, and I told my Lord, I was come to wait upon his Lordſhip to thank him for the kind Offer he had made to my Brother of returning the 1500 Guineas, and I wiſhed the ſame could be ſaid of Mr. *Hiccocks*, and I could prevail with him; but nothing could be done: I came to return his Lordſhip thanks; and I thought I ſhould have received the Money then. My Lord asked me to ſit down, and then told me if he had known I had been to give ſo great a Sum of Money for the Office, he would not have admitted me. I told him I did give ſo great a Sum, but immediately as ſoon as I was admitted, I enſured my Life to the Value of 8000 *l.* which coſt me 400 *l.* ſo that if I had died, no harm would have come to the Suitors. My Lord ſaid, it was very honourably done. Soon after that, he ſaid, he was very ſorry to ſee the *Items* that were put into my Accompt and Mr. *Kinaſton*'s in Relation to Sums in the Hands of an honourable Perſon; for, ſays he, that hath diſcovered the Method of purchaſing theſe Offices, that the Money is deducted out of the Suitors Money, which, ſaid he, I have always taken pains to deny, when ever I have been asked the Queſtion.

Mr. *Serj. Pengelly.* We beg Leave now to ask him, how much the whole of the Caſh, and Securities transferred from Mr. *Hiccocks* to him, amounted to?

Mr. *Tho. Bennet.* I believe near 100,000 *l.*

Mr. *Serj. Pengelly.* I apprehend he ſaid before, he was a younger Brother, and had but little Fortune of his own; I deſire he may be asked whether any Care was taken by my Lord *Macclesfield* as to the transferring the Effects of the Suitors in Mr. *Hiccocks* Hands over to him? and whether any Perſon was employed by my Lord to ſee the Effects transferred over?

Mr. *Tho. Bennet.* No.

Mr. *Serj. Pengelly.* Whether there was any other Security for this great Sum of Money depoſited in his Hands, beſides what was made by this Inſurance on his Life?

Mr. *Tho. Bennet.* No, my Lords, I know of no other Security. That was a voluntary Act of my own, and I paid for it.

Mr. *Lutwyche.* My Lords, Mr. *Bennet* ſays, he had ſome reaſon to hope that the 1500 Guineas would be given him back again; I deſire he may be asked whether there was any ſubſequent Overture about paying the 1500 Guineas back again?

Mr. *Tho. Bennet.* My Lord Chancellor diſmiſſed me at that time, and told me, I ſhould not know by what means, or by what methods I ſhould receive the Money, or by whoſe Hands; but his Lordſhip would take Care that one way or other I ſhould receive it: He would not ſay how, becauſe I might be called upon to anſwer what Diſcourſe paſſed between his Lordſhip and me in another place.

Mr. *Lutwyche.* Was there any thing done upon that?

Mr. *Tho. Bennet.* Hearing nothing from my Lord Chancellor for a Fortnight after, I went to his Secretary, Mr. *Dixon*, and told him that I had uſed ſuch Expreſſions in my Accompt, that if the Money was not produced, it would oblige me to name my Lord Chancellor; and I deſired him to acquaint my Lord that I could not pay this Money, and that I muſt diſcover it in a Day or two. This was *Sunday* Night: The ſame Night Mr. *Dixon* returned from my Lord, and told me, that if Mr. *Holford* would be preſent the next morning at the payment of the Money at Mr. *Kinaſton*'s Chambers, that Mr. *Kinaſton* and my ſelf ſhould receive it. We were there the next day. Mr. *Dixon* came, but brought no Money, ſaid my Lord expected ſome Indempnification. We ſaid, as to an Indempnification we could give none. He ſaid he would go to my Lord. I was in hopes he would have brought the Money; but when he came back, he ſaid it was an Holyday, and no Money could be had, and deſired we would go to the Judges, and deſire two or three days time to produce this Money. I told him we could not do it, for that very Night the Report was to be laid before the King and Council. He then returned again to my Lord Chancellor, as he told us, and when he came back, he ſaid my Lord Chancellor was gone out. Upon that we gave in my Lord Chancellor's Name to the Judges, and the Gentlemen of the Bank, and they gave it in to the Council, as I am informed.

Mr. *Lutwyche.* My Lords, We deſire he may anſwer this Queſtion, Whether it was explained what that Indempnification was, which was expected, and in what manner it was to be?

Mr. *Tho. Bennet.* My Lords, Mr. *Dixon* explained it thus,——

E. of *Macclesfield.* I hope whatever Mr. *Dixon* ſaid, ſhall not affect me; but that they will produce him: He is able to ſpeak for himſelf.

Mr. *Lutwyche.* Then I only deſire he may be asked, what Officer Mr. *Dixon* was under my Lord Chancellor?

Mr. *Tho. Bennet.* Mr. *Dixon* was my Lord's Secretary.

Mr. *Lutwyche.* Whether at that time that you had the Diſcourſe with my Lord *Macclesfield*, you mentioned or ſaid any thing of Mr. *Dixon*'s having come to you, in my Lord *Macclesfield* name?

Mr. *Tho. Bennet.* No, My Lords, that was before Mr. *Dixon*'s coming to me.

Mr. *Lutwyche.* Did you take Notice at any time to my Lord *Macclesfield* of Mr. *Dixon*'s coming to you?

Mr. *Tho. Bennet.* No, I never ſpoke to my Lord Chancellor afterwards. This was the 27th of *December*, and it was the 7th of *December* that I waited upon my Lord.

Mr. *Serj. Pengelly.* We think it appears that Mr. *Dixon* was an Agent of my Lord *Macclesfield*'s: I deſire to know what the Nature of the Propoſal of Indempnification was, that he made?

E. of *Macclesfield.* I can't think Mr. Serjeant is in earneſt. Have they proved that he was em-

ployed by me? I have heard no proof of it, only Mr. *Serjeant* hath ſaid it. Mr. *Dixon* himſelf is the proper Perſon to give an Account of what he told them from me. If they do inſiſt upon it, I muſt beg your Lordſhips Judgment.

Mr. *Serj. Pengelly.* If it is inſiſted upon by the Noble Lord, to diſavow the Proceedings of his own Agent, we will wave it.

E. of *Macclesfield.* I neither avow nor diſavow, but I object to the Evidence of this Gentleman about the Diſcourſe of what Mr. *Dixon* ſaid, who is living, and can ſpeak for himſelf.

Mr. *Serj. Pengelly.* If the Noble Lord will ask him any thing, he may, we have done.

E. of *Macclesfield.* I beg leave that Mr. *Bennet* may be asked two or three Queſtions: He has indeed given Evidence which greatly ſurprizes me. In the firſt place I deſire he may inform your Lordſhips, whether, when he was with me, he did not tell me that if Mr. *Hiccocks* would pay 2000 *l.* he would make good the whole Money?

Mr. *Tho. Bennet.* No, I did not ſay ſo; I could not make good the whole Money, or any thing like it. I ſaid that ſuch a Report had been ſpread, that I propoſed, that if Mr. *Hiccocks* would pay me 2000 *l.* I would anſwer the reſt; but I was not able.

E. of *Macclesfield.* I would be glad to know how he came to tell me of a Report of his own Act: Was it a Report without any Foundation?

Mr. *Tho. Bennet.* I went to Mr. *Hiccocks*, and told him I wanted 6000 *l.* but he ſaid if 2000 *l.* would do, he believ'd he could lend me that. Lend it me, ſaid I; if you give me 2000 *l.* it is ſomething. And this was the Foundation of this Report.

E. of *Macclesfield.* I cannot give Evidence my ſelf to diſprove him in this; and therefore I deſire to know whether he has ſaid to any other Perſons, that if Mr. *Hiccocks* would pay him two thouſand, or three thouſand Pounds, or thereabouts, he would pay the reſt?

Mr. *Tho. Bennet.* I might ſay, I would endeavour to raiſe the reſt; but I never ſaid I would pay the whole, for I knew I was not able.

E. of *Macclesfield.* Mr. *Bennet* underſtands my Queſtion, to which he hath given no Anſwer. My Queſtion is, Whether he hath not told ſome other People, that in Caſe Mr. *Hiccocks* would pay 2 or 3000 *l.* he would pay all the reſt?

Mr. *Tho. Bennet.* No, my Lords, I never told any Body that I would pay the reſt; but I believe I might ſay, if Mr. *Hiccocks* would give me 2 or 3000*l.* I would ſtand the Hazard; for I did not expect that all the Money ſhould be taken out of my Hand.

E. of *Macclesfield.* I deſire he may be asked, whether at that time he was with me, I did not ask him, with what Conſcience and Honeſty he could buy a Place, when he had not Money to pay for it? or whether it was not in anſwer to that, that he told me that he had inſured his Life?

Mr. *Tho. Bennet.* My Lord did ſay ſo to me. I anſwered, I had not Money; that I had not bought the Place, had it not been for the Caſh of the Suitors; and that I had ſince ſecured 8000 *l.* on my Life, in order to ſecure the Suitors.

E. of *Macclesfield.* I deſire to know what viſible Eſtate the Gentleman then had, and of what yearly Value?

Mr. *Tho. Bennet.* My Lords, when I came into the Office, I believe I had about 250*l.* a Year, or thereabouts.

E. of *Macclesfield.* I deſire to know whether he was married before?

Mr. *Tho. Bennet.* I was.

E. of *Macclesfield.* What Fortune had you with your Wife?

Mr. *Tho. Bennet.* The Fortune I had with my Wife, was in the Whole between 2 and 3000 *l.* part of it was an Houſe.

E. of *Macclesfield.* What was the Value of that Houſe?

Mr. *Tho. Bennet.* I had not let it then, but ſince my coming into the Office I have let it for 90 *l* a Year.

E. of *Macclesfield.* I deſire to know if he did not keep his Coach and Equipage at that time?

Mr. *Tho. Bennet.* I did ſet up my Coach in the unfortunate Year 1720. I was once worth 20,000 Pounds, but loſt it all, and became much indebted; the Eſtate I had of my own was mortgaged for more than it was worth.

E. of *Macclesfield.* Whether he was married in the Year, 1720?

Mr. *Tho. Bennet.* No, I was not.

E. of *Macclesfield.* I deſire to know what Eſtate he hath given into the Court of Chancery?

Mr. *Tho. Bennet.* That Accompt lies upon the Table.

E. of *Macclesfield.* What yearly Value is that?

Mr. *Tho. Bennet.* About 900 *l. per Annum*; part of it is ſettled, the reſt mortgaged, and an Annuity charged on it more than it is worth.

E. of *Macclesfield.* Has any Eſtate been purchaſed with your Money, or Money which came from you, ſince you was a Maſter?

Mr. *Tho. Bennet.* Part of that given in was ſo, 68 *l. per Annum*, and 40 *l. per Annum.*

E. of *Macclesfield.* Has any other Eſtate been purchaſed with your Money, or Money which came from you, ſince you was Maſter?

Mr. *Tho. Bennet.* None, but what I have given in. I have given in every Shilling.

Mr. *Com. Serj.* My Lords, I deſire he may be asked, whether he was not at the Time of his becoming Maſter in Chancery, in Poſſeſſion of the Office of Clerk of the Cuſtodies?

Mr. *Tho. Bennet.* Yes, I was.

Mr. *Com. Serj.* Now, my Lords, it will be very proper to ask him what that was ſold for, that the Value of his Eſtate may be known.

Mr. *Tho. Bennet.* That may affect me, and my Succeſſor.

Mr. *Lutwyche.* I don't know whether we need put you in mind, that the late Act of Parliament only indempnifies the Maſters, but there is none to indempnify the Clerk of the Cuſtodies.

Mr. *Com. Serj.* Which way it will affect Mr. *Bennet* I don't know. I apprehend no Action can lye againſt him for the Money he received, nor any criminal Proſecution or Information. But that I may not miſpend your Lordſhips time; I deſire Mr. *Bennet* may inform your Lordſhips of the yearly Value of the Place.

Mr. *Tho. Bennet.* It is about 250 *l.* a Year.

E. of *Macclesfield.* A Patent for Life?

Mr. *Tho. Bennet.* Yes, my Lords.

Mr. *Serj. Probyn.* How much hath it been ſold for?

Mr. *Tho. Bennet.* I can't tell what it hath been ſold for: It may have been once ſold for about 1200 *l.*

Mr. *Serj.*

Mr. *Serj. Probyn.* At that time when you ſurrendered, what might it have been ſold for?

Mr. *Tho. Bennet.* I beg leave to ſubmit, whether I am obliged to anſwer that Queſtion.

Mr. *Serj. Pengelly.* If it was not ſaleable by Law, it was not worth a Farthing. I beg leave to put your Lordſhips in mind, that Mr. *Bennet* was excus'd Yeſterday from anſwering a Queſtion of the ſame Nature: The Councel hope that this Day, being a new Day, they may have Liberty to ask the ſame Queſtion over again.

Mr. *Com. Serj.* There was another Ingredient in your Lordſhips Reſolution Yeſterday. I hope it is no Injury to him to anſwer how much he hath known it to be ſold for; without mentioning by whom.

Mr. *Serj. Probyn.* We hope Mr. *Bennet* will anſwer the Queſtion, what is the moſt he hath known it to be ſold for?

Mr. *Plummer.* My Lords, I object to his anſwering that Queſtion, becauſe if he did ſell it himſelf, that might be the greateſt Sum that he hath known to be given for it, and that will ſubject him to a Penalty.

Mr. *Serj. Probyn.* We don't ask who gave it, or who received it; but what is the greateſt Price he hath known that Office to be ſold for?

E. *of Macclesfield.* He ſays he hath known it to be ſold for 1200 *l.* I deſire he may be asked whether he hath not known that it hath been ſold for more?

Mr. *Tho. Bennet.* I believe it hath been ſold for more.

E. *of Macclesfield.* And how much more?

Mr. *Weſt.* This Queſtion is an indirect way to come at that Queſtion that was denied them Yeſterday.

Sir *Will. Strickland.* My Lords, with humble Submiſſion, the Queſtion asked by the Noble Lord, tends directly to make Mr. *Bennet* tell what he ſold his own Office for; for if his own Office was ſold, it is probable that he ſold it for the greateſt Price; and to tell that, is to make him ſay what he ſold his own Office for.

Mr. *Lutwyche.* By this Method your Lordſhips Reſolution of Yeſterday will be evaded. We took it then, that the Witneſs was not obliged to diſcover what he ſold the Office for. Now they are asking what is the greateſt Price he knew the Office ſold for? Then the next Queſtion may be, to whom was the Office ſold, and by whom was it ſold? Therefore we muſt humbly ſubmit it to your Lordſhips, that it is not a Queſtion to be asked.

Mr. *Com. Serj.* To object to a Queſtion becauſe another may follow, is odd arguing. When ſuch a Queſtion is made, it will be then time enough to oppoſe it: Therefore I hope that we ſhall go on.

Mr. *Serj. Probyn.* My Lords, I apprehend this Queſtion is proper, and the Anſwer to it is neceſſary.

Lord *Lechmere.* Your Lordſhips will obſerve ſome Rules in your Proceedings. An Objection hath been made: An Anſwer hath been given: Both Sides inſiſt upon your Lordſhips Judgment: That being done, they muſt withdraw. Therefore I deſire they may withdraw.

E. *of Macclesfield.* The Reply is not yet made; ſomething has been ſaid by the Gentlemen who are Managers by way of Objection to the Queſtion that was propoſed, which, if they inſiſt upon, I deſire my Councel who are to reply, may be heard before they withdraw.

Mr. *Serj. Probyn.* The Managers for the Houſe of Commons have been pleaſed to examine into the Circumſtances of Mr. *Bennet*, at the time he was admitted Maſter, in order to ſhew that he was then not of Subſtance fit to be intruſted with ſo great a Sum of Money. We are then in Duty obliged to examine him as to that Subſtance, and the Value of his Effects. He hath told your Lordſhips what Eſtate he hath in Land; we are now to examine him as to his Perſonal Eſtate: He hath told us he had an Office, the Clerk of the Cuſtodies; that he hath parted with it; the Money ariſing by that Office muſt be reckoned as part of his Perſonal Eſtate. To come at the Value of the Office, we do not ask him any Queſtion that makes him liable to a Penalty; but ſuch a Queſtion, where the Anſwer to it may be with Safety; and that is, what is the greateſt Sum he hath known to have been given for the Office of the Clerk of the Cuſtodies? He may anſwer this without involving himſelf in any Difficulties, for it is not asked what he himſelf hath ſold that Office for? No Anſwer to this general Queſtion can affect him with any ill Conſequence.

Dr. *Sayer.* I humbly apprehend this is no way irregular. We are inquiring about his Effects; it is owned he had the Clerk of the Cuſtodies, therefore that muſt be a part of his Perſonal Eſtate: The Anſwer to our Queſtion can't any way involve him in Danger, or ſubject him to any Penalty; becauſe it doth not neceſſarily follow that he ſold his Place at the greateſt Price that he ever knew it ſold for. We ſubmit it, whether it is not a Queſtion fair with regard to the Witneſs, and proper to be put to him.

Mr. *Robins.* We agree that where he may ſubject himſelf to a Loſs, there is no forcing him to anſwer; no Perſon is bound to accuſe himſelf. But this is only a Matter of Diſcovery what the Value of this Office is; the Anſwer cannot affect him; and therefore we hope we ſhall have an Anſwer.

Mr. *Strange.* My Lords, I am ſurprized to hear it ſaid that this is not a Queſtion material for the Noble Earl's Defence: Surely it is as material for us to increaſe his Eſtate, as it is for them to diminiſh it. They have already examined into Particulars, to ſhew what ſmall Subſtance he was of, and what the Eſtate he had was mortgaged for: The proper Anſwer to be given to that, as far as it will go, will be to ſhew that he had other Eſtate and Effects, and we are not able to ſhew that without examining him. I humbly ſubmit it therefore that we are as proper to go into that Evidence, as they were; it is equally material; and as they have examined to it on behalf of the Commons, we are intitled to examine to it likewiſe on behalf of the Noble Earl.

E. *of Macclesfield.* I apprehend the Objection is, That he is not to be asked a Queſtion, which if he anſwers he will charge himſelf with a Crime or Penalty. Whatever Anſwer he makes to this Queſtion cannot charge him: Let him Anſwer and ſay that he hath known this Place ſold for 1000, 1500, or 2000 *l.* can that be given in Evidence ſo as to affect him? Therefore the Queſtion to Day is not the ſame as was asked Yeſterday: It was then asked, what he had received for his Place? and if he had

had anſwered and ſaid what he had received, it would have been a Confeſſion, which would have convicted him: But if the Anſwer be, That he knows it was told for ſuch a Price, and that is given in Evidence, by that Anſwer it doth not appear that he ſold it: Therefore upon that I humbly ſubmit to your Lordſhips, and we are ready to withdraw.

Mr. *Serj Pengelly.* This is by a Side-wind to know your Lordſhips Opinion upon the 9th Article.

E. *of Macclesfield.* I beg leave to interrupt that worthy Gentleman. I agree that the Commons that bring in the Charge, have a right to Reply; but with Submiſſion this is an Objection ariſing from my Councel, and the Reply belongs to them.

Mr. *Serj. Pengelly.* My Lords, we apprehend the Objection ariſes from the Managers, and therefore the Reply belongs to them. The Managers made the Objection, therefore we beg Leave to obſerve, that this is in Conſequence to deſire your Lordſhips Judgment upon the 9th Article, Whether the Office of the Clerk of the Cuſtodies be ſaleable by Law, or no? If he is obliged to anſwer this Queſtion, it is upon a ſuppoſition that the Tranſaction is lawful: Therefore in an Affair of this Nature, there can be no other View but to get an Opinion upon this Article. My Lords, we apprehend this Proceeding is in Conſequence the ſame as if a Queſtion was propoſed to your Lordſhips, whether my Lord *Macclesfield* could by Law ſell the Place of Clerk of the Cuſtodies?

Mr. *Lutwchye.* My Lords, I muſt beg leave to mention this to your Lordſhips. When it is conſidered upon what Foundation this Queſtion is asked, and what it doth mean, it can be only to elude your Lordſhips Reſolution Yeſterday, and to make that of no Effect. My Lords, there ſhould be always the greateſt Candour uſed before your Lordſhips, that no Tricks or Methods ſhould be made uſe of to ask that which ſhould not be asked. Now, my Lords, what is the Queſtion they are examining to, and the Uſe to be made of it? Here is a Perſon that is alledged to be of mean Ability, and the Queſtion is, What Subſtance and Eſtate he hath? and they would reckon into Part of his Eſtate an Office not ſaleable by Law, and ask him, what that Office is worth? From whence the Inference muſt be, that he ſold it.

E. *of Macclesfield.* That is not the Queſtion, what it is worth; but a particular Fact, what is the moſt that it hath been ſold for?

Mr. *Lutwyche.* What doth that tend to? The Queſtion is, What Eſtate this Gentleman had that could enable him to pay this Money for this Office? They have examined him about his own Eſtate, and his Wife's Eſtate, but then there is another Part of his Eſtate; which was this Office of Clerk of the Cuſtodies. What is that? It is that very thing which we ſay it is unlawful to ſell. Therefore we ſubmit it to your Lordſhips as no way material to the Defence of the Lord. We hope your Lordſhips will not admit that to be done by an indirect Method, which would not be admitted to be done by a direct one.

Ordered to withdraw. Which was accordingly done; and all Parties concerned being after ſome time call'd in again, ——

The Lord Chief Juſtice *King* declared to them, That it was the Order and Judgment of the Lords, that the ſaid Queſtion was not to be asked.

Mr. *Plummer.* I would ask Mr. *Tho. Bennet* one Queſtion, Whether every thing he had in the World at the Time of his Purchaſe of the Maſterſhip, was worth the Money he gave for it?

Mr. *Tho. Bennet.* All I had in the World was not worth it.

Mr. *Serj. Probyn.* My Lords, Mr. *Bennet* ſays he mortgaged his Eſtate for more than it was worth; I deſire he may be asked whether he knew at that time, that is was not worth ſo much as it was mortgaged for?

Lords. No, No.

Mr. *Plummer.* My Lords, I beg leave to ask this Queſtion, and I hope it will be very proper, that is, I deſire to ask Mr. *Bennet*, as he hath given an account of a Converſation with my Lord *Macclesfield*; I deſire to know if my Lord *Macclesfield* at the time of his Admiſſion into his Office, did ask him what he was worth?

Mr. *Tho. Bennet.* My Lord *Macclesfield* never asked me any Queſtions in Relation to my Circumſtances, or any thing like it.

E. *of Macclesfield.* My Lords, I deſire he may be asked, whether I had any notice of his Loſſes by the *South-Sea*?

Mr. *Tho. Bennet.* Not that I know of: I don't know that my Lord *Chancellor* had any Notice of it.

Mr. *Serj. Pengelly.* My Lords, if the Councel have done, we ſhall not give your Lordſhips any farther Trouble on theſe two Articles: Both of them are as clearly and as fully proved and ſubſtantiated as it is poſſible. It comes out now upon the Examination, that, tho' ſeveral Maſters were intruſted with 40, 50, or 80,000 *l.* they were not of any competent Subſtance, not really worth what they paid for their particular Places. As to the manner of their paying for their Places, if we have not given a direct Evidence that his Lordſhip knew it, yet the Practice and Notoriety of the Fact being prov'd, and that it was thus generally underſtood, is a reaſonable Evidence in it ſelf, and by the Notice the Lord took of it himſelf by the ſeveral Queſtions he hath asked, we think it is yet clearer. We humbly ſubmit whether upon this Evidence every part of theſe two Articles is not ſufficiently proved? We depend upon the Examination already taken, and will take up your Lordſhips Time no farther.

Then the Managers and the Councel were directed to withdraw; and the Lords adjourned to the next Morning at Ten a Clock in the Forenoon.

Saturday May 8*th*. *The Third Day.*

THE Lords being ſeated in their Houſe, Proclamation was made by the Serjeant at Arms for Silence; and another Proclamation, That all Perſons concerned were to take Notice, that *Thomas Earl* of *Macclesfield* now ſtood upon his Tryal, and they might come forth in order to make good the Charge.

Lord Ch. Juſt. *King.* Gentlemen of the Houſe of Commons, you may proceed in your Evidence.

Mr.

Mr. *Gybbon*. My Lords, Your Lordſhips having already heard what has been offered in Support of the preceding Articles, I am commanded by the Commons to aſſiſt in maintaining the 13th and 14th Articles of their Impeachmen againſt the Earl of *Macclesfield*.

The Charge in theſe Articles is, That the Earl knowing Mr *Dormer* (one of the Maſters in Chancery) had diſpoſed of great part of the Suitors Money for his own private Advantage, by which there became and ſtill continues a Deficiency of at leaſt 25000 *l.* and that Mr. *Dormer* abſconded upon that Occaſion; That application was made to the Earl thereupon, who inſtead of taking proper Methods to compel Mr. *Dormer* to make Satisfaction to the Suitors (from an Apprehenſion that a publick Diſcovery of the ſaid Deficiency might leſſen the unjuſt Gain the Earl propoſed to himſelf, by ſelling and diſpoſing of the ſaid Offices) did endeavour by many indirect Practices to conceal from the Suitors of the Court the true State and Condition of the ſaid Office, and did falſly and deceitfully declare that Mr. *Dormer* was only gone to take the Air; that he would return in a little time, and all would be well. That Mr. *Dormer* having towards a Satisfaction to the Suitors of the Court, aſſigned to Mr. *Edwards* (who ſucceeded him in his Office of Maſter) a Debt of 24046 *l.* 4*s.* 0*d.* due from Mr. *Wilſon* (a Banker) to Mr. *Dormer*, to the intent the Money received on that Account ſhould be applied as the Court of Chancery ſhould direct, the Earl of *Macclesfield*, for the unlawful Purpoſes aforeſaid, without regard to the Intereſt of the ſaid Suitors, by Colour of his ſaid Office, did in an unwarrantable, clandeſtine, and unuſual Manner, authoriſe, direct and eſtabliſh a precarious and trifling Compoſition with the ſaid *Wilſon*, upon his paying 1463 *l.* 2*s.* 1*d.* and aſſigning 10,000 *l.* part of a Debt of 22,060 *l.* 12*s.* 5*d.* pretended to be due to the ſaid *Wilſon* from *Edward Poulter*, in Diſcharge of the ſaid Debt; and to that End, on Mr. *Hiccocks*'s Report, then one of the Maſters of the ſaid Court, without any Attendance ordered or had thereupon, and without Notice to the ſaid Suitors, did by a private Order, not made in open Court, order Mr *Edwards* to accept the ſaid Compoſition in full Diſcharge of the ſaid Debt; which ſaid *Poulter* was a Perſon Inſolvent, and has ſince abſconded for Debt, and none, or very ſmall part of the ſaid 10,000 *l.* has been, or is ever likely to be received.

Your Lordſhips will pleaſe to obſerve, that the Earl is charged with the higheſt Breach of Truſt in relation to the Suitors of the Court of Chancery, and to have committed that Breach of Truſt for the moſt unjuſtifiable End.

The Crimes, my Lords, ſtated in theſe Articles, are in themſelves ſo heinous, they need no aggravation; and I think the noble Lord's Anſwer ſhews they are capable of no Excuſe.

He is pleaſed to ſay, "That Mr. *Dormer* being out of Reach, his Effects unknown, except the Stock, which could not be transferred without his Concurrence, and the Earl ſeeing no other way open to get any thing for the Suitors, and being made believe, if a Deficiency ſhould happen, the ſame ſhould be made up by other Maſters; did agree, that in Caſe Mr. *Dormer* would come over, and make a full Diſcovery of all his Effects, and aſſign the ſame for the benefit of the Suitors, the ſaid Earl would allow him his Liberty on that Condition, and not otherwiſe.

The noble Lord ſays, No other way was open to get any thing. Sure, my Lords, the granting of a Sequeſtration would have been one and the ſpeedieſt way to have found out and ſecured the Effects; but it might have been a way too open; for it muſt have publiſhed the Deficiency of the Office; whereas Mr. *Dormer*'s coming home, and quietly reſigning, huſhed all Enquiry.

What the Earl means by being made to believe the Deficiency ſhould be made up, I am at a Loſs, my Lords, to know; made believe! how, or by whom! It does not appear the Maſters entred into any Contract to do it; and could his Lordſhip think any Diſcourſe between him and the Maſters (if ſuch there was) could be a ſufficient Security for the Suitors of the Court?

But ſuppoſe the Maſters had contracted to ſupply the Deficiency, I ſubmit to Your Lordſhips how far that Contract would have been juſtifiable; for how ſhould that Supply ariſe? If out of the Suitors Money in the Maſters Hands, that was only ſupplying one Deficiency by making another; and if it was to be out of their own Eſtates, that likewiſe, by leſſening the Subſtance of the Maſters, would diminiſh the Security of their own Suitors; And what, my Lords, could induce the Maſters to enter into ſuch a Contract? I can imagine nothing, but to conceal the Deficiency, in order to raiſe a Value on their own Places upon their Reſignations. I therefore ſubmit to your Lordſhips, whether the Earl's Anſwer is not an implyed Confeſſion of an Endeavour to conceal this Deficiency, in order to keep up the price of the Office? Your Lordſhips obſerve on what Condition the Earl ſays he permitted Mr. *Dormer* to come over. But I do not find the noble Lord alledges, that in order to gain the End propoſed, Mr. *Dormer* was examined on Interrogatories touching the Debts due to the Suitors of the Court, or to what Eſtate or Effects he had to anſwer the ſame: We can ſhew your Lordſhips there was no ſuch Examination. We ſhall prove, that Mr. *Dormer* did not give a ſatisfactory Account of his Ballance, and with great Difficulty was prevailed on to convey his Eſtate for the Benefit of the Suitors: But yet, my Lords, he continued to have his Liberty. How the Earl will account for thoſe Proceedings, I leave to your Lordſhips Conſideration: I can ſee no poſſible Account can be given but this, that an Examination on Interrogatories touching the Debts of the Suitors, and Mr. *Dormer*'s Anſwer and Confinement, muſt have publiſhed the Deficiency of the Office. The Earl is pleaſed to ſay, "He did not "doubt but the whole Debt upon the ſaid "*Fleetwood Dormer* would be paid.

I preſume he did not doubt but it would be, becauſe he knew in Juſtice it ought to be paid; and ſince it is before your Lordſhips, I likewiſe do not doubt but it will be paid.

The noble Lord in his Anſwer is pleaſed to quote on ſome Occaſions the Example of his Predeceſſors; I wiſh, for the Sake of the unhappy Suitors, and for the Honour and Juſtice of the Court of Chancery, he had here followed the Steps of his Predeceſſors in the Caſe of Dr. *Eddisbury*.

" The noble Lord inſiſts, He does not remember any Application made by the Maſters for any Aſſiſtance of the Court, touching the Perſon or Effects of Mr. *Dormer*, but what he granted, as far as he thought tended to the Benefit of the Suitors.

We ſhall offer Proof to the contrary: But had that been ſo, was that, my Lords, ſufficient? Was the Earl to wait the ſetting of a Proſecution on Foot, 'till Application made by the Maſters? It was not probable many of them (who had bought at high Prices, and on Reſignations, were to make the moſt of their Places) would apply for the ſecuring the Perſon or Effects of Mr. *Dormer*, they would not willingly have had a Maſter impriſoned; the Diſcovery of a Deficiency in him would have made other Suitors apprehenſive that the ſame might have happened to them; for every one knew how freely thoſe Gentlemen trafficked in the fatal Year of 1720. The very Notion of a Deficiency would have put the Suitors on an Inquiry, and upon calling the Money out of the Maſters Hands. Could then the Earl expect they would intereſt themſelves much in an Examination of this Kind? But was it leſs his Duty to enquire and give all neceſſary Orders, and take all proper Precautions for the Suitors Safety, becauſe the Maſters neglected it? No, certainly, unleſs for the Reaſon aſſigned in the Article.

The Earl ſays, " He did never endeavour to " conceal the true State and Condition of the " Office from the Suitors, nor did any of them, " until very lately, apply to him to look into " the ſame.

He well knew, that many of them called for their Money, and were ordered their whole Demands, while Mr. *Edwards* had wherewithal to pay; but thoſe unhappy Suitors, who did not know of the Deficiency, and from ſuch Orders for the whole Money might well be perſuaded there was no Deficiency, and conſequently did not complain, have now, I fear, a melancholy Caſe. And with what Grace the Earl can inſiſt, that no Suitors ever did, or at leaſt till very lately, complain, I leave to your Lordſhips Conſideration.

The Earl is pleaſed to ſay, " He remembers " nothing of his uſing the Expreſſion charged " in the Article, either before or after he knew " of Mr. *Dormer*'s abſconding.

I believe the noble Lord, on a little Recollection, will eaſier call to Mind what he ſaid on this Occaſion, than be able to give a juſtifiable Reaſon for it.

He is pleas'd to ſay in his Anſwer to the 14th Article, " He quitted all the Advantage of the " Diſpoſal of Mr. *Dormer*'s Office.

The Gentlemen, who have ſpoke before me, have, I hope, ſufficiently made it appear to your Lordſhips, that there could be no ſuch legal or juſt Advantage. Where then is the Generoſity? A Sum of Money, which he ought not to have taken, is given up towards anſwering the Debt of the Court, for which I take it his Lordſhip himſelf is anſwerable.

He is pleaſed to ſay, " That after Mr. *Dor-* " *mer*'s aſſigning Mr. *Wilſon*'s Debt to Mr. *Ed-* " *wards*, the Earl believes Mr. *Edwards* uſed " great Endeavours to obtain Payment and Sa- " tisfaction of the ſaid Debt from Mr. *Wilſon*; " but finding all Endeavours fruitleſs, and that " Mr. *Wilſon* had ſtopped Payment, and was in no " Condition of paying his Creditors the whole " of their Debts, but had offered to come to a " Compoſition, and to pay them in Proportion " the utmoſt he was able Mr. *Edwards* there- " upon petitioned his Lordſhip.

What thoſe great Endeavours were, I am, my Lords, at a loſs to know; for I can't find there was any Commiſſion of Bankruptcy taken out againſt *Wilſon* (though that was adviſed and preſſed as a ſafe and neceſſary Method) no Suit in the Court of Chancery, or in any other Court commenced againſt him, to get in this Debt, or that he was ſo much as ſerved with any Proceſs about it. How then the Earl can ſay, that all Endeavours were found fruitleſs, I leave to your Lordſhips Conſideration.

He is pleaſed to ſay, " Mr. *Hiccocks* reported, " 'twas his Opinion the accepting the ſaid Com- " poſition would be for the Benefit of the Per- " ſons entitled to receive the ſame.

My Lords, It does not appear Mr. *Hiccocks* had looked much into *Wilſon*'s Circumſtances, had examined the Particulars of his Books on Oath, had called the Creditors before him to enquire into the Juſtice of their Debts, or to know the Amount; but yet took upon him to apportion Part of *Poulter*'s Debt, as a Compoſition for the Suitors of the Court, though it will appear that *Wilſon* paid ſeveral of his Creditors afterwards their full Demands.

Strange Proceeding ſure in an Affair of this Nature! for which I will not pretend to Account. But, my Lords, I cannot but obſerve that the two Maſters, who were employed to take Care on this important Occaſion, for the innocent unhappy Suitors, were very ſoon (pending the Affair) allowed to ſell their Places at exorbitant Prices. Mr. *Rogers*, *Auguſt* 1721. for 6,000 *l.* and Mr. *Hiccocks*, *June* 1723. for 7,500 *l.* and which very Sums now remain a Debt to the Suitors of the reſpective Offices. Your Lordſhips have already heard what was demanded and paid on thoſe Reſignations.

The Earl is pleaſed to ſay, " That on Mr. *Ed-* " *wards*'s ſecond Petition with Mr. *Hiccock*'s Re- " port annexed (in which Mr. *Edwards* ex- " preſly prayed, that he might be ordered to " accept the ſaid Compoſition) the Earl in a " proper and uſual Manner ordered the ſame as " prayed, and was informed, and believes, that " the ſaid Compoſition was made and agreed to " on a Conſultation of all or moſt of the Ma- " ſters of the ſaid Court.

I have heard, my Lords, the proper and uſual Manner is to have Petitions of this Nature ſet down to be heard in Publick, and the Parties

concerned

concerned to be ſummoned; Petitions relating to Bankrupts, to Lunaticks, to Ideots, I believe are ſo: The Statute in the Caſe of Bankrupts directs publick Notice to be given in the *Gazette*, for the Creditors to meet; they have an Opportunity there to make all proper Enquiries, and ſee every thing done that may be moſt for their Advantage; the Bankrupt is not entitled to his Liberty, nor any Benefit allowed him, without a Certificate that he has made a full Diſcovery of his Effects, and that there appears no Reaſon to doubt of the Truth of ſuch Diſcovery; and not then neither, unleſs four Parts in five in Number and Value of his Creditors ſign ſuch Certificate, and teſtify their Conſent. How the Earl could think it juſt that the Suitors of the Court of Chancery (whoſe Money was forced from them by the Power of that Court, and put into the Hands of a Bankrupt Maſter) ſhould have leſs Care taken of them, leſs Privileges allowed them for their Security, than any other Creditors in the Kingdom, I can no way comprehend, but muſt think, my Lords, this clandeſtine and unuſual Proceeding a ſtrong Proof of the Crime charged in theſe Articles.

" As to what the Earl ſays of the Compoſiti-
" on being agreed to by moſt of the Maſters; if that, my Lords, had been ſo (though we ſhall give Evidence to the contrary) I ſhould not at all have wondered at it; for any Compoſition obſtructed the Inquiry and Proceedings, which otherwiſe muſt neceſſarily have been publick: But, my Lords, had the Compoſition been agreed to on a Conſultation of all or moſt of the Suitors concerned, that indeed would have been a good Defence of the noble Lord.

" He is pleaſed to ſay, at the Time of *Wil-*
" *ſon*'s Aſſignment of *Poulter*'s Debt, that *Poul-*
" *ter* was looked on to be a ſubſtantial Perſon.

We ſhall produce to your Lordſhips Evidence to the contrary: And I muſt obſerve, that the Earl does not offer to ſhew any proper Inquiry was made touching his Solvency. Sure, my Lords, when that Debt was taken as a Payment for the Suitors of the Court, his Circumſtances ſhould have been carefully looked to, and a Recognizance with Securities taken in Court; but that could not be done without a publick Notice of the Deficiency.

When I conſider, my Lords, the long Experience and great Abilities of the noble Earl, I can never think the Remiſneſs in this Inquiry, theſe clandeſtine and unuſual Proceedings, this precarious and trifling Compoſition, could ever have happened through Inadvertency only: I therefore, my Lords, muſt inſiſt upon it as a manifeſt Proof of the Charge contained in theſe Articles.

The Gentleman, who ſpeaks after me on this Occaſion, will open the Evidence we ſhall offer, and I will therefore take up no more of your Lordſhips Time.

Mr. Hedges. My Lords, it falls to my Share to endeavour to be Aſſiſtant to the Gentleman who ſpoke laſt, in maintaining the 13th and 14th *Articles*; which I ſhall do, by ſtating the Evidence to your Lordſhips, as ſhortly as I can.

My Lords, The 13th *Article* ſets forth, that Mr. *Dormer* having *embezled* great Part of the Suitors Effects, to the amount of 25,000 *l.* or ſome other great Sum, and he thereupon *abſconding*, Application was made to the Earl of *Macclesfield*, then Lord Chancellor, to *ſecure his Perſon and Effects*, which his Lordſhip *neglected* and *declined* to do; and *endeavour'd* to *conceal* the true State of the Office, as well with reſpect to Mr. *Dormer*'s Effects, as to the Debt due from him to the Suitors. And upon Motion made in the Court of Chancery (after his Lordſhip *knew* that Mr. *Dormer* had *abſconded*) that the Effects of ſome of the Suitors might be *transferr'd* to a more *ſecure* Office, his Lordſhip, in order to *delude* the Suitors into a Belief of the Safety of their Effects, and to prevent a publick Inquiry, then ſitting in open Court, did ſay, That the Parties need not be in haſte; *falſely and deceitfully* at the ſame Time declaring, that Mr. *Dormer* was only gone to *take the Air in the Country*, and that he would return in a little Time, and *all would be well*, or to that Effect. And, my Lords, notwithſtanding the Earl's Endeavour in his Anſwer to *evade* the Charge contain'd in this Article, I am perſuaded, upon hearing the Evidence, your Lordſhips will reſt ſatisfy'd, that it has been *made out* in every Particular. For, my Lords, as to the firſt Part of the Charge, where he denies that he was ever *advis'd to ſecure* Mr. *Dormer*'s Perſon, it will be made appear to your Lordſhips, that Mr. *John Bennet*, and Mr. *Lightboun*, went from a Meeting of ſeveral of the Maſters, and in their Names *acquainted* the Lord Chanceſſor, that it was their Opinion, that Mr. *Dormer* had *not fairly* ſtated his Accounts; that there was a *Deficiency* of upwards of 20,000 *l.* and that it was neceſſary for Example ſake, he ſhould be committed, according to the *Precedent* ſet him by the Lord *Cowper* in Dr. *Eddisbury*'s Caſe. But the Earl inſiſting on Mr. *Dormer*'s *Liberty*, they again repeated the *neceſſity* of making ſuch an Example, but at laſt left the Earl *fixed* in his Reſolution of continuing Mr. *Dormer* at Liberty.

My Lords, this Promiſe of Freedom to Mr. *Dormer* was only conditional; IF he gave in a fair and juſt Account, and aſſiſted in getting in the Debts. But he was ſo *far* from complying with theſe Conditions, that when he gave an Account in Writing of the Ballance of his Caſh, amounting to 49,000 *l.* he only inform'd them, that 24,000 *l.* of it was due from one *Wilſon* a Banker, *ſince broke*; but as to the Remainder, the Maſter, to whom it was given, could never obtain from him any other Notice where it lay, or what was become of it.

Immediately upon this, the Maſters were *ſummon'd*, and *acquainted* with it; and the next morning that Account was *left* with Mr. *Cottingham* for the Lord *Chancellor's peruſal*.

Your Lorſhips will be farther inform'd, that Mr. *Rogers* and Mr. *Hiccocks*, being directed by the Lord *Chancellor* to procure a Conveyance of Mr. *Dormer*'s Eſtate to them, for the Benefit of the Suitors, it was with the *greateſt Difficulty* that Mr. *Dormer* was *prevailed* upon to *comply* with it.

In the next place, my Lords, his Lordſhip, in his Anſwer, denies, that he endeavour'd to *conceal* the true State of the Office from the Suitors; or that he *remembers* any thing concerning

ing the *Expreſſion* he is charg'd with; That Mr. *Dormer* was only gone into the Country *to take the Air*, and that he wou'd *return* in a little time, and all would be well.

My Lords, I muſt agree, that, ſince his Lordſhip is reſolv'd to *deny* that he endeavour'd to *conceal* the State of the Office, it were to be *wiſh'd by him* that he cou'd *ſafely deny* this Expreſſion, ſince if true, it *proves* that Endeavour directly upon him. But, my Lords, the Words *were* ſpoken by his Lordſhip in open Court, and can be *ſworn to* by a Perſon, whoſe *Buſineſs* in Court at that time was ſuch, as can poſſibly leave no room for a *Doubt*, or *a Miſtake*.

For farther proof, my Lords, of his Lordſhip's Endeavour to *conceal* the State of this Office, we ſhall ſhew, that a Meſſage was ſent from the Lord *Chancellor* to Mr. *Lightboun* with a Propoſal that he ſhou'd advance 500 *l.* towards this Deficiency: Acquainting him, at the ſame time, that it was for the *Honour of the Court*; and that the *Appearance* of a Deficiency won'd be attended with *ill Conſequences*. But Mr. *Lightboun refus'd* to comply with that Demand, which he thought won'd only *skin* over the Wound, and not effectually *cure it*. And yet, my Lords, this Propoſal, which Mr. *Lightboun* had the *Honeſty and Courage to reject*, was enforc'd by the impeach'd Earl with the *Threats of a Parliamentary Enquiry*; aſſerting, that if the Maſters did not contribute towards the *Concealment* of this Deficiency, it wou'd *occaſion* a publick *Enquiry*; wherein, if it ſhou'd appear, that they had *bought* their Places *contrary to the Statute* 5 *and* 6 *of Edward* 6. it might go ill with him, but that it wou'd fare much worſe with them; turning even that *Parliamentary Enquiry*, which he ought to have *dreaded* as his *ſure Puniſhment*, into means for *extorting* of Money. We have alſo Proofs that at another Meeting of the Maſters, a farther *Demand* was made upon them, in order to *conceal* the State of that Office; but all the Maſters then *refuſing* to contribute to a *Concealment* ſo *unreaſonable* in its own nature, the Lord *Chancellor paid* that Demand of 1000 *l.* *himſelf*; not out of any *juſt regard* to the Suitors, but for his own *Profit and Advantage*, well knowing, that the Notoriety of this Inſolvency, wou'd make the Maſters Places *leſs valuable*; and therefore was content to part with this Sum, to *inſure* to himſelf a greater proſpect of Gain at his next Sale. Nor was it neceſſary for thoſe, who dealt at this *Auction*, to bring any Money of their *own* to it; the mere admittance into the Office immediately giving them *Poſſeſſion* of a Caſh ſufficient to anſwer his Lordſhip's Expectations. And thus *Beggars* were his *beſt Purchaſers*; though ſure to be the worſt *Truſtees* for the *Publick*.

How great a Hardſhip muſt it be, my Lords, to the Suitors of that High Court, to be contending many Years for their *juſt Property*, at an Expence poſſibly no ways *proportionable* to their remaining Fortunes; and to find at laſt, when they had *obtain'd* a Decree in their *Favour*, that their Money was *loſt in a Bankrupt* Office, without *hopes* of recovery? This is a Conſideration in which every Man in *Great Britain* is more or leſs concern'd. For what Eſtate is there, which may not ſome way or other in the Courſe of a few years, come under the *Direction* of that Court? How much then does it concern every *Individual*, and even the *Legiſlature* itſelf, that all its *Avenues* of Juſtice ſhou'd be *ſafe* and *open*? But how much more does it concern the *Honour* and *Conſcience* of the Perſon, who *preſides* in it, if there ſhou'd be a *dangerous Precipice* in the way, to be the *firſt* in ſetting up a *Mark* for all the World to *avoid* it?

But, my Lords, if in this Article, which I have open'd to your Lordſhips, there appears a *Criminal Endeavour* to conceal the Deficiency of this Office, ſupported by a *falſe Aſſertion* made in open Court, in order to delude the Suitors into an Opinion that their Money was ſafe, and a *great neglect* in not ſecuring Mr. *Dormer*'s Perſon; in the 14th Article, he will appear in a yet *more* guilty Light, not only *neglecting*, as in the former, to *enquire* into his Effects, but on *Enquiry made*, and *Time had* for mature deliberation, confirming a *precarious* and *trifling* Compoſition, and tying down the Suitors of the Court by his Authority, to the certain *Diminution* of one *half* at leaſt of their Effects, and in all probability to the irrecoverable loſs of the whole.

My Lords, in the Anſwer which his Lordſhip returns to this Article, he denies *none* of the Matters of Fact contain'd in it, but *admits* them as they there ſtand charg'd. I ſhall therefore only make ſome Obſervations on the nature of this Tranſaction, and on the Aſſertions in his Lordſhip's Anſwer.

In the firſt place, my Lords, he inſinuates that Mr. *Edwards* us'd *great endeavours* to obtain payment from *Wilſon*, but found them fruitleſs; *Wilſon* having ſtopp'd payment long before.

My Lords, I know not what *endeavours* his Lordſhip can prove Mr. *Edwards* to have us'd; but whatever they were, they were not unlikely to prove *fruitleſs*, ſince as his Lordſhip adds immediately, *Wilſon* had *long before ſtopp'd* payment: But this we can *prove*, That *Wilſon*'s Books were never *inſpected* by Mr. *Edwards*; that he never *knew* what his Debts were; nor any thing more of him, than that *Wilſon* came *voluntarily* to Mr. *Edwards*, and propos'd of himſelf to pay him 1400 *l.* in ready Money, and to aſſign over to him a Debt of 10,000 *l.* due from one *Poulter*, whoſe Circumſtances were ſtill more *precarious* than his own.

In the next Place, his Lordſhip aſſerts, that he order'd this whole Affair of *Wilſon*'s Compoſition in the *uſual* manner; and is inform'd, and believes, that this Compoſition was made and agreed to, upon a *Conſultation* of all, or moſt of the Maſters. But, my Lords, we ſhall make it appear, that the *Delivery* of the Petitions, the *Orders* made upon them, and the *whole Tranſaction* of this Affair, was carried on from *firſt to laſt* in a *clandeſtine*, *private*, and unuſual Manner.

As to the Conſent which his Lordſhip ſays he *believes* the other Maſters gave to this Compoſition, we ſhall *prove*, my Lords, that Mr. *Edwards* was the only Perſon concerned on behalf of the Suitors, and ſo *far* was he or any of the reſt of the Maſters from taking the *beſt Care* they could, that the *firſt* Draught of a Compoſition, which *Wilſon* brought, was accepted and ſettled between him

him, and Mr. *Hiccocks*. And that when Mr. *Edwards did* mention this Compoſition to *ſome* of the Maſters, they were ſo *far* from approving of it, that Mr. *Edwards acquainted* the Lord Chancellor, that it was the Opinion of one of them, that a *better Compoſition* was to be had. And another of the Maſters was ſo far from agreeing to this Method at all, that he propos'd a *Commiſſion of Bankrupcy* as the *only* Means to bring this Matter to a *proper Light*.

But that *Light*, my Lords, was what his Lordſhip was moſt *afraid* of. That wou'd have *diſcover'd* the *deficiency* of this Office, which would have brought a *diſrepute* upon others, and conſequently have *lower'd* their *Price*. This was his Lordſhip's *only* Care; whilſt for the reſt he cou'd ſet *unconcern'd*, and ſee ſo great a Sum of the Suitors Money *waſting away to nothing*, as it paſs'd thro' the Hands ſucceſſively of three Bankrupts.

But, my Lords, we ſhall farther prove, that when his Lordſhip order'd a Petition to be prefer'd to himſelf, that he might *approve* of this Compoſition, he never order'd the *Suitors* to be acquainted with it, nor had they *any Notice* of it. Nor did his Lordſhip *ask*, if *Wilſon* had *compounded* with any other Creditors, nor ſo much as *enquire* if he had *ſworn* to his Circumſtances.

It will be made appear, that at this very time Mr. *Edwards* was inform'd, and *did believe* that *Poulter*'s Circumſtances were *very bad*, and that neither he nor any one elſe *attended* the Commiſſion of Bankrupcy againſt *Poulter* on Behalf of the Suitors.

And, my Lords, to judge a little farther of this Matter, by a very ſure Rule of Juſtice; that, of *doing as one wou'd be done by*: Your Lordſhips will find that Mr. *Edwards confeſſes*, that if it had been his *own* Money, he wou'd have lookt more *carefully* after it.

Farther yet, my Lords, we ſhall prove, that notwithſtanding this Debt was *compounded* with *Wilſon*, yet he has paid the *whole Amount* of other Debts, with Intereſt, to *ſeveral* of his Creditors.

Laſtly, my Lords, his Lordſhip in his Anſwer ſays, that he *believes* Mr. *Edwards* has ſince got in one thouſand Pounds of *Poulter*'s Debt. The Truth is, one thouſand Pounds has been recover'd; but it was by an *accidental Diſcovery* of *conceal'd* Effects belonging to *Poulter*; one thouſand Pounds of *which* was paid to Mr. *Edwards* by *Wilſon*, as Part of *Poulter*'s Debt.

But does his Lordſhip *ſeriouſly* intend this for any *Vindication* of himſelf, or any *Compenſation* to the Suitors, that after *four or five years expectation*, inſtead of *twenty four thouſand Pounds due to them*, he *believes* one thouſand Pounds *may* have been ſince recover'd?

I cannot help obſerving here to your Lordſhips, how *different* a Care has appear'd throughout his Lordſhip's whole Behaviour, with Regard to his *private* Advantage, and the *Safety* and *Protection* of the Suitors of the Court.

In *their Caſe*, he could think it *equitable* to ſubject *their* Eſtates to the Loſſes of a *Maſter in Chancery*, who had *ſquander'd* and *gam'd* away their Subſtance and his own. But in his own *private* Affairs, how *cautiouſly circumſpect* was his Lordſhip? The leaſt Advantage was not neglected, and if a Maſter's Place was to be alienated, a *difference* of Guineas was meanly inſiſted upon, inſtead of the Pounds which had before been oppreſſively extorted.

But, my Lords, in this Impeachment, the Commons, with Regard to the Dignity of their own Proceedings, with Regard to this auguſt Judicature, are not deſirous to enlarge upon Matters of *ſmaller* Moment. His Lordſhip might have enjoy'd his *hundred Guineas* in quiet, had not a *long Series* of his Conduct in ſo high a Station, tended to *deſtroy* the Reverence due to the Laws, by an *Execution* of them inſtrumental to the Ruin of the Subject.——Againſt apparent Extortioners and Robbers, we guard ourſelves with a Caution proportionable to the Infamy of their Characters: But when the Sanctity of the Laws, and the Enſigns of Authority, deſign'd to defend and protect us, are made uſe of *to invite* us into Ruin, how ſure and extenſive muſt that Ruin be?

My Lords, The Commons *have* beheld with the deepeſt Concern ſuch corrupt Practices in this high Court; ſuch, as have *deform'd* the *Beauty* of Juſtice, and render'd the Adminiſtration of it *grievous*, and even *fatal* to the Subject. They have beheld that Miniſter of Juſtice, whom the Laws of the Land have inveſted with an *extraordinary* Power to puniſh *Frauds and Deceits*, himſelf carrying on a moſt *pernicious* Deceit, to the great *diſhonour* of the Court, and the *ruin* of its Suitors. The *Guardian* of Orphans become their *Oppreſſor*, the Keeper of the King's Conſcience proſtituting his *own*, and the Dignity of his high Station, to an ignominious *Traffick* with the beſt Bidder, and employing the Scales of Justice in the Buſineſs of an *Uſurer*.

But, my Lords, that Parliamentary Enquiry is *now* come, with the *Terrors* of which he *forc'd* the Maſters into Compliance with his *arbitrary* Demands. He then *foretold* it might poſſibly go ill with him, tho' it wou'd fare worſe with them. So *juſt* a *Decree* pronounc'd by *himſelf* againſt *himſelf*, is, we truſt, in no Danger of being *revers'd*; but reſt aſſur'd, that as far as it regards him, it will be unanimouſly *confirm'd* by your Lordſhips.

Mr. *Lutwyche*. My Lords, we ſhall now proceed to our Evidence on theſe two Articles together: To ſhew to your Lordſhips that the Deficiency of *Dormer*'s Office was endeavour'd to be conceal'd by many indirect Practices; and firſt of all we ſhall call a Witneſs to prove Mr. *Dormer's* Deficiency to be about twenty five thouſand Pounds.

Mr. *Thompſon* called, and appeared.

Mr. *Lutwyche*. My Lords, we deſire that Mr. *Thompſon* may refreſh his Memory, as this Matter was referred to him to examine, and that he would pleaſe to give your Lordſhips an Account how he found the State of Mr. *Dormer*'s Office, and what Deficiency there was in it?

Mr. *Thompſon*. My Lords, I find in our Report the Debt due from Mr. *Dormer*'s Office was ſtated at 49604*l.* 11*s.* 11*d.* and I find that Mr. *Edwards*, who ſucceeded Mr. *Dormer* in that Office, had paid to the Suitors 23725*l.* 15*s.* 9½ ſo that there remains due to the Suitors of the Court, ſuch as have paid their Money into Mr. *Dormer*'s Office, the Sum of 25878*l.* 16*s.* 1*d.* ½ And this I believe to be a true State of the Account, from ſuch Evidence as was laid before us.

Mr. *Lutwyche*. If the Counſel on the other Side don't think fit to ask this Evidence any Queſtion, we beg Leave to call Mr. *Edwards*, who ſucceed-

ed Mr. *Dormer*, and will give your Lordſhips an account of the State of that Office, and what the Deficiency was.

Mr. *Henry Edwards* ſworn.

Mr. *Lutwyche*. My Lords, we deſire that Mr. *Edwards* may be asked, how much the Deficiency is in Mr. *Dormer*'s Office?

Mr. *Edwards*. My Lords, according to the Account given in, the Deficiency appears to be about twenty five thouſand odd hundred Pounds; but ſince that, there is diſcover'd about fifteen hundred Pounds more, which was not brought into the Account. It was diſcover'd about three Weeks or a Month ago, and not before.

Mr. *Lutwyche*. I deſire he may be ask'd whether he knows of any other Deficiency diſcover'd?

Mr. *Edwards*. No, my Lords, I do not.

Mr. *Serj. Probyn*. My Lords, I deſire Mr. *Edwards* may be asked, that as there hath been a further Deficiency diſcovered, whether there hath not alſo been a Diſcovery of further Effects?

Mr. *Edwards*. Not as I know of. I am informed Adminiſtration hath been lately taken out to Mr. *Dormer*, that there hath been a Diſcovery of Effects, but to what Value I can't tell.

Mr. *Strange*. I would deſire he may be ask'd, whether he hath had any Account from the Adminiſtrator?

Mr. *Edwards*. I have ſeen Mr. *Paxton*, who I underſtand adminiſtred. He told me he had diſcover'd ſome Effects, but he did not tell me to what Value.

Mr. *Lutwyche*. If the Counſel for the noble Earl have done, we would beg Leave to ask another Queſtion, in Relation to this Matter. They examine what were the other Effects of Mr. *Dormer*, we deſire to know, if Mr. *Edwards* can inform us, how long ago this Diſcovery was?

Mr. *Edwards*. I can't certainly tell. I believe it is about two Months ago that Mr. *Paxton* hath had Adminiſtration; and ſince that he hath made this Diſcovery.

Mr. *Lutwyche*. It is proper from this Queſtion that hath been ask'd by the Counſel for the noble Lord, to call another Witneſs to prove that there have been Effects diſcovered, and that there have been Goods laid by three or four Years, and almoſt ſpoil'd, becauſe no Care was taken of his Effects.

Mr. *Serj. Probyn*. My Lords, before this Gentleman goes, I beg Leave he may be asked one other Queſtion, whether he had not Notice before *Chriſtmas* laſt, that there were other Effects of Mr. *Dormer*, and from whom?

Mr. *Edwards*. Yes, I believe I had; and when I underſtood that Mr. *Paxton* was the Perſon who had taken out the Adminiſtration, I told him of it.

E. of Macclesfield. My Lords, I deſire he may be asked who it was that brought him Notice of theſe Effects?

Mr. *Edwards*. It was a Gentleman that came out of the Country. I don't remember his Name. He was a Perſon that lived near the Place where Mr. *Dormer*'s Country Houſe was. I have forgot his Name.

E. of Macclesfield. Can you recollect if you hear his Name? Was his Name *Goodfellow?*

Mr. *Edwards*. I believe it was.

E. of Macclesfield. I deſire, if you can recollect, who he ſaid he came from?

Mr. *Edwards*. I think he ſaid he came from Mr. *Cottingham*; I don't know that he mention'd your Lordſhip. I underſtood your Lordſhip had been acquainted with it, but not that he acquainted you of it.

Mr. *Campbel ſworn*.

Mr. *Lutwyche*. My Lords, I deſire that this Witneſs may be asked, whether he knows of any Goods or Effects of Mr. *Dormer* being diſcover'd, and at what Time, and how long they had lain in that Place where they were found?

Mr. *Campbel*. In the Year 1721, I did buy a Parcel of Hops, but who they belong'd to I did not then know; but ſince I find they were Mr. *Dormer*'s. They were one hundred and forty eight Bags of Hops. I ſold ſixteen of them the ſame Year, one hundred and one ſince. I bought them of Countrymen; ſome of one Man, and ſome of another. I bought them by Commiſſion, but Mr. *Dormer* was not the Man that employ'd me, neither did I receive the Money from his Hands.

Mr. *Lutwyche*. We deſire to know how long the Goods did lye in that Place where they were; and whether there was any Loſs by the Sale of thoſe Goods, being left ſo long there.

Mr. *Campbel*. They had lain there above three Years, and I believe, modeſtly ſpeaking, there was above five hundred Pounds Loſs upon them.

Mr. *Plummer*. I deſire Mr. *Campbel* may be asked how he came to know they were Mr. *Dormer*'s Hops?

Mr. *Campbel*. I never did know they were Mr. *Dormer*'s Hops, nor ſtill do I know it, but as I am told.

Mr. *Plummer*. My Lords, I deſire he may be asked who told him ſo?

Mr. *Campbel*. This Gentleman told me ſo [pointing to Mr. *Paxton*.]

Mr. *Serj. Pengelly*. My Lords, we ſhall now call Mr. *Paxton*, who hath taken out Adminiſtration by the Direction of the Lords Commiſſioners of the Great Seal; and under that Adminiſtration he hath poſſeſs'd himſelf of thoſe Effects, which were ſcatter'd and lay waſte before.

Mr. *Serj. Probyn*. My Lords, I beg Leave this Witneſs may be firſt asked one Queſtion. I think he hath ſaid that he bought thoſe Hops by Commiſſion, not by the Order of Mr. *Dormer*, nor for Mr. *Dormer*: I deſire he may be asked, by whoſe Direction they were kept ſo long by him?

Mr. *Campbel*. He that gave me the Orders to buy them was not Mr. *Dormer*, neither did he pay me the Money. The Reaſon they lay ſo long was, I had no Orders to ſell them.

Mr. *Serj. Prob*. Who was the Perſon that gave you Orders to buy them?

Mr. *Campbel*. The Perſon's Name is one Mr. *Longmead*.

Mr. *Serj. Prob*. Where doth this Perſon live?

Mr. *Campbel*. He lives at *Iſlington*.

Mr. *Com. Serj*. My Lords, I deſire this Witneſs may be asked, whether or no about the Time that theſe Hops were bought, they were not very cheap, and at a low Price?

Mr. *Campbel*. They were at a low Price.

Mr. *Com. Serj*. Whether a great Number of People have not kept Hops upon a Suppoſition that they would riſe?

Mr. *Campbel*. Yes they have, a great many.

Mr. *Serj. Probyn.* I desire he may be asked, whether he did not keep other Hops as well as these by him, for the Advantage of a better Market?

Mr. *Campbel.* Yes, I had several other Hops bought in that Year that I kept for a better Market, and still had a worse. I have Hops by me cost me 5 *l.* a Hundred, not worth now 10*s.* a Hundred.

E. of Macclesfield. How much a Bag might that be?

Mr. *Campbel.* I can't tell how many hundred may be in a Bag: I can't tell, because they are not weighed

E. of Macclesfield. Whereabouts?

Mr. *Campbel.* Sometimes there are three hundred, sometimes 2 and a half, sometimes 2 and 3qrs.

Mr. *Lutwyche.* My Lords, to explain this Matter I desire he may be asked, whether this Loss he speaks of, of 4 or 500 *l.* happened in the Difference of the Price, or by the Hops being spoiled?

Mr. *Campbel.* Both by the Difference of Price, Hops being cheaper, and by the Antiquity of the Hops.

Mr. *Lutwyche.* My Lords, we desire he may be asked who is this Mr. *Longmead?*

Mr. *Campbel.* He keeps a Shop in *Islington*, he keeps a Grocer's Shop.

Mr. *Lutwyche.* My Lords, I desire he may be asked, whether he is not Mr. *Dormer*'s Servant, or an Agent for him?

Mr. *Campbel.* For any thing I know he was an Agent for Mr. *Dormer.*

Mr. *Com. Serj.* My Lords, we desire he may be asked, whether for ought he knows he was not an Agent for Mr. *Dormer?*

Mr. *Campbel.* I believe he was an Agent for him, and I have good Reason to believe it, because he paid me all the Money, and gave me Orders to buy the Goods.

E. of Macclesfield. I desire to know whether the Witness infers that *Longmead* was Mr. *Dormer*'s Agent because he paid him Money; might not he have paid him the Money, tho' he had not been his Agent?

Ld. Ch. Just. King. Speak your own Knowledge, whether he was Agent for Mr. *Dormer* or no.

Mr. *Campbel.* I never did ask him whose they were: He employed me, and I bought the Goods, and did suppose they were for Mr. *Dormer.* I never asked him whether they were his Goods or not.

Mr. *Sol. Gen.* My Lords, we desire that Mr. *Paxton* may be called, to shew how he discovered these Effects.

Mr. *Nicholas Paxton* Sworn.

Mr. *Lutwyche.* My Lords, we desire Mr. *Paxton* may give your Lordships an Account what he knows of these Hops.

Mr. *Paxton.* After I had got Letters of Administration to Mr. *Dormer* granted me, I did make what Inquiry I could relating to the Effects of Mr. *Dormer.* This Mr. *Longmead* came and told me of some Hops; that he was Servant to Mr. *Dormer*, and had bought them by his Direction. Then we went to Mr. *Campbel*'s who took out a Handful and said they were Saleable, and would bring in about 200 *l.* He told me they cost 800 *l.* and it would be best to dispose of them as fast as I could, that there might be no more Loss. They are not yet sold, they may be worth about 200 *l.*

Mr. *Lutwyche.* My Lords, It is admitted by the Answer, that Mr. *Dormer* absented himself and absconded. It was notorious, and talked of by every Body: It will lye upon this Noble Lord to give an Account what he did thereon. My Lords, we will now proceed to give your Lordships an Account of this Composition made with *Wilson* who was indebted to *Dormer.* This *Wilson* was a Banker, the Person that Mr. *Dormer* intrusted with Money; and upon that Occasion, there being a great Debt due to *Dormer*, as is set forth in the Articles, a Composition is made with *Wilson* on Account of that Debt. There were such Dealings and Proceedings therein, as will appear to your Lordships to have been unusual and unwarrantable. We beg Leave therefore to shew your Lordships a written Evidence, an Order under the Hand of this noble Lord himself for this Composition though never drawn up: And indeed your Lordships will observe that through the whole Course of these Proceedings, there is not any one Affidavit, or any one Order, or any Report filed in the usual Manner. From whence we may infer, that it was intended to be a clandestine thing, that nothing might appear of it upon Record, as other things do. The first thing we shall beg Leave to shew is, an Assignment from Mr. *Dormer* to one of the Masters in Chancery of this Debt. When we have shewn that Assignment, then we shall beg Leave to give your Lordships an Account of the Methods and Proceedings thereupon.

Mr. *William Green* sworn, and the Assignment produced.

Mr. *Lutwyche.* My Lords, we desire this Witness may be asked, whether he saw this Deed executed, and by whom?

Mr. *Green.* My Lords, I did see this Deed executed by the late Mr. *Dormer:* I am one of the Witnesses to it, and *John Jones* is the other Witness.

Mr. *Lutwyche.* My Lords, we desire this Deed may be read.

Clerk reads. This Indenture made the six and twentieth Day of *July*, *Ann. Dom.* 1721, and in the seventh Year of the Reign of our Sovereign Lord *George* by the Grace of God, King of *Great-Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* Between *Fleetwood Dormer* of *Lincolns-Inn* in the County of *Middlesex*, *Esq*; late one of the Masters of the High Court of *Chancery* of the one Part, and *Henry Edwards* of *Lincolns-Inn* aforesaid, *Esq*; one of the Masters of the said High Court of *Chancery* of the other Part. Whereas *William Wilson* Citizen and Goldsmith of *London*, is and stands justly indebted unto the said *Fleetwood Dormer* upon Account, in the full and just Sum of twenty four thousand and forty six Pounds and four Shillings of lawful Money of *Great-Britain*, or upwards, as by the Books of the said *William Wilson* may and doth appear: And whereas the said *Fleetwood Dormer* is and stands justly indebted to divers Persons, Suitors in the said High Court of *Chancery*, in several considerable Sums of Money, for and on Accompt of Moneys brought before and paid to him as one of the Masters of the said Court: Now therefore for the more speedy getting in and recovering of the aforesaid Debt, due and owing by

and

and from the ſaid *William Wilſon* as aforeſaid; and alſo for the more ſpeedy and effectual Payment of all ſuch Sum and Sums of Money as are owing by the ſaid *Fleetwood Dormer* as aforeſaid: This Indenture witneſſeth, That for the Ends and Purpoſes aforeſaid, and for and in Conſideration of the Sum of ten Shillings of lawful Money of *Great-Britain* to the ſaid *Fleetwood Dormer* in Hand paid by the ſaid *Henry Edwards*, at or before the enſealing and delivery of theſe Preſents, the Receipt whereof is hereby acknowledged: He, the ſaid *Fleetwood Dormer*, hath granted, aſſigned, transferred, and ſet over, and by theſe Preſents, doth grant, aſſign, transfer, and ſet over unto the ſaid *Henry Edwards*, his Executors, Adminiſtrators, and Aſſigns, the ſaid Debt or Sum of twenty four thouſand and forty ſix Pounds and four Shillings, and all and every Part thereof, and all and every other Debt or Debts, Sum or Sums of Money any ways due or owing by or from the ſaid *William Wilſon* to the ſaid *Fleetwood Dormer* and every Part thereof, and all Intereſt due or to grow due for the ſame, and all Bonds, Bills, Notes, and other Securities, for the ſame or any Part thereof. And all the Right, Title, Intereſt, Property, Benefit, Advantage, Claim, and Demand whatſoever, both in Law and Equity, of him, the ſaid *Fleetwood Dormer*, of, in, to, or out of the ſame, and every or any Part thereof, to have, hold, receive, perceive, take, and enjoy the ſaid Debt or Sum of twenty four thouſand and forty ſix Pounds and four Shillings, and all ſuch other Debts and Sums of Money as are due or owing to the ſaid *Fleetwood Dormer* by the ſaid *William Wilſon* as aforeſaid, and every Part thereof, and all the Benefit thereof, and all and ſingular other the Premiſſes unto the ſaid *Henry Edwards*, his Executors, Adminiſtrators, and Aſſigns upon truſt. Nevertheleſs, and to the Intent and Purpoſe that he, the ſaid *Henry Edwards*, his Executors, Adminiſtrators, or Aſſigns, ſhall and do iſſue, pay, apply, and diſpoſe of the ſame, or ſuch Part or Parts thereof, as ſhall from time to Time be by him or them got in and received in ſuch manner as the ſaid High Court of *Chancery* ſhall in that Behalf order or direct, for and towards Payment and Satisfaction of ſuch Debts and Sums of Money as are now due and owing by the ſaid *Fleetwood Dormer*, for or on Account of Monies brought before and paid to him, as one of the Maſters of the ſaid Court. And in the mean time, after Receipt thereof, and until the ſame ſhall be ſo paid, applied, and diſpoſed of, ſhall and do depoſit, lend, or place out the ſame, or any Part thereof, in ſuch Manner as the ſaid Court of *Chancery* ſhall in that Behalf order or direct. And for the better enabling the ſaid *Henry Edwards*, his Executors, Adminiſtrators, and Aſſigns, to get, call in, and receive the aforeſaid Debt or Sum of twenty four thouſand and forty ſix Pounds and four Shillings, and other the ſaid hereby aſſigned Premiſſes upon the Truſts aforeſaid: He, the ſaid *Fleetwood Dormer*, hath made, ordained, conſtituted and appointed, and in his Place and Stead put and deputed, and by theſe Preſents doth make, ordain, conſtitute and appoint, and in his Place and Stead, put and depute the ſaid *Henry Edwards*, his Executors, Adminiſtrators, and Aſſigns, his true and lawful Attorney and Attornies irrevocable for him the ſaid *Fleetwood Dormer*, and in his Name; but upon the Truſts aforeſaid, to ask, demand, ſue for, recover, and receive of and from the ſaid *William Wilſon*, his Heirs, Executors, or Adminiſtrators, and all and every, or any other Perſon or Perſons whom it may concern, the aforeſaid Debt or Sum of twenty four thouſand and forty ſix Pounds and four Shillings, and other the ſaid hereby aſſigned Premiſſes, and every or any Part thereof upon the Truſts aforeſaid, and likewiſe to compound for the ſame, and every or any Part thereof, as he or they ſhall in their Diſcretions think fit, and upon non Payment of the ſame Debt or Sum, Debts or Sums, or any Part thereof, to bring, commence, and proſecute ſuch Action or Actions, Suit or Suits, either at Law or in Equity, or elſewhere, for the Recovery thereof, as he or they ſhall be adviſed, and on Payment thereof, or any Part thereof, to give Receipts and Diſcharges for the ſame, and one or more Attorney or Attornies for the Purpoſe aforeſaid, to make and conſtitute, and at Pleaſure to revoke, and generally to do and act in the Premiſſes for the recovering and obtaining of the ſaid Debt or Sum of twenty four thouſand and forty ſix Pounds and four Shillings, and other the ſaid hereby aſſigned Premiſſes, and every or any Part thereof, as fully and effectually to all Intents and Purpoſes as he the ſaid *Fleetwood Dormer*, his Executors or Adminiſtrators might have done; giving and hereby granting unto the ſaid *Henry Edwards*, his Executors, Adminiſtrators and Aſſigns, the full and whole Power and Authority of him the ſaid *Fleetwood Dormer*, in and about the Premiſſes upon the Truſts aforeſaid; hereby ratifying, confirming, and allowing all, and whatever the ſaid *Henry Edwards*, his Executors, Adminiſtrators, or Aſſigns, or his or their Attorney or Attornies ſhall lawfully do or cauſe to be done in or about the Premiſſes by Vertue of theſe Preſents. And the ſaid *Fleetwood Dormer* doth hereby for himſelf, his Heirs, Executors, and Adminiſtrators, covenant, promiſe, and agree to and with the ſaid *Henry Edwards*, his Executors, Adminiſtrators, and Aſſigns in Manner following: That is to ſay, that he, the ſaid *Fleetwood Dormer*, hath not received, compounded, releaſed or diſcharged, or conſented to the receiving, compounding, releaſing, or diſcharging the ſaid Debt or Sum of twenty four thouſand and forty ſix Pounds and four Shillings, and other the hereby aſſigned Premiſſes, or any Part thereof, and that he, his Executors, or Adminiſtrators ſhall not, nor will at any time hereafter, receive, compound, releaſe, or diſcharge the ſame or any Part thereof, without the Conſent of the ſaid *Henry Edwards*, his Executors, Adminiſtrators, or Aſſigns, firſt thereunto had and obtained in writing under his or their Hands. And further, That he the ſaid *Fleetwood Dormer*, his Executors and Adminiſtrators, ſhall and will at the Requeſts, Coſts and Charges of the ſaid *Henry Edwards*, his Executors, Adminiſtrators, or Aſſigns, make, do, and execute, or cauſe and procure to be made, done, and executed, any further or other lawful and reaſonable Acts, Deeds, Powers and Authorities, for the better enabling him, the ſaid *Henry Edwards*, his Executors, Adminiſtrators, and Aſſigns, to ſue for, recover, and obtain the ſaid Debt and Premiſſes hereby aſſigned, and every or any Part thereof upon the Truſt aforeſaid. And it is hereby declared and agreed that the ſaid *Henry Edwards*, his Executors, Adminiſtrators, or Aſſigns ſhall not be charged or chargeable with, or accountable for any more Monies than he or they ſhall actually receive, or ſhall come to his or their Hands by Vertue of theſe Preſents; and that it ſhall and may be

lawful to and for the ſaid *Henry Edwards*, his Executors, Adminiſtrators and Aſſigns, in the firſt Place, by and out of the Premiſſes, to deduct and reimburſe him and themſelves all ſuch Loſſes, Coſts, Charges and Expences as he, they, or any of them ſhall ſuſtain or be put unto, by Reaſon of the Truſt hereby in him repoſed, or the Management or Execution thereof, or any other thing in any wiſe relating thereunto: In witneſs whereof, the ſaid Parties to theſe Preſents have hereunto interchangably ſet their Hands and Seals the Day and Year firſt above written.

Fleetwood Dormer.

Mr. *Lutwyche*. The next thing we ſhall trouble your Lordſhips with in relation to this Matter of the Compoſition, is a Petition of Mr. *Edwards*, to which there is an Anſwer. The Anſwer is writ by Mr. *Cottingham*, and ſigned by the noble Lord. I mentioned to your Lordſhips that no Order is drawn up upon it: Nothing appears in publick: Therefore we muſt beg Leave to prove the Earl's Hand to this Order made upon this Petition.

E. of Macclesfield. After taking the Petition in his Hand and looking upon the Name ſubſcribed to the Anſwer written upon it, ſaid, My Lords, this is my Hand.

Clerk reads,

To the Right Honourable Thomas *Earl of* Macclesfield, *Lord High Chancellor of* Great-Britain.

The humble Petition and Repreſentation of Henry Edwards, *Eſq; one of the Maſters of the high and honourable Court of* Chancery.

Sheweth,

THAT *William Wilſon*, Citizen and Goldſmith of *London*, is and ſtands juſtly indebted to *Fleetwood Dormer*, Eſq; late one of the Maſters of this Court upon Account, in the full Sum of twenty four thouſand and forty ſix Pounds, four Shillings, as by the Books of the ſaid *William Wilſon* doth and may appear.

That the ſaid *Fleetwood Dormer* is and ſtands juſtly indebted to divers Perſons, Suitors in this Court, in ſeveral conſiderable Sums of Money. And for the more ſpeedy getting in and recovering the ſaid Debt, and effectual Payment of all ſuch Sum and Sums of Money as are owing by the ſaid *Fleetwood Dormer* as aforeſaid, the ſaid *Fleetwood Dormer*, for that End and Purpoſe, hath by Indenture bearing Date the 26th of *July* 1721, granted, aſſigned, transferred, and ſet over to your Petitioner, his Executors, Adminiſtrators, and Aſſigns, the ſaid Debt or Sum of twenty four thouſand and forty ſix Pounds four Shillings in Truſt, and to the Intent that your Petitioner ſhall pay, apply, and diſpoſe of the ſame, or ſuch Part thereof as ſhall from time to time be by him got in and received of and from the ſaid *William Wilſon*, in ſuch Manner as this Court ſhall order and direct.

That it appears to your Petitioner, that the ſaid *William Wilſon* is indebted to divers other Perſons in great Sums of Money, and for ſome time hath not been able to carry on his Buſineſs, or able to make good and pay the ſaid Debt ſo aſſigned to your Petitioner; but hath lately offered to your Petitioner and his other Creditors to come to a Compoſition, and to pay them in Proportion the utmoſt he is able. And your Petitioner doubting whether he can with Safety to himſelf, agree to any ſuch Compoſition,

Humbly prays your Lordſhip would be pleaſed to refer it to one of the Maſters of this Court, to ſee if ſuch Compoſition ſo propoſed by the ſaid *Wilſon* be for the Benefit of the Perſons intituled to receive the ſame.

And your Petitioner ſhall ever pray, *&c.*

30th of *June* 1722.

Be it as is prayed, and to that End let it be referred to Mr. Hiccocks *one of the Maſters of this Court, and let the Maſter ſpeed his Report: After which, ſuch further Order will be made as ſhall be juſt; of which give Notice forthwith.*

Macclesfield C.

Mr. *Lutwyche*. My Lords, I beg Leave to take Notice, that in this Petition it is expreſly recited, that *Dormer* was indebted to the Suitors of the Court, and that being ſo, we apprehend the greateſt Care ſhould have been taken for their Benefit. Your Lordſhips ſhall ſee in the Progreſs of this thing, how it was tranſacted. I believe any Perſon that is concerned in the Court of *Chancery*, hath not known ſuch a Proceeding in the moſt trifling Matter whatſoever. My Lords, the next thing is a ſecond Petition, ſaid to be with a Report annexed, but we can't find it filed; here is a Paper of Mr. *Hiccocks* not ſtampt nor filed, which we do apprehend to be the Report meant, and therefore we deſire that may be firſt read.

Clerk reads 26th of *July* 1722.

WHereas by an Order made by the Right Honourable the Lord High Chancellor of *Great Britain*, the thirtieth of *June* laſt, upon the humble Petition of *Henry Edwards*, Eſq; one of the Maſters of this Court, I am directed to ſee if the Compoſition in the ſaid Order mention'd, to be offer'd or propos'd to be made by *William Wilſon*, Citizen and Goldſmith of *London*, to the ſaid Mr. *Edwards*, as Aſſignee of *Fleetwood Dormer*, Eſq; late one of the Maſters of this Court, who was a Creditor of the ſaid *William Wilſon*, for the Sum of 24046 *l.* 4 *s.* 0 *d.* in the ſaid Petition mention'd: I have been attended by the ſaid Mr. *Edwards*, and by the ſaid *William Wilſon*, and conſidered of the ſeveral Matters by the ſaid Petition and Order to me referred. And the ſaid *William Wilſon* hath un-

der his Hand in Writing propos'd to assign over to the said Mr. *Edwards* (as a Composition for, and in full Discharge of the said Sum of 24046 *l.* 4 *s.* 0 *d.*) the Sum of 10000 *l.* part of a larger Sum due to the said *William Wilson*, from *Edward Poulter* of *Hackney*, in the County of *Middlesex*, Gent. and to pay to the said Mr. *Edwards* in Specie the Sum of 1463 *l.* 2 *s.* 1 *d.* over and above the Sum of 560 *l.* already paid to the said Mr. *Dormer* in part of the said Composition. And upon Consideration had of the Circumstances of the said *William Wilson*, and the said several Matters, I am of Opinion that the accepting the said Composition will be for the Benefit of the Person or Persons entitled to receive the same. All which I humbly certify and submit to his Lordship.

Hiccocks.

Mr. *Lutwyche*. Now read the Petition of Mr. *Edwards*, and the Order thereupon.

Clerk reads.

To the Right Honourable Thomas *Earl of* Macclesfield, *Lord High Chancellor of* Great Britain.

The humble Petition of Henry Edwards, *Esq*; *one of the Masters of the high and honourable Court of Chancery.*

Sheweth,

THAT upon your Petitioner's former Petition prefer'd to your Lordship relating to *William Wilson, Citizen and Goldsmith of* London, your Lordship *the* 30th *of June last was pleas'd to refer it to Mr. Hiccocks*, one of the Masters of this Court, *to see if the Composition mention'd in the* said Petition and *Order to be proposed by the said Wilson*, would be for the Benefit of the Persons entitled to receive the same.

That the said Mr. *Hiccocks* having been attended by your Petitioner, and *the said Wilson hath pursuant* to your Lordship's said Order, made his Report dated *the* 26th *of July last*, whereby he certifies that he is of Opinion that the accepting of the Composition in his Report mention'd, will be for the Benefit of the Person or Persons entitled to receive the same, as by the Report annexed.

Wherefore your Petitioner most humbly prays your Lordship to take into your Consideration the Matter of the said Report, and to order your Petitioner to accept of the said Composition upon the Terms therein mention'd, if your Lordship shall so think fit, or to make such other and further Order in the Premisses, as to your Lordship shall seem most meet.

And your Petitioner shall ever pray, *&c.*

3d of *August*, 1722.

On the Report annexed be it as is prayed. Of which give Notice forthwith,

Macclesfield, C.

Mr. *Lutwyche*. My Lords, I must beg Leave to make one Observation upon this, that the noble Lord may explain it, for I believe there is no Precedent for it; when there is a Composition thus to be made, and thus referred, and a Report hath been made, The Prayer of the Petition is, that Mr. *Edwards* may be order'd to accept of this Composition, or to make such other Order, as his Lordship should think fit. The Answer to it is, Be it as is prayed, of which give Notice forthwith; by which I suppose the Parties understood that it was ordering Mr. *Edwards* to accept of this Composition. Now it is wonderful to me, if he was order'd to accept of the Composition, why it is said, give Notice forthwith? What? when the thing is done? Besides, there is another thing more material, to whom should such Notice be given? surely to the Suitors of the Court. But it is well known his Lordship had not appointed any Sollicitor for the Suitors of the Court, and they had no Notice, tho' here is a Semblance or Shew of what is done in other Cases. We shall beg Leave to shew next to your Lordships, that these Orders on these Petitions, this Report, and these Proceedings, were not one of them entred or filed as Orders usually are.

Mr. *Plummer*. My Lords, I beg Leave to make one Observation before this Matter goes over. The Petition is by Mr. *Edwards* only, one of the Masters, and it is that my Lord *Macclesfield* would be pleas'd to order him to accept of the Composition. None of the Suitors of the Court, who were the Persons entitled to receive the same, are Petitioners.

Clerk reads two Certificates from, and signed by *Edward Goldsbrough*, Deputy Register, that there were no such Orders entred, nor no such Report filed.

Mr. *Lutwyche*. My Lords, the Composition is signed by *William Wilson*. I desire Mr. *Edwards* may be asked whether he knows Mr. *Wilson*'s Hand?

Mr. *Edwards*. This is signed by Mr. *Wilson*; it is Mr. *Wilson*'s Hand.

Clerk reads,

WHereas a Suit in Chancery is now depending between Mr. *Edward Poulter* of *Hackney*, and myself, for the Sum of 22060 *l.* 12 *s.* 5 *d.* which he agreed to pay me for and upon closing all Accounts between us: And whereas *Fleetwood Dormer*, Esq; late a Master in the high Court of Chancery, being indebted to divers Persons, Suitors in the said Court, in several considerable Sums of Money, for and on Account of Money brought before and paid to him as one of the Masters of the said Court, he the said *Fleetwood Dormer*, for the better Payment thereof, did by Assignment dated the 26th of *July* 1721, assign over to *Henry Edwards*, Esq; one of the Masters of the said Court, a Debt or Sum of 24046 *l.* 4 *s.* which was and is due and owing from me to him the said *Fleetwood Dormer*: And whereas I being incapable of paying the said Debt of 24046 *l.* 4 *s.* did lately propose as a Composition for and in full Discharge of the same, to assign to the said *Henry Edwards* the Sum of 10000 *l.* part of the Sum of 22060 *l.* 12 *s.* 5 *d.* due to me from the said *Edward Poulter*, as aforesaid; and likewise to pay to him the said *Henry Edwards*, the Sum of 1463 *l.* 2 *s.* 1 *d.* in Specie, over and above the Sum of 560 *l.* before paid to the said Mr. *Dormer*, in part of the said

ſaid Compoſition: And whereas on a Petition preſer'd to the Right Honourable the Lord High Chancellor of *Great Britain*, by the ſaid *Henry Edwards*, repreſenting the Matter of the ſaid Propoſal; and after ſeveral ſubſequent Proceedings had upon the ſaid Petition, his Lordſhip was pleaſed, by Order dated the third of *Auguſt*, 1722, to order the ſaid *Henry Edwards* to accept of the ſaid Compoſition: And the ſaid *Henry Edwards* having thereupon agreed to accept of the ſaid Compoſition, accordingly I do hereby, in Conſideration thereof, aſſign over to the ſaid *Henry Edwards* the Sum of ten thouſand Pounds, part of the Sum of twenty two thouſand and ſixty Pounds, twelve Shillings and five Pence, due to me from the ſaid *Edward Poulter* as aforeſaid, having already paid him the ſaid Mr. *Edwards*, the other Sum of 1463 *l.* 2 *s.* 1 *d.* before-mention'd. And I do hereby promiſe to pay to the ſaid *Henry Edwards*, Eſq; or his Order, the ſaid Sum of ten thouſand Pounds, on my recovering the Sum of twenty two thouſand and ſixty Pounds, twelve Shillings and five Pence aforeſaid, or otherwiſe to pay him a like Proportion of what I ſhall recover, more or leſs, from the ſaid *Edward Poulter*. And I do hereby further promiſe, that I will not do any Act to incumber or diſcharge the Demand I now have againſt the ſaid *Edward Poulter*, without the Conſent of the ſaid *Henry Edwards*. And whereas the ſaid Mr. *Edwards* does now accept of the ſaid Compoſition, I do hereby declare and agree, that if I do not on Demand pay him the before-mention'd Proportion of what I ſhall recover from the ſaid *Edward Poulter* as aforeſaid, or do any ways diſcharge the Demand I now have againſt him, without the Conſent of the ſaid *Henry Edwards*, that then the ſaid Compoſition ſo made by the ſaid *Edwards*, ſhall be void, and of no effect, as if it had never been made. And I do hereby further promiſe, I will at my own Charge proſecute the ſaid Suit, and alſo do and execute all further and other Acts that ſhall be neceſſary for the better aſſigning to the ſaid *Henry Edwards*, Eſq; the before-mention'd Proportion of what I ſhall or may recover as aforeſaid, from him the ſaid *Edward Poulter*, as he the ſaid *Henry Edwards* ſhall at any Time require. Witneſs my Hand this twenty eighth Day of *Auguſt*, 1722.

William Wilſon.

31ſt of *October*, 1724. Paid to *Henry Edwards*, Eſq; the Sum of one thouſand Pounds, in part of this Note or Aſſignment.

William Wilſon.

Mr. *Lutwyche*. My Lords, this Compoſition which hath been read to your Lordſhips, is recited to be in full Satisfaction and Diſcharge of *Wilſon*'s Debt. Now we beg Leave Mr. *Edwards* may be asked, whether he made any Application to the Earl of *Macclesfield*, before the firſt Petition was preferr'd?

Mr. *Edwards*. My Lords, I had received Propoſals from Mr. *Wilſon*. He came to me and told me, he had a Sum of Money in his Hands, and was willing to pay the Debt to Mr. *Dormer*, in Proportion with his other Creditors, and asked me whether I would accept of a Compoſition, and give him a Diſcharge in full. I told him I had no Power to make a Compoſition, but however I would repreſent it to ſome of the Maſters; and accordingly I ſpoke to Mr. *Hiccocks*, who was then ſenior Maſter, and told him the Propoſal Mr. *Wilſon* had made; and I believe I mention'd it to others, but eſpecially to Mr. *Hiccocks*, he being the ſenior Maſter, and more particularly concerned in Mr. *Dormer*'s Affairs. Mr. *Hiccocks* was of Opinion I could not ſafely make a Compoſition. I asked, What Method then was the moſt proper to be taken? if that was really all he had to pay, I had better ſecure that than have nothing. He ſaid he did not ſee why it might not be in this Caſe as in other Caſes; whether upon a Petition to my Lord Chancellor, he might not direct an Enquiry to be made by a Maſter, whether it was for the Benefit of the Parties to make ſuch Compoſition or not. Upon that I waited on my Lord Chancellor, and acquainted him with Mr. *Wilſon*'s Propoſal. I told his Lordſhip, I thought I had not Power to do it. He ſaid, I think ſo too; I don't ſee that you have Power to do it. Said I, I am informed that it is uſual in Caſes of this Nature, to apply to the Court by Petition, that it may be referred to a Maſter, to ſee whether the accepting of this Compoſition be for the Benefit of the Parties concerned or not. Yes, ſays my Lord, I think that is very proper, that will indemnify you, I would have you prefer a Petition; which accordingly I did.

Mr. *Lutwyche*. I would beg Leave to ask in Relation to what he mentions, that it was taken Notice of that he had no Power to make ſuch Compoſition, whether any thing was ſaid whether my Lord *Macclesfield* had ſuch a Power?

Mr. *Edwards*. No, there was nothing ſaid of that.

Mr. *Plummer*. My Lords, I deſire he may be asked, whether any of the Suitors were acquainted with this intended Compoſition?

Mr. *Edwards*. No.

Mr. *Sol. General*. Did my Lord *Macclesfield* give any Direction to give Notice to any of the Suitors?

Mr. *Edwards*. No.

Mr. *Plummer*. My Lords, I deſire he may be asked if he himſelf attended Mr. *Hiccocks* when Mr. *Wilſon* was before Mr. *Hiccocks*?

Mr. *Edwards*. I am not ſure I was there at any time with Mr. *Wilſon*.

Mr. *Plummer*. If he knows what Methods were taken to know what Mr. *Wilſon* was worth?

Mr. *Edwards*. I underſtood that Mr. *Hiccocks* and Mr. *Rogers*, the two ſenior Maſters, upon Mr. *Dormer*'s abſenting himſelf, had Mr. *Dormer*'s Accompts laid before them, and that they were directed to inſpect thoſe Matters; and I was informed they did look into *Dormer*'s Books, and had alſo the Peruſal and Inſpection of Mr. *Wilſon*'s Books, to ſee how Mr. *Dormer*'s Affairs ſtood in thoſe Books.

Mr. *Plummer*. My Lords, I deſire Mr. *Edwards* may be asked if any Body was employ'd for the Suitors on their Behalf?

Mr.

Mr. *Edwards*. I was before Mr. *Hiccocks*, but not preſent with Mr. *Wilſon*.

Mr. *Plummer*. I ask if any Body on the Suitors Behalf was before Mr. *Hiccocks*, when Mr. *Wilſon* was there, to ſee and croſs-examine him?

Mr. *Edwards*. I don't remember there was.

Mr. *Serj. Pengelly*. My Lords, I deſire Mr. *Edwards* may be asked whether this Petition is of his own Hand-writing?

Mr. *Edwards*. No, my Lords.

Mr. *Serj. Pengelly*. Do you know whoſe it is?

Mr. *Edwards*. It is my Clerk's Hand.

Mr. *Serj. Pengelly*. Whether the two laſt Lines were ſtruck out before the Anſwer to the Petition, and by what Hand?

Mr. *Edwards*. I don't know when they were ſtruck out.

Mr. *Serj. Pengelly*. My Lords, we will beg Leave to mention what it is. At the End of the firſt Petition, the Maſter deſires an Indemnification by the Order of the Court: Part of the Petition is, that he may be indemnified and ſaved harmleſs in making ſuch Compoſition. But that is ſtruck out before the Anſwer, which ſhews, as I humbly apprehend, the very Notice that the Earl of *Macclesfield* himſelf took, how dangerous and hazardous that Tranſaction was.

Read the Words.

Clerk reads. And that your Petitioner may be indemnified and ſaved harmleſs in making ſuch Compoſition.

Mr. Serj. Pengelly. Do theſe Words ſtand now in the Reading?

Clerk. No, they are razed out.

Mr. Edwards. I remember this was a Paper that I laid before the honourable Committee. I was a little ſurprized to ſee thoſe Words ſtruck out; but when they were ſtruck out I can't ſay, nor by whom.

Mr. Lutwyche. I deſire he may be asked, if they were ſtruck out before he delivered the Petition into the Committee?

Mr. Edwards. Yes they were.

Mr. Sol. Gen. My Lords, we deſire he may be asked how much he hath received of this Compoſition?

Lord Lechmere. I deſire him to explain himſelf, whether theſe Words were ſtruck out after the Petition delivered, and before the Order made by the noble Earl?

Mr. Edwards. My Lords, I don't remember ever to have taken Notice, that thoſe Words were ſtruck out, till I had Occaſion to look for it to lay it before the Committee.

Lord Lechmere. Whether he hath any Doubt whether they were ſtruck out before they were delivered into the Committee?

Mr. Edwards. They were ſtruck out before I delivered them into the Committee.

Mr. Sol. Gen. In whoſe Cuſtody was this Petition?

Mr. Edwards. I believe part of the Time in Mr. *Hiccocks*'s; Mr. *Hiccocks* ſent it to me, and I have had it ever ſince.

Mr. Serj. Pengelly. Whether he ſtruck out theſe Words that were inſerted for his own Indemnification?

Mr. Edwards. No, upon my Oath I did not.

Earl of Abingdon. As I apprehend, there was no Commiſſion of Bankrupcy againſt *Wilſon*, therefore I would know what Method was taken to inform the Court of the real Subſtance and Ability of *Wilſon* before this Compoſition was made?

Mr. Edwards. I know of no other Application made to the Court by Mr. *Wilſon*.

Earl of Abingdon. Was *Wilſon* examined upon Oath?

Mr. Edwards. Mr. *Hiccocks* told me that Mr. *Wilſon* had made an Affidavit, that this Sum of Money which he propoſed as a Compoſition, was what he was able to pay in Proportion with the reſt of his Creditors, and that he grounded his Report thereupon.

Mr. Lutwyche. Was this Affidavit ever filed?

Mr. Edwards. No, my Lords.

Mr. Sol. Gen. My Lords, we deſire he may give an Account how much he hath received of this ten thouſand Pounds.

Mr. Edwards. The firſt Sum was fourteen hundred and odd Pounds, and the Sum of one thouſand Pounds ſince.

Mr. Sol. Gen. How much of this was of the ten thouſand Pounds?

Mr. Edwards. Only the one thouſand Pounds.

Mr. Sol. Gen. What is become of *Poulter*?

Mr. Edwards. *Wilſon* hath told me that he is in *Holland* or *France*.

Mr. Sol. Gen. What was his Character, as to Subſtance, at the Time of his Compoſition?

Mr. Edwards. I never met any Body that could give an Account of his Character. All I heard of him was from Mr. *Wilſon* himſelf.

Mr. Lutwyche. My Lords, I deſire he would acquaint your Lordſhips when the one thouſand Pounds was paid?

Mr. Edwards. I can't recollect exactly the Time.

Mr. Lutwyche. As near as you can, before or ſince *Chriſtmas*?

Mr. Edwards. I believe it was in *September* or *October* laſt; I believe in *October*.

Mr. Sol. Gen. I deſire Mr. *Edwards* may inform your Lordſhips what he thought of *Poulter*, at the Time of the Compoſition, whether he looked upon him as a Man of Subſtance?

Mr. Edwards. I could make no Judgment of the Man, I never ſaw him before; I know nothing of him, otherwiſe than as Mr. *Wilſon* told me.

Mr. Sol. Gen. That is no Anſwer to my Queſtion, which is what his Opinion was as to his Subſtance at the Time of the Compoſition, whether he would have truſted him with one hundred Pounds?

Mr. Edwards. I can't tell what Anſwer to give to it; *Wilſon* repreſented him to me as a Man able to pay the Debt; and from his Repreſentation I believed that *Poulter* was ſufficient.

Mr. Sol. Gen. Whether he enquired into *Poulter*'s Character?

Mr. Edwards. There was no Body I knew to enquire of.

Mr. Sol. Gen. Did he enquire, or did he not?

Mr. Edwards. I asked Mr. *Wilſon* as many Queſtions as I could, and what his Opinion was about him. He told me he believed he was able to pay his Debts, and he told me one *Helbut* a *Jew*, who

was his Bail, could tell his Subſtance. I happen'd to meet *Helbut* at the *Rainbow* Coffee-Houſe, and I asked him if he knew *Poulter*. He ſaid Yes. Says I, is he a Man of any Subſtance, What is he? No, ſays he, I believe he is in very mean Circumſtances. This is all I ever asked.

Sol. Gen. What was your Opinion of this Man's Abilities?

Mr. Edwards. My Lords, I told you that as to the account I had of him, *Mr. Wilſon* gave me a great aſſurance that he was a Man of Ability.

Mr. Plummer. I deſire he may be ask'd, whether *Mr. Wilſon* hath not paid his whole Debt to ſeveral other Creditors?

Mr. Edwards. I am inform'd he hath paid his full Debt to ſome Creditors.

Mr. Plummer. My Lords, I deſire he may be ask'd, what Directions he received from my Lord *Macclesfield* to inquire into this Man's Circumſtances?

Mr. *Edwards.* I had no Directions.

Mr. *Plummer.* Whether any Inquiry was made by the Earl of *Macclesfield?*

Mr. *Edwards.* Not as I know of.

Mr. *Lutwyche.* I think he mentioned one *Helbut* as his Bail: I deſire to know whether there was a Suit commenced for this Debt aſſigned?

Mr. *Edwards.* I underſtood it was for this Debt aſſigned, which *Wilſon* recovered at Law.

Mr. *Serj. Pengelly.* My Lords, I deſire he may be asked, whether Mr. *Poulter* hath appeared here and been eſteemed ſolvent, or a Perſon quite gone away?

Mr. *Edwards.* I have not ſeen Mr. *Poulter*, nor any that have ſeen him, for ſome conſiderable time.

Mr. *Serj. Pengelly.* My Lords, I beg Leave to make one Obſervation, and it is to ſave your Lordſhips time; that is, That you would be pleaſed to obſerve in the Proceedings upon this Article, the ſeveral Acts and Orders made by the Earl of *Macclesfield* relating to this Deficiency of *Dormer*'s, do take Notice of his Deficiency, and you'll find the Earl himſelf doing one Act which makes a Deficiency; that is, compounding a Debt due from *Wilſon* to *Dormer*; and therefore thoſe Orders having been read before your Lordſhips, you will pleaſe to retain them in your Memory, till we come to the 6th Article, wherein it is charged that there was a Deficiency in *Dormer*'s Office, and there we ſhall ſhew that this noble Lord declared that he never knew of any Deficiency; and by an Order made in Court, pronounced by himſelf, he then did direct that a Maſter ſhould inquire if there was any Deficiency in this Office; ſo that thoſe publick Acts won't be neceſſary to be read over again upon that Article, but as now produced, will be ſufficient to prove the Notice the noble Earl had of this Deficiency, and that even he made part of the Deficiency himſelf.

Mr. *Lutwyche.* My Lords, we have done upon theſe two Articles we have opened.

Mr. *Serj. Probyn.* My Lords, if the Gentlemen have done, we deſire to ask ſome Queſtions, and firſt we beg Leave that he may be askt, whether any of the Maſters were acquainted with this Agreement or Compoſition with Mr. *Wilſon?*

Mr. *Edwards.* I don't remember that any were, but Mr. *Hiccocks.*

Mr. *Serj. Probyn.* My Lords, we deſire he may recollect whether there was any Conſultation between him and any other Maſter, as to the Manner that this Compoſition ſhould be made, before it was accepted, and whether it was a reaſonable Compoſition or not?

Mr. *Edwards.* I mentioned it to two or three other Maſters at the publick Office, but I can't charge my Memory particularly who they were.

Mr. *Serj. Probyn.* Was that before the time that the Compoſition was made?

Mr. *Edwards.* Before the time I applied to my Lord *Macclesfield.*

Mr. *Com. Serj.* My Lords, I deſire that Mr. *Edwards* may inform your Lordſhips from whom it was that he received this Information, that ſeveral of the Creditors of *Wilſon* were paid their full Debts?

Mr. *Edwards.* The firſt Perſon that informed me was Sir *Laurence Carter*; I happened to be at his Chambers, and naming to me the Affair of *Wilſon*, he told me his Brother Mr. *Thomas Carter* had received 120 *l.* which Mr. *Wilſon* owed him, and which was his whole Sum.

Mr. *Com. Serj.* I deſire to know when it was that he received that Sum?

Mr. Edwards. There was no time mentioned when that was paid him: As near as I can recollect the time, when Sir *Laurence Carter* told me this, it was ſoon after the Compoſition.

Mr. Com. Serj. My Lords, I deſire he may recollect, whether this Payment was made before the Compoſition or after; did not he ſay it was before the Compoſition?

Mr. Edwards. No, I don't remember that.

Mr. Serj. Probyn. I deſire he may be asked, whether he knows any thing of this Payment to *Mr. Carter* of his own Knowledge?

Mr. Edwards. No, I don't know it of my own Knowledge, but I believe it to be very true.

Mr. Serj. Probyn. Since he had this Information of one Debt being paid intirely, tho' he had compounded with others, I deſire he may be ask'd whether he ever charg'd *Mr. Wilſon* with it?

Mr. Edwards. Yes, my Lords, I did: A little after I went to *Mr. Wilſon*, and I told him that I was informed he had paid *Mr. Thomas Carter* his full Demand, and it was rumoured about that he had paid ſeveral others their full Debts, and that it look'd unfair. Says he, this Money was lent me by my particular Friends, to pay off ſome little ſtraggling Debts to keep me up in my Buſineſs, and therefore I was unwilling he ſhould loſe it.

Mr. Serj. Probyn. Whether did he apprehend this to be a new Debt contracted ſince his Failure, or an old one due before?

Mr. Edwards. I don't know when the Debt was contracted.

Mr. Com. Serj. I apprehend he ſays, that this Money was lent him by ſome Friends to ſet him up again?

Mr. Lutwyche. Really, my Lords, we would not interrupt the Gentlemen, but I take it, what they are going on with is not Evidence. We muſt ſubmit it, whether what *Mr. Wilſon* ſaid is Evidence, either on the one Side or on the other?

Mr. Com. Serj. We muſt humbly be in your Lordſhips Judgment, whether this kind of Evidence be not as proper on our Side as on the other? moſt of the Evidence *Mr. Edwards* has given to affect the noble Earl, has been only Informations he has had from *Wilſon* or Sir *Laurence Carter*, and yet now the learned Manager objects the ſame Information muſt not be admitted as Evidence on the other Side. I apprehend if any Favour is to be ſhewn on either Side, it ſhould rather go on in the Support of Innocence.

Lords. Go on, go on.

Mr. Sol. Gen. My Lords, we don't oppoſe their going on, we only beg Leave to ſet your Lordſhips right. We did not give a tittle of Evidence of what *Mr. Wilſon* ſaid: We have proved the Petitions, we have proved the Orders, we have proved the Facts; we did not mention a Word of Sir *Laurence Carter*, it ſprung from this Examination; but we are willing they may go on, if your Lordſhips think fit.

Earl of Macclesfield. My Lords, I apprehend there is no Occaſion to give your Lordſhips any trouble. If what this Gentleman hath ſaid, with relation to *Mr. Wilſon*'s Payment to his Creditors is no Evidence, it needs no Anſwer.

Mr. Com. Serj. My Lords, we deſire that *Mr. Edwards* may inform your Lordſhips, whether or no there was any Conſultation among the Maſters relating to this matter, and what their Opinion was?

Mr. Edwards. I don't know of any Conſultation about it.

Mr. Com. Serj. We deſire that he may inform your Lordſhips, whether he made any Acknowledgment for his being admitted into his Office, and to whom this Money was paid, and to what Purpoſe, and how applied?

Mr. Edwards. My Lords, the Steps I took to be admitted into my Office, if your Lordſhips will give me leave to trouble your Lordſhips with the Narrative, were theſe. Firſt, I applied to *Mr. Godfrey* one of the Maſters, with whom I had moſt Acquaintance: I told him I heard *Mr. Dormer*'s Office would be diſpoſed of; he told me he believed it would. Says I, if I could be accepted I have ſome Thoughts of treating for it, what is the uſual method in thoſe Caſes to be recommended to my Lord Chancellor? Says he, you muſt apply to my Lord's Secretary *Mr. Cottingham*; accordingly I did, and I told *Mr. Cottingham* that I had heard *Mr. Dormer*'s Office was to be diſpoſed of. *Mr. Cottingham* told me it was to be diſpoſed of. I then talk'd to him about the Terms. *Mr. Cottingham* told me as to the Price and the Perſon, my Lord *Macclesfield* had left it intirely to the other Maſters; for whatſoever that Place could fetch, was intended to go towards making up *Mr. Dormer*'s Deficiency. Upon that, my Lords, I went again to *Mr. Godfrey*, and after a Meeting or two, I concluded to give five thouſand Pounds if I could be admitted. Whether *Mr. Godfrey*, or *Mr. Cottingham*, or who went to my Lord I can't tell. I had not the Honour to ſee my Lord till I was admitted: But upon theſe Terms I was approved. I had Direction, I can't ſay whether *Mr. Godfrey* or *Mr. Cottingham* gave me the Directions, that I ſhould pay my Money into the Hands of *Mr. Rogers* the then ſenior Maſter; accordingly I did pay five thouſand Pounds, and in three or four Days after I had the Honour to be admitted and ſworn in.

Mr. Strange. My Lords, I deſire he may be asked, whether at the time of his Admiſſion any Preſents was made by him to the Earl of *Macclesfield* or to his Secretary?

Mr. Edwards. None at all, but the Secretary's Fees as uſual in thoſe Caſes.

Mr. Strange. Whether at the time he agreed to pay the Sum of five thouſand Pounds for the Office, he knew how the Money was to be apply'd?

Mr. Edwards. Yes, *Mr. Godfrey* told it me when I went back to him from *Mr. Cottingham*; I remember to have asked him ſeveral Queſtions, and made him ſeveral Propoſals relating to the Office, for we differed a great deal about its Value; I think I firſt propoſed three thouſand Pounds for it; but he diſliking that and ſome other Offers I made him, I deſired to know how much it was that my Lord *Macclesfield* inſiſted upon? to which he anſwered, that it was not my Lord's Intention to take any thing for the Admittance, but that he had left it to the Diſpoſal of the Maſters, to make the moſt of it for the Benefit of the Office.

Mr. Com. Serj. Whether he knows how this Money was diſpoſed of, and to what Uſe employed?

Mr. Edwards. I can't remember the time, but ſome ſhort time before *Mr. Rogers* ſurrendred his Office, he paid me back this five thouſand Pounds which I in a little time paid to the Suitors of the Court.

Mr. Strange. Whether before he ſurrendred his Office, he had any Diſcourſe with the Maſters how *Mr. Dormer*'s Debts were ſecured?

Mr. Edwards. No otherwiſe than upon this Treaty. I told *Mr. Cottingham*, I hear there is a Diſcourſe of a Deficiency in *Mr. Dormer*'s Office; ſays he, I believe there is, but how much I can't tell; but that can be no Objection to you, becauſe you are to anſwer for no more than you receive. Matters are all ſettled and taken Care of, that what Deficiency ſoever there is ſhall be made good.

Mr. Serj. Probyn. By whom?

Mr. Edwards. He did not ſay by whom, or in what Manner.

Mr. Serj. Probyn. Had you any Diſcourſe with any other Maſter?

Mr. Plummer. My Lords, I beg leave to make one Obſervation. The Counſel ſays with any other Maſter, and the Gentleman at the Bar ſays it was *Mr. Cottingham* told him ſo.

Mr. Serj. Probyn. This Gentleman I am examining

amining is one of the Masters, therefore it is not improper to ask whether he had any Discourse with any other of the Masters?

Mr. Edwards. I made the same Objection to *Mr. Godfrey*, and he answered me much the same. *Mr. Godfrey* said he could not tell what the Deficiency was, but whatsoever it was, that would be all settled and made good.

Mr. Serj. Probyn. As he had this Discourse with *Mr. Godfrey*, I desire he may be ask'd, whether he hath not likewise had some Discourse with *Mr. Rogers* how this Deficiency was to be made good?

Mr. Edwards. No, I don't remember I had any Discourse with *Mr. Rogers*.

Mr. Com. Serj. My Lords, I desire he may inform your Lordships, whether at any other time he had any Discourse with any of the Masters about this matter?

Mr. Edwards. My Lords, I often talk'd upon this Subject with the Masters, as a matter which very much concern'd my Office. This I mentioned at the time I came in. They were then all of Opinion that this Deficiency was to be made good. I don't remember that any Body told me in what method or particular way it was to be made good.

Mr. Com. Serj. I desire he would inform your Lordships, as near as he can remember, whether it was said that it would be made good, or that it was to be made good?

Mr. Edwards. I can't remember the distinct Words, I took it to have the same tendency and meaning.

Mr. Serj. Probyn. I desire he may be ask'd, whether he hath not several times and on many Occasions heard the Masters declare, that this Deficiency was to be made good, and by the Masters?

Mr. Edwards. I have heard them several times declare, that they did not doubt but it would be made good; but I never heard them say that it would be made good by the Masters. I have often heard the Masters say they would not make it good.

Mr. Serj. Probyn. I desire he may be ask'd, whether about the time that the Masters advanced the five hundred Pounds apiece, he did not hear them declare how this Deficiency of *Dormer* was to be made up?

Mr. Edwards. My Lords, when I came into the Office, I think the very Day that I was admitted, *Mr. Rogers* paid five hundred Pounds; eight more paid five hundred Pounds apiece, some at one time, some at another; they did not all pay at the same time. That I heard was to go towards making up this Deficiency; but how far the Masters intended to contribute further I can't say.

Mr. Com. Serj. I desire he may inform your Lordships, whether he did not apprehend that the making up of this Deficiency was a great Concern to him?

Mr. Edwards. Yes, I think it hath been of a great Concern to me.

Mr. Com. Serj. I desire to know then how it comes to pass that he inquired no more into it?

Mr. Edwards. My Lords, I remember I was once asking some Questions relating to that Account, and it was told me, that the State of this Deficiency had been laid before my Lord Chancellor before I was admitted. Upon that I did conclude, that this Contribution of the Masters, of five hundred Pounds apiece, had been in Concert with my Lord Chancellor. I understood it to be so; I don't know whether my Lord gave Orders that it should be so.

Mr. Com. Serj. I desire he may be asked who it was that told him so?

Mr. Edwards. I think *Mr. Hiccocks* told me so.

Mr. Serj. Probyn. My Lords, we have done.

Mr. Robins. I desire to know what Answer *Mr. Hiccocks* gave to the Questions he asked?

Mr. Edwards. Only that my Lord was acquainted with it, and had the State of *Mr. Dormer*'s Office laid before him.

Mr. Serj. Pengelly. My Lords, if they have done, we only beg leave to observe, that they have been establishing the Notice of this whole Deficiency on the Earl, upon the first Vacancy in the Office, even before *Mr. Edwards* came in; so that the whole Transaction afterwards proceeded upon a full Notice of the Circumstances and State of the Office. The Evidence of the Contribution of the Masters, and of the Earl of *Macclesfield*, towards making good this Deficiency, prevents, in a great measure, our bringing any Proof to the fifteenth Article, which is now going to be opened.

Mr. Plummer. My Lords, if they have done, I only beg leave to observe, that the very letting *Mr. Edwards* pay his five thousand Pounds to the Deficiency of the Office, and my Lord *Macclesfield*'s not taking it to his own Use, is a sufficient Proof of his Knowledge of the Deficiency. And as to this Composition, I have one Question more to ask. I think he says he mention'd it to two or three Masters; I desire to know if he did so, and whether they approv'd it?

Mr. Edwards. I think one of the two or three Masters was *Mr. Lightboun*. He was there, and he did say, as I remember, that he thought we might as well lose the whole, as take so small a part of such a Debt.

Mr. Plummer. I desire another Question, and that is, if he consulted any of *Mr. Wilson*'s Creditors before he made this Composition?

Mr. Edwards. No, my Lords, I did not know any of them.

Mr. Serj. Pengelly. How much did he receive in the whole from the Masters?

Mr. Edwards. I received five hundred Pounds from nine of them.

Mr. Serj. Pengelly. Did any of the Masters, and which, refuse?

Mr. Edwards. Yes, *Mr. Lightboun* refused.

Mr. Serj. Pengelly. For what Reason?

Mr. Edwards. That I can't tell; he did not give any particular Reason.

Mr. Com. Serj. My Lords, I believe it may be necessary to trouble your Lordships with asking another Question: Whether this Discourse in Relation to this Composition, was before or after the Composition made?

Mr. Edwards. I believe it was before.

Mr.

Mr. Com. Serj. Then I desire to know whether Mr. *Edwards*, upon that or any other Occasion, acquainted the noble Earl of it?

Mr. Edwards, No, I don't remember I did.

Mr. Sol. Gen. My Lords, I believe we have done with these two Articles.

Sir John Rushout. My Lords, the Commons proceed to the fifteenth Article against *Thomas* Earl of *Macclesfield*, and they have entrusted me to lay open to your Lordships the Subject matter of this, and the two ensuing Articles, and the Nature of the Evidence they think proper to produce to make good the Charge in these Articles; by which it will appear to your Lordships very fully, that the Crimes charged upon the Person at your Bar, which have already been manifested in so many Instances, did not proceed from Mistake, or mere Negligence; altho' these would have been Faults not excusable in a Person placed in so high a Station, but that they were the Effects of Art and Contrivance, formed to carry on and promote a corrupt and illegal Gain and Advantage to himself.

It may seem at first sight very surprizing, and may not readily obtain Belief with your Lordships, that a Person rais'd by his Majesty's abundant Goodness, to Stations of so great Honour and Profit, who had received large Additions to a plentiful Income by successive and repeated Grants from the royal Bounty, that such a Person should condescend to receive, much more that he should use Arts and Stratagems to obtain further Supplies to his insatiable Thirst of Lucre.

But this your Lordships will plainly see to be the Case, when we have given our Proofs to the fifteenth, sixteenth, and seventeenth Articles. Your Lordships have already heard that there was a very great Deficiency and Loss of the Suitors Money in the Office of Mr. *Dormer*, a late Master in the Court of *Chancery*; that the Earl at your Bar then presiding in that Court, well knew that there was such a Deficiency; that instead of applying Remedies to redress the Evil, he made use of several Methods to cover and conceal it; it being very obvious for him to reflect, that if such a Deficiency was publickly known, and not effectually remedied, none would ever after purchase a Master in *Chancery*'s Place, at least not at such exorbitant Prices to which the Purchase had lately been raised.

What then must be done? here was like to be an entire Stop put to this Branch of Revenue which had yielded so plentifully, and proved so beneficial to his Lordship.

The Contrivance therefore is to oblige the Masters, who had already paid for their Places, to pay again towards making good this Deficiency, and by an artful drawing them to a Compliance in this Point, to conceal and continue the Mischief.

This is what the Commons charge in the fifteenth Article, that the Earl of *Macclesfield*, to conceal the Deficiency in Mr. *Dormer*'s Office, did order several Masters of the Court to bring in their Accounts of the Cash, Effects, and Securities belonging to the Suitors which were in their Hands, with Intent to terrify the Masters thereby, so far, as to oblige them to contribute large Sums to answer the Demands of that Office: And further to engage them to a Compliance in that Respect, he represented to them, that unless they would do it, the Money and Effects of the Suitors would be taken out of their Hands: That by this means he did induce nine of the Masters to contribute five hundred Pounds apiece, which several of them did out of the Suitors Money in their Hands; and this being done, they were never obliged to bring in their Accounts.

What Answer is given to this Charge? The Answer hath been read, and I need not trouble your Lordships with a Recital of it. But the Earl admits that he gave such Orders that the Masters should bring in their Accounts:

That several Masters did afterwards pay and contribute as is charged:

That they were not afterwards obliged to bring in their Accounts.

But then in Excuse he alledges, That this was not done to terrify the Masters to make any Contribution to the Demands on *Dormer*'s Office:

That what they did contribute, he believes they paid freely, and out of their own Money:

That he believes he follow'd therein a Precedent of the like Nature in the Failure of Dr. *Edisbury*.

That he continued to call for the Accounts, but was convinced how tedious a Work it would be, what Obstruction it would give to the Business of the Court, so he laid it aside; and observes, that what is lately done with respect to the Accounts of the Masters, shews the insuperable Difficulties of such an Undertaking.

From this Answer your Lordships may reflect, how just the Observation is, that the Commons have made in their Replication, when they say, the Earl of *Macclesfield* hath industriously avoided giving a direct and particular Answer to several matters positively and certainly alledged against him, which from the Nature of the Facts themselves must necessarily lye in his own Knowledge.

For he admits the Fact charged upon him by the Article; but to that part of it which charges that this was done to conceal the Deficiency in *Dormer*'s Office, he makes no Answer at all.

And where the Article charges, that in order to obtain what is own'd to be done, he did represent to the Masters, that unless they would comply, the Money and Effects of the Suitors should be taken out of their Hands; to this likewise he makes no Answer.

My Lords, It may be difficult for me who am little conversant in Law Proceedings, to lay this matter in its strongest Light before your Lordships. But I take the Case to be this.

The Commons charge, that the Earl of *Macclesfield*, to conceal the Deficiency in *Dormer*'s Office, ordered the Masters to bring before him their Accounts of the Suitors Effects, and threatned that unless they would contribute towards that Deficiency, those Effects should be taken out of their Hands: They contribute, the matter is dropt, and no Accounts are ever brought before him.

The

The Earl acknowledges that he order'd those Accounts to be brought before him; that upon his giving that Order several Masters contributed 500*l.* apiece, and that afterwards the bringing the Accounts was dropt; that this was done to conceal *Dormer*'s Deficiency, and procured by the Menace of taking the Effects of the Suitors out of the Hands of the Masters cannot be denied: What part of the Charge then remains unadmitted? I must submit it to your Lordships, whether, upon what the Earl hath allowed in expres Terms by his Answer, as well as what he hath admitted by not answering at all, the whole Charge of this Article doth not stand confessed, and the Commons might demand Judgment against the Earl, upon this Article, upon his own Confession.

But the Earl adds some things by way of Excuse, I suppose, or Extenuation of the Offence; how immaterially and how evasively your Lordships will soon observe.

He denies, that the ordering the Masters to bring in their Accounts, was done to terrify them to make any Contribution towards *Dormer*'s Deficiency, and yet there is not the least Appearance of any other End, or Design, for which it could be done; nor does he mention, or so much as pretend to any other End which with the least Colour of Reason could be intended by it; he says, indeed, he had a Mind to know the State and Condition of the several Offices, that he might be able to make proper Regulations concerning them; but the thing was dropt before he had this Knowledge given him, and before he made any one Regulation in the matter; and yet he solemnly declares that this was his real and whole Intention: If it was his Intention how came he to alter it so soon? Could it not last till one Regulation was made in a Matter which wanted it so much?

Your Lordships will from hence judge, That the Crime which the Commons charge upon the Person at your Bar was not a Sin of Ignorance; he was informed of the Miscarriage of the Officers of his Court, he was conscious that it needed Regulation, he had sometime a Thought and Intention to make such Regulation; but, alas, it soon proved abortive, and the intended Reformation, however necessary for the Honour of the Court, as well as the Safety and Advantage of the Subject, was soon laid aside: A Conduct so weak and so greatly inconsistent, as not to be accounted for in any Person, who had not been capable of pleading Innocence and Pardon to the same Fact.

However his Lordship having found it necessary to excuse this proceeding with the Masters, by pretending an Intention to make some Regulations concerning them; it became as necessary, in the next Place, to make some Apology for not proceeding to such a Regulation.

And for this he says, that it would be a difficult and tedious Work:

That it would be an Obstruction to the Business of the Court:

That what has been lately done shews the insuperable Difficulties of the Undertaking.

I may reasonably fear I should grow tedious to your Lordships if I should attempt to take notice of all the Inconsistences, Inconsequences and Evasions in the Answer to this single Article.

Upon what Account was the Person now at your Bar advanced to the highest Station of the Law; intrusted with the distribution of Justice and Equity in his Majesty's supreme Court in *Westminster-Hall*, if it was not to secure the Property of the Subject to those to whom it did in Conscience belong? And upon what Account were the Moneys brought into Court deposited with the Masters, but only for safe Custody, till it appeared to whom Equity wou'd determin the Right?

But when it was once manifest that those, who were employed in this Trust, had shamefully broken it, and by notorious Mismanagement were likely to bring Ruin to all the Suitors of the Court, was it fit to cherish and cover up the Evil because it was a difficult and tedious Work to redress it? Was it likely to be less difficult by the Delay, or rather did not every Day propagate and increase the Mischief, and make it less capable of Remedy? Or could any thing be more proper for the Business of the Court?

Your Lordships have too great Sagacity not to discern the Weakness of such an Excuse, nor will you easily be persuaded to believe, That the Earl of *Macclesfield* was only going on in a Path his Predecessors trod before him, or that he is to be sheltred, because what hath been since done hath met with Difficulties in the Undertaking.

It is known, how upon the first Failure, in the Time of his Predecessors, an effectual Remedy was immediately applied; and that those, who have since attempted to give an helping Hand, have prevented any new Eruption of the Evil complained of; and if the Undertaking was attended with Difficulties, their Care and commendable Zeal for the publick Service have already been able to surmount them in some Measure; altho' the gross Encouragements given by the Earl of *Macclesfield* had laid such a strong Foundation for those Difficulties, as if he had designed really to make them insuperable, that they might serve for such a Sort of Excuse as he now endeavours to draw from them.

But the Earl alledges further, that he believes the Masters, who contributed towards *Dormer*'s Deficiency, did it freely and out of their own Money; and that in bringing them to contribute he followed the Precedent in Dr. *Edisbury*'s Case.

I need not trouble your Lordships long upon this Branch of the Article, since no one besides his Lordship can well believe the Masters contributed freely; and the Proof we shall lay before your Lordships upon this Head will give full Satisfaction, that none of them did it freely, nor all of them out of their own Money; nor is it the Crime the Commons charge, that the Masters were prevailed on to contribute towards the Deficiency; but that the Earl, whose high Station made it his Duty, when he was inform'd of the Deficiency, to take Care to redress it, did not, as in the Case of Dr. *Edisbury*, provide that the whole Money belonging to the Suitors should be effectually answered; but instead of following that Precedent in the just and honest Use of it, he turned it to answer his own corrupt Purposes, and to conceal from public Notice, that Loss to the Suitors which it was his Duty to have wholly prevented.

The next Article we proceed to is the sixteenth, which charges, that one *Elizabeth Chitty* having obtained an Order of the 17*th* of *March*, in the tenth Year of his present Majesty, whereby Mr.

Edwards, who ſucceeded in Mr. *Dormer*'s Office, was order'd to pay 1000 *l.* part of a very large Sum due to her, which had been paid into *Dormer*'s Hands; Mr. *Edwards* complained of this as an Hardſhip to him, who had never received the Money; upon this the Earl would have perſuaded the reſt of the Maſters to pay the Money to prevent a Parliamentary Enquiry, and they refuſing, he paid it himſelf to one *Mr. Lochmann* for the Uſe of the ſaid *Mrs. Chitty*; with Intimations however, that ſhe muſt not expect any more of the 10000 *l.* which had been paid on her Account into *Dormer*'s Hands.

Your Lordſhips will be ſurprized at the Detection here made both of the Guilt and the Boldneſs of the Offender; that the Perſon, who is ſo ſenſible of his Crime, as to tell the Maſters this Matter would affect both himſelf and them, who diſcerns the monſtrous Conſequences of the Miſchief before him, who foreſees the Puniſhment of that Crime by a Parliamentary Enquiry; that this Perſon, inſtead of applying Remedies to the Evil, ſhould uſe little Artifices only to conceal it.

What Anſwer gives the Earl to this Charge? He admits the Order made, and that *Mr. Edwards* refuſed to pay the 1000 *l.* that he himſelf paid the Money, and told *Lochmann* that was all they muſt expect from him; but he does not believe he had any Diſcourſe with the Maſters to perſuade them to pay the 1000 *l.* to *Lochmann*.

Your Lordſhips muſt be convinced of the Guilt when the Offender himſelf hath not the Aſſurance to deny it; he cannot deny but that he knew and repreſented the Conſequences that would enſue what was done; that it would produce a Parliamentary Enquiry; that it would affect himſelf as well as the Maſters, and that it would hazard the Forfeiture of their Offices. Your Lordſhips have now an Opportunity to vindicate the Honour of Parliaments, and to have this Inſtruction to Poſterity; that thoſe who foreſee their unwarrantable Actions will give Occaſion for a Parliamentary Enquiry, ſhall not be able by any Contrivances, by any Means whatever, to evade the Juſtice of it.

As to the laſt Part of this Article, which charges, that, on a Motion in a Cauſe, *Harper* againſt *Caſe* and others, relating to 260 *l.* which having been paid into *Mr. Dormer*'s Hands was in danger of being loſt, the Earl falſly and deceitfully declared he had heard there was a Deficiency in *Dormer*'s Office, but knew nothing of it only as public News: The Commons will give ſufficient Evidence to your Lordſhips of the Truth of this Charge.

The Earl indeed gives a large Account of this Cauſe and the Orders made in it, and then concludes, he believes he expreſſed himſelf to this Effect, That he had indeed heard of *Dormer*'s Deficiency, but that it had never come judicially before him upon Complaint of any of the Suitors of the Court; that ſeveral Circumſtances taken Notice of at large had concurr'd thereto, and adds, that he ſaid he did not know how all theſe things would come out, and expreſſed himſelf to that effect and no other; and upon all this Circumlocution in the Anſwer, without any denial of the Words as they ſtand charged, we have reaſon to believe your Lordſhips would be very well ſatisfied without further Proof, that the Words mentioned in the Article were undoubtedly uſed by the Earl of *Macclesfield*.

It is further obſerv'd by the Earl, that this happened after ſuch time as the Maſters Accounts had been laid before the Lords of the Council, and had been under the Examination of the Judges and others to whom they had been referr'd by his Majeſty; and there may be ſome reaſon to doubt whether the Knowledge of a Deficiency had been ſo ſoon declared by his Lordſhip, if the Examination under which his Majeſty's abundant Goodneſs and Care for his People had put thoſe Accounts, had not already laid open and made a public Diſcovery of it.

The ſeventeenth Article charges, that tho' the Earl of *Macclesfield* knew of the great Deficiency in *Dormer*'s Office, yet to conceal it, in order to carry on his corrupt and unjuſt Deſigns, he made Orders upon *Mr. Edwards* for the payment of ſeveral Sums, which were paid without Regard to the Proportion the reſt of the Suitors were juſtly entitled to out of *Dormer*'s Effects, and conſequently to their great Loſs and Prejudice: To this the Earl anſwers with his uſual Candour, That he never endeavour'd to conceal the Deficiency, but as he was under a full Perſuaſion it would in due time be made good; that he did not think it incumbent on him *ex officio* to make a Declaration of an Average; that he doth not know any Order was made by him for Mr. *Edwards* to pay Money lodged with Mr. *Dormer*, but believes ſeveral Orders were made by the Court for that Purpoſe.

Your Lordſhips upon the bare reciting the Words of the Anſwer, will perceive the Art and Fallacy of the Anſwerer; he doth not know any Order was made by him, but believes ſeveral were made by the Court; as if he could hope to make your Lordſhips believe, he was a Stranger to, and unconcern'd in the Orders made by the Court, of which he was the only Judge.

He admits he did endeavour to conceal the Deficiency, but was perſuaded it would be made good in due time, without acquainting your Lordſhips with any Grounds for that Perſuaſion, or even mentioning when he thought that due time would come.

He intimates it was incumbent to make a Declaration of an Average, but thought it not incumbent upon him to make it *ex officio*: He could not deny it to be the moſt equal Rule, that if a Loſs was inevitable, an Average ought to be made; that the Loſs might be born equally and in Proportion among all: He could not deny the making Orders to pay ſome was inconſiſtent with, and deſtructive to this Equality; and he could not however think it incumbent on him to do this *ex officio*, and yet it belonged to to no body's Office but his own to effect it.

Thus your Lordſhips may obſerve how, to every Article, the Anſwer either admits the Charge or uſes looſe, general, or foreign Circumlocutions to evade it, when the Evidence of the Fact will not allow him to deny it; yet he would be thought to ſay ſomething at leaſt in excuſe: But his Knowledge of your Lordſhips ſuperiour Underſtanding, ought to have deterred him from all Expectations of impoſing upon your Lordſhips by any little Shifts and Artifices of this kind; nor ſhould he hope to paſs here the Anſwer as ſufficient, which muſt have been reported contrary, if I am rightly informed of the Practice, by any of the Maſters of his Court.

But I shall not longer detain your Lordships with Observations in matters in themselves so evident; what is admitted to every one of these three Articles is sufficient to justify the Charge of the Commons, and whatever remains but imperfectly admitted, we doubt not, by Witnesses and other Proofs, to make out to your Lordships intire Satisfaction.

Mr. *Sandys*. My Lords, It is a Province enjoined me likewise, to maintain the Charge exhibited by the Commons of *Great Britain*, in the fifteenth, sixteenth, and seventeenth Articles of their Impeachment against *Thomas* Earl of *Macclesfield*. And it is with the greater Chearfulness I undertake that Province, since I come to demand that Justice, which your Lordships are always disposed to administer, to every Subject of *Great Britain*; and therefore I cannot but be fully assured of your just Inclinations, to do equal Right where it is demanded by the House of Commons, the Representative Body of the whole united Kingdom.

It is very strange, that the Earl now under Prosecution; who hath been so many Years within the Walls of this House; who hath so long been Witness of your Lordships great Integrity and Wisdom, should not thereby be deterred from attempting what might subject him to your Censure. But it is still more unaccountable, that a Person, who hath had so long Experience of that Judgment and Sagacity, whereby you skilfully distinguish between right and wrong, should hope, by the Artifice of Words, and loose, general, evasive Expressions; that he should ever hope, I say, My Lords, by such Fig-Leaves as these, to hide himself from the Eyes of your Lordships impartial Justice.

The worthy Gentleman, who hath preceded me upon this Head, hath so fully open'd the several Articles now under Consideration, and hath so clearly detected the Sophistry, and Insufficiency of the Answers that are given to them, that I shall not need to be long upon that Head; it would indeed be difficult to add any thing new to what hath already been observed, did not the innumerable Fallacies and Inconsistencies with which his Answer abounds, continually supply fresh Materials for Observation.

But I shall content my self only to take notice upon the Answer to the fifteenth Article, that the Earl stands in a Manner convicted by his own Confession: He admits the Fact, but would avoid the Consequence by saying, that he really intended to make the Masters bring in their Accounts, altho' he did not do it: If it was intended, why was it not done? It was a difficult and a tedious Work.

I am surprised, my Lords, to find that any Person should expect to satisfy your Lordships, by so weak, and frivolous an Excuse.

A Person who presides in the highest Court in *Westminster-Hall*, is informed of some unwarrantable Practices of the Officers to whom the Money of the Suitors is intrusted, which for want of due Care hath already proved very pernicious, and must in time prove destructive to the Property of all the Suitors of that Court, unless some speedy Check be put to this growing Evil: is convinced the Matter needs Regulation; but he lets it go on, because it would be a difficult and tedious Work to redress it.

In moral Evil, my Lords, the Continuation of the Practice of an ill Habit, because it is difficult to break it, is so far from extenuating, that it is justly esteemed to aggravate the Fault; and I don't doubt but that your Lordships will have the same Sentiments in this Case; for since it was necessary to apply a Remedy, the sooner it was done the better, and the Difficulty of the Work should have been a Spur, rather than a Check to a vigorous Endeavour for redressing it.

In his Answer to the sixteenth Article, your Lordships will observe the same Prevarication spread through the whole: The Widow *Chitty* having a considerable sum of Money, to which she was intituled, brought into Court, and deposited in Mr. *Dormer*'s Hands for the safe Custody of it only, petitions for 1000*l.* part of her own Money; such a Petition could not be denied intirely, without bringing on a speedy Inquiry of the Causes and Occasions of the Embezzlement which had happen'd in that Office; and the Discovery must have brought on a Necessity of remedying the Evil, that would thereby have been made so publick, and so notorious.

An Order therefore is granted, that the 1000*l.* should be paid, but then the Difficulty is renewed, how to make that Payment without discovering to the Publick the Mismanagement; which must have put a stop to the Sale of the Masters Places, which were disposed of at exorbitant Prices, and brought in an immense, tho' illegal Gain. Mr. *Edwards* would not pay it; he had no Money of Mr. *Dormer*'s in his Hands; the next Application was made to the Masters of the Court, to see if they could be prevailed on once more to raise a Sum by Contribution amongst them; to this End they were told, that if they did not comply, *Dormer*'s Deficiency would be discovered; and that might occasion a Parliamentary Inquiry, the Consequence of which might be, the Forfeiture of their Offices, bought contrary to the Statute of *Edward* the sixth: that this might affect himself a little, but them much more; all this, my Lords, is charged in this Article, and not denied by the Earl, but in such a lamentable, evasive Manner, as betrays more Guilt than an open, an ingenuous Confession.

It passes my Observation, in that little View I have been able to make of past Times, that any Judge of a Court in *Westminster-Hall*, should own the Knowledge of so great a Crime in the Officers of his Court, as that they came into their Places contrary to Law, without any Censure, or Blame for it.

But that a Person raised by the unmerited Bounty of his Majesty, to preside in the highest Court there, to conduct the Administration of Justice agreeable to the Rules of Equity and good Conscience, as his Majesty's Vicegerent in that great Station; that such a Person should not only be conscious of the Illegality, of the Masters obtaining their Places, and a Party to such Illegality, but should have the Assurance to make use of that as an Argument, to extort Money from them, in order to prevent the Discovery, and the Punishment consequent thereto, will, I persuade my self, stir up in your Lordships the greatest Indignation.

It seems he apprehended the Terror of a Prosecution by Parliament might have some Effect upon them, and engage them to comply with his Demands,

minds, altho' it had not the least Effect upon himself. It was a proper Expedient to bring them in to a Contribution of a 1000*l.* but it was not sufficient to deter him from those Practices, which justly merited such a Prosecution.

Our Ancestors thought it became them to keep in Awe the greatest Subjects in the Realm, and none were too big to be called to Account for the Wrongs and Injuries they did the Publick; the Case of *Michael de la Pole* in *Richard* the Second's Time, and Card. *Woolsey* in *Henry* the Eighth's, with many others, some of which have been already mentioned to your Lordships, are flagrant Instances of it. And we have now a just Opportunity of shewing, that we have the same regard for the Honour of Parliaments, and the Good of the People; that no one ought to presume to transgress the Laws, be his Station, or his Power never so highly advanced, upon prospect of Impunity; since a *British* Parliament can reach the most lofty, and punish the most insolent, corrupt Offender: So that he who is not restrained within the Limits and Boundaries of the Law out of Awe and Reverence to it, must expect to fall a Sacrifice to the Power of their Justice.

Your Lordships have here an Instance of one placed at the Head of the Law, who is conscious that his Actions are contrary to it; who makes no Scruple of avowing this, where it may serve his Interest, defies a Parliamentary Inquiry, and goes on in Practices which he knows, and professes to be illegal. Your Lordships will observe how he endeavours to shelter himself from Danger, and by an infamous Degree of Dissimulation; what he openly avows to raise a Contribution from the Masters of the Court, he more publickly denies, with design to carry a plausible Appearance in this Affair to the People.

The Deficiency of *Dormer* at last became a publick Clamour; it was not Mrs. *Chitty* only, but many others wanted their Money deposited and entrusted in the Hands of the Court, and by the Court entrusted to the Custody of the Master; and the Suitors then made open Complaint upon this Subject. In the Cause therefore of *Harper* and *Case*, a Motion being made, that 260*l.* lodged in *Dormer*'s Hands might be paid before the Execution of the Conveyance, directed by the Court; he who had been so long informed of the shameful Embezzlement of the Money of the Suitors in *Dormer*'s Office, who had invented so many artful Contrivances to conceal the Knowledge of it from the publick, in order to serve his own private, unjust, corrupt Designs, the Matter being now declared in open Court, he could no longer deny the Knowledge of what he was so plainly inform'd of; that therefore all By-standers might imagine his Care and Concern for the publick Good was so extraordinary, that he could not have forborn to have remedied the Mischief if he had been before apprized of it; he then publickly and falsly declared that he had heard there was a Deficiency in *Dormer*'s Office, but that he knew nothing of it but as publick News. In the Earl's Answer, my Lords, he explains this Expression, by saying, that it never came judicially before him upon the Complaint of any of the Suitors of the Court: This I am perswaded your Lordships will think a very poor Excuse, that he who was the Protector of all the Fortunes of the Fatherless and Lunaticks, should not upon the first Intimation, or even Suspicion that they were like to be Losers, cause a strict Examination to be made into it.

It can scarce be believed a Person who has so great a Capacity to judge in what manner he ought to act, should ever descend to so low a Degree, so unworthy the Station in which he was placed, so unworthy the Dignity and Honour to which he had been advanced, as to deny the Knowledge (otherways than as News and accidental Discourse) of what he had been so frequently informed, and what he had taken Pains so long, and so deliberately to conceal.

I need not use any Words to represent to your Lordships the Indignity of such Prevarication, who will upon the first Intimation be sensible of every thing that may seem in the least Degree to depart from the Rules of Honour: It is indeed almost inconceivable, that a Person advanced to be a Part of your noble Body, should so far forget himself and you; it is what, if he could have expresly denied by his Answer, we must have despair'd to have gain'd Credit in, tho' we could have proved it by inferior Witnesses; but his Answer will sufficiently convince your Lordships of the Truth of the Allegation; for he who could not directly deny a Charge of so gross a Crime, must by his own Silence, in a Matter of so heavy a Nature, be concluded to be guilty of it.

I have already detained your Lordships so long upon this sixteenth Article, that I shall not take the liberty of trying your Patience by making any Observations upon the Seventeen, but shall leave it to the Gentleman that is appointed to assist in it.

It contains only repeated Instances of a corrupt Endeavour, still to conceal the Knowledge of that Deficiency from the Publick, which it was his Duty to have prevented; or at least to have supplied, and rather to have made it good, than have conceal'd it. What Ground or Reason could there possibly be, why a Mischief of this Kind, if it did happen by Accident, should with so much Industry be covered and continued? when that Concealment could answer no good or honest Purpose, but must by the Delay increase and grow more desperate and tend to bring Destruction and Ruin to the Suitors of the Court?

But as your Lordships, by the Proofs upon the former Articles, had an Opportunity to take notice what large Sums of Money had been paid for the Purchase or Exchange of the Places of the Masters of the Court of *Chancery*; it is natural to conclude from thence, that the Masters were necessarily to be indulged in making use of the Suitors Money in their Hands in order to make up the vast Sums they had given for their Offices; and if there had been Miscarriages in Attempts of that kind (which in bold Adventures for such Ends could hardly be avoided) the Discovery of such a Mischief would have made it absolutely necessary to have removed the Money from those who had proved such unfaithful Stewards, or at least to have obliged them to have given proper Securities to indemnify those, whose Fortunes were intrusted to their Care, from any Loss which might happen by their Mismanagement; the Consequence of which Caution must unavoidably have drawn on a Re-

trenchment

trenchment of the exorbitant Prices which of late have been given for thoſe Places.

But I need not give your Lordſhips any further Trouble, by enlarging more upon this Topick, who ought rather to make Apology for having been already ſo long upon it; the Gentleman who went before me, and he that will follow me upon this Head, will be ſufficient to give your Lordſhips more ample Satisfaction; and the Certainty of the Facts (which the Earl himſelf ſeldom hath the Aſſurance to deny, but only attempts by falſe Colours to avoid the Inferences from them) will, where-ever there is need or occaſion, be ſupported, and made good, by full Evidence.

Mr. *Thompſon*. My Lords, I am commanded by the Commons to aſſiſt in maintaining the fifteenth, ſixteenth, and ſeventeenth Articles of their Impeachment. The Gentlemen who have gone before me, have acquitted me from giving your Lordſhips any Trouble upon two of theſe Articles; and I count it my good Fortune that the Third is fallen to my Lot, ſince the Evidence to prove the Charge contain'd in it, is ſo very clear and direct, that little need be ſaid, either to ſhew the Neceſſity of the Accuſation, or the Truth of the Facts alledg'd by the Commons.

My Lords, I will avoid, as much as I can, recapitulating any Evidence which has been opened before; but the Crimes of the unfortunate Earl of *Macclesfield* are ſo interwoven, that it may be ſometimes neceſſary for me to look back upon Circumſtances that have been ſpoken to upon other Articles.

The Commons in the ſeventeenth Article ſet forth, "That the Earl very well knew there was "a Deficiency in Mr. *Dormer*'s Office, and "that Mr. *Edwards* (his Succeſſor) had not ſuffi- "cient in his Hands to pay the whole Money due "to the Suitors." My Lords, as to the Earl's Knowledge of this Deficiency, he admits it in his Anſwer, by ſaying, "He never endeavour'd to "conceal it:" and Mr. *Edwards* has not only declar'd upon Oath this Day at your Bar, there was a Deficiency, but alſo, "That it was laid before my "Lord before he was admitted."

Yet "Notwithſtanding he very well knew it," the Commons aver, "That he did from time to "time make Orders for the Payment of ſeveral "Sums out of this Office," and in ſupport of this Charge, we ſhall produce divers of his Lordſhip's original Orders.

And, my Lords, I appeal to the Teſtimony of every Maſter in *Chancery*, who has been, or may be examined before you; I appeal to your Lordſhips Obſervations upon the Evidence you have already heard, whether or no ſuch Proceedings were not calculated, "to carry on his unjuſt Deſigns, and to "prevent a Parliamentary Enquiry."

As to the latter part of the Article, "That Sums "were paid without any regard to, or conſiderati- "on of the Proportion the reſt of the Suitors were "entitled to," we ſhall not only prove the Fact, but ſhew likewiſe that this Partiality was not carried on inadvertently, but deliberately; that this unequal Diſtribution of Right did not flow from a ſupine Neglect, or careleſs Overſight, but ſprung from a deprav'd Intention, and determin'd Corruption.

Mr. *Edwards* will acquaint your Lordſhips, that he forewarn'd the Earl of the Conſequences that muſt follow from his Payments, who ſtill bid him "continue paying," and Mr. *Lightbown* (reaſoning with him as became a Perſon aſſociated to the Chancellor) urg'd, "That he did not think any "Meaſures juſtifiable in a Court of Equity, where- "by any undue Preference might be given, and "ſome have their whole Money and others be left "in the Lurch."

So that this Miſdemeanor, this Fraud, was in "ma- "nifeſt and wilful Violation of the Truſt repos'd in "him," a Truſt, my Lords, (when faithfully executed) wherein conſiſts the Glory and Happineſs of this Kingdom. It is the Security of all our Properties, a Refuge for diſtreſt Widows, and a Protection to helpleſs Orphans; and when the Commons ſaw that Oppreſſion had poſſeſt the Seat of Juſtice, that Partiality had uſurped the Throne of Equity, that the Guarantee for our Fortunes was become the Invader of them, they beheld it with Indignation and Horror, and have applied to your Lordſhips to demand Redreſs and Vengeance.

Now, my Lords, I beg your Attention, whilſt I take a view of the Earl's Anſwer.

He ſays, "He never endeavour'd to conceal *Dor-* "*mer*'s Deficiency." You will hear that he did, and alledg'd, "It would be for the Honour of the Court "to conceal it.

The accus'd Earl proceeds, "As he was under a "full Perſuaſion the ſame wou'd be made good." I dare ſay the Earl of *Macclesfield* will at a proper time acquaint you what were the Grounds of this "Perſuaſion." The Commons obſerve with the deepeſt Concern for the miſerable Suitors, that they have met with no Foundation, no Colour of Reaſon to induce "Them" to entertain ſuch Hopes. On the contrary, the Maſter who ſucceeded to Mr. *Dormer*'s Office frequently repreſented to the Lord Chancellor, "The Hazards the Suitors were in from "this Deficiency."

Yet the Earl boldly aſſerts, that this very Maſter "Mr. *Edwards* was under a firm Perſuaſion the "whole would be made good." We ſhall convince your Lordſhips he never had the leaſt Proſpect, the leaſt Glimpſe of it; and I'm afraid the Earl and he had juſt the "ſame full and firm Per- "ſuaſion of the State of this Office."

The noble Lord goes on. "And as no Applica- "tion was made to him by Perſons concern'd to "ſtop Payment." I ſuppoſe he means before that remarkable Motion which produc'd his extraordinary Declaration in open Court.

Perhaps the learned Lord will here make another notable Diſtinction, and explain by the Words "Perſons concern'd," the "Suitors only;" and have recourſe to his old Subterfuge, "That it never "came judicially before him." We think, and no doubt your Lordſhips will think ſo too, that "Mr. "*Edwards* was a Perſon concern'd"; that his preſſing Applications ought to have been ſufficient, and that our Evidence is not to be defeated by ſo weak an Evaſion.

But admitting, my Lords, "That the Earl had "this full Perſuaſion, and that no Application was "made to him to ſtop Payment:" What Juſtification does he draw from thence? "That he did "not think it a Duty incumbent upon him, "*ex officio*, to make a Declaration of an Ave- "rage."

How contradictory, my Lords, How inconsistent is this with his Answer to the fifteenth Article! There he pleads the Case of Dr. *Edisbury*, and in that Case an Average was declar'd. The Precedent was follow'd to encourage Contribution, but was laid aside when it directed him to secure the Suitors their Proportions. Here I can't help observing, that as the Earl has thro' the whole Series of his Actions copied Precedents from the worst Views, so he has now quoted them in the most disadvantageous Manner. When his Predecessors took small Sums, he ventur'd by their Examples to swell his Demands to exorbitant Prices; but when their Patterns shou'd have led him to a nice and scrupulous Caution in the Choice of his Officers, he disdain'd to tread in their Footsteps. And, my Lords, This Precedent was good for the corrupt Purpose of concealing a Deficiency, but ceas'd to be so, when it was to do Justice to the injur'd Suitors. He has turn'd his Weapons upon himself, and if Dr. *Edisbury* guards him in one Article, he must of necessity wound him in another.

What I shall next take notice of in his Answer is, "That he does not know any Orders were "made by him except in the Case of *Chitty*." That Case is attended with such Circumstances, and may be follow'd by such Consequences, that he has not yet, nor will, I dare say, soon forget it: However, I presume he will recollect others when we produce his own original Orders for three several Payments, one of 400 *l.* another of 642 *l.* and a third of 2000 *l.*

This Evidence alone, my Lords, would support this Article, but the Earl has thoroughly confirmed the Charge in his next Sentence. "He believes "Orders have been made by the Court."

Tho' his own Orders were criminal, Orders from the Court were innocent, till they received his Stamp of Guilt, who knowing the Condition of the Office, commanded "Payments to be made as Orders came "in." The impeach'd Lord (and were this his only Offence, therefore justly impeach'd) commanded these Payments.

His Defence is again become his Accusation. Orders from the Court wou'd have ended, had he suffer'd the Master to stop Payment, but that would have dissolv'd what he took such unwarrantable Pains to conceal; and from that Concealment arose the Injuries to the Suitors; that was the malignant Ground-work of his infamous Designs, and is now the Subject of our just Charge.

Certainly the Earl did not mean here obliquely to insinuate that he had a Sharer in his wicked Administration, or to bring another great Name in question with his that were not for his Service. Characters, my Lords, receive their Lustre from their Foils.

My Lords, I have open'd to you, that we shall prove the Accusation contain'd in the Article, and enforce it from the Earl's Answer. If your Lordships find we have made good our Charge, I submit it to your Lordships what Judgment you will pass upon such "manifest and wilful "Violations of the Rights of the Subject."

Far be it from me to add Load to the Guilty; here indeed it is impossible. Crimes committed by a Lord Chancellor are capable of no Aggravations; his Station enhances his Guilt. Such Crimes are now become a Parliamentary Enquiry, as the Chancellor's conscious Heart long since pressag'd; and the Commons think they have shewn good Reason why your Lordships should convince the Earl of *Macclesfield* that he flatter'd himself with vain Hopes, when he menac'd the Masters, "That this Enquiry would affect him, but "them much more."

The Commons are sensible, that he who has so long been a Stranger to Justice, will at last meet with it here; and that your Lordships providential Wisdom will never suffer such Reproaches to be cast upon this, as have been thrown out upon another Nation. "That a Judge is an Evening Wolf, "that Justice standeth afar off, and Equity can-"not enter.

Mr. Serjeant Pengelly. My Lords, We beg leave to call our Witnesses in support of these Articles. We desire Mr. *Conway* may be call'd.

Mr. Conway *call'd and sworn.*

Mr. Serj. Pengelly. My Lords, We beg leave that Mr. *Conway* may be ask'd, whether he paid any Money in the Nature of a Contribution, and when? We have the Receipt here (shewing it to Mr. *Conway.*)

Mr. Conway. My Lords, This is a Receipt given me by Mr. *Edwards*, *Aug.* 11, 1721. for the Sum of 500 *l.* contributed by me.

He reads the Receipt.

Aug. 11, 1721.

Receiv'd then of Master *Edward Conway*, Esq; the Sum of 500 *l.* voluntarily contributed by him in Aid of the Deficiency of my Predecessor *Fleetwood Dormer*, Esq; in the Cash of his Office, which I promise to repay in case the same shall at any time hereafter be otherwise made good.

H. Edwards.

Mr. Serj. Pengelly. We desire he may be ask'd in what manner he paid it, whether it was out of his own Money or stopt out of any other Money paid into Court?

Mr. *Conway.* Soon after, my Lords, I was admitted a Master, Mr. *Dormer*'s Deficiency broke out; and the Contribution of the Masters being then spoken of, I was among the rest applied to, to contribute: I was sworn in in *January* 1720, and this Receipt is in *August* 1721, when Mr. *Edwards* came to me to bring me some Junior Masters Money, which he was to deliver to me, out of which he stopt this 500 *l.* upon account of the Contribution which I had promis'd to come into.

Mr. Serj. Pengelly. We beg leave that Mr. *Conway* may be askt, whether the 500 *l.* was allowed or deducted at that time out of the Suitors Money?

Mr. Conway. Yes, my Lords, it was stopt by him at that time.

Mr. Serj. Pengelly. What Persuasions were made use of to induce the Masters to contribute to pay this Money?

Mr. Conway. When the Affair of Mr. *Dormer* came out, what I can remember is, that Letter that came from him from *Holland* was sent to Mr. *Hol-*

ford to be read before the Masters in the publick Office, and there the Masters spoke of it what they thought proper.

Mr. Serj. Pengelly. What Intimation was there from him, or from any other Person, of any Direction from my Lord *Macclesfield* relating to the Payment of this 500 *l.* Contribution?

Mr. Conway. I think my Lord *Macclesfield*'s Secretary was there at the time Mr. *Dormer*'s Letter was read. I think he had spoken what he had principally to say before I came in, but I think he said the Consequence might be fatal to the Masters, if we did not take take care of this Deficiency.

Mr. Serj. Probyn. We would not presume to interrupt the learned Managers; but I think the particular time when this was done, and the particular Sums that were paid by each Master should be stated. I remember Mr. *Edwards* was pleas'd to say the first 500 *l.* that was contributed was paid upon the Day he was sworn in, which I think was in *May* 1721. We desire therefore that he would please to express the Day when every other Sum was paid in.

Mr. Sol. Gen. We only desire this Gentleman to speak to his own Payment.

Mr. Conway. The Receipt is dated *August* 11, 1721. Then Mr. *Edwards* stopt so much Money.

Mr. Serj. Pengelly. We desire he may be ask'd how he paid that Money, whether voluntarily, or freely, or upon what Ground?

Mr. Com. Serj. I beg Pardon, but I must beg leave that the Witness may declare at what time this Transaction was.

Mr. Conway. It was the Day the Receipt bears Date, the Transaction happen'd *Aug.* 11, 1721.

Mr. Sol. Gen. We desire he may be ask'd what induced him to pay in this Sum?

Mr. Conway. It was stopt as a Contribution towards making up Mr. *Dormer*'s Deficiency.

Mr. Serj. Probyn. My Lords, We desire that this Witness may be ask'd, whether there was any preceding Promise or Agreement to pay this Money?

Mr. Conway. My Receipt mentions a Promise.

Mr. Serj. Probyn. Then I desire to know how long before this Promise was made?

Mr. Conway. Soon after the Deficiency was spoken of in Mr. *Dormer*'s Office, in *February* 1720. about three Weeks after I was admitted.

Mr. Edwards called.

Mr. Serj. Pengelly. My Lords, We only call Mr. *Edwards* to ascertain the time when he received the Money of Mr. *Conway* for his Contribution.

Mr. Edwards. My Lords, According as I have taken it out of my Book, it was the 11th of *August* 1721.

Mr. Serj. Pengelly. Now, my Lords, we shall shew the manner how this Payment was made.

Then Mr. Lightboun *was called and appeared.*

Mr. Plummer. I desire Mr. *Lightboun* may be ask'd if he was ever press'd to pay 500 *l.* by whom, and for what?

Mr. Lightboun Not long after Mr. *Dormer*'s Failure, Mr. *Cottingham*——

Mr. Com. Serj. My Lords, I hope Mr. *Lightboun* shall mention the time as he goes along.

Mr. Lightboun. Not long after the Failure of Mr. *Dormer*, I met Mr. *Cottingham* by accident at my Lord Chancellor's Room at *Westminster*, and he ask'd me, whether there had been mentioned to me a Proposal of paying or advancing 500 *l.* a piece towards making up the Deficiency of Mr. *Dormer*'s Office, for carrying on the Business there? I said I had heard it; he said it was proposed that it should be immediately raised, that the Business of the Office might be carryed on, till Mr. *Dormer*'s Effects could be disposed of and sold; and some Intimation was given, that possibly we might have our Money again as *Dormer*'s Effects came in. I have heard such a Thing talk'd of, says I, but I will never come into it; I thought it attended with dangerous Circumstances, and a dangerous Precedent, and therefore I was resolved I would not contribute.

Mr. Plummer. Can you recollect what passed afterwards?

Mr. Lightboun. He said all the rest would. I said I would not, and I continued the same Resolution when I talked with the Masters about it.

Mr. Plummer. I desire he may be ask'd if my Lord *Macclesfield* ever pressed him to pay this Money, and when?

Mr. Lightboun. It was often mention'd to me by the Masters, why I did not contribute as the others did, and I was made not a little uneasy for not having done it. I think in the beginning of the Summer 1722, as near as I can remember the time, my Lord Chancellor coming out of Court at his own House, (where I had the Honour to have been sitting with him) said, Mr. *Lightboun*, I would speak with you. I followed his Lordship into his House up into his Study, where my Lord was pleased to say, *Mr. Lightboun*, I am very sorry to hear that you have not contributed your 500 *l.* towards making up *Mr. Dormer*'s Deficiency; for, says he, it must be considered, that it will be attended with ill Consequences, if that Matter is not taken care of. I asked him, was it your Lordship's Proposal? He said it came from the two senior Masters, but he approved of it. I answered, that if it had came from your Lordship, it might have had a different Consideration, but as it was theirs, and to serve their own Purposes, I hop'd his Lordship would not insist upon my coming into it. The two senior Masters had been long in their Offices, were grown in Years, and were willing to get out, and sell at high Prices; one of them had slipt out, and the other was about it; that I was but lately come into the Office, and intended to continue in it, and said, I will not concern my self in this Affair, unless the Office can be put upon such a Foot that the Suitors may be made safe and easy.

Mr. Serj. Pengelly. My Lords, I desire he may be ask'd, whether at this time my Lord *Macclesfield* made use of any Reasons, Arguments or Promises towards prevailing upon him to pay this Money?

Mr. Lightboun. I can't say my Lord press'd me; he left me to my own Inclination, but advis'd me to pay it, and not to stand out, to do as the rest did, and not to stand alone in it.

Mr. Serj. Pengelly. Whether did he mention of what Consequence or Advantage it would be to the Masters?

Mr. Lightboun. His Lordship said, if there were not some Measures taken it might be of ill Consequence, and that this was the only Expedient he though

thought of. I told his Lordſhip, I thought there were many others, but this was one I would not come into; but that it was not for me to preſume to dictate to his Lordſhip, I thought it did not become me.

Mr. Serj. Pengelly. My Lords, I deſire he may be ask'd, if after theſe Diſcouragements my Lord *Macclesfield* did not again demand Money of him, and when?

Mr. Lightboun. My Lords, In the Year 1724, about the latter end of *July*, I met *Mr. Cottingham* by accident at the Tavern. He came in and deſired me to go into a Room, for he had ſomething to ſay to me. He told me, that my Lord *Macclesfield* had ſent him to tell me, that he wonder'd that I had not paid my 500 *l.*; that there was 1000 *l.* to be paid to *Mrs. Chitty*, or to *Mr. Lockmann*, that muſt be immediately paid; that my Lord had been apply'd to, and much preſs'd, and it muſt be forthwith paid, and he expected that I would advance the 500 *l.* and the reſt of the Maſters 50 *l.* apiece, which would make up the Sum. I ſaid to *Mr. Cottingham*, I cannot think my Lord *Macclesfield* would ſend you on ſuch an Errand to me, I told my Lord formerly I would not pay it, I was with his Lordſhip this Morning, and he ſaid nothing of it, and ſhall have the Honour of waiting upon him in a Day or two, and if he then think fit to talk to me about it, I ſhall give him a proper Anſwer; but I don't care to ſend my Meſſage to him by you, becauſe Meſſages are liable to be miſtaken and miſrepreſented, and I will give my Anſwer my ſelf. Upon that *Mr. Cottingham* began to be angry at my diſtruſting him, and thinking that he came of his own Accord, and averr'd to me that he came with my Lord Chancellor's Privity. I repeated the ſame Anſwer again to him, that I would give my own Anſwer to his Lordſhip, and would return none by him. In a Day or two after there was an Intimation given that my Lord Chancellor expected all the Maſters to attend him at ſix a Clock in the Evening: We imagined that it was a Call upon the other Maſters for more Money, and for my five hundred Pounds. They had all declared to me they would never contribute any thing more, and therefore I deſired them that in caſe that were the Buſineſs, they would freely declare their Thoughts before my Lord himſelf. I believe it was the ſenior Maſter I preſſed to do it, ſaying to him, it beſt becomes you to give the Anſwer; ſays he, if the Queſtion be put, I ſhall propoſe that we may have time to conſider of it. I deſired he would not do that, it would encourage my Lord, and he might think that if he importuned it further we would comply, and for my part I am determined not to do it; ſo we went on to my Lord, and were carried up Stairs; when we came there, my Lord ſaid, there hath been an Application made to me on the behalf of *Mrs. Chitty* or *Mr. Lockmann*, I think he was the Perſon expreſly named, and that he had been much preſſed by Perſons of Diſtinction; and then he turned to me, and ſaid, Mr. *Lightboun*, I am extremely ſurprized you have not paid the 500 *l.* as the reſt have done. After he had us'd a good many Perſuaſions and Arguments, I told his Lordſhip it was with great Concern that I refus'd to do any thing that his Lordſhip could deſire of me; but this was a Thing of ſuch a dangerous Conſequence, that I would not contribute one Farthing, and that I had given his Lordſhip my Reaſons before; if he would hear them again, I would repeat them again; but this one was of moſt Weight with me, that it might be a Precedent, and look'd upon as an Undertaking for one another, if ever there ſhould be a national Inquiry into theſe Matters; and that I would be anſwerable only for my own Debts: That as I had not contributed towards the Misfortunes of others, I would not contribute towards Payment of their Debts; that I did not know but the paying Contributions to make good the Demands on other Offices might make Deficiencies in our own; I had always refus'd it, and never repented it, and I had the pleaſure of hearing every Maſter repent the doing it. I called upon the reſt of the Maſters to deal ingenuouſly with my Lord, to tell him what they had ſaid when they had talk'd over the Matter among themſelves, that they would not contribute any more; upon that *Mr. Holford* got up and ſaid, he would never do it. Then my Lord ſaid, he either would pay it himſelf, or take care it ſhould be paid.

Mr. Plummer. I deſire he may be ask'd if my Lord *Macclesfield* uſed any Inſinuations with reſpect to the Parliament?

Mr. Lightboun. I forgot that my Lord *Macclesfield* was pleas'd to ſay, that the Conſequences of not contributing to raiſe a Sum of Money to pay the Debt of *Mr. Dormer*, might be that the Money and Securities would be taken out of our Hands. I told him I was ready to deliver both the Money and Securities the next Day if his Lordſhip made the proper Orders, and I was properly indemnified. I think his Lordſhip ſaid further, this may produce a Parliamentary Enquiry, and ſhould it be reſolved that purchaſing a Maſter's Place is contrary to the Statute of the fifth and ſixth of *Edward* VI. you might loſe your Places; to that I replied, I would quit my Office rather than hold it upon thoſe Terms of paying other Maſters Debts. He went on further about a Parliamentary Inquiry; I ſaid, let the Conſequence be what it will, I would not pay it. Then I called upon the other Maſters, who ſaid they would not pay it.

Mr. Serj. Probyn. My Lords, As to the paying of the 1000 *l.* to *Mrs. Chitty* or *Mr. Lockmann*, I deſire *Mr. Lightboun* may be ask'd whether the late Lord Chancellor was pleaſed to ſay that he had or would take Care to pay the 1000 *l.* himſelf, or what the particular Expreſſion was that he then made uſe of, that he had taken Care or would take Care?

Mr. Lightboun. I can't remember at this diſtance of time, whether he ſaid he had, or would take Care to pay it. There is ſo little Difference, that I cannot ſay which. I do not pretend to ſay thoſe were the very Expreſſions my Lord uſed to me, or I to him. I ſpeak as to the Tenor or Purport of our Converſation, I would neither aggravate nor ſoften Matters.

Mr. Serj. *Pengelly*. The next Witneſs we call is Mr. *Holford*, who was preſent at this Converſation.

Mr. *Holford* ſworn.

Mr. Serj. *Pengelly*. We deſire Mr. *Holford* may be asked, whether he was preſent at this Time, as is mentioned, when the Maſters were required by the Earl of *Macclesfield* to raiſe this 1000 *l.* for Mrs. *Chitty* or Mr. *Lockmann*.

Mr. *Holford*. My Lords, I was preſent at that Meeting. It was deſir'd, as I apprehended, by my Lord *Macclesfield*, for us to attend him at Six o' Clock. When we came up there, I think, the firſt thing that my Lord *Macclesfield* ſaid was, he asked Mr *Lightboun* why he would not pay his 500 *l.* as others had done. Mr. *Lightboun* did give this Anſwer: That he had told him ſeveral Times before, that he would not do it; he had given his Reaſons, and it was in vain to repeat thoſe Reaſons again, he was of the ſame Mind ſtill. My Lord then ſpoke of a Demand there was of 1000 *l.* on Mr. *Dormer*'s Office for one Mrs. *Chitty* and Mr. *Lockmann*, and I apprehended, my Lord mentioned it as if he intended that the Maſters ſhould contribute towards making it up; but he after ſaid he would take Care of it. After that my Lord did not mention the 1000 *l.* but, in general, ſpoke of the Deficiency in Mr. *Dormer*'s Office, and it ought to be made up; and he propoſed, as I did apprehend, that the Maſters ſhould make it up. Mr. *Lightboun* did call upon me to declare; upon that I told my Lord, it was very unadviſeable to contribute towards a Deficiency which no Body knew what it was; and the doing ſo would only be ruining one's ſelf, for fear of being undone; and, for my Part, I was unwilling to do it; any Body elſe might do as they thought fit.

Mr. *Plummer*. In what Manner did my Lord addreſs himſelf to Mr. *Lightboun*, did he do it in gentle Terms, or how?

Mr. *Holford*. He ſpoke pretty ſharply to him.

Mr. Serj. *Pengelly*. What was ſaid by the Earl of *Macclesfield*, to perſuade the Maſters to come into this Contribution?

Mr. *Holford*. My Lord ſaid it was a grievous thing, there had not been that due Care taken there ought to have been; that thoſe who came firſt had all their Money, and thoſe that came after would have none; which would make a great Clamour upon the Maſters.

Mr. Serj. *Pengelly*. What was ſaid upon that?

Mr. *Holford*. I don't remember what in particular.

Mr. Serj. *Pengelly*. What was ſaid, as to a Parliamentary Enquiry?

Mr. *Holford*. I remember my Lord did ſay, it might perhaps occaſion a Parliamentary Enquiry. Suppoſe, ſaid he, the Parliament ſhould reſolve, that the Office of a Maſter in Chancery is a Place relating to the Execution of Juſtice, and reſolve that every Body that hath purchaſed thoſe Offices is within the Statute of the 5th and 6th of *Edward* VI. It may affect me in ſome Degree, in the Loſs of the Diſpoſition of the Offices; but it will affect you in the Loſs of the Places themſelves.

Mr. Serj. *Pengelly*. Whether any Perſon then ask'd my Lord, in what Manner it might come before the Parliament?

Mr. *Holford*. I ask'd my Lord myſelf, and ſaid it would be a Favour if he would give us his Opinion, in what Manner it might come before the Parliament, and in what Way. He ſaid, it might come in by the Committee for Courts of Juſtice, appointed by the Houſe of Commons at the Beginnning of every Seſſion. But when I came out of the Room, I ſaid, it was more likely to come by Way of Complaint than that Way.

Mr. Serj. *Pengelly*. I deſire he may be asked, whether, at this Time, the Maſters agreed to come to a Contribution to pay this 1000 *l.* and what was ſaid about it.

Mr. *Holford*. It was diſagreed to; and when it was ſo, my Lord did ſay, that he himſelf would pay the 1000 *l.*

Mr. Serj. *Pengelly*. We leave that as a Circumſtance of my Lord's endeavouring to prevent a Parliamentary Enquiry.

Mr. Serj. *Probyn*. My Lords, we deſire Mr. *Holford* may be asked, whether he can be poſitive as to the Time of this Meeting?

Mr. *Holford*. I believe it was in *July*, or *Auguſt*, 1724.

Mr. Serj. *Probyn*. You can't be poſitive?

Mr. *Holford*. No, I can't be poſitive.

Mr. Serj. *Probyn*. Whether there was, at that Time, any Propoſal made to raiſe Money, by any annual Sum or Payment out of the Offices, towards paying the Deficiencies by degrees.

Mr. *Holford*. I do not remember any ſuch thing.

Mr. Serj. *Probyn*. Was ſuch Propoſal made at any other Time.

Mr. *Holford*. I don't remember that it was ever propoſed by my Lord. I have heard Talk among the Maſters of a great many Schemes and Propoſals; but they never did agree in any one thing.

Mr. Serj. *Probyn*. I deſire he may refreſh his Memory, and that he may inform your Lordſhips if there was not a Propoſal made, that if they might be maintain'd in their Offices, as they then were, they would not then conſent that a Contribution ſhould be rais'd among the Maſters.

Mr. *Holford*. No, I don't remember that; I believe it was mentioned, that ſuppoſing the Maſters might be continued on the Foot they were, whether they would not think it worth their while to do it. I ſaid it was a Matter fit to be conſidered, and I did not know but it might; but there was no Method propoſed but what ſeemed difficult; and I don't remember that any thing was agreed to.

Mr. *Strange*. I deſire he may be ask'd, whether, after they had contributed the 500 *l.* a piece, their Accompts were called for by my Lord *Macclesfield*, in the Manner they were called for before?

Mr. *Holford*. I don't know but they might. The Manner of calling for thoſe Accompts was thus: There was a Writing left in the publick Office, in which there were a great many *Items* in what Method thoſe Accompts ſhould be brought in. I had prepared mine, and waited till they ſhould be called for; but they were not called for, nor demanded; ſo I laid mine by.

Mr. *Com. Serj.* I deſire he may be ask'd, whether this Diſcourſe, in relation to the raiſing of Money, was to pay off the whole Deficiency, or confin'd to pay off this Demand of 1000 *l.*

Mr. *Holford*. I don't remember any Propoſal, but only a Diſcourſe that was ſtarted. I did not apprehend the whole Deficiency was intended to

be paid; for I never knew any Body that could tell what the whole Deficiency was, 'till of late.

Mr. *Com Serj.* I desire to know, whether he speaks this from his Memory?

Mr. *Holford.* I can speak from nothing but my Memory.

Mr. *Com. Serj.* I desire that he will inform your Lordships, whether he doth not remember, that in *November* last there was a Signification to the Masters, and to him in particular, to bring in their Accompts?

Mr. *Holford* Yes, my Lord.

Mr. *Com. Serj.* If there was such an Intimation in *November* last, to deliver in their Accompts, how comes it that you say you have them by you still?

Mr. *Holford.* This is a Mistake; you misapprehend me. The Accompt, that I mentioned before, was what was immediately called for, after the Failure of Mr. *Dormer*; but the Accompt in *November* last was what was called for by the Judges, and delivered into the Council.

E. of *Macclesfield.* My Lords, I desire to know, whether Mr. *Holford* can remember what the particular Directions, as to those Accompts, were, and whether the Accompts he prepared were drawn up according to those Directions?

Mr. *Holford.* Those Directions were many; in in drawing up my Accompt, I did not draw it up exactly according to those Directions; but I drew them up to shew the Balance of Cash and Securities in my Hands.

E. *Macclesfield.* I would desire to know, whether they were not the like Directions as in *November* last, and whether the Masters did not think it impracticable to draw it up accordingly?

Mr. *Holford.* Yes, my Lords, they did; they thought it difficult, I thought it was not practicable without a great deal of Trouble.

Sir *George Oxenden.* I desire to know, whether it was required by my Lord Chancellor to look into *Dormer's* Deficiency, to see what the true State of it was at that Time?

Mr. *Holford.* All I heard of it was: I heard that my Lord had ordered Mr. *Edwards* to deliver in an Accompt of Mr. *Dormer's* Office to me and Mr. *Bennet*: He did deliver one; but it was an Accompt done in Haste, and did not shew what the Deficiency was. For some of the Payments said to be made, no proper Vouchers were produced; there were Mistakes, and it was not a proper Accompt; and without examining it we could not depend on it.

Mr. Serj. *Pengelly.* He mentions, that at this Meeting it was said, supposing the Masters might be continued on the same Foot they then stood, *&c.* I desire Mr. *Holford* may explain what he meant by the Foot they then stood on; what Liberties and Privileges were meant by that Expression?

Mr. *Holford.* I understood it was their continuing in the Possession of the Money.

Mr. Serj. *Pengelly.* Whether that was to lock the Money up in a Cabinet, or to have Power of the Money to make use of it?

Mr. *Holford.* For my own Part, I should not have lock'd it up.

Mr. *Lutwyche.* I would beg Leave to ask him, as he hath mentioned the Calling for the Accompts, whether he delivered any Accompt to the Earl of *Macclesfield*, till the Order made by the Council?

Mr. *Holford.* My Lords, I did deliver an Accompt to my Lord *Macclesfield*, or to Mr. *Cottingham*, of my Money, but not of the Securities.

Mr. Serj. *Pengelly.* We desire Mr. *Edwards* may be called again.

[*Accordingly Mr.* Edwards *was called and appeared.*

Mr. Serj. *Pengelly.* My Lords, we beg Leave that Mr. *Edwards* may give your Lordships an Account; because he was immediately concerned in a Demand made upon this Office, what Application was made to him for this Mrs. *Chitty's* Money; and what Application he made to the Earl of *Macclesfield* on that Occasion.

Mr. *Edwards.* My Lords, there was an Order brought to me, that was made by my Lord *Macclesfield*, for the Payment of 1000 *l.* to Mrs. *Chitty.* I told the Party, I had not Money in my Hands of Mr. *Dormer's*, sufficient to answer the Demand upon the Office. I then went to my Lord *Macclesfield.* I told him (I had been forced to trouble him pretty often upon that Occasion) that it gave me a great deal of Uneasiness, that there was no Fund in my Hands to answer those Demands that were upon my Office. I hoped his Lordship would take Care that there should be a Supply, or that he would not be pleased to make Orders upon me for Payment of Money.

Mr. Serj. *Pengelly.* Give an Account of the Whole that passed, the whole Conversation.

Mr. *Edwards.* My Lord *Macclesfield*, in answer to that said, at least, it was what I understood by his Answer, that, if the People would but have a little Patience, he was doing every thing necessary, and making proper Regulations for that Purpose.

Mr. Serj. *Pengelly.* I desire he may be ask'd, whether my Lord *Macclesfield*, at that Time, directed him to proceed to make any further Payments, or encouraged him to go on to make Payments?

Mr. Serj. *Probyn.* My Lords, we apprehend that is too leading a Question.

Mr. Serj. *Pengelly.* What Directions he had, in general.

Mr. *Edwards.* My Lords, I had no other Directions that I remember.

Mr. Serj *Pengelly.* I desire he may acquaint your Lordships, whether he said any thing relating to the State and Condition of the Suitors of the Court?

Mr. *Edwards.* Several Times that I had the Honour to wait on my Lord *Macclesfield*, I told him there was like to be a great Deficiency in Mr. *Dormer's* Effects: All that had been raised out of *Dormer's* Effects was exhausted and gone, and there were a great many Demands; and I hoped Provision would be made to answer them: It was for me to do it else; and I hoped it was not expected that I should.

Mr. Serj. *Pengelly.* Was any thing represented at that Time, concerning paying some of the Suitors of the Court, and not others?

Mr. *Edwards.* About that Time, or rather since, as I remember, I told my Lord *Macclesfield* that I saw the Masters were determined not to make any further Contributions; and if that were to be the Case, and there was to be no further Supply of Money, it would be very hard for some to have

all

all their Money, and others none at all. My Lord Chancellor ſaid, I do not know what to ſay to it, I think it is very hard it ſhould be ſo; I will take all the Care I can, and hope to make every Body eaſy.

Mr. *Lutwyche*. My Lords, I deſire he may be asked, whether he had not paid all the Money, or near all, when this Diſcourſe happened?

Mr. *Edwards*. Yes, My Lords.

Mr. *Lutwyche*. I deſire he may be asked, whether he was preſent at the Meeting of the Maſters, when this 1000 *l.* was inſiſted upon, and on what Occaſion it was?

Mr. *Edwards*. It was upon a Summons that all the Maſters ſhould attend his Lordſhip; I am not ſure, as to the Day; I think it was the latter End of *July*: We waited upon his Lordſhip about ſix of the Clock in the Evening, and my Lord mentioned it to Mr. *Lightboun*, that he was ſurprized that he had not contributed his 500 *l.* he wonder'd that he ſhould be ſo backward in doing what others thought right to do, and that there was Occaſion at that Time for the Payment of 1000 *l.* he mentioned, either to Mrs. *Chitty* or Mr. *Lockmann*. Mr. *Lightboun* told him, that he did not expect to be asked again upon this Subject, he had ſo often told his Lordſhip he would not contribute; other People might do what they pleaſed, but, as for his Part, he was determined not to do it.

Mr. *Lutwyche*. We deſire to know what paſſed, and what was ſaid by the Earl, at that Meeting?

Mr. *Edwards*. When this was refuſed by Mr. *Lightboun*, there was a Diſcourſe in the Company, that if the reſt of the Maſters would advance 50 *l.* a piece, and Mr. *Lightboun* his 500 *l.* it would make up the Sum. The Maſters, moſt of them, ſpoke their Mind, and ſhewed an Unwillingneſs to contribute any more. My Lord *Macclesfield* was pleaſed to ſay, this is a Thing of Conſequence, a Matter that ought to be conſidered; here is a very preſſing Occaſion for a Sum of Money to be immediately paid, if not paid, I don't know what the Conſequence may be; Clamours begin to grow pretty ſtrong, I don't know but it may occaſion a Parliamentary Enquiry; or to that Effect.

Mr. *Lutwyche*. I deſire he may be ask'd, whether there was any further Diſcourſe what the Parliament might do?

Mr. *Edwards*. My Lord *Macclesfield* was pleaſed to ſay further, I don't know, if this Matter comes into the Conſideration of Parliament, how far it may affect your Offices, the Sale of them is againſt an Act of Parliament: Suppoſe it ſhould be reſolved by the Houſe, that theſe Places, being bought contrary to the Act of Parliament, are forfeited, I can't ſay how far it may affect me in ſome Meaſure, but it will affect you much more.

Mr. Serj. *Pengelly*. Theſe are the very Words of the Article, and we may rely upon the Opinion of of the Earl himſelf, when he was in the Poſſeſſion of that great Office?

E. of *Macclesfield*. My Lords, I deſire Mr. *Edwards* may be asked, whether the Subject Matter of this Diſcourſe was the Payment of this 1000 *l.* or making good the Whole of *Dormer's* Deficiency?

Mr. *Edwards*. I underſtood the only Subject to be this 1000 *l.*

E. of *Macclesfield*. You underſtood it ſo?

Mr. *Edwards*. And the Reaſon why I undergoon it ſo was, becauſe if Mr. *Lightboun* would have been pleaſed to have paid his 500 *l.* and the other Maſters 50 *l.* a piece, it would have made up the Sum.

E. of *Macclesfield*. Was the Propoſal of paying 50 *l.* a piece, after Mr. *Lightboun* had refuſed the Payment of 500 *l*?

Mr. *Edwards*. I believe it was.

E. of *Macclesfield*. What Occaſion was there for the Propoſal to pay 50 *l.* a piece, when the Payment of 500 *l.* was abſolutely refuſed?

Mr. *Edwards*. I believe it was underſtood by ſeveral, that, if the other Maſters would have contributed 50 *l.* a piece, it would have been an Inducement for Mr. *Lightboun* to have come in and paid his 500 *l.*

E. of *Macclesfield*. Some Body muſt propoſe this that had that Apprehenſion?

Mr. *Edwards*. I can't ſay who propoſed it, nor whether it was propoſed by my Lord *Macclesfield*, but 50 *l.* a piece was mentioned.

E. of *Macclesfield*. My Lords, I deſire to know of Mr. *Edwards*, whether the Maſters did not at any Time agree to make good *Dormer's* Deficiency?

Mr. *Edwards*. My Lords, I think I remember a Meeting of the Maſters at your Lordſhip's Houſe, not long before this, where they ſeemed inclinable to agree, that if they were continued in the Rights of their Office in all Reſpects, and on the ſame Foot as they had enjoyed them, that then they would have endeavoured to have made this Deficiency good.

E. of *Macclesfield*. I deſire to know if he hath not ſaid, that on his coming into the Office, the Maſters told him, they would make good the Deficiency?

Mr. *Edwards*. I can't ſay the Maſters ever told me, they would make good the Deficiency; I can't ſay I ever heard them ſay, that they would make it up.

E. of *Macclesfield*. I deſire you would recollect yourſelf, whether, when you was with me, and I deſired you to give an Account of this Matter, you did not ſay, that the Maſters did promiſe to make it good, or elſe you would not have come into the Office?

Mr. *Edwards*. I don't remember I told your Lordſhip ſo; I believe it was deſigned by the Maſters to have it made up, if not the Whole, the greateſt Part of the Maſters, were inclinable to make up the Deficiency.

E. of *Macclesfield*. I deſire an Anſwer to the Queſtion, whether he did not ſay, that the Maſters did promiſe him to make good the Deficiency?

Mr. *Edwards*. I don't remember that I ſaid ſo directly; I told your Lordſhip, that unleſs I had had Aſſurances, that the Deficiency of the Office would have been made up, I never would have meddled with it. Theſe Aſſurances I had from Mr. *Cottingham* and Mr. *Godfrey*.

E. of *Macclesfield*. I think you ſay, the Maſters did ſeem to agree, that if they were kept in Poſſeſſion of the Rights of their Offices, they would contribute. Had you two Meetings with me in *July*, or *Auguſt*?

Mr. *Edwards*.

Mr. *Edwards.* I think there were two in the ſame Month of *July*: Within a Month the two Meetings were.

E. of *Macclesfield.* Whether the Maſters have not made ſeveral Complaints to me, of the Invaſion of their Right in their Offices, and deſired me to make an Order to redreſs them?

Mr. *Edwards.* Not only Complaints of that Sort were made, but I believe thoſe Complaints were reduced into Writing, and laid before your Lordſhip; there were frequent Complaints by Concurrence of all the Maſters.

E. of *Macclesfield.* How long before that Time were Complaints made to me, of the Maſters being injured in the Profits of their Office?

Mr. *Edwards.* I believe near a Twelvemonth.

E. of *Macclesfield.* Was it not more?

Mr. *Edwards.* It was full a Year.

[*Earl of* Macclesfield *ſhews Mr.* Edwards *a Paper.*

Mr. *Edwards.* This is what I mentioned, a Repreſentation in Writing laid before your Lordſhip.

E. of *Macclesfield.* Pray look upon that.

[*Shews another Paper, which Mr* Edwards *looks upon.*

E. of *Macclesfield.* Are thoſe two Papers ſigned by you, and the other Maſters whoſe Names are at the End of them?

Mr. *Edwards.* Yes.

E. of *Macclesfield.* I deſire to know in the next Place, whether I was not much preſſed by the Maſters to have made ſome Alterations in the Proceedings of the Court? And what Anſwer did I give?

Mr. *Edwards.* Upon this Repreſentation there were a great many Applications made to my Lord *Macclesfield.* I went ſeveral Times myſelf. Sometimes two or three would make Application to him, that he would be pleaſed, if he thought the Matters repreſented to be Grievances, that he would redreſs them. My Lord did ſay, that he thought, that the Matter of our Complaint was juſt, and that thoſe Matters were proper to be rectified, and he would take all proper Meaſures to do it.

E. of *Macclesfield.* And why were not all theſe Things ſet right?

Mr. *Edwards.* I remember one Circumſtance that I believe will be an Anſwer to the Noble Lord's Queſtion. Thoſe Matters were not laid together all at once before my Lord Chancellor, but ſome at one Time, and others at another Time; and my Lord *Macclesfield* did ſay, I would have you draw up a State of all theſe Grievances you complain of, and then I ſhall ſee them better under one View, and take them together.

E. of *Macclesfield.* Was there any Order made in Favour of the Maſters, and to redreſs theſe Grievances?

Mr. *Edwards.* I remember we were a little impatient that there was no Order made; we often ſollicited on ſeveral Accounts before they were made.

E. of *Macclesfield.* For what particular Reaſons were you ſo impatient?

Mr. *Edwards.* It is impoſſible to recollect the particular Reaſons; they were, in many Inſtances, relating to the Proceedings at the Rolls, and the Innovations there to the Prejudice of the Maſters Offices.

Mr. *Plummer.* My Lord *Macclesfield* hath asked ſeveral Queſtions, and I would make an Obſervation upon this Evidence, That theſe Gentlemen applied to Lord *Macclesfield* to redreſs Grievances, but he would not promiſe them a Redreſs till they paid this Debt.

Sir *George Oxenden.* I deſire to know what he means by the Profits of the Office?

Mr. *Edwards.* The principal Thing that I mean is, the keeping of the Money; but there were ſeveral other Things in which we thought our Offices leſſened, by taking away the cuſtomary Fees which uſually belonged to the Maſters.

Sir *George Oxenden.* If the Profits of the Office was the keeping of the Money, I ſuppoſe they made uſe of it?

Mr. *Edwards.* Yes, my Lords, I believe it was not underſtood by any Body, that the Money was deſigned to be locked up. By the Profits of the Money is meant the putting out the Money at Intereſt for ourſelves. But that is not all, the placing the ſame out at Intereſt for the Suitors occaſions ſeveral Perquiſites, as Reports and other Things, which would be loſt by taking away the Money.

Mr. *John Bennet* called again.

Mr. *Sol. Gen.* My Lords, we deſire Mr. *John Bennet* may be asked, whether he was preſent at the Meeting at the Lord Chancellor's, when Propoſals were made for the raiſing this 1000 *l.*

Mr. *Bennet.* My Lords, I was there, and my Lord *Macclesfield* was earneſt in perſuading Mr. *Lightboun* to pay his 500 *l.* Mr. *Lightboun* ſaid he had much rather bring in all the Money and Securities he had in his Hands, and deliver them up, than pay this 500 *l.* Upon which my Lord *Macclesfield* ſaid, delivering up the Money and Securities too might be the Conſequence, but that was not the worſt; there might be Votes of the Houſe of Commons, that the Office of a Maſter in Chancery did concern the Execution of Juſtice, and that the Maſters in Chancery, by purchaſing their Offices, had incurred the Penalty of the Statute of *Edward* the VIth, and thereby forfeited their Places, and that a new Set of Maſters might be put in; it might redound to ſome Loſs to his Lordſhip in diſpoſing of thoſe Offices, but it would redound much more to their Loſs, the Loſs of their Places.

Mr. *Lutwyche.* When the Maſters refuſed to contribute to this of *Chitty*, what ſaid my Lord?

Mr. *Bennet.* My Lord ſaid, he would take Care of it himſelf, or that he would pay it himſelf, I can't ſay which.

Mr. *Lutwyche.* Whether any thing was ſaid concerning the Conſequence of not paying this 1000 *l.* and whether any Mention was made of *Dormer*'s Deficiency?

Mr. *Bennet.* There was Mention made of Mr. *Dormer*'s Deficiency, and one Maſter mentioned, that it was a bottomleſs Pit; and as my Lord had deſired me and Mr. *Holford* to take ſome Account of it, we both declared, we had not received ſuch a ſatisfactory Account from Mr. *Edwards*, as could be depended upon, and that the Deficiency appeared to us to be very uncertain.

Mr. *Lut-*

Mr. *Lutwyche.* I desire he may be asked, whether any mention was made of any Fear of the Discovery of that Deficiency?

Mr. *Bennet.* I can't say by whom it was said, but it was said in Discourse, If this 1000 *l.* was not now paid, the Deficiency of Mr. *Dormer's* Office would be discovered.

Mr. *Lutwyche.* Pray recollect who was that said by?

Mr. *Bennet.* I can't take upon me to say whom it was said by, but it was said in the Conversation that passed at that Time.

Mr. *Lutwyche.* Who were then present?

Mr. *Bennet.* I believe, all the Masters.

Mr *Lutwyche.* And who besides?

Mr. *Bennet.* My Lord *Macclesfield.*

Mr. *Lutwyche.* Were not all the Masters against making up the Deficiency?

Mr. *Bennet.* Yes, all of them.

E. of *Macclesfield.* Was *Dormer's* Deficiency then known?

Mr. *Bennet.* It was known abroad, but it was nor known how much.

E. of *Macclesfield.* Were there two Meetings between me and the Masters in *July*, or the Beginning of *August?*

Mr. *Bennet.* I believe within a Month there were two Meetings.

E. of *Macclesfield.* What was the Subject Matter of the other Meeting?

Mr. *Bennet.* The first Meeting was to put us all in mind of our Duty, and to admonish us to avoid any Complaint?

E. of *Macclesfield.* That was the first Meeting. Was there any thing said about *Dormer's* Deficiency?

Mr. *Bennet.* I don't remember there was.

E. of *Macclesfield.* What Admonition was it that was given to the Masters, and what was said to them, if they did fail in their Duty?

Mr. *Bennet.* The Admonition was generally to take Care to perform our Duty, not to give any Cause of Complaint, and, in particular, not to go out of Town, till a Week after the last Seal.

E. of *Macclesfield.* Do you not remember, that I said in my Admonition, that, if any Master failed in his Duty, I owed it to the rest to punish him, and to make him an Example?

Mr. *Bennet.* I believe you did say so.

Mr. *Lutwyche.* At the Time when this Admonition was given, was any thing then said about your Accompts?

Mr. *Bennet.* No, I don't remember that any thing was then said on that Subject.

E of *Macclesfield.* In Point of Regularity, when these Gentlemen speak of this 1000 *l.* they should produce the Order?

Mr. Serj. *Pengelly.* It is here, and it is admitted in the Answer.

[*The Order produced, proved by Mr.* Ralph Paxton, *who swore it to be a true Copy of the Order taken from the Report-Office.*

Mr. *Paxton* begins to read,

Martis decimo septimo Die Martii Anno Regni Georgii Regis decimo, inter Prideaux Sutton Cler. & Annam Uxorem ejus, Mercy Sheldon Spinster & Egidium Laurence Executor. Winifred Sheldon Spinster Defunct. Quer. Elisam Chitty, Johannem Russel & alios Defendentes.

Whereas the Defendant, *Elizabeth Chitty* ——

E. of *Macclesfield.* It is not necessary to trouble my Lords in hearing the whole Order, only the ordering Part?

Mr. *Paxton* reads again,

His Lordship doth order, that the said Master do, out of the said Money in his Hands, pay unto the Defendant Eliz. Chitty *the Sum of one Thousand Pounds, and to the Plaintiffs the Sum of five Hundred Pounds, subject to the further Order of this Court.*

Mr. *Lovibond* sworn.

Mr. *Lutwyche.* My Lords, we desire that Mr. *Lovibond* may be asked, whether he was at the Meeting, when the Masters attended my Lord *Macclesfield* about *July* last, and what passed at that Meeting?

Mr. *Lovibond.* I was at that Meeting with several of the other Masters, I think most of them: As to what passed then, according to the best of my Recollection, the first Thing was, my Lord *Macclesfield* turned to Mr. *Lightboun* and ask'd him, why he had not paid the 500 *l.* as well as the rest of the Masters; to which he replied, he never would, and gave my Lord some Reasons why he would not. Then my Lord *Macclesfield* was pleased to say, there was a Matter that required Expedition, a further Demand was made of a Sum of Money, by one Mr. *Lockmann*, who belonged to to the Prince's Court, and it did behove us to find out some Way to make him easy. He proposed that the Masters should raise that Money among them. The Masters in general said, that they could not do it.

Mr. *Lutwyche.* What Arguments were made use of by my Lord *Macclesfield*, to persuade them to it?

Mr. *Lovibond.* I remember that Mr. *Lighboun* said, rather than pay it, he would deliver up all the Money and Effects in his Hands, and my Lord *Macclesfield* did reply, Perhaps that is not the worst of the Matter, it may be worse than that; suppose there should be a Parliamentary Enquiry, and the Parliament should come to a Resolution, that you have forfeited your Offices, by having bought them against the Statute of *Edward* the VIth.

Mr. *Lutwyche.* I desire he may be asked, whether any Encouragement was given, in case they would pay this Money?

Mr. *Lovibond.* I don't remember there was any thing spoke by way of Encouragement to the Masters, for Payment of that Sum of Money.

Mr. *Lutwyche.* I desire to know what was the Result of this Matter, as to this Sum of Money being to be paid, and who it was that said it should be paid?

Mr. *Lovibond.* Upon the Refusal of the Masters, my Lord *Macclesfield* said, Well, I will take Care of that Part myself.

Mr. *Lutwyche.* I desire he may be asked, whether any thing was then said in relation to the Deficiency of *Dormer's* Office?

Mr. *Lovibond.* Yes, there was some Discourse about that Matter, and my Lord *Macclesfield* did express himself as though it would be an unlucky

Thing, and it muſt be made up one Way or other, and he deſired the Maſters to think of a Way to make it up. My Lord *Macclesfield* ſaid, if you can have the Enjoyment of your Places, as you have had them theſe Forty Years, will you come into ſome Terms to make up that Debt? Some ſaid they could not come into it; ſome ſaid there be a might Means of paying it by Annual Inſtallments out of their ſeveral Offices; ſome ſeemed to agree to it; others ſaid we may as well make good the Bankers Debts, as make good this Debt.

E. of *Macclesfield*. I deſire he may be asked, whether he did not agree, that this Deficiency ſhould be made good by Annual Payments?

Mr. *Lovibond*. No, I did not.

E. of *Macclesfield*. I deſire to know, whether the reſt of the Maſters did not?

Mr. *Lovibond*. I believe ſome of the Maſters did.

E. of *Macclesfield*. I deſire to know, whether they did all agree?

Mr. *Lovibond*. I believe the major Part did. I did not.

E. of *Macclesfield*. Do you believe any beſides yourſelf diſagreed?

Mr. *Lovibond*. Indeed I can't tell. The greateſt Part did agree. I can't ſay I heard any Body refuſe.

E. of *Macclesfield*. Some, he ſays, did agree to it, the major Part, and none that he heard refuſed. I deſire to know, if it was not endeavoured to find out a Way to make up whatever Deficiency there was; and whether this was the Subject Matter, the making good the 1000 *l.* or the Whole of the Debt?

Mr. *Lovibond*. The making good the Whole of the Debt, as I underſtood it.

E. of *Macclesfield*. I think he ſaid, that I ſaid then, I would take Care of the 1000 *l.* whether was that after they had agreed that the Deficiency ſhould be made good, or before?

Mr. *Lovibond*. No, I think it was before.

Mr. *Plummer*. I deſire to know, if my Lord *Macclesfield* did ſay, he would take Care of it, when the Maſters refuſed to contribute?

Mr. *Lovibond*. To the beſt of my Remembrance, it was upon their Refuſal, that he ſaid ſo.

Mr. *Thomas Bennet* called again.

Mr. *Tho. Bennet*. My Lords, before the Managers propoſe a Queſtion, I beg the Favour to mention a Thing that my Memory ſlipp'd me in Yeſterday. My Lord *Macclesfield* then asked me, what Eſtate I had purchaſed? I ſaid 68 *l.* a Year in *Kent*, and 40 *l. per Annum* in *Suffolk*. I forgot a Houſe I bought for 700 *l.* which is mortgaged for the ſame Sum. The Accompt lies upon the Table, I forgot it then, and I did then refer to my Accompt that lies upon the Table, that I might not be miſtaken.

Mr. *Sol. Gen.* I deſire he may be asked, whether he was preſent at this Meeting at my Lord *Macclesfield*'s.

Mr. *Tho. Bennet*. Yes, I was ſummoned to attend my Lord *Macclesfield* on this Occaſion. I dined that Day with my Brother and Mr. *Lovibond* and one more; and my Brother told me, that there was a Propoſal come from my Lord *Macclesfield* by Mr. *Cottingham*. He ſaid it was, that the Maſters ſhould advance 50 *l.* a piece, towards a Demand in the Court of *Chancery*; and in caſe we would do it, my Lord *Macclesfield* would make Mr. *Lightboun* pay his 500 *l.* We, who were then preſent, ſeemed to agree, that if my Lord would make Mr. *Lightboun* pay his 500 *l.* we would pay our 50 *l.* a piece. In the Evening, when we attended my Lord *Macclesfield*, his firſt Application was to Mr. *Lightboun*, and as ſoon as we came, he ſaid to him, Mr. *Lightboun*, I am ſurprized you have not paid your 500 *l.* as the reſt have done, I wonder at it; and he uſed ſome hard Expreſſions, that I wonder he could ſtand it, I could hardly have done it; but Mr. *Lightboun* did ſtand it, and refuſed to pay it, and gave his Reaſons for it, and ſaid he had given them over and over again.

Mr. *Sol. Gen.* What Reaſons were laid before you to pay it?

Mr. *Tho. Bennet*. The Reaſons laid before us by my Lord *Macclesfield* were, that there was a Deficiency in *Dormer*'s Office, which he was afraid would break out; for here was a Demand of a Sum of Money by one, for whom he had been ſpoken to, by a Perſon of very great Diſtinction. I did not know who it was then, but I afterwards underſtood it was Mr. *Lockmann*, that was the Perſon that was to have the Money; and he asked, if we did not think it for our Intereſt to make ſuch a Perſon our Friend?

Mr. *Sol. Gen.* Was there any thing more ſaid?

Mr. *Tho. Bennet*. My Lord *Macclesfield* ſaid, that in caſe this Money was not paid, and ſome Method found to make up the Deficiency of Mr. *Dormer*, he believed it might occaſion a Parliamentary Enquiry, which might hurt him very much, but, ſaid he, I believe it will hurt you Gentlemen much more.

Mr. *Lutwyche*. Were there any of the Maſters that asked him any Queſtions, how he apprehended it would come into Parliament?

Mr. *Tho. Bennet*. Yes, Mr. *Holford* asked him the Queſtion, Can your Lordſhip imagine, in what Method this may come into Parliament? My Lord anſwered, Upon the Meeting of every Parliament, Committees were choſen by the Houſe of Commons, and among the reſt there was a Committee of the Courts of Juſtice, and he thought it very likely, that That Committee might take this under Conſideration.

Mr. *Sol. Gen.* What was ſaid upon the Maſters Refuſal to raiſe the 1000 *l.*?

Mr. *Thomas Bennet*. After Mr. *Lightboun* refuſed to pay towards the 1000 *l.* my Lord then ſaid he would make up that.

Mr. *Sol. Gen.* Was there any Talk of *Dormer*'s Deficiency?

Mr. *Tho. Bennet*. There was ſome Diſcourſe about making up Mr. *Dormer*'s Deficiency. Several of the Maſters were againſt it. No Scheme could be found that would make it up. I ſaid upon that Occaſion, that it was a bottomleſs Pit, and Mr. *Edwards* had not given Satisfaction to any of the Maſters what the Deficiency was.

Sir *George Oxenden*. Was there any mention made at this Meeting of the Statute of *Edward* VI.

Mr. *Tho. Bennet*. My Lord Chancellor ſaid, He did not know but our Offices might come within the Statute of *Edward* VI: And, if that ſhould be

ſo

ſo reſolved by Parliament, we muſt forfeit our Offices; and therefore had we not better do ſomething than forfeit our Offices?

Mr. Serj. *Pengelly*. My Lords, we beg Leave to call Mr. *Lockmann*, to whom this 1000 *l.* was paid, and to ſhew your Lordſhips the Declaration that was made by the Earl of *Macclesfield* at that Time.

Mr. *Lutwyche*. We beg Leave firſt to read the Order in the Cauſe of *Harper* and *Cate*.

[*The Order is proved.*

Mr. *Ralph Paxton* reads.

Sabbati quinto Die Decembris, Anno Regni Georgii Regis undecimo, inter Jana' Harper vidua' Quer' Thoma' Caſe Clericu' & Sara' Maria' uxor' ejus, Henricu' Halſey, & alios Defendentes.

UPON opening of the Matter this preſent Day unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. *Sollicitor General* and Mr. *Williams*, being of Council for the Plaintiff; and Mr. *Benjamin Jackman*, in the Preſence of Mr. *Talbott*, of Council for the Defendants: The Caſes. It was alledged, That it being, by the Order made on the hearing of this Cauſe (*inter alia*) ordered and decreed, that the Sum of 500 *l.* Pounds, Part of the Marriage Portion of the Plaintiff, receiv'd by *Thomas Harper* Clerk, her late Husband, ſhould be made good to her with Intereſt from his Death, at the Rate of 5 *l. per Cent. per Annum*, together with her Coſts of this Suit, to be taxed by Mr. *Dormer*, then one of the Maſters of this Court, out of the ſaid *Thomas Harper*'s Eſtate (for which, and other Purpoſes, in the ſaid Order, ſo much as ſhould be neceſſary of the ſaid *Thomas Harper*'s Eſtate was to be ſold to the beſt Purchaſer that could be got for the ſame, with the Approbation of the ſaid Maſter:) And the ſaid Maſter having, by his Report, (made purſuant to the ſaid Order, and) dated the 12th of *December*, 1716, certified the Sum of 557 *l.* 16 *s.* 05 *d.* to be due to the Plaintiff for Principal and Intereſt, beſides Coſts. And the ſaid Defendants having been ſerved with a Writ of Execution of the ſaid Decree, the ſaid Maſter, by his Report dated the 9th of *November*, 1717. allowed the ſaid *Jackman* the Purchaſe of three Houſes at *Kenſington* (Part of the Premiſes directed to be ſold) at the Sum of 260 *l.* And the ſaid Maſter's Report being afterwards abſolutely confirmed, the ſaid *Jackman* obtained an Order of the 19th of *December*, 1717. whereby it was ordered, That the Writings belonging to the ſaid Eſtate, purchaſed by the ſaid *Jackman*, ſhould be delivered to his Council, and that the Tenants of the ſaid Eſtate ſhould attorn to him, on bringing his Purchaſe Money before the ſaid Maſter. And the ſaid *Jackman* did accordingly, on the 24th of the ſame *December*, bring his ſaid Purchaſe Money before the ſaid Maſter, as by his Certificate of that Date, now read, appears, and the Tenants attorned to the ſaid *Jackman*: But the Defendants have ever ſince, by trifling Pretences and Excuſes, put off the executing proper Conveyances to the ſaid *Jackman*, although the ſame have been long ſince ſettled and allowed by Mr. *Edwards*, one of the Maſters of this Court, the ſaid Mr. *Dormer*'s Succeſſor, as by the Affidavits of *Joſeph Herring* and *Thomas Atwood* appears. It was therefore prayed, that all Parties may forthwith execute Conveyances of the ſaid Houſes to the ſaid Mr. *Jackman*, or as he ſhall appoint: And it was on the Plaintiff's Behalf prayed, that the ſaid Purchaſe Money may be paid to her, towards Satisfaction of what is due to her, by vertue of the ſaid Decree: Whereto the Council for the Defendants had Caſes alledged, that they are intitled to the Reſidue of the ſaid *Tho. Harper*'s Eſtate, after ſuch Payments, as are directed by the ſaid Decree to be made out of the ſame, are made, and the Defendants *Caſe* and his Wife were always ready to join in executing the ſaid Conveyances, upon an Application being made of the ſaid *Jackman*'s Purchaſe Money towards what is due to the Plaintiff; but being apprehenſive of a Deficiency of Mr. *Dormer*'s Eſtate, to anſwer the Monies brought before him, purſuant to the Orders of this Court; and conceiving they ought not to be Sufferers, though ſuch Deficiency might appear, and the Delay being occaſioned by the Purchaſer, and not by the Plaintiff, and the ſaid Maſter not having ſettled the ſaid Conveyances, they did therefore ſcruple to execute the ſaid Conveyances, until the ſaid *Jackman*'s Purchaſe Money ſhould be applied to the Purpoſes in the ſaid Decree; but are willing, if the Court ſhould ſo think proper, on Payment of the ſaid 260 *l.* Purchaſe Money to the Plaintiff, and the ſaid *Tho. Harper*'s Eſtate being diſcharged of ſo much, to execute the ſaid Conveyances. Whereupon, and upon hearing of the ſaid Affidavits of the ſaid *Joſeph Herring* and *Thomas Atwood*, and an Affidavit of Notice to the Defendant *Halſey* read, and what was alledged on both Sides: His Lordſhip doth order, that it be referred to the ſaid Mr. *Edwards*, to examine, whether the ſaid 260 *l.* was depoſited with the ſaid Mr. *Dormer*, for the Benefit of any particular Perſon, and whom, and what was the Occaſion of the Delay, that the ſaid Conveyances were not executed, and the ſaid 260 *l.* Purchaſe Money paid out before the Year 1720. and whether there is likely to be a Loſs of any Monies depoſited with the ſaid Mr. *Dormer*: And, upon the ſaid Maſter's Report, ſuch further Orders ſhall be made, as ſhall be juſt.

Mr. Serj. *Pengelly*. My Lords, this Order was made in *December* laſt: It is a Direction to Mr. *Edwards* to ſee, whether there was likely to be any Loſs of any Monies depoſited with Mr. *Dormer*: We pray that Mr. *Lockmann* may be ſworn.

Mr. *Lockmann* ſworn.

Mr. Serj. *Pengelly*. We beg Leave that Mr. *Lockmann* may be asked, whether he attended upon the Earl of *Macclesfield* at any Time relating to a Sum of Money, and where.

Mr.

Mr. *Lockmann.* I received an Order from the Earl of *Macclesfield* upon Mr. *Edwards* for 1000 *l.* but not being able to receive it of Mr. *Edwards*, I went to *Kenſington* to wait upon the Earl of *Macclesfield*, and told his Lordſhip the Neceſſity I had for this 1000 *l.* which belonged to Mrs. *Chitty*, but the Benefit of it was made over to me; that I had the Misfortune to be backwards in my Affairs, and had ſome *South-Sea* Contracts to make up, and had made a Compoſition of my Debts, for which I had about three Weeks to pay it in, and therefore I deſired the Favour of his Lordſhip to order me the Payment of this 1000 *l.* His Lordſhip was pleaſed to tell me, that if I attended him in Town, and applied to him there, I ſhould have the Money paid. Upon which I waited upon his Lordſhip in Town; and when I had the Honour to ſee his Lordſhip, he told me, that he had enquired into the Affair relating to that Money upon which the Order was made, that it was in Mr. *Dormer*'s Office, where there was a Deficiency, that he could not yet bring all the Maſters to ſettle that Matter; but if I would come a few Days after, he would ſee what he could do for me. Thereupon I attended ſeveral Days, and went to *Weſtminſter-Hall*, and ſpoke to Mr. *Cottingham*, and he ſaid great Pains had been taken by my Lord, but he had not yet been able to bring any thing to bear, but he did not doubt but in a little Time he could bring it to bear to his Satisfaction; there had been ſome Motions made by Serjeant *Cheſhyre*, &c. which had frightened the Maſters from raiſing Money; but if I attended in a few Days, he would do what he could for me. I waited ſome Days, and at laſt I took the Freedom to wait upon my Lord *Macclesfield* at his own Houſe in *Lincoln's-Inn* Fields, and I told his Lordſhip I had attended many Days in Town, and had neglected my Duty and Service; that the next Day was the laſt Day appointed to pay my Compoſition, and having depended upon this Money, I had made no other Proviſion. Whereupon his Lordſhip ſaid, he had taken a great deal of Pains, and had ſpoken to the Maſters, and that I ſhould attend his Lordſhip next Day at *Weſtminſter* at Ten, and he would ſee what he could do for me, but that there was none of the Eſtate of Mr. *Dormer* left. I waited upon his Lordſhip accordingly the next Day at *Weſtminſter*. His Lordſhip called me into his Room, and told me that Mr. *Cottingham* ſhould pay me the 1000 *l.* but he believed there would come no more, that this would be the laſt of the Money, or the laſt Sum that Mrs. *Chitty* would receive; and that if ſhe had nothing elſe, I might, by marrying her, in Expectation of a Fortune, make myſelf worſe than I was.

Mr. *Dodington.* I deſire Mr. *Lockmann* may be asked, what the whole Sum was that was paid in?

Mr. *Lockmann.* I took it to be about 10000 *l.*

Mr. Serj *Pengelly.* I deſire he may be asked, if the Earl of *Macclesfield* gave any further Reaſons, why it was like to be the laſt Sum?

Mr. *Lockmann.* The Earl of *Macclesfield* did not, at that Time, give me any Reaſon; but the Day before, when I had the Honour of ſeeing his Lordſhip, at his Houſe in *Lincoln's-Inn-Fields*, and once before that, his Lordſhip told me that the Maſters in Chancery were apprehenſive of loſing a great deal of their Privileges and Profits of their Places; and therefore ſome of them were not willing to advance any Money.

Mr. *Weſt.* My Lords, I beg Leave to ask Mr. *Lockmann*, whether he received any Direction or Intimation, as to the keeping of this private, the telling, or not telling it?

Mr. *Lockmann.* I did receive no Intimation at that Time; afterwards, when the Sollicitor met me, he ask'd me, Pray, ſays he, Mr. *Lockmann*, have you received the 1000 *l.* you ſollicited for? Yes, I have received it. Pray, who then paid it you? I told him Mr *Cottingham*; ſays he, Mr. *Cottingham* denied it to me. Upon that I met Mr. *Cottingham* ſome Time afterwards in the Court of Requeſts. He told me I ſhould ſay nothing of it: Beſides this, I received no Intimation to keep it ſecret.

Mr. *Weſt.* What did he ſay to you then?

Mr. *Lockmann.* He ſaid ſaid at firſt meeting me, You can't fare well, but you muſt cry out Roaſt-meat. I, being not well acquainted with that Phraſe, did not know what he meant. I did not know that I had ever eat Roaſt-meat or boil'd Meat with him either; ſo I told him, if that was in relation to his paying me the 1000 *l.* it was only what was due, and I hoped there would be Care taken to anſwer the Remainder. He anſwered, he could not tell what the Conſequence would be, whether ever it would be made up, or not, he could not tell, he was very uncertain.

E. of *Macclesfield.* Sir, I deſire to know off you, whether you did not repreſent yourſelf to me to be in the utmoſt Diſtreſs, if this Money was not paid to you, that in ſuch Caſe you muſt be ruined?

Mr. *Lockmann.* I remember I told his Lordſhip, that this Money, I had borrowed it of Mrs. *Chitty*, that I had ſettled a Compoſition with my Creditors and wanted this Money to ſatisfy them; that it muſt be paid the next Day; and if I did not then pay it, it would be a great Damage to me; but I preſſed his Lordſhip more, as I depended upon his Lordſhip's Promiſe, and that was the Reaſon I preſs'd it the more.

E. of *Macclesfield.* I deſire he may be asked, whether I ever promiſed to pay him at any Time before that?

Mr. *Lockmann.* When I went to wait upon your Lordſhip at *Kenſington*, your Lordſhip promiſed me it ſhould be paid; that, aſſoon as you came to Town I ſhould apply to your Lordſhip, and you would give Orders, and it ſhould be done.

E. of *Macclesfield.* Whether he did not look upon it, that I did this out of Compaſſion to him?

Mr. *Lockmann.* I took it as Part of a Sum of Money due, and I did not look upon it as Charity, or out of Compaſſion.

E. of *Macclesfield.* I deſire to know, whether he did not intreat it of me as an Act of Compaſſion to him?

Mr. *Lockmann.* I don't underſtand the *Engliſh* Terms, I did not uſe the Word Compaſſion; I begg'd that your Lordſhip would be ſo good as to order me the Money.

E. of *Macclesfield.* I deſire to know, whether the firſt Time he applied to me I promiſed to pay the Money?

Mr. *Lockmann.*

Mr *Lockmann.* Your Lordſhip promiſed the Order ſhould be given to the Maſter, and that I ſhould be paid.

E of *Macclesfield.* When was that Promiſe?

Mr. *Lockmann.* When you promiſed to order the Maſter, and I ſhould have the Money.

E of *Macclesfield.* How long before?

Mr. *Lockmann.* I can't very well remember; becauſe the Sollicitor waited ſeveral Times upon the Maſter, and the Maſter told him there was nothing. I went to the Maſter's Houſe, and then to the Rolls, and there I ſaw him; and he told me there were no Aſſits in his Hands of Mr. *Dormer's.*

E. of *Macclesfield.* I deſire to know, whether he did not deſire a further Sum, after this 1000 *l.* was paid by Mr. *Cottingham,* and how much?

Mr. *Lockmann.* My Lord, I ask your Lordſhip's Pardon, I don't remember I then ask'd any other Sum. When I ſaw your Lordſhip afterwards, I asked your Lordſhip, if it was not poſſible to have another 1000 *l.* You was pleaſed to tell me, there could be no more paid.

E. of *Macclesfield.* Did not you ſollicit for a further Sum, till Mr. *Cottingham* chid you?

Mr. *Lockmann.* Mr. *Cottingham* was a little angry, when I preſs'd him. I went out of Doors, Mr *Cottingham* followed me. I ſtood in the Yard, Mr. *Cottingham* came out, and told me he had an Order from my Lord Chancellor to call the Maſters to a Meeting, and ſee what could be done. I ſaid, ſtill this is uncertain, how ſhall I do if I have not this Money? it will be a great Prejudice to me.

E. of *Macclesfield.* I deſire to know, whether he did not ask a further Sum of 500 *l.* or 570 *l.*

Mr. *Lockmann.* There was an Order, on a Letter of Attorney from Mrs. *Chitty,* for that Sum. But never, after I was at your Lordſhip's Houſe at *Kenſington,* did I ask if I could have a thouſand Pounds more.

E. of *Macclesfield.* When was that 500 *l.* paid?

Mr. *Lockmann.* I don't know.

E. of *Macclesfield.* I deſire to know, whether between the Time you ſay you was promiſed the 1000 *l.* and the Time of paying it, you did not deſire to have the Sum of 574 *l.* advanced for Mrs. *Chitty's* Uſe.

Mr. *Lockmann.* When your Lordſhip had told me that 1000 *l.* was all that could poſſibly be obtained, I made no further Sollicitations.

E. of *Macclesfield.* How long was it that you came to *Kenſington,* to ask me for that 1000 *l.* before the other 1000 *l.* was paid?

Mr. *Lockmann.* Three Weeks before.

E. of *Macclesfield.* Then after that Time you never demanded any more?

Mr. *Lockmann.* After your Lordſhip had told me that was all that could be obtained, then I deſiſted from asking any more.

E. of *Macclesfield.* And that was about three Weeks before the Time you received the Money?

Mr. *Lockmann.* I believe, between a Fortnight or three Weeks, or thereabouts.

Mr. *Com. Serj.* I deſire he may be asked, whether he can be certain as to the Expreſſion, whether this was the laſt Money that was like to be paid, or that my Lord would pay.

Mr. *Lockmann.* It was, as I remember, in theſe Words: If the Lady hath no other Fortune than what is in *Chantery,* in the Maſter's Hand, this will be the laſt of it.

Mr. *Sol. Gen.* We deſire Mr. *Atwood* may be called.

Mr. *Atwood* ſworn.

Mr. Serj. *Pengelly.* My Lords, we deſire Mr. *Atwood* may be asked, whether he was in Court at the Time a Motion was made upon an Order in a Cauſe between *Harper* and *Cate.*

Mr. *Atwood.* My Lords, I was at my late Lord Chancellor's Houſe, where, about the 5th of *December* laſt, the Motion was made. I was Sollicitor for Mrs. *Harper* in the Cauſe. The Occaſion of it was, There was an Eſtate decreed to be ſold, and the Money was to be paid into the Maſter's Hands, who was Mr. *Dormer:* The Money was accordingly paid, and the Conveyances approved of by the Council, and a Fine agreed upon; but at laſt the Parties would not execute, unleſs the Money was paid them; objecting there would be a Deficiency in *Dormer's* Office: Therefore they mov'd that they might not be obliged to execute the Conveyance, till the Money was applied and paid to the Plaintiff. My Lord Chancellor was pleaſed to declare thereon, that he had heard there would be a Deficiency of Mr. *Dormer's* Effects; but it had never judicially come before him; and what Knowledge he had of it was only as publick News, and referred it to Mr. *Edwards* to examine, whether there was likely to be a Deficiency, or not. I was near two Months before I could get this Order paſſed; and then the Impeachment came on. The Regiſter told me, he was afraid this Order would do ſome Miſchief. When I had got the Order, I was told by ſeveral People about the Town, that Mr. *Dormer's* Effects were very defective; and that my Lord Chancellor had directed a Compoſition to be made with one *Wilſon* who was a Banker; and had directed Mr. *Hiccocks* to compound for Half a Crown in the Pound, and that others had twenty Shillings. Lord Chancellor had directed an Enquiry to be made, whether any Deficiency. I was adviſed to put in theſe Words: *By what Means;* becauſe I was told then it was, by reaſon of compounding that Debt with *Wilſon;* but the Regiſter would not let them ſtand.

Mr. Serj. *Pengelly.* The making of the Order, in this Caſe, confirms the Evidence of Mr. *Atwood,* that his Lordſhip declared he had heard of it no other-ways than as publick News; becauſe by this Order he directs Mr. *Edwards* to enquire, whether there was likely to be a Deficiency, or not, although it had been ſo well known to his Lordſhip ſome Years before.

Mr. Serj. *Probyn.* He ſays there are Words ſtruck out of the Order; I deſire to know, whether thoſe Words were not added by himſelf to the Order?

Mr. *Atwood.* Yes, they were added by me before it paſſed.

Mr. Serj. *Probyn.* When?

Mr. *Atwood.* After I had the Order from the Regiſter.

Mr. Serj. *Pengelly.* When was that?

Mr. *Atwood.* It was near two Months before I could get the Order paſſed.

E. of *Macclesfield.* Had you the Order paſſed before the Impeachment?

Mr. *Atwood.* Yes, I believe I had.

E. of *Macclesfield.* Had you it paſſed before this Matter came into Parliament?

Mr. *Atwood.* I don't particularly know; I believe it was before your Lordſhip was impeached.

E. of *Macclesfield.* Whether was it after I had parted with the Seals?

Mr. *Atwood.* I believe after.

E. of *Macclesfield.* How long was it before you added thoſe Words?

Mr. *Atwood.* Two or three Days after I had got the Order.

E. of *Macclesfield.* When was it the Regiſter ſtruck out thoſe Words?

Mr. *Atwood.* I can't ſay, I believe it was before the Impeachment. The other Side had let thoſe Words be in; but yet the Regiſter ſtruck them out.

E. of *Macclesfield.* Was it after I had ceaſed to be Chancellor?

Mr *Atwood.* I believe it was.

E. of *Macclesfield.* Was any thing ſaid, at that Time, of the Accident of *Wilſon*'s breaking and *Poulter*'s going off?

Mr. *Atwood.* I do remember your Lordſhip ſaid *Wilſon* was become Bankrupt, and that he had Money of Mr. *Dormer*'s; and you ſaid ſomething of a Perſon that was ſued by *Wilſon*, and of a Recovery againſt him, and of an Action brought for an Eſcape; and you concluded, upon the Whole, that all you knew of the Matter was only as publick News. This was after you had given an Account of the Matter of *Wilſon* and of the Marſhal.

Dr. *Sayer.* I deſire he may be asked, whether my Lord did not expreſs a Doubt, how theſe Matters might come out?

Mr. *Atwood.* I don't know what his Lordſhip was pleaſed to doubt of.

Mr. Serj. *Probyn.* I deſire Mr. *Atwood* would recollect himſelf, whether there was any Notice taken, how this might come out, when the Report of the Maſters ſhould be made?

Mr. *Atwood.* I don't remember any thing tending to that.

Mr. *Com. Serj.* Whether he took any *Memoranda* of theſe Words, and when?

Mr. *Atwood.* No, I took no *Memoranda* of them, till I was ſummoned to attend the Committee.

Mr. *Com. Serj.* I deſire Mr. *Atwood* may give a Reaſon, how he comes to forget Facts, and remember a Form of Words?

Mr. *Atwood.* I don't remember all the Facts that have been asked.

Mr. *Robins.* Whether my Lord did not mention a particular Sum that was owing from *Wilſon* to *Dormer*?

Mr. *Atwood.* I believe my Lord did mention a Sum, and I believe it was 18000 *l.*

Mr. *Robins.* Whether he did not mention that *Wilſon* had brought an Action of Eſcape againſt the Marſhal?

Mr. *Atwood.* Yes, that *Wilſon* had brought an Action of Eſcape againſt the Marſhal?

Mr. *Robins.* Whether he did not mention, that *Wilſon* had recovered a Judgment againſt the Marſhal?

Mr. *Atwood.* Yes, that *Wilſon* had recovered a Judgment.

Mr. *Robins.* Whether was there any thing ſaid of the Eſcape of *Poulter*?

Mr. *Atwood.* Yes, my Lord did mention, that there was an Action brought againſt the Marſhal, for that very Eſcape.

Mr. *Com. Serj.* Whether my Lord having mentioned theſe Particulars, he did not from thence infer, he could not then tell, how Matters might come out?

Mr. *Atwood.* I do not remember any thing of that.

Mr. *Lutwyche.* My Lords, I ſhall only make one ſhort Obſervation. The Lord *Macclesfield* ſaith in his Anſwer, that he doth not believe that he had any Diſcourſe with the Maſters about the Payment of this 1000 *l.* I ſubmit it to your Lordſhips, whether there are not four or five Witneſſes to it. We have now done with the Sixteenth Article.

Mr. *Sol. Gen.* We ſhall proceed to our Proofs on the Seventeenth Article. And it will be neceſſary to lay before your Lordſhips three or four Orders, for the Proof of this Article.

Mr. *Ralph Paxton*, being called, appeared, and proved the ſeveral Orders following, which were then all read.

An Order, dated 18 *January*, 8° *Georgij Regis.*

Another, dated 8 *March*, 8° *Georgij Regis.*

Another, dated 5 *July*, 8° *Georgij Regis.*

Another, dated 22 *December*, 9° *Georgij Regis.*

Jovis decimo octavo Die Januarij Anno Regni D'ni Georgij Regis octavo, inter Jonathan' Jones Infant' per Eliza' Jones Vidua' prox' Amit' & dicta' Eliza' Jones Quer' Thoma' Jett Arm' & Petru' Wiſe, Defendentes.

UPON opening of the Matter, this preſent Day, unto this Court, by Mr. Serjeant *Cheſhire*, of Council with the Plaintiff *Jonathan Jones*, in the Preſence of Mr. *Ketleby*, of Council with the Plaintiff *Elizabeth Jones*; and the Defendant *Wiſe*, and Mr. *Horſeley*, of Council with the Defendant *Jett*. The Council for the Plaintiff *Jonathan Jones* alledged, that *Jonathan Jones* deceaſed, late Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth*, by his Will, deviſed one Moiety of his Eſtate, which was wholly perſonal, after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he ſhould attain his Age of One and Twenty Years, together with the Produce thereof, and made the Defendants, *Jett* and *Wiſe*, Executors in Truſt for the ſaid Plaintiffs, who duly

duly proved the ſaid Will. That the Plaintiffs having brought their Bill in this Court, to have an Account of the ſaid Teſtator's Eſtate, for a Maintenance for the Plaintiff *Jonathan*, during his Infancy, and a Performance of the ſaid Will: Upon the Hearing of this Cauſe, it was referred to Mr. *Dormer*, then one of the Maſters of this Court, to take an Account of the ſaid Teſtator's Eſtate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties; and the Plaintiff *Elizabeth*'s Moiety was to be forthwith aſſigned to her; and the other Moiety was to be placed out at Intereſt, by the ſaid Maſter, for the ſaid Infant's Benefit. And the ſaid Maſter was to aſſign a Maintenance for the ſaid Plaintiff, for the Time paſt; and was alſo to conſider what was proper to be allowed for his Maintenance, for the future. That the ſaid Maſter, having proceeded to take an Account of the ſaid Teſtator's Eſtate, it appeared, that ſo much thereof was raiſed by the Sale of *Bank* and *South-Sea* Stock, and brought before the Maſter, as amounted to Five Thouſand, Nine Hundred, and Eighty-five Pounds, Three Shillings, and Four Pence, one Moiety whereof, after Payment of her Share of the Coſts of this Suit, belongs to the Plaintiff *Elizabeth Jones*, and has been accordingly paid to her. And the other Moiety belongs to the Plaintiff *Jonathan Jones*, and is now in the Hands of Mr. *Edwards*, one of the Maſters of this Court, who ſucceeded the ſaid Mr. *Dormer*, and to whom the Reference, in this Cauſe, hath been transferred. That the Plaintiff, *Jonathan Jones*, hath now attained his Age of One and Twenty Years, as by Affidavit and Certificate appears, and is intitled to receive his Moiety of the ſaid Monies, after Deduction of his Share of the ſaid Coſts. And having contracted ſome conſiderable Debts, for his Maintenance, and otherwiſe, during his Infancy, for which he is threatened no be arreſted, in caſe the ſaid Debts are not ſpeedily paid: It was therefore pray'd, that the ſaid Maſter may, out of the Monies in his Hands, pay to the Plaintiff, *Jonathan Jones*, the Sum of Four Hundred Pounds, which, upon reading the ſaid Affidavit and Certificate, and upon hearing the Council for the Plaintiff, *Elizabeth Jones*, and the Defendant, *Wife*, who conſented thereto, and the Council for the Defendant, *Jett*, who did not oppoſe the Payment thereof, is ordered accordingly.

Jovis octavo Die Martij Anno Regni D'ni Georgij Regis octavo, inter Jonathan' Jones & Eliza' Jones Quer' Thoma' Jett Arm' & Petru' Wiſe, Defendentes.

UPON opening of the Matter, this preſent Day, unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. Serjeant *Cheſhire*, being of Council for the Plaintiff, *Jonathan Jones*, in the Preſence of Mr. *Ketlebey*, of Council for the Plaintiff, *Elizabeth Jones*, and for the Defendant, *Wiſe*: It was alledged, that *Jonathan Jones* deceaſed, late Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth Jones*, by his Will, deviſed one Moiety of his Eſtate (which was wholly perſonal) after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he ſhould attain his Age of One and Twenty Years, together with the Produce thereof; and made the Defendants, *Jett* and *Wiſe*, Executors in Truſt for the ſaid Plaintiffs; and the ſaid Defendants duly proved the ſaid Will. That the Plaintiffs exhibited their Bill into this Court againſt the Defendants, to have an Account of the ſaid Teſtator's Eſtate, and a Performance of his Will. And, upon the hearing of the Cauſe, it was referred to Mr. *Dormer*, then one of the Maſters of this Court, to take an Account of the ſaid Teſtator's Eſtate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties; and the Plaintiff *Elizabeth*'s Moiety was to be forthwith aſſigned to her. And the other Moiety was to be placed out at Intereſt, by the ſaid Maſter, for the ſaid Infant's Benefit. That the ſaid Maſter having proceeded to take an Account of the ſaid Teſtator's Eſtate, it appeared, that ſo much was raiſed by the Sale of the *Bank* and *South-Sea* Stocks, and brought before the ſaid Maſter, as amounted to Five Thouſand, Nine Hundred, and Eighty-five Pounds, Three Shillings and Four Pence, one Moiety whereof, after Payment of the Plaintiff *Elizabeth Jones*'s Share of the Coſts of this Suit, belonged to her, and had been accordingly paid to her. And the other Moiety belonged to the Plaintiff *Jonathan Jones*, and was in the Hands of Mr. *Edwards*, one of the Maſters of this Court (who ſucceeded the ſaid Mr. *Dormer*.) That the Plaintiff, *Jonathan Jones*, has attained his Age of One and Twenty Years, as by Certificate and Affidavit appears, and is intitled to receive his Moiety of the ſaid Money, after Deduction of his Share of the ſaid Coſts: And he had contracted, for a Poſt in the Army, which, with his Equipage, will amount to Two Thouſand Pounds, which he is adviſed will be very advantageous for him to purchaſe; and therefore it was pray'd, that the ſaid Maſter may pay to the Plaintiff, *Jonathan Jones*, out of the Money in his Hands, a Sum not exceeding Two Thouſand Pounds, to be laid out in the Purchaſe of a Commiſſion, and for other Purpoſes. Whereupon, and upon hearing of the Plaintiff, *Elizabeth Jones*, and Defendant *Wiſe*'s Council; and hearing an Affidavit of Notice of this Motion to the Defendant, *Jett*, read, and what was alledged by the Council on both Sides: It is ordered, that the ſaid Maſter do, out of the Money in his Hands, pay unto the Plaintiff, *Jonathan Jones*, the Sum of Two Thouſand Pounds; the Plaintiff, *Elizabeth Jones*, and the Defendant, *Wiſe*, having ſubſcribed the Regiſter's Book, ſignifying their Conſent thereto.

Jovis

Jovis quinto Die Julii Anno Regni D'ni Georgii Regis octavo, inter Jonathan' Jones & Eliza' Jones Quer' Thoma' Jett Arm' & Petru' Wife, Defendentes,

UPON opening of the Matter this preſent Day, unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. Serj. *Chehne*, being of Council for the Plaintiff, it was alledged, That *Jonathan Jones* deceaſed, Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth Jones*, by his Will deviſed one Moiety of his Eſtate (which was wholly perſonal) after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he ſhould attain his Age of One and Twenty Years, together with the Produce thereof, and made the Defendants, *Jett* and *Wife*, Executors in Truſt for the ſaid Plaintiffs, and the ſaid Defendants duly proved the ſaid Will. That the Plaintiffs exhibited their Bill into this Court againſt the Defendants, to have an Account of the ſaid Teſtator's Eſtate, and a Performance of his Will, and upon the hearing of the Cauſe, it was referred to Mr. *Dormer*, then one of the Maſters of this Court, to take an Account of the ſaid Teſtator's Eſtate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties, and the Plaintiff *Elizabeth*'s Moiety was to be forthwith aſſigned to her, and the other Moiety was to be placed out at Intereſt, by the ſaid Maſter, for the ſaid Infant's Benefit. That the ſaid Maſter having proceeded to take an Account of the ſaid Teſtator's Eſtate, it appeared by ſeveral Certificates from the ſaid Maſter, that ſo much thereof was raiſed by the Sale of the *Bank* and *South Sea* Stocks, and brought before him, as amounted to Five Thouſand nine Hundred and and eighty five Pounds three Shillings and four Pence, that one Moiety thereof, after Payment of the Plaintiff *Elizabeth Jones*'s Share of the Coſts of this Suit, hath been in purſuance of ſeveral Orders of this Court paid to her, and the other Moiety, which belonged to the Plaintiff *Jonathan Jones*, was paid over to Mr. *Edwards*, one of the Maſters of this Court (who ſucceeded the ſaid Mr. *Dormer*). That the Plaintiff *Jonathan Jones*, having attained his Age of One and Twenty Years, and being intitled to receive his Moiety of the ſaid Money, after Deduction of his Share of the ſaid Coſts, and he having contracted for a Poſt in the Army, which, with his Equipage, will amount to two Thouſand Pounds, he did, on the eighth Day of *March* laſt, apply to the Court for that Money, and it was then ordered, That the ſaid Maſter ſhould, out of the Money in his Hands, pay unto the Plaintiff *Jonathan Jones* the Sum of two Thouſand Pounds, the Plaintiff *Elizabeth Jones*, and Defendant *Wife*, having ſubſcribed the Regiſter's Book, ſignifying their Conſent thereto; that purſuant to the ſaid Order, the ſaid Maſter paid the ſaid two Thouſand Pounds, and there now remaining in his Hands of the Plaintiff *Jonathan Jones*'s Share of the ſaid Money, about the Sum of ſix Hundred and forty two Pounds. That the ſaid Plaintiff *Jonathan Jones*, having preſent Occaſion for the ſaid Money, hath executed a Letter of Attorney to the Plaintiff *Elizabeth Jones*, his Mother, dated the Five and Twentieth of *May* laſt, impowering her to receive all Monies due to him from the ſaid Maſter, and the Intereſt thereof, for the Purpoſes therein mentioned. It was therefore prayed, that the ſaid Maſter may pay to the ſaid Plaintiff, *Elizabeth Jones*, the Remainder of the Money which is in his Hands, belonging to the ſaid *Jonathan*'s Share, purſuant to the Letter of Attorney, executed for that Purpoſe, which, upon hearing of Mr. *Horſeley*, of Council for the Defendant *Jett*, and what was alledged on both Sides, his Lordſhip held reaſonable, and doth order the ſame accordingly.

Sab'ti viceſſimo ſecundo Die Decembr' Anno Regni D'ni Georgii Regis nono, inter Prideaux Sutton Cler' & Anna' Uxor' ejus Mercy Sheldon Spinſtr' & Egidiu' Lawrence gen' Extor' Winifred Sheldon Spinſtr' Defunct', Quer' Elizam Chitty & Joh'em Ruſſell & al' per Billa' ad revivend' & Supplement' Defend'.

WHEREAS the Defendant *Elizabeth Chitty*, on the Eleventh of this Inſtant *December*, preferred her Petition to the Right Honourable the Lord High Chancellor of *Great Britain*, ſhewing, That the Plaintiff and *Winifred Sheldon*, ſince deceaſed, having executed their Bill for an Account of the Eſtate of *Ralph Sheldon*, who died in the *Eaſt-Indies*; and to have their Shares and Proportions thereof, purſuant to his Will: It was on the hearing of this Cauſe, the eight and twentieth of *May*, One Thouſand Seven Hundred and Fifteen, declared, That the Defendant *Elizabeth Chitty* was intitled to one Third of the ſaid Eſtate, under the Will of the Teſtator *Sheldon*, her ſecond Husband, in her own Right, and to a Moiety of the other two Thirds, in right of, or, as ſurviving the Children ſhe had by the ſaid *Sheldon*, who were dead, and that the other Moiety of the ſaid two Thirds belonged to the Plaintiffs, or thoſe whom they repreſented, and decreed the ſame, after juſt Allowances, to be paid and diſtributed accordingly; and Sir *Robert Nightingale*, Bart. ſince dead, having, by his Anſwer, admitted to have in his Hands Ten Thouſand Four Hundred and Seventy Pounds, three Shillings and Six-pence, Part of the Teſtator's Eſtate: It was ordered, That he ſhould carry Ten Thouſand Pounds thereof, before Mr. *Dormer*, then one of the Maſters, to be by him placed out at Intereſt, on Government, or ſuch other Security as he ſhould approve of, for the Benefit of the Parties to whom the ſaid ſhould belong. In purſuance whereof, the ſaid Sir *Robert Nightingale* carried the ſaid Ten Thouſand Pounds before the ſaid Maſter, who placed the ſame out at Intereſt, and on the Nine and Twentieth of *July*,

July, One Thouſand Seven Hundred and Nineteen, though the ſaid Ten Thouſand Pounds, with the Intereſt, which had been received by the ſaid Maſter, amounting to Eleven Thouſand three Hundred and fifty nine Pounds, ſeven Shillings, and three Pence, the ſaid Maſter, by his Report, certify'd, That he had placed eleven Thouſand three Hundred Pounds, Part thereof, out on the Land Tax, for the Year One Thouſand Seven Hundred and Nineteen, at four Pounds *per Cent.* and that the Nine and Fifty Pounds ſeven Shillings and three Pence remained in his Hands; that on the third of *Auguſt*, One Thouſand Seven Hundred and Twenty, the Plaintiffs, by Petition, applied to his Lordſhip, That the Maſter might pay them ſome Money to carry on this Cauſe, and for their other Occaſions; upon hearing whereof, they were ordered Six Hundred Pounds out of the Money in the Maſter's Hands, which they have received accordingly. That the Defendant, *Elizabeth Chitty*, had, ever ſince the Death of her late Husband, *Joſiah Chitty*, wanted Money, not only to defend the ſaid Cauſe, but alſo for her Support, and other neceſſary Occaſions, and that neither ſhe, nor her late Husband, had received any Part of the Principal or Intereſt before the Maſter, nor any other Part of the Teſtator's Eſtate, except ſome Jewels which were delivered up by the Truſtees of the Teſtator's Will in *India*, to her and her late Husband, which, or the greateſt Part thereof, ſhe claimed as her *Paraphernalia*, but that ſhe had no Benefit or Advantage thereof, her Husband having ſold and diſpoſed of them in his Life-time. Therefore, *and for that the Money in the Hands of Mr.* Edwards, *one of the Maſters of this Court, who ſucceeded the ſaid Mr.* Dormer *in his Office, were conſiderably encreaſed by the Intereſt which had been received by him*, and for that the ſaid Mrs. *Chitty* was, as aforeſaid, intitled to two Thirds of the ſaid Teſtator's Eſtate, except what ſhould be decreed thereout to her Children, by her firſt Husband, who were intitled to one Moiety of their Father's Eſtate, which was poſſeſſed by the ſaid *Ralph Sheldon*, and for that ſhe was obliged to maintain them, it was prayed, That the ſaid Mr. *Edwards* might, out of the Money in his Hands, and which ſhould be paid in upon the coming in of any of the Securities taken for the ſame, pay unto the Defendant Mrs. *Chitty* ſuch Sum of Money as his Lordſhip ſhould think fit, to enable her to carry on the ſaid Cauſe, and for her immediate Support, and other Occaſions. Whereupon all Parties were ordered to attend his Lordſhip, on the then next Day of Petitions. And whereas the ſaid Plaintiffs, on the eighteenth Day of this Inſtant *December*, alſo preferred their Petition to his Lordſhip, ſhewing, *inter al'* That they were, thro' their great Occaſion for Money, forced to apply the greateſt Part of the Money, ordered them as aforeſaid, towards their Support; and that the ſaid Cauſe had been long depending, and very expenſive, and was likely to undergo greater Travail before the ſaid Maſter, before the ſaid Account could be taken, ſo that they had great Occaſion for more Money, not only to carry on the ſaid Cauſe, but alſo for their Support, and other neceſſary Occaſions; and therefore praying, that the ſaid Maſter might alſo out of the Monies in his Hands, and which ſhould be paid in, upon coming in of any of the Securities taken for the ſame, pay unto the Plaintiffs, or their Sollicitors, ſuch Sums of Money as his Lordſhip ſhould think fit, to enable them to carry on the ſaid Cauſe, and for their immediate Support and other Occaſions; and the Matter of the ſaid Petition, being ordered to come on with the Defendant *Chitty*'s Petition; and Council on both Sides this Day attending accordingly. Whereupon, and upon hearing both the ſaid Petitions read, and of what was alledged by the Council on both Sides: His Lordſhip doth order, That the ſaid Mr. *Edwards* do, out of the Money in his Hands, pay unto the Defendant, Mrs. *Chitty*, the Sum of Six Hundred Pounds, and alſo unto the Plaintiffs One Hundred Pounds a-piece, and it being now alledged, that *John Wyvill*, Eſq; having exhibited his Bill againſt the ſaid *Giles Lawrence*, for Payment of a Legacy of two Hundred Pounds bequeathed to him by the Will of the ſaid *Winifred Sheldon*. It was on the hearing the ſaid Cauſe, the firſt Day of *December*, One Thouſand Seven Hundred and Twenty One, decreed, That the ſaid Mr. *Wyvill* ſhould be paid the ſaid Legacy and Intereſt, together with the Coſts of that Suit, out of the Aſſetts of the ſaid *Ralph Sheldon*. It is further ordered, That the ſaid Maſter, do, out of the Money in his Hands, pay the Plaintiff, *Lawrence*, the further Sum of Three Hundred Pounds, to enable him to ſatisfy the ſaid Decree.

Mr. *Lutwyche*. Pray ſhew Mr. *Edwards* thoſe Orders.

[*The Orders ſhewn to Mr.* Edwards.

Mr *Lutwyche*. My Lords, we deſire that Mr. *Edwards* may be asked, whether he hath paid any Money in that Cauſe?

Mr. *Edwards*. Here are two Cauſes, which is it you mean, that of *Jones* and *Jett*.

Mr. *Lutwyche*. Yes, that of *Jones* and *Jett*?

Mr. *Edwards*. The Money ordered, by thoſe ſeveral Orders, hath been paid by me.

Mr. *Lutwyche*. I deſire to know, whether Mr. *Edwards* can inform your Lordſhips, whether it is the whole Money, or but in part?

Mr. *Edwards*. It is the whole Money in the Cauſe.

Mr. *Lutwyche*. I deſire he may be asked, whether the Money was paid out of Mr. *Dormer*'s Effects, or out of his own?

Mr. *Edwards*. Out of Mr. *Dormer*'s Effects.

E. of *Macclesfield*. My Lords, Mr. *Edwards* is a little miſtaken, pleaſe to put the Orders in; here are three Orders in one Cauſe, and one in another; I deſire to know, whether in both Cauſes the whole Money was paid out?

Mr. *Edwards*. In that in *Jones* and *Jett*, the whole Money was paid out, in the other between *Sutton* and *Sheldon*, the Whole was not paid, but only Part.

Mr. *Serj. Pengelly*. We beg Leave to ask Mr. *Edwards*, whether he did not pay the Whole that was ordered by thoſe ſeveral Orders?

Mr. *Edwards*. Yes, my Lords.

Mr. *Lutwyche.* Mr. *Edwards* did tell your Lordſhips before, that all the Money, ariſing by Mr. *Dormer*'s Effects, was paid out and gone.

Mr. *Serj. Pengelly.* My Lords, we have gone through theſe three Articles that have been opened, and we ſhall call no more Proof to them.

Then the Houſe adjourned to Monday *next at Ten o' Clock in the Forenoon.*

The FOURTH DAY.

MONDAY, *May* 10.

The Lords being ſeated in their Houſe, and the Managers being come, and the Earl ſitting on a Stool, as before, and his Council and Sollicitors at the Bar, the Serjeant at Arms made Proclamation for Silence, as alſo another Proclamation, That all Perſons concerned were to take notice, that Thomas, *Earl of* Macclesfield, *now ſtood upon his Tryal, and they might come forth in order to make good the Charge.*

L. Ch. J. King. GEntlemen of the Houſe of Commons, you may proceed.

Mr. *Plummer.* My Lords, I am commanded by the Commons, to aſſiſt in maintaining their Impeachment againſt *Thomas*, Earl of *Macclesfield*; and when I conſider how neceſſary it is for the Honour of his Majeſty's Government, that an impartial Examination ſhould be made into the Behaviour of this Earl, while he enjoyed the High Office of Chancellor; I am perſuaded, that every good Subject muſt with Pleaſure obſerve, in what Manner this Proſecution is carried on; it muſt be a Satisfaction to them, to ſee the Commons placing a Confidence in your Lordſhips Juſtice, and proceeding in the Legal Parliamentary Method by Impeachments, and your Lordſhips meriting that Confidence, by laying aſide all uſeleſs Ceremonies, and making the Proſecution practicable and eaſy, a Harmony between the two Houſes of Parliament always to be wiſhed for, and which alone can bring Impeachments to a happy Iſſue, and deter great Offenders from oppreſſing their Fellow-Subjects.

My Lords, In former Reigns, Proſecutions of this Kind, have met with other Obſtructions, and the Crown has often interpoſed its Authority to ſave a Favourite Miniſter; but, his Majeſty, who has no other Views, but the Welfare and Happineſs of his People, and who is always attentive to their Intereſt, was the firſt who took notice, that the Earl of *Macclesfield* had abuſed the Truſt and Confidence repoſed in him. And who can (without the deepeſt Senſe of Gratitude) conſider the Conduct of his Majeſty in this Affair, who immediately diſmiſſed him his Service, and left him to the Juſtice of an injured Nation? And the Earl of *Macclesfield* himſelf will have this Advantage by it, that His Name will be delivered down to Poſterity, as a Monument of his Majeſty's Paternal Goodneſs to his People. The immenſe Liberalities, the great Honours, the high Dignities conferred on him by his Majeſty, will be ſo many Marks of his Royal Munificence to the Earl, while he appeared to be his Worthy and Faithful Servant. And Poſterity will with due Veneration obſerve, that neither the greateſt Favour, the neareſt Acceſs to his Sacred Perſon, nor any former Merits towards Himſelf, and his Royal Family, could in his Majeſty's Reign, ſhelter the Higheſt Officer of the Crown from Juſtice, who, preſuming on thoſe Advantages, would venture to oppreſs his Majeſty's Loyal and Faithful People.

My Lords, The particular Province, aſſigned me in this Proſecution, is to make good the 18th Article, wherein I ſhall have the Aſſiſtance of a Gentleman, who will amply ſupply all the Defects or Omiſſions I ſhall be guilty of.

As this Article has been read by your Lordſhips Clerk, I ſhall not miſpend your Time in a needleſs Repetition of it; but will obſerve, that the Subſtance of the Charge contained in it, Is a wilful Neglect of the High Truſt repoſed in the Earl of *Macclesfield*, as Chancellor, That he did not reſtrain the Maſters of the High Court of *Chancery*, from trafficking with the Suitors Money and Effects, but did permit and encourage that Practice, tho' he was adviſed to put a Stop to it, and fully informed of the Dangers, which were then likely to enſue, and which have ſince actually enſued, to the great Loſs and Injury of the Suitors of the ſaid Court.

My Lords, As this wilful Neglect is highly criminal in itſelf, ſo it is greatly aggravated by the unjuſt and corrupt Views which induced him to be guilty of it, and the pernicious Conſequences which have neceſſarily attended it; and, my Lords, ſince you have heard the Evidence that has been given on the former Articles, of the exorbitant Sums of Money which he exacted for the Diſpoſal of the Offices of Maſters in *Chancery*, even after *Dormer*'s Failure, we don't doubt but your Lordſhips are convinced that he left the Maſters, with that unreaſonable unlimited Power, over the Effects of the Suitors of the Court, with no other View, but as a Bait and Incitement to others, to purchaſe thoſe Offices (when Vacancies ſhould happen) at the ſame, or greater Prices.

As I have ſtated the Charge contained in this Article, in as clear a Manner as I am able; I beg Leave, my Lords, to make ſome Obſervations on the Earl's Anſwer. He begins with an abſolute Denial of his knowing, how the Maſters kept or diſpoſed of the Money and Effects belonging to the Suitors of the Court. This Anſwer, my Lords, was a Surprize to the Commons, as well becauſe ſuch an Ignorance would have been criminal in the Perſon, who ordered ſuch prodigious Sums of Money into their Hands, and who ſhould be ſuppoſed to have had

ſome

ſome Care of the Suitors, as alſo becauſe We have the cleareſt Proofs imaginable, that he did know it, and it has already been proved by the Examination of ſeveral of the Maſters before your Lordſhips. But what Want can we have of Proofs? when the Earl of *Macclesfield* himſelf, in his farther Anſwer to this Article confeſſeth it, by ſaying, that after Mr. *Dormer*'s Misfortune, he thought of ſeveral Methods, and ſeveral Propoſals were made to him by Perſons he conſulted on that Occaſion, to prevent any Inconvenience on the like Accident, for the future. Pray let us conſider, What was Mr. *Dormer*'s Misfortune? What was this Accident? Why truly, Mr. *Dormer* had trafficked with the Suitors Money and Effects, and had loſt near 30000 *l.* And this the Earl of *Macclesfield* knew, and this made him think how to prevent ſuch Inconveniencies, for the future. My Lords, here is one of thoſe Inconſiſtencies the Commons take Notice of in their Reply, and on which (without any farther Proofs) they might ſafely demand your Lordſhips Judgment.

But to conſider his Anſwer farther: He ſays, he believes it will not be held criminal in him, not to have eſtabliſhed any of the Propoſals that were made to him by the Perſons he conſulted on that Occaſion: Some Things were propoſed that he thought impracticable, ſome inſufficient, and ſome inconſiſtent with that compleat Regulation he hoped to make: The Objects, he propoſed to himſelf, were, to make good Mr. *Dormer*'s Deficiency, to ſecure the Suitors from any future Loſs, and to make ſeveral Regulations relating to the Offices of the Maſters: And he thought theſe would be beſt done together; nor had he perfected the Scheme of any of them to his own Satisfaction.

My Lords, I am unwilling to make any Obſervations on this Part of his Anſwer; it is in itſelf ſo groſs, I am afraid, if I took it in Pieces, I ſhould appear ludicrous, which I ſhall take great Care to avoid on ſo ſolemn an Occaſion.

But I appeal to your Lordſhips, if a Perſon was to read this Anſwer, who was not acquainted with the Times of theſe Occurrences, whether he muſt not imagine that the Earl of *Macclesfield* had quitted the Great Seal within ſome very ſhort Time after Mr. *Dormer*'s Failure. Whereas it has appeared to your Lordſhips, that Mr. *Dormer* went away from that Office in the Year 1720. and that the Earl of *Macclesfield* continued Chancellor till *January* laſt, which is more than four Years after, during all which Time (by his own Confeſſion) he knew the Affairs of the Maſters of the Court of *Chancery* to have been in great Diſorder, and to have wanted ſeveral Regulations: But, becauſe he could not think of a Scheme perfectly to his Mind to anſwer all his Deſigns, he therefore has done nothing. This Anſwer muſt be left to your Lordſhips Judgment, but, I am afraid, my Lords, the letting the Maſters go on, without any Check, was the Scheme the moſt to his Satisfaction, and moſt effectually obtain'd the Ends he really propos'd to himſelf, which were the making an exorbitant Gain by the Sale of their Offices, which muſt have fallen in their Price, if a Stop had been put to their trading with the Suitors Money.

My Lords, he farther anſwers, That he remembers no Propoſal that he thought would take it totally out of the Power of the Maſters to diſpoſe of the Securities or Effects, or effectually ſecure the Caſh. I can't omit taking Notice of the wording this Paragraph; and I believe your Lordſhips will agree with me, that the Words HE THOUGHT, TOTALLY, AND EFFECTUALLY, are thrown in with great Caution. My Lords, We think we can prove to You that a Propoſal was made to him, that would have taken it out of the Power of the Maſters to have diſpoſed of the Securities and Effects, and to have ſecured, in great Meaſure, the Caſh; and this Evidence the Earl of *Macclesfield* muſt be well aware of, for He has it in his Hands as well as We; and I foreſee the Strength of his Defence, in this Point, lies in the Caution of his Anſwer: But, my Lords, if any Propoſal was made to him, which would have cured the greateſt Part of the Evils the Court laboured under, I am ſure your Lordſhips will hold it criminal in him not to have made uſe of it, and the rather, becauſe he ſubſtituted no other in its Room.

My Lords, He admits he took no Security of the Maſters, and ſays, he was never asked ſo to do. My Lords, We will prove that he was asked ſo to do, and that taking Security was Part of the Propoſal I have mentioned. In this Place he takes Notice of his Predeceſſors, who (as he ſays) were wiſer Men than himſelf, and who took no Security of the Maſters. My Lords, We don't accuſe his Predeceſſors, nor are we obliged to juſtify them; but, if I may be permitted to give my own private Opinion, It is, that if ſuch Misfortunes had happened in his Predeceſſors Days, and ſuch Application had been made to them, they were ſo wiſe, they would have applied a proper Remedy: His not doing ſo, under theſe Circumſtances, We look on as a plain Permiſſion, and a ſtrong Encouragement to the Maſters to traffick with, and employ the Suitors Money for their own Gain and Profit. And it muſt appear ſo in a ſtronger Light, when your Lordſhips are acquainted that Mr. *Lightboun*, who is himſelf a Maſter in *Chancery*, was the Perſon who made thePropoſal, and who muſt (by my Lord's not uſing it) plainly ſee, that my Lord was reſolved to lay no Reſtraint on them, which might have tempted Mr. *Lightboun* himſelf to have made an ill Uſe of that Power: But as he profeſſed to my Lord Chancellor his Abhorrence of the Maſters abuſing their Truſt, by alienating the Suitors Effects, and deſired my Lord to put a Stop to that Practice; ſo it appeared by his Accounts given in before the Judges, that he had appropriated the ſpecifick Securities of the Suitors to every particular Cauſe. And, my Lords, we look on it as a great Aggravation of the Crimes contain'd in this Article, which I have now gone through, That my Lord *Macclesfield* ſhould continue to act with ſuch mean, low Views, as were unbecoming a Maſter in *Chancery*, when he had the Aſſiſtance of a Maſter, who behaved himſelf with a Prudence, Integrity, and Reſolution, which would have been becoming the Lord Chancellor.

Mr.

Mr. *Cary*. My Lords, It is my Province to aſſiſt the Gentleman, that ſpoke before me, in ſupporting the Charge of the Commons in the 18th Article, which he has open'd with ſo great Force and Perſpicuity, that it is unneceſſary for me to give your Lordſhips more Trouble upon it, than by making an Obſervation or two on the moſt material Parts. The Beginning of this Article ſets forth, *That the Earl of* Macclesfield *very well knew, or was inform'd, that the Maſters did, or that it was in their Power to diſpoſe of, and employ the Suitors* Money and Effects, to which, he is pleaſed evaſively to anſwer, "That he never knew "how the Maſters kept, or diſpoſed of the Mo-"ney and Effects belonging to the Suitors of "the Court." The contrary of this will be abundantly prov'd, in the Manner the Gentleman has already ſtated it.

But were it not, my Lords, ſo ſtrong in Proof, the Guilt to me appears ſelf-evident; 'tis much the ſame, whether he knew it, or knew it not; his Lordſhip may take the Alternative. What! did He, Lord Chancellor, ſupreme Director of the Court, the great Truſtee of *England* (who order'd the Money into the Maſter's Hands, who order'd it out of their Hands) did He know nothing of their Power over it? Was he the only Man in *England* that knew *nothing* of their Deficiency? And if he was, my Lords, Is that Ignorance an Excuſe, or Aggravation? But we ſhall prove to your Lordſhips, that he not only was told of this Traffick with the Suitors Money, but was foretold the Conſequences of it, the Danger of future Loſſes was pointed out to him, and Propoſals for preventing 'em were given him in Writing.

And who was it, my Lords, that made theſe Propoſals? Who gave him this Warning? One of the Maſters of the Court, One intereſted in the Traffick of the Suitors Money, a Gameſter at the ſame Table with the impeach'd Earl. Advice from ſuch a Hand muſt be ſincere and unſuſpected; nothing but Juſtice, or a ſtrong Apprehenſion of their common Danger, could have extorted it; nothing but the blindeſt Avarice could have prevented the Compliance with it. But what ſtill renders this Conduct more amazing is, that the impeach'd Lord had not the Advantage of a ſingle Propoſal only, and from a ſingle Maſter, but of ſeveral Propoſals, and from ſeveral of 'em. Mr. *Kynaſton* will inform your Lordſhips, *That he and other Maſters waited on the Lord Chancellor, and propos'd to give Security in Land, or Money, for their Cash, and to make their Truſt leſs by putting the Securities in two Maſters Names, or in the Names of the Parties* and one of the Maſters, with which he then appear'd pleas'd, tho' he afterwards did nothing in it, and expreſs'd his Diſlike of the Propoſal. Yes, my Lords, the Propoſal was too reaſonable to be refus'd, and too ſelf-denying to be follow'd. So far was the unfortunate Lord from following it, or acting in any Manner conſiſtent with it, that ſoon after the Failure of Mr. *Dormer*, after theſe Propoſals were made to him, he ſells the Offices of ſeveral Maſters at moſt exorbitant Prices. And was this what my noble Lord ſets forth in his Anſwer, *as one of the Expedients he thought of, after* Dormer's *Misfortune, for preventing any Inconvenience, on the like Accident, for the future? Was this the only Method of Cure the noble Earl brought to ſuch Perfection, as to venture to put it in Practice.*

My Lords, the Gentlemen, embarqu'd in the ſame Bottom with this unhappy Lord, ſaw the Ship ſinking, and propos'd throwing over-board Part of their unjuſtifiable Gains, to prevent their general Wreck; but the impeach'd Earl does not only boldly ſteer on the ſame Courſe, but takes in Lading, more Weight of Guilt, if not in Defiance of the Danger, certainly in the Neglect of it.

And how, my Lords, does his Anſwer excuſe this Conduct? He admits that ſeveral Propoſals were made on that Occaſion, but *ſome he thought impracticable, ſome inſufficient, ſome inconſiſtent with that compleat Regulation he hop'd to make.* And becauſe ſome were inſufficient, ſome inconſiſtent, and not anſwering the full Idea of Perfection propos'd by his Lordſhip, Muſt therefore nothing be attempted? Muſt we have no Relief, becauſe we deſpair of an abſolute Cure? Muſt no Remedy be apply'd to a dying Perſon, becauſe it is not certain it will reſtore him to his perfect Strength? Thus far indeed is certain, It is much better to do nothing, than to continue ſuch Methods, as firſt brought the Diſtemper upon him. We muſt therefore leave it with your Lordſhips to judge, whether the Inconſiſtency of the Propoſals with the Earl's private Views was not the true Reaſon of their being thought impracticable and inſufficient. And what thoſe Views really were, the whole Tenor of our Evidence has, and will ſhew Views beneath the Dignity of his high Office, and far below a Member of this Auguſt Aſſembly.

My Lords, the Commons farther charge this unhappy Earl, *that he not only knew, but conniv'd at, and encourag'd this deſtructive Traffick:* And in anſwer to this, He ſays: "That he gave no "Permiſſion nor Encouragement to the Maſters "of the Court, to employ or traffick with the "Suitors Money." We have ſhew'd your Lordſhips, he knew it, and knew it in the moſt affecting Manner, by the Ruin it had produced. We need not ſhew you that He had Power to prevent it. And ſurely, my Lords, to know it and not prevent it, in his Situation, was to permit it. And as His not preventing it was a Permiſſion, ſo his Example was an Encouragement: And when the Maſters ſaw him (the greateſt Object in the Compaſs of their View) taking every indirect Method to make the moſt of *His High* Office; ſure, they muſt think that Example (join'd to the Neceſſity he *Himſelf* laid them under by the exorbitant Prices he exacted) a ſufficient Encouragement to authorize them in the like Practices *in theirs*. The Examples of great Men, my Lords, are Encouragements, and the Aſſembly I ſee before me is an illuſtrious Proof, they ought to be ſo, and will do Honour to thoſe who follow them: And from the Influence thoſe Examples have, and ought to have over the reſt of Mankind, it has been ſuppos'd, that the only Paſſage to Honour was through the Temple of Virtue; but, my Lords, tho' there be but one Paſſage to it, there are many from it; and ſo many are the Frailties of human Nature, that the Building would be imperfect, without a Back-Door to let out, whatſoever ſullies

ſullies or pollutes it: A Door, my Lords, your Anceſtors have open'd to former Lord Chancellors.

But we ſhall call our Evidence, and ſubmit the Whole with the greateſt Security and Satisfaction to your Lordſhips Judgment.

Mr. *Plummer*. I deſire Mr. *Lightboun* may be called.

[*Mr* Lightboun *being called appeared*

Mr. *Plummer*. I deſired Mr. *Lightboun* may inform your Lordſhips, whether he had any Diſcourſe with my Lord Chancellor, about putting the Offices of Maſters of *Chancery* into a better Regulation?

Mr. *Lightboun*. My Lords, in order to anſwer this Queſtion it will be neceſſary for me to repeat ſome Part of the Account I gave when I was laſt at your Lordſhip's Bar. I then acquainted your Lordſhips, that in the Beginning of the Summer, in the Year 1722, the Lord *Macclesfield*, having directed me to attend him, told me that he had heard I had not contributed my 500 *l.* towards making up Mr. *Dormer's* Deficiency, as the other Maſters had done; that he did not expect I would have ſtood out, and was ſorry to hear of it, as he had a more particular Regard to my Conduct than any of the reſt, becauſe I was the only Maſter of his immediate Choice; and on his Lordſhip's telling me that it was firſt propoſed by the Maſters, and not by his Lordſhip, I told him I was not willing to comply with it, and thought it a dangerous Expedient; that it might be hereafter looked upon as an Undertaking one for another, and therefore I would not come into it; and that as this Accident had happened to Mr. *Dormer*, the like might happen again to others, and might be the Ruin of us all, if ſuch a Conſtruction were put upon it. My Lord was pleaſed to ſay, it was the only Expedient he could think of for making good the Deficiency. I told him I had as much at Heart the doing of that as any Body; and that if a proper Expedient could be found out to pay Mr. *Dormer's* Deficiency, and prevent the like Accident among us for the future, by putting the Offices on ſuch a Foot, that the Maſters might execute them with Honour to the Court and themſelves, and with Safety to the Suitors, I ſhould be glad to contribute to ſuch Regulations. His Lordſhip ſaid he ſhould be glad if any ſuch Thing could be thought of, and asked me, if I could think of any Method by which that might be done. I told him I believed I had, at which he expreſs'd great Satisfaction; and we being then ſtanding, his Lordſhip deſired I would ſit down. He then asked me, in what Manner it was that I propoſed the Suitors ſhould be made ſafe: I told his Lordſhip that I apprehended it was impoſſible to expect, that the Maſters could give a Security adequate to ſuch a Truſt; that there were many Inſtances of great Officers, whoſe Truſt was ſo great as to be above giving ample Security, particularly the Tellers of the *Exchequer*, and the Treaſurers of the *South-Sea* and *Eaſt-India* Companies: But if a competent Security were taken, and ſuch I apprehended might be given, I hoped it would anſwer the Intent, and give Satisfaction, ſince ample Security for ſo great Truſt could not be expected. I then told his Lordſhip, that if the Cauſes of Mr. *Dormer's* Misfortunes were conſidered, they would be found not only to proceed from Squandering or Miſapplication of the Caſh, but from Power over the Securities in his Hands; for that the Money could not be ſo much, but the Securities amounted to a greater Sum. He ſaid it might be ſo, but how to prevent it he would be glad to know. I told his Lordſhip, that if the Securities, for the future, were to be taken in the Names of the Maſter, and one or more of the Parties, the Suitors would be ſafe. It was then obſerved, but whether by my Lord, or me, I do not remember, that an Objection might ariſe to this Method, for that if either the Maſter or the Party ſhould die, the Truſt would ſurvive; and thereby either the Court loſe its Power over the Security, or the Maſter's ſole Power over it be reſtored; but, to prevent that, I propoſed that they might be taken in the Name of two or three, or more of the Maſters, with or without the Perſons intereſted, as the Court ſhould think proper; and that it was hardly to be imagined that all the Maſters would betray their Truſt, and riſque their Fortunes to oblige any one, by ſuffering him to traffick with the Securities of the Court, taken in their joint Names; eſpecially, if Care was taken, that ſuch Maſter, as was to be joined, or be a Check upon another Maſter, ſhould have a Third to be a Check upon him. My Lord *Macclesfield* objected, That there was a great Number of *South-Sea* and *India* Bonds, and other Securities, payable to the Bearer, that could not be in the Names of any particular Perſons, and ſo could not be ſecured in that Manner; and that it would be troubleſome to lock them up. To which I replied, I knew no occaſion for putting out Money on *South-Sea* or *India* Bonds, or ſuch Securities, ſince there were other Securities ſufficient, which might be under a proper Reſtriction, and which were not partable, but are transferrable in Books at the *Bank*, or elſewhere, *viz. Stocks*, *Bank-Annuities*, *Civil-Liſt Annuities*, *Four per Cent Annuities*, *Land* and *Malt Tallies*, *and Lottery Orders*, which were aſſignable by Indorſement; and that, if theſe Securities were taken in the Names of ſeveral Perſons, it would be impoſſible for any one Perſon to diſpoſe of them, without the Knowledge and Conſent of all. My Lord expreſſed great Satisfaction at this Propoſal; and then asked me, in what Manner Mr. *Dormer's* Deficiency would be provided for? I then acquainted his Lordſhip, that there was always a conſiderable Caſh in each Maſter's Hands; and that if ſome Part of that was placed out at Intereſt, in the Name of all the Maſters, it would be no Injury to the Owners, if it was ready, when called for; and the Produce would raiſe a Fund to pay Mr. *Dormer's* Debt; and that it was very likely the Lords of the Treaſury might, on ſuch an Occaſion, give us the Preference, and let us chuſe a proper Part of the Loans on the Land and Malt-Tax, to lend the Money upon; that if any Maſter wanted any Part of the Money he had placed out on that Occaſion, to anſwer the Suitors Demands, ſuch Securities were eaſily converted into Money. I was

unwilling to fix any Sum for each Maſter to advance; but believe I did mention 3, 4, or 5000 *l.* for his Lordſhip's Conſideration; and took Notice that would amount to 40 or 50000 *l.* and would, in due Time, raiſe a Sum of Money ſufficient to anſwer the Deficiency of Mr. *Dormer*. My Lord made ſome Doubts; but ſaid he would be exceeding glad to give his Aſſiſtance; but was afraid he could not properly order the Suitors Money to be laid out, but for their Benefit whoſe Money it was. I ſaid, I thought that might be done without any Order, if his Lordſhip approved it, and the Maſters all came into it, and placed it out in all their Names; and that at any Time, by diſpoſing of the Security taken for it, the Money might be raiſed, when wanted. My Lord made ſome Doubt, whether it could well be done; but was pleaſed with the Propoſal: And many other Things were ſaid, which I cannot, at this Diſtance of Time, recollect. I had, my Lords, two Views in it, but won't be poſitive that I mentioned them to my Lord. I apprehended it would not only raiſe a Fund to pay Mr. *Dormer*'s Debt; but that it would diveſt each Maſter of the Power over 5000 *l.* of the Suitors Money, which he had in his Hands. I alſo took Notice, that if ſome ſmall Security was taken from the Maſters, but am not certain that I mentioned any Sum; but believe I might ſay 5000 *l.* and that ſuch a Security, with our Offices, valued at about 5000 *l.* a-piece, would, with the Money placed out for the Payment of Mr. *Dormer*'s Debt, be a Security for the Money in our Hands, were we but diveſted of the Power over the Securities, which was four Parts in five of the Truſt: And tho' 15000 *l.* will not anſwer the Money which a Maſter may ſometimes have in his Hands; yet, where a Man gives a Security for 14 or 15000 *l.* he'll ſcarce run away for 20000 *l.* This, I thought, might be of Service to the Publick, and deſired my Lord to conſider of it: And his Lordſhip ſaid, that ſomething might be graſted on this Plan; and deſired me to put it in Writing. I told his Lordſhip, I did not know, whether this Scheme might be agreeable to every Body; that I came into the Office but very lately; and that it was neceſſary for me to have a good Correſpondence with my Brethren; and that I was afraid, if it ſhould be known that I propoſed any thing without their Privity, I ſhould be uſed more unkindly among them than I had already been; and therefore hoped his Lordſhip would not let them know, that it was my Propoſal, nor ſhew them any thing of mine in writing; and took my Leave of my Lord at that Time. The other Maſters knew I had been with my Lord; but I did not communicate the Occaſion of my going to him, or the Propoſal; but I ſounded the reſt of the Maſters, how any Propoſal of this Kind was agreeable to them: Moſt of them were averſe to it, particularly that of diveſting them of the Securities; becauſe that ſhew'd a Diſtruſt of them, and, they ſaid, would diminiſh the Reputation of the Office. They were againſt placing out any ſuch Sum as 5000 *l.* ſome were rather willing to contribute annually, than to pay ſuch a Sum of Money down: And finding them averſe to it, I was a little cautious how I put this Propoſal into Writing. It was near a Month before I ſet about it; and then did it by way of Letter, in which I took Notice in the Beginning, that it was in Obedience to his Lordſhip's Command.

Mr. *Plummer*. I beg Pardon for interrupting the Witneſs; I deſire he may be asked, if he did not ſend that Letter to my Lord *Macclesfield*?

Mr. *Lightboun*. I wrote a Letter, to the ſame Purport or Effect with what I had propoſed, except in ſome Inſtances which I found other Maſters averſe to, and was cautious of carrying it too far; and believe, inſtead of 5000 *l.* to be placed out, I only mentioned 2000, or ſuch other Sum as ſhould be agreed on. And though I mentioned a larger Sum, when I was with my Lord, and a ſmaller by Letter, I left that to my Lord's Direction, as his Lordſhip ſhould think neceſſary. I don't remember, or believe, that I took notice in my Letter of the ſmall Security I propoſed to be taken, the rather, becauſe the Maſters differed much in their Thoughts about that: Some of them were for giving none; therefore I ſaid nothing of it. I thought that was my Lord's Province more than mine; but I ſtuck the more cloſely to that of placing out of the Money, for Payment of Mr. *Dormer*'s Deficiency, and taking the Securities in ſeveral Maſters Names. And when I had writ the Letter, I ſent it to my Lord about *June*, or *July*, 1722, by my Clerk, who told me he delivered it to my Lord's Servant.

Mr. *Plummer*. I deſire to know, if he kept any Copy of that Letter?

Mr. *Lightboun*. I kept the original Draught, which I apprehend I writ the Letter from. I can't ſay it is an exact Copy; becauſe in tranſcribing, I might alter Words which I diſliked, and put in others; and therefore I am not ſure it is a true Copy; it may vary in Form, but not in Subſtance.

Mr. *Plummer*. I deſire he may be asked, whether ever he ſpoke to my Lord about it, and that my Lord acknowledged the Receipt of this Letter?

Mr. *Lightboun*. My Lords, I think I did ſay, in the Preſence of ſome of the Maſters, when my Lord talked of taking Security in ſeveral Maſters Names, that, if his Lordſhip would look into the Letter I writ to him at ſuch a Time, he would find that Propoſal made: I don't remember my Lord made any Reply, he did not deny it. But not long before *Chriſtmas*, my Lord did mention this Letter to me, upon this Occaſion: When I was paſſing my Accompt before the Judges, and the Directors of the *Bank*, I had told them of this Letter; which his Lordſhip, having heard of, asked me, what I had ſaid about it? I told his Lordſhip, I had acquainted them with the Contents of the Letter I wrote: Says He, I have that Letter by me.

Mr. *Plummer*. I deſire Mr. *Lightboun* may produce the Letter.

Mr. *Lightboun*. My Lords, I have not the Letter.

Mr. *Plummer*. The original Draught you mention.

[*Mr.* Lightboun *produces the Draught.*

Mr.

Mr. *Plummer.* Is that your own Hand-writing, and the Subſtance of the Letter you ſent to the Lord Chancellor?

Mr. *Lightboun.* It is my Hand-writing, and the Subſtance of that Letter.

Mr. *Plummer.* I deſire it may be read.

[*Mr.* Baily *reads the Draught.*

My LORD,

IN Obedience to your Commands, I here lay before your Lordſhip my Thoughts upon the Affair you were pleaſed to mention, when I had laſt the Honour to wait upon your Lordſhip; and muſt own, that a Proviſion, for the Demand upon Mr. *Dormer*'s Office, might anſwer our preſent Purpoſe: But, with great Submiſſion, I think it concerns the Honour of the Court of *Chancery*, to find out ſome proper Expedient to prevent the like Accident for the future: And I beg Leave to obſerve, *that the great Difficulty, which this Gentleman has brought upon himſelf and the* Court, *proceeds not only from his Squandering or Miſapplication of the Court Caſh in his Hands (were that all, his Eſtate and Office would much more than have anſwer'd the Demand) but I am afraid it is too obvious, that his Power over the Government Securities, that had been transferr'd to, or brought before him, or upon which he had placed out the Money of the Suitors of the Court in his own Name, has been the Occaſion of this great Deficiency, which I hope may be provided for, and the Credit of the Court retrieved and ſupported, by every Maſter's advancing* 2000 *l. or ſuch other Sum as ſhall be agreed on, out of the Caſh of the Court in his Hands; which being placed out at Intereſt, the yearly Income thereof, together with the Produce of Mr.* Dormer's *Eſtate, will anſwer the Demands that may be expected on his Succeſſor; and will, in due Time, make good the Debt upon the Office,* provided the Money that has already, or may hereafter be raiſed, from his Eſtate, or any other Way, for that Purpoſe, be forthwith apply'd to diſcharge ſuch Demands as carry Intereſt, or be inveſted in ſuch Securities as have been diſpoſed of by Mr. *Dormer*, belonging to the Suitors, to anſwer the ſame and the accruing Intereſt, which I hope the *Gentleman that ſucceeds him has already taken Care of, if not, the Demand will rather encreaſe than diminiſh*

And having before obſerved, from whence this great Deficiency has aroſe, I ſubmit it to your Lordſhip, whether the taking all Government Securities for the future, in the Name of two or more Maſters, may not prevent the like Misfortune hereafter: And *the Depoſit to be put out to Intereſt, to raiſe a Fund for the Payment of Mr.* Dormer's *Debt, together with our Office, wou'd in a great Meaſure, be a Security for the Caſh with which we ſhould then only be intruſted.*

I expect it will be objected, againſt the Depoſit, that ſome Maſters may not always have that Sum in their Hands; but *I will venture to ſay, 'tis ſcarce probable that can happen, if the Money be directed as uſual, to be brought before the Maſters, both by* Your Lordſhip *and the Maſter of the Rolls, without which the Maſters can't think themſelves much intereſted in the Event of Mr.* Dormer's *Affair.*

It may alſo be objected, that the Alteration, propoſed, in the future taking Government Securities, will ſhew a Diſtruſt, and cauſe Reflections upon the Maſters; but I ſhall think it a Happineſs, to be diveſted of a Power never to be uſed, without the greateſt Violation of the Truſt repoſed in us that can well be imagined; and I think it evident, that it had been a much greater, if we had never been intruſted with it; and as this Variation may be begun by ourſelves, without any publick Direction or Alteration in future Orders, I think it will rather turn to our Reputation than Diſadvantage, and will certainly eaſe the Minds of the Suitors, which ought to have ſome Conſideration in this Affair. I am unwilling to treſpaſs longer on your Lordſhip's Time; but if *I have the Happineſs to have offered any thing thought practicable by your Lordſhip, when I have the Honour to be admitted to wait upon you, I hope to ſatisfy your Lordſhip, that I ſhall, with Pleaſure, contribute, as becomes me, to facilitate any Undertaking* of this Kind. And that I have as much at Heart the Reputation of the Office I had the Honour to be placed in by your Lordſhip, as any of my Brother Maſters. But as we have different Views, it is not ſurprizing that we think not alike; which makes me fear that nothing of this Kind will be approved of, unleſs recommended by your Lordſhip; and am,

My LORD,

July 19. 1722.

Your Lordſhip's

Moſt obedient Servant,

J. LIGHTBOUN.

Mr. *Plummer.* What Date is it?

Mr. *Lightboun.* I did not expect, when I wrote this Letter, that I ſhould have been called upon to give any Account of it, and did not put any Date to it; but, to the beſt of my Knowledge, it was in *June*, *July*, or *Auguſt*, 1722; but it is from Circumſtances I recollect that, rather than from any Remembrance I have of the exact Time.

Mr. *Lutwyche.* I only deſire that Mr. *Lightboun* may recollect the Time, when he firſt mentioned this to my Lord *Macclesfield*, and this Letter was taken Notice of to him?

Mr. *Lightboun.* Indeed, my Lords, I cannot do that. I believe it was at a Meeting of ſeveral of the Maſters, at my Lord's Houſe. I often had the Honour to be admitted to him, with or without other Maſters. His Doors and Ear were always open to me; and I was often troubleſome to his Lordſhip. But I cannot recollect the Time, when this was firſt mentioned.

Mr. *Plummer.* I think he ſays the Maſters might have different Views. I deſire he would explain himſelf, what he meant by that?

Mr. *Lightboun.* I meant by that to put my Lord in mind of what I had ſaid, when I had the Honour to be with him laſt, when his Lordſhip told me, that the Propoſal of a Contribution came from the two ſenior Maſters, I then ſaid that their Deſign was only to skin over this Wound, till they could get out: That one of them had ſlipp'd his

his Neck out of the Collar already, and another was about getting out. I told his Lordſhip, that, as I was but lately come into the Office, I propoſed to ſpend my Days or wear myſelf out in the Service of the Court. Therefore, that their Deſign was to get out, and mine to continue in, was what I meant by different Views.

Mr. *Plummer.* Mr. *Lightboun* hath given your Lordſhips an Account of his Propoſals and Arguments uſed with my Lord Chancellor; I deſire to know, whether he uſed any other Inducements to perſuade my Lord to make ſome Orders relating to the Maſters?

Mr. *Lightboun.* It was a long Time before I heard any more of this Affair. As they were quiet, without any Application to me for the 500 *l.* or to come into any Contribution, which I was reſolved againſt; ſo I did not think it prudent for me to make any Buſtle amongſt my Brethren. I thought I had done my Duty, I had given my Opinion when it was required, and I did not ſtir in it till the Maſters apprehended themſelves very much aggrieved, by the Variation the Maſter of the Rolls was pleaſed to make in the Practice of the Court, by directing all the Money of the Suitors to be brought before his Uſher, and ſometimes to be put out by him without the Maſters Approbation; which not only deprived the Maſters of any Advantage from thence, but of thoſe Fees that were due to them, on the receiving and placing out at Intereſt, or paying it out again; and, as I took it, it no Way anſwered the End, nor was for the Benefit or Security of the Suitors: Becauſe if the Truſt was too great, and the Suitors Property not ſafe in eleven Men's Hands, much leſs was it ſafe in the Hands of one. Therefore I apprehended there was Reaſon for Complaint. On this Account we had ſeveral Meetings; I was always ready to come into any Repreſentation to my Lord, in hopes that Grievances of all Kinds might be looked into, and, I believe, often complained to my Lord of theſe Matters. We went to my Lord Chancellor, and acquainted him of our Grievances; my Lord deſired us to put them into Writing, we all readily concurred in that: Accordingly we drew up our Complaints of theſe, and other Incroachments on our Offices, by Way of Repreſentation, which was delivered to my Lord Chancellor, and after my Lord had had it ſome Time, and nothing done, we frequently importuned my Lord, to conſider the declining State of our Offices: and, I concluded, that would bring the other Matters on the Stage, without which, nothing effectual could be done. My Lord ſaid he would have a Conference with the Maſter of the Rolls, and the Maſters, in order to debate theſe Matters; and I did not doubt, but, upon that Occaſion, the Deficiency of *Dormer*'s would come out, and that ſomething might be done for us, conſiſtent with the Honour of the Court, and the Suitors Safety. But that Conference was delayed; the Grievances in all Reſpects grew greater; we grew more troubleſome to my Lord Chancellor; my Lord then ſaid, there was a Neceſſity of redreſſing all the Grievances; he mentioned the Maſters giving Security, that of taking Securities for the Suitors in other People's Names, and continuing the Maſters in the Enjoyment of their Offices, as they had uſed to have them, and ſaid it would be beſt to do all together. With this we were put off for ſome Time, but, on further Sollicitation, my Lord ſaid, he was now determined to do ſomething in this Affair, and his Lordſhip deſired a more particular Account of the Grievances complained of by the Maſters, and their Reaſons, and the Inconveniencies to the Suitors that accrued from the new Methods, which the Maſter of the Rolls had turned the Buſineſs of the Court into; and that the Matter, both with reſpect to the Suitors and the Maſters, might be fully underſtood, his Lordſhip preſſed, that ſomething of that Kind might be drawn up in Writing and laid before him, and he would make Orders proper to make a thorough Reformation in the Court: And, I remember his Expreſſion to me was, It would ſave him much Trouble, if what was drawn up by the Maſters, not only contained the Things which they had Grounds to complain of, but was put into the Form of Orders neceſſary to be made, for him to conſider of, and alter, and add ſuch others as he had prepared, or thought neceſſary. And ſoon after, a ſecond Repreſentation was prepared and was delivered to my Lord. And after his Lordſhip, had had it ſome ſhort Time, there was a Meeting at my Lord Chancellor's, where the Maſter of the Rolls and the Maſters were preſent, and at that Time there was a good deal of Diſcourſe about the Money. But when the Maſter of the Rolls began the Topick of his Juriſdiction, excluſive of the King's Commiſſion, Heats aroſe, and little was done at that Meeting. I think ſome Perſons of Quality came to ſpeak with my Lord, and that broke it up. I was ſoon afterwards with my Lord, and I asked his Lordſhip what he intended to do: He ſaid he was ſorry Matters were got to that Heighth, but that he found if the Maſters would give up the Judicature, they might be made eaſy in their Demands, and Things put upon the old Foot, and the Suitors made ſafe too; upon that Occaſion, I did take the Liberty to ſay, if there was a judicial Power in the Maſters by Vertue of the King's Commiſſion, as it was his Majeſty's Prerogative to grant, we could not give it up; and that, for my Part, I would not exchange or barter it for the Cuſtody of the Suitors Money. I believe my Lord propoſed, at this Meeting, to have had the Aſſiſtance of the Maſter of the Rolls in making theſe intended Orders; and I recollect, that after the Deficiency of this laſt Repreſentation, which I was preſent at, I heard that my Lord had ſhewn it to the Maſter of the Rolls before the Meeting, which I took amiſs, my Lord deſiring it for his own private Uſe: Upon which I went to him in order to withdraw it, and told him it was done in ſuch Haſte, that all the Maſters had not conſidered it; but whether I alledged to him, or He to me; I don't remember. but it was ſaid, that it was very proper the Maſters ſhould all ſign it; and I think I carried it back to the Maſters, and that we all ſigned it; and then it was delivered back to my Lord. And, I believe, upon the Face of that Repreſentation it will appear, that it was drawn up at my Lord Chancellor's Requeſt.

The

The firſt Repreſentation was chiefly confined to ſuch Grievances as affected our ſelves, the ſecond is more at large; I don't know whether his Lordſhip will produce it. Some things in it may ſeem to bear hard upon his Honour the Maſter of the Rolls, and may give Offence; but it will be conſidered, that it was written at a time when there were great Differences between the Maſter of the Rolls and the Maſters. Nay, I think I may ſay, the whole Court of Chancery was in a State of War.

Mr. *Plummer.* I deſire he may be asked, if he ever laid before my Lord Chancellor, the Expectations of the World, that he would reform theſe Abuſes and Grievances?

Mr. *Lightboun.* I have often mentioned that to my Lord, and preſſed it rather more and oftener than became me. I was aſhamed to be ſo troubleſom, and I was ſurprized that my Lord did not do ſomething in it; tho' I ſoon found, and have often told one or other of the Maſters and others, that my Lord would do nothing in it. However, I continued to perſevere in preſſing it; and expreſly mentioned the great Inconveniencies the Court would be run into, for want of a proper Regulation, and with what an ill Grace we could apply to his Succeſſors to redreſs theſe Grievances, in Caſe his Lordſhip grew weary of the fatigue of Buſineſs, and quitted the great Seal; that they would tell us, we had long acquieſced under them, and that his Lordſhip not having ſo much as looked into them, they would not care to meddle or interfere in it. I preſſed it home to his Lordſhip, and thought he made Doubts and Difficulties where there were none. Indeed I thought in this his Lordſhip wanted his uſual Reſolution, and almoſt ventured to ſay ſo (tho' I know not whether it is very proper to mention it) but I did take the Liberty to tell his Lordſhip, that if he did not redreſs theſe Grievances, unleſs my Lord *Lechmere* ſucceeded him, I deſpaired of ſeeing them ſettled on any better Foot. I hope my Lord will pardon my mentioning his Name.

Mr. Serj. *Pengelly.* My Lords, We have done with Mr. *Lightboun.*

Mr. Serj. *Probyn.* I deſire he may be asked, when the firſt Application was made by the Maſters to redreſs their Grievances?

Mr. *Lightboun.* I really can't tell. I went ſo frequently to my Lord, that I cannot diſtinguiſh one time from another; I believe other Maſters that went ſeldomer can tell better; but I believe it muſt be a Year and a half, or 2 Years ago, or more: I cannot tell the Time.

Mr. Serj. *Probyn.* I deſire he may be asked, whether there was any ſecond Application, before the Repreſentation was put into Writing?

Mr. *Lightboun.* Immediately upon the Maſter of the Rolls's varying the Method of the Court, and Directing the Money to be paid into the Uſher, the Maſters went to my Lord Chancellor's, which I believe muſt be before *Chriſtmas*, 1722. I believe Mr. *Holford* remembers it better; and that from time to time, I have often told him that my Lord Chancellor would do nothing in it.

Mr. Serj. *Probyn.* I deſire to ask him, when that meeting was between the late Lord Chancellor and the Maſter of the Rolls?

Mr. *Lightboun,* That I believe was the beginning of laſt Summer.

Mr. Serj. *Probyn.* We deſire he may ſay who was then preſent at that meeting with the Maſter of the Rolls?

Mr. *Lightboun.* My Lords, At that meeting with the Maſter of the Rolls the Lord Chancellor was there, had the great Seal before him; and the two Senior Regiſters were there, with Pen Ink and Paper before them, in proper Habits, the Maſter of the Rolls, and all the Maſters in their Gowns, and the Secretary was there, and the Maſters all hoped the Orders were to be then pronounced; but I can't remember that the Regiſters ſet Pen to Paper. The Uſher was likewiſe there.

Mr. Serj. *Probyn.* I deſire he may, if he can recollect it, give a particular Account of what paſſed at that meeting.

Mr. *Lightboun.* The Maſters inſiſted they had a Right by Cuſtom to have the Money brought before them, where there was any Reference to a Maſter, whether it was by Orders made upon hearing, or by Interlocutory Orders, or if there was a Direction in that Order, by which the Money was brought in for the Payment, or Application of it; in theſe Caſes they alledged, that the Money had, time out of Mind, been brought before the Maſter, to whom the reference was directed; and they did admit, that where Money was brought in upon Bills of Interpleader or Interlocutory Orders, where there was no Reference to a Maſter, the Money had uſually been directed to be brought into Court, in Order to be kept till it could be determined whoſe it was, or to what Uſe it was to be applied; and there they admitted the Money was formerly kept by the Uſher. This I apprehended was inſiſted upon by the Maſters as their undoubted Right, and it was expected an Order would have been then made declaring it ſo.

Mr. Serj. *Probyn.* I deſire to know what further paſſed relating to Facts only, without any Account of his own Expectations?

Mr. *Lightboun.* Some Debate aroſe about the Maſter of the Rolls's Judicature, ſtarted I think firſt by himſelf.

E. of *Macclesfield.* I deſire to put Mr. *Lightboun* in Mind of ſome things, and firſt to ask him, whether upon that Application they had made to me in relation to the Alteration or Variation, as he calls it, in the Practice of the Court, by the Orders made by the Maſter of the Rolls, whether I did not require them to lay Precedents before me, that I might be ſatisfyed how that Matter ſtood?

Mr. *Lightbourn.* Your Lordſhip did, but it was long before that meeting, I believe a Year and more.

E. of *Macclesfield.* Whether there had not been like Directions, that the Uſher ſhould lay Precedents before me?

Mr. *Lightboun,* I don't know of any ſuch Directions to him, but I remember my Lord Chancellor called for his Precedents, and wondred he had not brought them, if he had any for his purpoſe.

E. of *Macclesfield,* I deſire Mr. *Lightboun* may recollect whether the queſtion was not put to the Uſher, with relation to the Uſage of the Court, to put the Money into the Maſters Hands, in all Caſes where the Money was brought into Court, to be diſpoſed of, either to be put out at Intereſt, or paid to Creditors, or Legatees, whether he had any one Precedent to the contrary?

Mr. *Lightboun.* I remember he had none, and I apprehended the Uſher did not make out any ſort of Claim to keep ſuch Money.

E. of *Macclesfield.* I don't ask what the Uſher made out, but what Queſtions were asked him about the Uſage and Precedents.

Mr. *Lightboun.* I believe they were asked for, and I am ſure he then produced none.

E. of *Macclesfield.* Pray recollect, and conſider; did I ſpeak to him, as to one that had not any Precedents to produce; or did I make mention as if he had brought Precedents, and ask him if he could ſay, that among thoſe Precedents there was one to the Purpoſe, to make out that the Uſage was not ſo?

Mr. *Lightboun.* I ſay your Lordſhip blamed him for not bringing theſe Precedents. I believe your Lordſhip asked him, if he could bring any Precedent to the Point? and, to the beſt of my Remembrance, he ſaid he had none, or gave no ſatisfactory Anſwer, but ſuch as I thought Evaſive; but I cannot remember particularly what your Lordſhip and he ſaid to each other.

E. of *Macclesfield.* This is a very indifferent Account; ſince Mr. *Lightboun* hath ſo good a Memory, I deſire to know whether the Uſher was not told, that his Precedents had been read, and poſſibly might have overlooked ſome that were Material; and therefore deſired him to ſhew whether there was among them any one Precedent, that related to Money brought in, in theſe Caſes?

Mr. *Lightboun.* He produced none.

E. of *Macclesfield.* Did it not appear that he had produced Precedents before, and they had been read, and that poſſibly I might have overlooked ſome of them?

Mr. *Lightboun.* On your Lordſhip's mentioning of it, I do recollect ſomething did appear, that your Lordſhip had ſeen his Precedents, and did expect he ſhould have brought more.

E. of *Macclesfield.* I deſire he may be asked whether he did pretend he could produce more?

Mr. *Lightboun.* My Lords, I cannot be particular in that.

E. of *Macclesfield.* I deſire to know whether he did not own that he had no ſuch Precedents?

Mr. *Lightboun.* In Anſwer to that, my Lords, I cannot ſay poſitively he did or did not; for I believe I have ſeen ſome few Orders of antient Dates, that were Precedents of Money being brought into the Uſher's Hands, in Order to be diſpoſed of after hearing. But there were but few of them.

E. of *Macclesfield.* My Lords, I deſire Mr. *Lightboun* may be asked whether the Regiſters were not asked about the Practice of the Court and if in all their Obſervation and Experience the Money in the caſes before ſpecified was ordered to the Uſher?

Mr. *Lightboun.* They were, my Lords.

E. of *Macclesfield.* And what Anſwer did they make?

Mr. *Lightboun.* They anſwered, that the Money, after hearing, and on interlocutory Orders, where the Application was directed, had been uſually ordered to the Maſters.

E. of *Macclesfield.* I deſire Mr. *Lightboun* may be asked, whether it was not after this, that the Maſter of the Rolls began to ſpeak with relation to the Judicature, and how that was introduced?

Mr. *Lightboun.* I have forgot the Circumſtances and Manner of its being introduced by the Maſter of the Rolls. But I remember one Expreſſion of his Honour's, That he would have the Maſters conſider how proper it was for them to inſiſt upon a Judicature, which would impower them to order Money into their own Hands. But how he introduced that Diſcourſe I don't know; but I ſaw the Lord Chancellor had not a Mind that Topick ſhould be touched upon, and that the Maſter of the Rolls brought it in much againſt his Lordſhip's Inclination; but how I don't remember. If your Lordſhip puts me in mind, I may recollect.

E. of *Macclesfield.* The Uſher, was not he apprized of this meeting?

Mr. *Lightboun.* Yes.

E. of *Macclesfield.* Did the Maſter of the Rolls give any Opinion relating to this Matter of the Money being paid to the Uſher?

Mr. *Lightboun.* He inſiſted on his own Judicature, and both introduced and ſtuck to that Diſcourſe.

E. of *Macclesfield.* Do you remember his ſaying that the Maſters muſt not expect favour at the Rolls, if they contended for Juriſdiction?

Mr. *Lightboun.* My Lords I do not.

E. of *Macclesfield.* You ſpoke of my irreſolution: Was it not with reſpect to the Diſpute between you and the Maſter of the Rolls?

Mr. *Lightboun.* I could not tell where it ſtuck, there was ſome Difficulty made of determining that Matter; but your Lordſhip did not communicate to me your Reaſons why you did not proceed upon that or any other of the Maſters Affairs.

E. of *Macclesfield.* I preſume, Mr. *Lightboun*, you did not every time you came to me, ſpeak to me of the Affairs wherein the Maſters thought themſelves hurt?

Mr. *Lightboun.* No, my Lord, I did not.

E. of *Macclesfield.* You ſometimes ſpoke to me about the Money, and at other times relating to the Maſter of the Rolls; I deſire to know, when you applied to me with reſpect to the Diſputes with the Maſter of the Rolls and the Innovations made on your Offices; if it was not upon that you found me irreſolute?

Mr. *Lightboun.* Your Lordſhip always ſaid it was proper to ſettle all at one time, that ſome ſecurity ſhould be given by the Maſters, and ſomething done to make it reaſonable to expect it from them; which was to eſtabliſh the Maſters in their juſt Rights, and upon that occaſion your Lordſhip mentioned taking Securities in different Perſons Names, and upon that Score the old Propoſal of mine was revived.

E. of *Macclesfield.* I have no further Queſtion to ask.

Mr. Serj. *Pengelly.* My Lords, we deſire Mr. *Holford* may be called.

Mr. *Holford* called.

Mr. Serj. *Pengelly.* My Lords, We deſire Mr. *Holford* may be asked, whether at any time, and when, he heard of a Propoſal made by Mr. *Lightboun*, and whether it was made publick?

Mr. *Holford.* My Lords, a good while ago, I believe two or three Years, Mr. *Lightboun* and I had a great deal of Diſcourſe about the Condition and Circumſtances the Court of Chancery was then in; and about the Confuſion that was like to happen by the unfortunate Accident that had happen'd to Mr. *Dormer*. We did talk of a great many things that were proper to remedy it. A great many were the ſame that are mentioned in the Letter that hath been read. I think I told him, it was very right, eſpecially as to the matter of the Securities, which was the greateſt power a Maſter was truſted with; for, as the Securities were above three Parts in four of the whole truſt, if there could be

a way found out to ſecure that, it would be a taking away three Parts in four of our Truſt; and conſequently would not leave ſo great a Power in the Maſters; but as long as they were taken in the Name of one Perſon, and no truſt declared, he could diſpoſe of thoſe things, and no body could hinder it. Therefore I thought it proper to be taken in two or three Names. I believe when it was propoſed to be in two Maſters, it was mentioned there might be a third, and then no harm could happen to the Suitors, unleſs Corruption ran through the whole Office. I remember ſometime after, that Mr. *Lightboun* did ſhew me the rough Draught of this Letter, which he ſaid he had ſent to my Lord; and we read it over together at my Houſe: I told him, it was very right, and that he had put it upon as good a Foot, as upon the firſt Conſideration it could be put upon: That every new Method was liable to Inconveniencies, but for my part I thought it looked fair, in that, as to the Matter of the Securities, the Money in the Maſters Hands was left pretty much to the Direction of my Lord Chancellor.

Mr. Serj *Pengelly*. I deſire he may be asked, whether theſe Propoſals that were made were agreeable to him, ſo far, that if they were directed by my Lord Chancellor, he would have ſubmitted to them?

Mr. *Holford*. Yes, my Lords, I ſhould have readily ſubmitted to them.

Mr. Serj. *Pengelly*. I deſire he may be asked, whether he remembers any Diſcourſe of theſe Propoſals before my Lord Chancellor in his Preſence?

Mr. *Holford*. I don't remember I ever had the Honour of ſpeaking to my Lord Chancellor about any of them; nor to have been at any meeting where they were ſpoken of before my Lord Chancellor.

Mr. *Lutwyche*. My Lords, I deſire he may be asked, whether he can recollect when he had this Diſcourſe with Mr. *Lightboun*, and when this Draught of the Letter was ſhewn him?

Mr. *Holford*. About two Years ago; ſome time after it had been written, and ſent to my Lord, Mr. *Lightboun* told me, ſays he, I have writ to my Lord to the Effect of what we talked of; and I will ſhew you the Letter; and he pulled out the Copy and ſhew'd it me.

E. of *Macclesfield*. Was you at that meeting which Mr. *Lightboun* hath mentioned, when the Maſters and the Maſter of the Rolls were there? And what paſſed, as near as you can remember?

Mr. *Holford*. My Lords, I think it was upon Midſummer Day, if I remember right, and the Maſters, the Uſher, the Regiſters, and the Maſter of the Rolls, were all there. My Lord Chancellor declared there had been ſome Diſputes in the Court of Chancery, and he had called them together to adjuſt thoſe Diſputes, eſpecially in relation to the Money of the Court. I believe the Uſher was called upon to know whether he had any Precedents to offer in Juſtification of his own Right, or of what he claimed as a Right? and the Uſher, I think, ſaid at that time, he had no more than he had already delivered to his Lordſhip; I believe his Lordſhip ſaid thoſe Precedents were not much to the purpoſe; the Uſher ſaid he had no more, and delivered no more; and after ſome Diſcourſe, there were ſeveral People ſpoke, the Uſher inſiſting there were ſome Precedents to the purpoſe. Then a Diſpute aroſe about the Juriſdiction of the Maſter of the Rolls; and ſo the Affair broke up at that time. I think nothing more was done.

Mr. Serj. *Pengelly*. My Lords, we deſire that Mr. *Kinaſton* may be called.

Mr. *Kinaſton* called.

Mr. Serj. *Pengelly*. My Lords, We deſire that Mr. *Kinaſton* may give your Lordſhips an Account, whether he knows of any Propoſal made to the Earl of *Macclesfield*, relating to the ſecuring the Effects of the Suitors?

Mr. *Kinaſton*. Yes, My Lords, I do; there were ſeveral Meetings among the Maſters privately before they came into an Agreement. I think they all did agree, that they would go to my Lord *Macclesfield*, and propoſe to him to give Security, and to ſettle the Matter of the Securities ſo, that it ſhould not be in the Maſters power to diſpoſe of them. I remember it was agreed upon, that it ſhould be ſo repreſented to my Lord, and I believe all, or moſt of the Maſters, went to my Lord *Macclesfield*, and did propoſe it to my Lord. I am very poſitive ſome Propoſals were laid before him. Some propoſed to get People to be bound with them, but there might be ſome Difficulty in that; others propoſed that they ſhould give Land Security, but it was thought likewiſe that might meet with Difficulties in relation to the Title.

Mr. Serj. *Pengelly*. Was there any Propoſal made as to the Securities in their Hands?

Mr. *Kinaſton*. Yes.

Mr. Serj. *Pengelly*. In what manner was it propoſed that the Securities ſhould be taken?

Mr. *Kinaſton*. I am not poſitive, but it was to this purpoſe; they ſhould be put in one or two of the Maſters Names, and of the Perſons concerned. I am not certain how that was, but it was ſomething of that Kind.

Mr. Serj. *Probyn*. My Lords, I beg leave to ask this Witneſs when this was?

Mr. *Kinaſton*. I do not remember the time exactly. I believe it was ſometime about *Chriſtmas* was twelve Month.

Mr. Serj. *Pengelly*. My Lords, We ſhall call no further Witneſſes upon this particular Article; but beg leave to refer to your Lordſhips recollection of what paſſed Yeſterday, from the Examination of all the Maſters, relating to the Encouragement and Inducement that proceeded from my Lord *Macclesfield*, to the Maſters, to perſuade them to make up *Dormer*'s Deficiency, if their Offices ſhould be eſtabliſhed on their old Foot; which ſufficiently proves the Notice the Earl had of their Trafficking and dealing with the Money belonging to the Suitors of the Court. In the next place we ſhall lay before your Lordſhips an Order, made by the Earl of *Macclesfield*, of the 17th. of *December*, 1724. Tho' as to the ſeveral Propoſals made to his Lordſhip by the Maſters, he doubted of the Power he had to make any Order, yet when it was too late, or after the Loſſes had happened, when the Affair of this great Deficiency appeared, then doth he make an Order, that looks with ſome Care, but with this Introduction, that it was not uſual for the Maſters to give Security; tho' it appears to your Lordſhips that they had offered it, and were willing to do it.

Mr. *Ralph Paxton* proves the Order.

Clerk reads, *Ordo Curiæ Jovis Decimo Septimo die Decembris*, 1724.

WHereas his Majeſty has been pleaſed to appoint a Committee, of ſeveral Lords and others, of his moſt Honourable Privy Council; to make ſome Inquiries concerning the Court of Chancery,

Chancery, and particularly concerning the Monies of the Suitors of that Court, in the Hands of the Maſters or other Officers of that Court, and to conſider which way the ſame may be beſt ſecured; and the Lord Chancellor having at their Deſire ordered the ſeveral Maſters to give in their reſpective Accompts, which they accordingly did; and Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, and likewiſe Sir *Nathaniel Gold*, Mr. *Thompſon*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governor of the Bank, having been appointed and deſired by the ſaid Committee, to inſpect and examine the ſaid Accompts, and who have proceeded ſo to do, and after having been ſeveral Times attended by the ſaid Maſters, have made a Report thereof to the ſaid Committee of Council; whereby it appears, that, tho' all the Maſters of the ſaid Court have produced before them all the Securities and Certificates of their having the Stock and Annuities in their Names; which upon their Accompts, they appear to be chargeable with as belonging to the Suitors of the Court, and much the greater Part of the Maſters have brought before the ſaid Mr. Baron *Gilbert*, and other Perſons above named, their Caſh or Securities eaſily convertible into Money, Certificates of Stock, and Annuities ſufficient to make good the Ballance of their Accompts: Yet upon the ſaid Report it appears that there are yet conſiderable Deficiencies of Monies, which were in the Hands of ſome Maſters, who are dead; and that ſome of the preſent Maſters have not produced the Ballance of their Caſh, nor given a ſatisfactory Accompt how the ſame is to be made good, and it not having been uſual for the Maſters of the ſaid Court to give Security for the Money in their Hands, the ſaid Committee thought adviſeable, that till this Affair could be more maturely conſidered, and proper Methods eſtabliſhed for ſecurity of the Suitors of the ſaid Court, the Effects herein after mentioned, which have upon this Occaſion been produced, ſhould be at preſent ſecured in the Manner herein after mentioned, and recommended to the Right Honourable the Lord Chancellor, to take ſuch Order therein, as ſhould be proper; all which being communicated to all the ſaid Maſters, and the ſaid Report now read in the Preſence of them all, except Mr. *Kinaſton*, who is indiſpoſed, and thereby prevented from attending; and upon hearing what was alledged by the ſaid Maſters, and the Facts of the ſaid Report, ſo far as concerns their reſpective Securities in their Hands and Power, and the Ballance of Caſh in their Hands not being controverted, his Lordſhip therefore doth think fit, and ſo order, that the ſaid Maſters, Mr. *Holford*, Mr. *Lovibond*, Mr. *John Bennet*, Mr *Godfrey*, Mr. *Lightboun*, Mr. *Conway*, Mr. *Edwards*, Mr. *Thomas Bennet*, Mr. *Elde*, and Mr. *Thurſton*, all now preſent, and likewiſe Mr. *Kinaſton*, do forthwith prepare and ſend to the Bank of *England*, every one a Cheſt with one Lock, and Haſps for two Padlocks; the Key of the Lock to be kept by the Maſter, and the Key of one of the Padlocks by Mr. *Smith*, and Mr. *Malthus*, two of the Six Clerks of this Court, or one of them, and the Key of the other by the Governor, Deputy Governor or Caſhire of the Bank; and that all the Bonds, Exchequer Annuities and Orders, and other Securities given in upon their ſaid Accompts, as Securities belonging to the Suitors of this Court, or as the proper Securities of the ſaid Maſters, towards making good the Ballance of their reſpective Caſh; and likewiſe the Bank Notes and Caſh ſo given in, and not ſince paid to, or laid out for the Suitors of the Court, be depoſited in the ſaid Cheſts, under the Inſpection of Mr. Baron *Gilbert*, and the other Perſons appointed, as aforeſaid, to inſpect the Maſters Accompts, or of ſome of them; and that then the Cheſts be locked up, and left in the Cuſtody of the Bank of *England*; but ſo to be kept, as that the Maſters may have eaſy Acceſs thereto, to comply with the Orders of this Court, till further Order may be taken concerning the ſame; and whereas the Maſters have in their ſeveral Accompts given in particulars of Stock, and of Annuities, transferrable in the Books of the ſeveral Companies, ſtanding in their Names, which belong to the ſeveral Suitors of this Court, or as their own proper Stock and Annuities, by which part of the Ballance of Caſh in their Hands may be made good or ſecured; it is further ordered, that they do each of them forthwith deliver into the reſpective Company, a Declaration in writing, wherein ſuch Stock in each reſpective Company, or the Annuities there transferrable, as by their reſpective Accompts, appear to belong to the Suitors of the Court, and likewiſe the Stock and Annuities by them reſpectively propoſed towards making good, or ſecuring their Ballance of Caſh, or ſo much thereof, as ſhall equal the Ballance of their ſaid Accompt; in Caſe they have in their Names more than ſufficient for that Purpoſe, it ſhall be declared to be upon Truſt, to attend the Orders of this Court; and the ſaid reſpective Companies are to take care, that proper Entries be made thereof in their Books, ſo that ſuch Stock or Annuities be not Transferred, but by Order or Leave of this Court, and the ſaid Maſters upon performing the Order above, are to take proper Certificates, Signed by Mr Baron *Gilbert*, and the other Perſons appointed as aforeſaid, to inſpect the ſaid Accompts, or ſome of them; and by the Perſons keeping the Keys of the ſaid Cheſts, of the Particulars of the Bonds, or other Securities, and Caſh Notes, depoſited and locked up in ſuch Cheſts, as aforeſaid, and Certificates Signed by the ſame Perſons, and by a proper Officer of the Bank, that ſuch Cheſts are depoſited in the Bank, and Certificates ſigned by the proper Officers of the reſpective Companies, of the Declarations made as aforeſaid, by the reſpective Maſters, and of the Entries thereof; and it is further ordered that the *Goldſmiths* Notes, produced by the ſaid Maſters, in giving in their Accompts, be by them turned into Bank Notes, and ſo depoſited as aforeſaid; and the ſaid ſeveral Maſters are forthwith to give Mr. Baron *Gilbert* Poſt-Accompts of their Receipt, and Payments ſince the former Accompts, and a Copy hereof is to be delivered to Mr. *Kinaſton*, he not being now preſent; and another Copy left at the publick Office of the Maſters, with their Clerk there, for their more eaſy recourſe thereto, in order to their exact Compliance therewith.

EDW. GOLDESBROUGH
Deputy Regiſter.

Mr. Serj. *Pengelly*. By this Order your Lordſhips will obſerve, that ſome of the inſuperable Difficulties

Difficulties were ſurmounted, and ſome of the Evils Cured; and tho' that Method will not take it totally out of the Power of the Maſters, yet why the noble Lord could not have proceeded ſo far before, is left to your Lordſhips Determination; we ſhall not call any further Witneſſes on theſe Articles, we apprehend we have fully made them out. The honourable Gentleman who opens the next Article, will proceed.

Lord *Morpeth*, My Lords, It falls to my Lot, to open to your Lordſhips the 19th Article of this Impeachment, and, it being ſometime ſince 'twas read at your Table, 'twill be neceſſary for me ſhortly to recollect it.

The Article charges, 'That his Majeſty, having in *Novemb.* laſt, directed an Inquiry into 'the Accounts of the Maſters, to the intent, that 'proper Methods ſhou'd be taken, for the Security of the Suitors, the Earl of *Macclesfield*, being 'then Lord Chancellor, and one of the Privy Counſel, in order to obſtruct the ſame, and to prevent a parliamentary Inquiry into the Condition 'of the Offices of the Maſters, did, in the firſt 'Place, adviſe the Maſters to aſſiſt each other with 'Money and Effects; and for their Incouragement, 'repreſented it to them, that it wou'd be for their 'Honour and Service to appear Able and Sufficient, and that if they made a bold ſtand now, it 'wou'd prevent a Parliamentary Inquiry. In the next Place, 'That the Earl perſuaded ſeveral of 'of them, to make falſe Repreſentations of their 'Circumſtances to his Majeſty, by adding a Subſcription to their Accounts, that they were able 'and willing to Anſwer the Effects in their Hands, 'tho' the Earl then knew, or had good reaſon to 'believe the contrary; and that ſeveral of the 'Maſters, according to the Earl's advice, did 'ſupply others with Money and Effects, to make 'a falſe Shew, and appearance of their Abilities.

Your Lordſhips take notice, that the time mentioned in the Article, is *November* laſt; at which time, and for ſome Years before, the Kingdom had rang of the Abuſes and Corruptions of the Court of Chancery, with little hopes of Redreſs, but from the Juſtice of Parliament: The Earl cou'd not but foreſee, that the Period was then drawing near, when the Cries of the Oppreſſed and the univerſal Diſſatisfaction, rais'd againſt his Adminiſtration, wou'd, ſome way or other, force its Relief.

This cry for Juſtice having reach'd his Majeſty's Ear, He was pleaſed to direct the Inquiry mention'd in the Article, and whilſt this was depending, the Impeach'd Lord finiſh'd that Scheme of Iniquity, he had carried on ſo long without controul.

The Facts charg'd in this Article contain in themſelves the vileſt Deceit and Treachery; heighten'd, and aggravated by the wicked Purpoſes, for which they were contrived; Firſt, to have miſled the Council Board into a groundleſs Belief of the Maſter's ſufficiency to Anſwer the Suitors; and on this Foundation he built a more impious, but more fatal Project, the preventing a Parliamentary Inquiry.

The Anſwer given by the Earl to this Article deſerves a particular Notice; He ſays, 'That upon great Conſideration of *Dormer*'s Deficiency, 'and the Danger there might be of further Inconveniencies with relation to the Suitors Effects, of ſome Diſputes in the Court, and of 'ſome Practices of the Maſters, which he thought 'ought to be Reform'd, he was convinced, it was 'a work of too great Conſequence, for him ſingly 'to Attempt; and being highly ſenſible of his 'moſt ſacred Majeſty's paternal Goodneſs, did preſume humbly to beſeech his Majeſty, as the Fountain of Juſtice, to Depute ſome of his Privy 'Council to take the Matters into Conſideration.

My Lords, Seven Years, and more had paſs'd ſince he was made Lord Chancellor, three Years, ſince *Dormer*'s Deficiency, without one honeſt thought, for any thing that has yet appear'd, or one ſincere Step taken by him, for the Honour of the Court, or the ſafety of the Suitors; if the Examination order'd by his Majeſty, did ſpring from his Lordſhip's Requeſt, his real intention, in deſiring it, will be beſt known from his former Conduct, and from the Uſe, we ſhall prove, he intended to have made of that Inquiry; his paſt Behaviour has already appear'd to your Lordſhips, to have been a Series of Extortion and Oppreſſion, conſtantly attended with the vileſt and meaneſt Artifices to keep it Secret; the King's paternal Goodneſs was moſt notoriouſly abuſed, by him, who was intruſted to Diſpenſe it; and that Fountain of Juſtice polluted, which he now dares to name in his Defence.

I think my ſelf juſtified in charging this Part of his Defence, as an Act of high Diſſimulation before your Lordſhips; and a preſumptuous Attempt, to cover his own Guilt under his Majeſty's ſacred Name, and the Orders he was pleaſed to give for that Inquiry. The Earl has, indeed, acknowledged one Truth, in this part of his Anſwer, 'That the great Deficiencies, and Danger to the 'Suitors, and the Practices of the Maſters (which 'he does not name, but ſays) ought to be reform'd, had convinc'd him, that the Reformati'on of them was a Work too great for him, 'ſingly, to Attempt,

My Lords, The many Proſtitutions of the Dignity of that great Office, which have been proved upon him, had doubtleſs greatly wounded the Honour, and Authority of the Court it ſelf; and the Earl had bound himſelf ſo faſt to thoſe Maſters, whom he had admitted, by the Bands of Corruption, which he had not Power to break thro'; that nothing which tended to the Honour of that high Court, or the Advantage of the Suitors, cou'd be expected from his Hands.

The next Paſſage of his Anſwer is a wretched Mixture of the moſt abject Flattery of ſuch of your Lordſhips, as attended that Committee, to whom, I believe, his Lordſhip very truly Declares, he was entirely ſubſervient; and of falſe Praiſes of himſelf, for the great Services he contributed to that Inquiry: However, after this Introduction, the Anſwer goes on and declares, 'That he is greatly ſurprized, to find himſelf 'charged with Obſtructing the taking thoſe Accounts, which he had thus deſired might be taken, and had promoted with all his Power.

This is a poor Evaſion and Affectation of Innocence, and the more ſurprizing, to come from his Lordſhip, whoſe Miſconduct had ſo notoriouſly been the Occaſion of that Inquiry. And the Charge is not, as he inſinuates, for obſtructing the taking the Accounts, but, for procuring falſe Accounts, and Repreſentations to be laid before the Council, by which means that inquiry might have been fruſtrated.

But he proceeds in his Anſwer to a Declaration, the moſt aſtoniſhing of all others, 'That he never 'thought of preventing a Parliamentary Inquiry, any 'otherwiſe, than by making it unneceſſary, and procuring to the Suitors a full Redreſs of all their 'Grievances, and rectifying whatever he found a'miſs; and that he lookd upon to be his Duty

'and begs leave to ſay it here, once for all, in Anſwer to all the Inſinuations of that kind contained in any of the Articles.'

By the laſt Words the Earl, in a very ſummary Manner, pronounces his own Acquittal; but your Lordſhips will obſerve, that the Article charges him, in plain Words, with actual adviſing the Maſters to miſrepreſent their Accounts, in order to prevent a Parliamentary Inquiry, and that, if they made a bold ſtand now, it might prevent one; His Lordſhip Anſwers, that he never thought of preventing it, otherwiſe, than by procuring full Redreſs, &c.

By this he confeſſes, he did think of preventing the Inquiry of Parliament.

He has not dared to deny the Facts charged, from which this Deſign was manifeſt, becauſe he knew they would be fully proved: But the Subterfuge he flies to, *viz.* that he did intend to prevent it, by rendring it unneceſſary, is impoſſible to be believed, tho' the Commons ſhou'd offer no Proofs at all to this part of the Article; unleſs his Lordſhip imagines, that he is able to carry on the Impoſition ſo far, as that the concealing from his Majeſty the true Condition of the Suitors, by the Methods he was then practiſing with the Maſters, ſhould be taken by your Lordſhips to be the Means of procuring them full Redreſs; and it is ſelf-evident, that if his Contrivance had taken place, the immediate and full Relief of the Suitors, which was his Majeſty's gracious Purpoſe, had thereby been wholly defeated: The Commons therefore may inſiſt upon it, that this flagrant Circumſtance is eſtabliſhed by his own Confeſſion, eſpecially ſince your Lordſhips find, that in the following parts of his Anſwer the Earl declares, 'That Mr. *Holford* having ſubſcribed his Accounts, 'with a Declaration of his Abilities, and Readineſs to anſwer the Suitors, and ſome of the Maſters having uſed Expreſſions, as he thought, not 'ſo proper, others of them having made no Concluſions at all; he did adviſe them all to write 'the ſame Words under their Accounts, as Mr. '*Holford* had done, and did tell them, in great 'Sincerity and Friendſhip, that at a Time when 'ſo many Mens Mouths were open againſt them 'as Inſolvent, it would be for their Honour and 'Intereſt to make it appear that they were Able.'

Thus far the Anſwer is a full Confeſſion, that he adviſed all the Maſters to add Mr. *Holford*'s Concluſion to their Accounts.

His Lordſhip ſays, he was induced to do this from their aſſuring him they were able; this Aſſertion will appear to be notoriouſly falſe; however, if it had been true, his Lordſhip, it ſeems, took their bare Words for it, at the ſame Time that he declared to them, that ſo many Mens Mouths were open againſt them as Inſolvent: But here, unhappy Man, he flies again for Sanctuary to the Integrity of his own Heart, and aſſures your Lordſhips, 'That he never thought of a Contrivance to 'have them deceitfully appear to be what they 'really were not; tho' this Declaration of the Innocence of his Mind ſtands alſo in direct Contradiction to the Fact he had juſt before confeſſed; and in the very next Lines he again confeſſes, that ſome of the Maſters, purſuant to his own Directions, did withdraw to add the ſame Words to their Accounts, as Mr *Holford* had done to his; which he carried to the Council without looking into them, and, when they were read there, the Maſters, it ſeems, were honeſter Men than the Earl expected, or would have had them to be; for, notwithſtanding his Advice, all of them did not make theſe Subſcriptions to their Accounts.

To the other Charge in the Article, of his adviſing them to ſtand by one another and appear able, his Lordſhip has given a particular Anſwer, 'That an Order being made upon the Maſters, 'to produce their Securities and Caſh, and the 'Maſters complaining of the ſhort Time to produce ſuch great Sums, he confeſſes, he did ſay, 'that he required them to beſtir themſelves, and 'might, ſay that ſome of their Brethren might perhaps be able to let them have Money, till they 'could raiſe it another Way.'

The Excuſe he offers for this Advice, is a very unjuſtifiable one, it is, that the Maſters declared to him, that they had not the Suitors Effects ready, which, by the Duty of their Offices, his Lordſhip knew they ought to have had, but had Effects ſufficient to raiſe the whole, if they could have had more Time. By his own Account of this Matter 'tis plain, that the Maſters did at that Time diſcloſe to him one of the Practices, which 'twas his Duty to have reformed; and yet your Lordſhips ſee what Conſideration he had of it; even at this Juncture he adviſed them to ſupply one another, which they accordingly did, and the Deceit prevailed, till the Order for carrying the Securities and Caſh to the Bank made the Diſcovery.

Perhaps, my Lords, I have dwelt too long on the Earl's Anſwer; but, I think, it will appear to your Lordſhips to betray ſuch a Confuſion of Mind, as nothing but the heavieſt Preſſures of Guilt could have produced, and is a ſtronger Conviction of him than a thouſand Witneſſes.

I will, in the next Place, give ſome ſhort Account of our Evidence to this Article. The Maſters themſelves will prove the Earl's Directions, either given by his own Mouth, or by his Secretaries, when they were required to make up their Accounts to be laid before the King in Council, that they ſhould ſtand by one another, and give the beſt Account, they could, to prevent a Parliamentary Inquiry, and that they need only to produce or ſhew Bank or Goldſmiths Notes; and that it was a critical Juncture, and that the Strong ſhould aſſiſt the Weak, and that they muſt make a Stand, and defeat the Deſigns of their Enemies.

We ſhall farther prove his Lordſhip's expreſs Directions to the Maſters, to add the ſame Concluſion to their Accounts, as Mr. *Holford* had done to his, which was, that they were able and ready to anſwer their Balances; tho' the Earl did not ſo much as ask any of them whether they could make it good, and ſome of them declar'd the contrary; and at that Time alſo he told them, that it would be for their Honour and Service, and that it would look well to the Council to appear able and willing.

We ſhall alſo prove, that this falſe Advice of the Earl was followed by ſeveral of the Maſters, in both Reſpects; and that afterwards, when the Suitors Effects were to be carried into the Bank, ſeveral of them who had before appeared able, now proved deficient in great Sums, and Bank and Goldſmiths Notes, and other Effects, to a great Value, with which ſeveral of them had been accommodated, and which they had produced to the Perſons appointed to examine the Accounts, and which, as appears by the Reports on your Lordſhips Table, they had ſworn to be their own, and not lent them for the Purpoſe of accounting, now vaniſhed, and a Deficiency appeared of fourſcore thouſand Pounds and upwards, which ſtill continues.

This Evidence will fully maintain our Article, and, if any Proof is neceſſary, will ſufficiently clear up the Earl's Intentions.

My

My Lords, The Part which ſtill remains to me is ſuch, as I own my ſelf utterly unable to perform, I mean, to aggravate this Offence in ſuch Manner as it deſerves; the amazing Scene this Article has opened, muſt not be judged of ſingly, and by it ſelf; nor can it be accounted for but as the Off-ſpring of a Mind thoroughly debaſed, and flowing from the moſt incurable Corruption: And tho' they have iſſued from that Source, as from an unexhauſtible Fountain, yet it can't be denied, but as the Earl's thirſt for Lucre grew ſtronger upon him, with that his Invention alſo has conſtantly improved into ſome new Device or Management for ſecuring his exorbitant Advantages, by preſerving the Secret. 'Twas a remarkable Law, in one of the wiſeſt of the *Grecian* Governments, ariſing from their Dread and Abhorrence of a corrupt Judge, *That no Man, bred up to Merchandize, ſhould be admitted into any Office of Judicature, till he had quitted that Employment for at leaſt ten Years*; and the Reaſon was, becauſe the Fingers of Merchants had been too much uſed to Traffick.

The Earl's Adminiſtration, in the higheſt Seat of Juſtice in this Kingdom, has appeared to your Lordſhips to have been one continued pyratical Trade; during the Courſe of which, from Time to Time, as Opportunities have offer'd, he has prey'd alike upon Maſters and Suitors; his craving Appetite was, in no Sort, check'd by the approach of Death it ſelf; and the Hand of a dying Chancellor, as he expreſs'd himſelf to one of the Maſters, was open'd to receive that unjuſt Gain he had ſo plentifully fed upon in full Health: To which, and his other Misbehaviours, your Lordſhips now ſee, that not only the Ruin of many even of the Maſters, but the Diſhonour, Diſtreſs and Confuſion ſtill remaining in that part of the publick Juſtice muſt be imputed; and how groundleſs and unaccountable ſoever the repeated Aſſertions in the Earl's Anſwer, that the Maſters freely and voluntarily parted with their Money to him now, appear to him to be; yet, from the Unwillingneſs and other conſcious Circumſtances, with which he has ſince, at ſeveral Times, refunded ſome parts of his extorſive Gains, tho' the Guilt is not leſſen'd, his Lordſhip is thereby Self-condemn'd.

The Fund out of which he has raiſed his unwarrantable Profits, ought to have been held by him as ſacred and inviolable, being depoſited in the Sanctuary of his own Court: His Extortions therefore muſt be judged of, not as private Violations of Property, but as Pillage taken from the Treaſure of the Publick; the Livelihood of the Widow and Fatherleſs, under the Protection of the Law, in a Court of Juſtice; great part of it, perhaps, dedicated to Charities: And how far your Lordſhips may, in this Reſpect, conſider it as a ſacrilegious Plunder, is left to your Judgment: However, the injuries done to diſtreſſed, ſhipwreck'd Sufferers, have been always eſteemed the higheſt Barbarity.

But the Methods the Earl has uſed from Time to Time to excuſe and cover his Crimes, tho' they were the natural Refuge of an obſtinate unrelenting Mind, yet are more heinous than the Crimes themſelves. Your Lordſhips can't forget the Oath of his Office, which he has ſet forth at large in his Anſwer; he was ſworn *to do Right to all manner of People, poor and rich, according to the Laws and Uſages of the Realm, and not to do or ſuffer the Hurt of the King, if he could hinder it; if not, clearly and expreſſly to make it known to him, with his true Advice and Counſel.* 'Tis ſurprizing to find his Lordſhip to have ſo utterly abandon'd all Regard to this ſolemn Obligation, as the whole Courſe of his Behaviour fully demonſtrates. You have alſo heard the Oath he cauſed to be adminiſter'd to the Maſters, immediately after he had ſhared with them the Eſtates of the Suitors; by which Oath they were *likewiſe ſworn neither to do Hurt to the King, nor to do any Fraud to the Hurt of any of the People*; and it has appear'd in what Manner they have ſince been practiſed and tamper'd with by the Earl himſelf, in order to conceal and ſuppreſs the Knowledge of the Grievances of the Subject, which he had procur'd; ſometimes they were threaten'd, at other Times cajoled and ſeduced, but always deceived; and this Artifice, deſcribed by this Article, was his laſt Shift. When he ſaw the Storm began to ariſe, he deliberately contrived to turn the fatherly Goodneſs of his bountiful Maſter to the Deſtruction of his People, and, by this moſt unparallelled Attempt, to have render'd the Throne it ſelf the Shelter of his Iniquities, and acceſſary to his Oppreſſions; but 'twill now appear, that this was conducted to another Point, to skreen himſelf from the Juſtice of Parliament.

My Lords, There have been Crimes ſo unexampled, and of ſo horrid a Nature, that the Malefactors have been try'd at Midnight, and immediately drown'd, and the Journal Books burnt, in Compaſſion to Mankind, that the Memory of the Proceeding being deſtroyed, the Crime it ſelf might not be propagated.

The Offences of the impeached Lord are ripened to a Fulneſs ſurpaſſing all Belief, too big indeed for the ordinary Hand of Juſtice; but the Commons of *Great Britain*, whoſe Inquiry he vainly flattered himſelf he could prevent (tho' the Terrors of it had long lain upon his Breaſt) have, by this Time, I preſume, convinced his Lordſhip; and his Example will, I hope, convince the World, that no Offender, how great or ſubtil ſoever, can eſcape their Juſtice, of which this publick Proceeding will be an eternal Monument, as well as of the Shame of the unfortunate Earl.

The Lord *Bacon*, one of his Predeceſſors, made a frank Submiſſion to your Lordſhips Anceſtors upon the Accuſation of the Commons, and taking Comfort to himſelf from his Afflictions, uſes theſe Words, 'That hereafter the Greatneſs of a 'Judge or Magiſtrate ſhall be no Sanctuary or 'Protection to him againſt Guilt; and that, after his Example, it was like, that Judges would 'fly from any Thing in the Likeneſs of Corruption, tho' at a great Diſtance; which tends to 'purging the Courts of Juſtice, and reducing 'them to their true Honour and Splendor.' He did, indeed, urge it as no ſmall Excuſe for himſelf, that Bribery and Corruption, the Vices of which he ſtood impeached, were the Vices of the Times; but the Commons rejoyce to find, that the Earl, now before your Lordſhips in Judgment, has no Ground to claim the ſame Excuſe.

The Admonitions left by that penitent great Man, and the juſt Puniſhment he underwent, have, I believe, conduced to prevent the like Evil for near an hundred Years, tho' they had not an immediate Effect: For an eminent Hiſtorian of thoſe Times has recorded, that ſome Time after his Sentence in Parliament, meeting the Earl of *Middleſex*, then Lord Treaſurer (whom he had Ground to ſuſpect to have been inſtrumental in his Diſgrace) in Diſcourſe with him he recommended it as a Rule to be obſerv'd by the Earl, and all great Officers, to

Remember a Parliament will come.

And the ſame Author further obſerves, that tho' the Lord *Bacon* had not the Spirit of Divination, and tho' the Treaſurer deſpiſed and laughed at his Advice, yet, within two Years after, the Treaſurer alſo was condemned in Parliament for Bribery, Extortions, Oppreſſions, and other grievous Miſdemeanors.

I will conclude with one Obſervation more: It may, my Lords, be too juſtly apprehended, that the moſt dangerous Symptoms of a declining Commonwealth do then appear, when Men in the higheſt Stations in Government, eſpecially thoſe which concern the Adminiſtration of Juſtice, ſhall be ſo far loſt to all Senſe of Virtue, as to be guilty of ſuch odious Crimes as thoſe now charg'd upon the Earl; yet, we promiſe our ſelves, that your Lordſhips Juſtice, in the Puniſhment of thoſe Crimes, will afford us a hopeful Proſpect of a reviving State; and that whenever the Crimes and Miſdemeanors of this unfortunate Earl ſhall hereafter be mentioned, it will be remembred at the ſame Time, for the Honour of your Lordſhips, and the Benefit of the whole Nation, that he received a Condemnation ſuitable to his Guilt.

Mr. *Snell*, My Lords, I would gladly have been excuſed *this Service*, becauſe I have been extreamly indiſpoſed, ever ſince I receiv'd the commands of *the Houſe of Commons*, and becauſe I am otherwiſe truly ſenſible of my Inability to execute thoſe Commands, in the manner they ought to be executed. But theſe Reaſons, being thought inſufficient by *others* to prevail for my abſence, it is no longer a Matter of Choice, and I muſt comply with the duty *impoſed* upon me. Your Lordſhips therefore wil be pleas'd to conſider (as the Truth is) that what I have to ſay is only the Product of a few Hours, and that it is impoſſible for me, in ſo ſhort a time, to offer any *Obſervations*, any *Arguments*, but ſuch as will appear crude and indigeſted on this *great and important Subject*.

The *Earl* then *at the Bar* ſtands under *an Impeachment of all the Commons of* Great Britain, *of high Crimes and Miſdemeanors in his late Office of Lord high Chancellor*, and tho' *the Charge* againſt him in *the Article* now under your Lordſhips conſideration, be of a different Nature, yet in every Circumſtance it is as highly *criminal*, as any of thoſe that have gone before it. The Accuſation hitherto has generally run upon *Corruption in the ſale of Offices*, *Extortion*, and *a Series of foul Practices* to cover and conceal *the deficiency in* Dormer's Office, which had drawn upon him *an Univerſal* Cry for Redreſs. All the little Arts, that had been play'd over and over again upon *the Maſters*, either by applying to their Hopes, or Fears, as opportunity offer'd, had prov'd ineffectual; and ſome other expedient muſt be found out, ſome new Stratagem invented, to quiet the clamours *of the injur'd Suitors*. Theſe clamours had juſtly ariſen from a Suppoſition of the *Maſters Inſolvency*, and no Method could be ſo likely to ſerve his turn to appeaſe them, as one, that would make *the Maſters ſeem* to be ſolvent. He therefore ventur'd to adviſe them to aſſiſt one another, to repreſent their Circumſtances in a falſe Light, by Subſcribing their Accounts as Mr. *Holford* had done; and thus he propos'd to deceive *the Suitors*, and to make *the Maſters* appear to the World able to anſwer the Monies and Effects in their Hands: But this laſt Effort was as unſuccesful as his former. For if *the Maſters* were able and ſufficient, what reaſon could he have for his Apprehenſions of a *Parliamentary Enquiry*? If they were not able, he had indeed reaſon for *ſuch Apprehenſions*, which leaves your Lordſhips no room to doubt, but that *this Advice* was given with a View only to keep the Affair out of Parliament; and the conſtant Anxiety he labour'd under to ſecure that *main Point*, does more than *decypher* the Secret of the whole Tranſaction.

Now, my Lords, this extraordinary Step could not proceed from any Doubt *the Earl* could have, whether the Parliament was able and willing to redreſs theſe Grievances and Inconveniencies, or whether it would contribute its Aſſiſtance to the Relief of *the Suitors*: No, my Lords, he knew very well, that the Parliament was the proper Place for redreſſing *Abuſes in the Courts of Juſtice*. He was ſenſible too, that it had always interpos'd with *Accuſations* and *Impeachments*, and that *ill Actions* had, in no Age, met with Favour there. He could have no Hopes that his Ambiguity of Expreſſion, his Dexterity in playing upon Words, in wreſting their proper Senſe and Meaning, could ſtand him in any Stead; or that all his Subtilty could be a Match for the Wiſdom of the Legiſlature: But, perhaps, he might imagine, that *a Committee of Council* might be wrought upon, and miſled by Appearances, at leaſt ſo far, as to *protract the evil Day*; and who could tell what Time or Accident might bring about? Another *Act of Grace* might come, and expunge the whole Score.

I ſhould have congratulated your Lordſhips and the Houſe of Commons, and even the *accuſed Earl himſelf*, if the *juſt Apprehenſions* he conceiv'd of *a Parliamentary Inquiry* had raiſed in him a *compaſſion* equal to the *Sufferings* of *the Suitors*: If it had begot a Repentance of his former Miſdeeds and Crimes, and a reſolution of future Innocence and Uprightneſs: But your Lordſhips find, it had a very different Effect; it only produced a vile Contrivance to guard himſelf againſt Puniſhment for what was paſt, and to make it more difficult hereafter, to detect him in *the ſame Practices*. This is *a behaviour* my Lords, which is ſo far from deſerving your *Mercy*, that it calls aloud for your *Indignation*, as well as *Juſtice*. This is a *Circumſtance*, which is not only a high aggravation of his Guilt, but a great Indignity to the Authority and Honour of Parliament; which I hope will never be *eluded* by the Artifice of the *moſt cunning and ſkilful*, nor *controul'd* by *the influence* of the moſt *powerful and favour'd Miniſter of State*.

But, if the *impeach'd Earl's Actions* may be allow'd to be any Proof of his Intentions, the Fact ſtated in this Article goes further, and implies *a bold and deſperate Attempt* to miſlead his Majeſty, and to Obſtruct his gracious Endeavours to find out proper Methods for ſecuring the Money and Effects of *the Suitors*, which is an Inſtance on one Hand of his *baſeneſs* and *ingratitude* to *his Sovereign*, to whom he *ow'd every thing*; on the other of his *injuſtice* and *barbarity* to thoſe *of his fellow Subjects*, whom he had *injur'd*, whom he had *oppreſs'd*, during the whole courſe of his *Tyrannick Adminiſtration*.

What, my Lords, muſt have been the Conſequence, if *this Contrivance* had paſs'd? And it would have paſs'd upon a Prince of leſs Diſcernment than his Majeſty. Whenever it had been diſcovered, all the Obloquy would have been thrown upon *his Sacred Perſon*, as if he had been engaged in *a Confederacy* to *ſkreen* that guilt which he was labouring to *detect*. But *the Earls avaricious Temper* had ſet ſo wrong a Biaſs upon his Actions, that *the Means* by which he propoſed to ſhelter himſelf, and to conceal his Depredations, have brought upon him (what he ſo long dreaded) this *juſt and neceſſary Proſecution*.

As to *the Earl's Anſwer* to *this Article*, I hope I may be excuſed the Liberty of ſaying, that it is either *vain*, *evaſive*, or *falſe*.

He begins with enumerating the many Inconveniencies and Abuſes, which he thought neceſſary to be reformed in the Court of Chancery, and with aſſuring your Lordſhips of his good Intentions to contribute to the Reformation of them; but your Lordſhips will beſt judge of this pretended Zeal, and of the Sincerity and Candour, with which it is urged, by conſidering the conſtant Tenor of his Actions, by examining whether he can produce any Inſtance of his having endeavoured to correct theſe Abuſes, or to remove theſe Inconveniencies. Now I don't find thro' his whole Anſwer, nor have I heard it aſſerted, that he ever attempted any Thing of that Kind. On the Contrary, it is too apparent, that many of them took their Riſe while he preſided in Chancery.

In

In the next place, my Lords, he arrogates to himself the Merit of *that Enquiry*, which his Majesty had directed to be made by a *Committee of his Privy Council*; and insists, that it was the Effect of his Application.

How true this Assertion is, some of your Lordships may know. But the Part he acted in *that Enquiry*, might have oblig'd him to Silence, or at least have restrained him from boasting of his Conduct. The *Commons* charge him directly with obstructing the Methods then proposed for securing the Property of *the Suitors*; and it is not a sufficient Answer, to say, that *this Enquiry* was begun at his Instance, and that he press'd *the Masters* to bring in their Accompts: For all this may be true, and yet he might give them *the Advice* I have already mention'd, and complain'd of to your Lordships. Surely, my Lords, it is a Justice due to his Majesty, to observe upon this *vain-glorious Part* of *the Earl*'s Answer, that, whatever Share He had in setting *this Enquiry* on foot, all the *good Fruits*, to be hop'd for from it, are the Result only of his Majesty's *Paternal Care* of his People.

He further says, That *he never thought of preventing a Parliamentary Enquiry, any other ways, than by making it unnecessary, and by procuring the Suitors a full Redress of all their Grievances*, &c.

This is another Instance of his Disingenuity: For *the Grievances* complain'd of, could no where be redress'd but in Parliament; and therefore nothing more can be understood by the Words [*Any other ways, than by making it unnecessary*] than by making it SEEM unnecessary; which is a poor and mean Prevarication.

Nor is there any Credit to be given to what he urges in Excuse for his *Fraudulent Proposal* to *the Masters*, *viz. That while the Accompts were taking, all the Masters, at least all that he saw, except Mr.* Kinaston, *had declared that they had Effects sufficient to answer their whole Accompts*, &c.

For we shall prove to your Lordships by Mr. *Thomas Bennet*, and Mr. *Kinaston*, that it is *false*, unless you'll suppose them *perjur'd*: For they are very positive, *That the Earl never ask'd them whether they had Effects to answer, or not, or were able to pay in their Cash-Ballance*: Nay, they are *sure they did not tell him so, because in Fact it would have been false, if they had.*

Besides, Your Lordships will have the concurrent Testimony of almost all *the Masters* to prove, that (while they were making up their Accompts to lay before the *Committee* of *Council*) they were directed by *Cottingham* and *Dixon* to assist one another *in making a Shew of their Abilities*; and that some of them, *viz.* Mr. *John Bennet*, Mr. *Godfrey* and Mr. *Conway*, complied with *this Direction*, which we must ascribe to *the Earl himself*, as being given by his *Two Chief Agents and Ministers.*

Who is it, my Lords, that has been guilty of the Crimes laid in *this Impeachment*? It is *a Peer of Parliament! A Lord High Chancellor of Great Britain!* And how precarious must be the Property, how deplorable the Condition of the Subjects of this Kingdom, if such Crimes should not be punish'd in *so exemplary* a manner, as to *carry down Terror* to all *succeeding Chancellors*?

My Lords, If I have express'd my self with too much Acrimony on this occasion; if what I have said, has any way offended the *Impeached Earl*, I hope he will do me the Justice to believe, that I meant it only in *Detestation of his Crimes*, and not in *Disrespect to his Person.* For I assure him, I should have been heartily sorry for the Misfortune he has brought upon himself, if it had proceeded from *Ignorance* or *Neglect*, and not from *an insatiable Appetite* after *illegal Gains*, which he is pleased to mis-call *Voluntary Presents*, and for which I must ever entertain *the Utmost Abhorrence.* I will therefore conclude with a Word of Advice out of the Scriptures for his future Conduct, *That he shall receive no Gift; for a Gift blindeth the Wise, and perverteth the Words of the Righteous.*

Mr. Serj. Pengelly. My Lords, we beg leave that Mr. *Thomas Bennet* may be examin'd, and that he may give your Lordships an Account of what pass'd after this Inquiry directed by his Majesty, begun; what Order and Direction the Masters receiv'd from his Lordship in the Execution of that Inquiry?

Mr. Tho. Bennet. My Lords, I think, on the 3*d* of *November* last we receiv'd an Order from my Lord Chancellor, to make up our Accompts. It was a very particular Order, express'd abundance of *Items*, and Columns, in what manner those Accompts were to be made up. The Masters had a Meeting on this occasion; and a great many, if not all of them, agreed, that the making up of the Accompts in that manner as my Lord Chancellor had directed, was impracticable in so short a time; for we were directed to do it forthwith. It was represented by some of the Masters to Mr. *Cottingham*, and I believe, by him to my Lord Chancellor, that it was impossible to do it in so short a time, and it would take up a Month or two, or more. I did not know what other People could do: Ih ad begun to make up my Accompts; I could have done it in a short time, having been in but a little while: Others, indeed, that had been in twelve Years, and must have given an Accompt of the whole Proceedings of that time, could not do it. I was inform'd by my Brother, that he could not have done it in a Year: But soon afterwards I was told, that the Order was dispens'd with by my Lord Chancellor; and all we were to do, was to make up an Accompt of the Ballance of the Money and Securities that were in our respective Offices distinctly, the Money and Securities in Two Distinct Columns, only the Sum total at the Bottom. This Order the Masters all comply'd with, as appears by their Accompts: And between that and the 9*th* Day of *November* following, we had several Messages from my Lord Chancellor by Mr. *Cottingham* to dispatch these Accompts; for they were much wanted, being to be laid before the Committee of Council. On the 10*th* of *November* we had express Orders to appear at my Lord Chancellor's House with our Accompts ready. All the Masters, except Mr. *Conway*, were there.

Mr. Serj. Pengelly. I desire he may be ask'd, if there was any other Meeting before that of the 10*th* of *November*?

Mr. Tho. Bennet. I think there were some Meetings at Mr. *Edwards*'s House by Mr. *Cottingham*'s Direction, before, and after That at my Lord's House. At those Meetings, at one of them, I particularly remember (which was the most material of all) Mr. *Cottingham* brought Mr. *Dixon* with him, and introduc'd him, saying, we need not be afraid of Mr. *Dixon*; for he brought him there by my Lord's Direction, because he himself

was deaf, and could not well hear what was ſaid. Upon that he began his Meſſage, and ſaid, Our Accompts were then laid before the Council juſt at that time: But, ſaid he, ſuppoſe my Lord Chancellor or the Council ſhould expect, that the Bonds and Securities ſhould be inſpected, would you be willing, that any Officer from him ſhould inſpect your Books and Securities? The Maſters anſwer'd, They were ready and willing to do it; I don't remember any body that oppos'd it. The next Queſtion Mr. *Cottingham* ask'd, was, Whether we could produce the Ballance of our Caſh, and ſhew that we had the Money? To that all the Maſters ſpoke in general, that they were under a great Concern and Surprize, and deſir'd to know what Mr. *Cottingham* meant by that: Whether it was only to produce the Money, or the Money to be taken from us? and whether there was any Danger of that? Says Mr. *Cottingham*, You are only to produce the Ballance of Caſh, and ſhew it. We ask'd, whether we ſhould produce it in Goldſmiths Notes, or Bank-Notes? Says he, I believe Goldſmiths Notes will ſerve: You are to ſhew the Ballance of your Caſh; but I think, Bank-Notes will do better. Upon that, Mr. *Lightboun* ſaid, I don't know what the Conſequence of this may be. Suppoſe, when we have produc'd theſe Notes, they ſhould be detain'd from us, I am afraid moſt of the Goldſmiths Shops about *Temple-Bar* would be ſhut up the next Day, and Inquiry would be made what Holiday it was, and Thouſands of Families might be ruin'd by this Tranſaction. Mr. *Cottingham* propos'd, You may ſtand by, and aſſiſt one another. Mr. *Kinaſton* ſaid, I find, we are like to be ſacrific'd, and given up; for my part, I will neither borrow, nor lend: Any one that borrows is a Knave, and he that lends is a Fool. Upon this, the Maſters were in great concern. Mr. *Cottingham* and Mr. *Dixon* went back to my Lord Chancellor, and ſtaid about an Hour and half, and then return'd to us, and ſaid, my Lord was very buſie, and diſmiſs'd us, and ſo we went home.

Mr. Serj. Pengelly. When was the next Meeting?

Mr. Tho. Bennet. I don't remember; we had ſeveral Meetings. I don't remember when the next was.

Mr. Serj. Pengelly. What paſs'd on the 10*th* of *November* in the Preſence of my Lord *Macclesfield*, at his Houſe?

Mr. Tho. Bennet. When we came to my Lord Chancellor's Houſe, upon the 10*th* of *November*, all the Maſters then preſent carry'd up their Accompts: Two or three had not their Accompts ready; my Brother and Mr. *Conway* had not theirs; but all that were ready, carry'd them up to my Lord, and, according to Seniority, deliver'd them to his Lordſhip. The firſt was Mr. *Holford*: He had added to his Accompt, a Letter, I don't remember the Words, or that it was read; but I remember a Subſcription, which my Lord Chancellor read, and that he ſaid it was very good, and he lik'd it very well, and, I think, he laid it down upon the Table. The next Maſter gave his Accompt, and ſo all the reſt. My Lord look'd them all over; ſome of the Maſters he objected to. I remember, I had written at the Bottom of my Accompt, as near as I can remember, *I am ready and willing that the Bonds and other Securities in my Hands, may be inſpected by ſuch Perſon as your Lordſhip ſhall appoint.* My Lord, after looking them all over, ſaid, he lik'd Mr. *Holford*'s Subſcription, and, ſays he, I wiſh you would all make uſe of that; For it would be for your Honour and Service, to make your ſelves appear able and ſufficient to anſwer the Effects in your Hands. Somebody ask'd my Lord, what might be the meaning of this Commiſſion being appointed by his Majeſty? This, ſays he, I apprehend, will prevent a Parliamentary Inquiry.

Mr. Serj. Pengelly. We deſire that Mr. *Bennet* may repeat the Expreſſion my Lord made uſe of to perſuade them to ſubſcribe, as Mr. *Holford* had done.

Mr. Tho. Bennet. That they might appear able and ſufficient. I think, thoſe were the Words.

Mr. Serj. Pengelly. My Lords, I deſire he may be ask'd, whether my Lord had at that time made an Inquiry of the Maſters, whether they were able and ſufficient?

Mr. Tho. Bennet. I can only anſwer for my ſelf. My Lord did not ask me, whether I was able and ſufficient; but only directed me to write that Subſcription that Mr. *Holford* had done; and I did go down, and write, in effect, that Subſcription. I did ſubſcribe thus: 'My Lord, I have 'all the Securities ſtanding in my Name, as in 'the within mention'd Accompt are ſpecified; 'as alſo the Tallies, Orders, and Bonds in my 'cuſtody; and as to the Money, I am ready to 'give your Lordſhip ſatisfaction, that I am able 'to anſwer it to every Perſon that is entitled 'thereto. The Words, *to a Demonſtration*, which are in Mr. *Holford*'s Subſcription, I omitted, becauſe I could not make it out to the Lords of the Council.

Mr. Serj. Pengelly. My Lords, We beg leave to produce theſe Acompts, and ſhew to your Lordſhips that Subſcription of Mr *Holford*, that was to be followed by the other Maſters, and the firſt Subſcription of Mr *Bennet*.

Mr. *Onſlow*. Pray, tell my Lords, if you can remember, was there any other Expreſſion made uſe of at that time?

Mr. Tho. Bennet. The Expreſſion was, It would be for our Honour and Service, to appear able and ſufficient.

Mr. *Onſlow*. No other Words?

Mr. Tho Bennet. And it would be a means to prevent a parliamentary Enquiry.

Mr. *Onſlow*. Was there nothing mentioned relating to a Stand?

Mr. Tho. Bennet. I don't remember that then; Mr *Cottingham* ſaid ſomething of that at a Meeting at Mr. *Edwards*'s.

(The Subſcription ſhew'd to Mr *Bennet*. And proved by him to be Mr. *Holford*'s Hand.)

Mr. Serj. Pengelly. My Lords, we beg leave, that this Subſcription may be read, which was to be follow'd by all the Maſters.

Clerk reads.

'I have all theſe Securities ſtanding in my 'Name, as in this Accompt is ſpecified, and will 'procure Certificates from the proper Offices, that 'I have, and had them before the Account, if 'your Lordſhip requires it. And as to the Money, I am ready to give your Lordſhip ſatisfaction, to a Demonſtration, that I have it in my 'power to anſwer it to every Perſon, that ſhall 'appear to be entitled to it, and who can give me 'a Legal Diſcharge.

Mr. Serj. Pengelly. We beg leave to read Mr. *Tho. Bennet*'s Firſt Subſcription, that my Lord was not ſatisfy'd with.

Clerk

Clerk reads.

'My Lord, I am ready and willing the Securi-
'ties in the foregoing Account mention'd, ſhall be
'inſpected by ſuch Perſon or Perſons as your
'Lordſhip ſhall be pleas'd to appoint.

Tho. Bennet, 10*th Novemb.* 1724.

Mr. Serj. Pengelly. Your Lordſhips obſerve, there is nothing in this Subſcription, as to the Caſh, and the producing it. Now we beg leave to ſee the ſubſequent Subſcription.

Clerk reads.

'10 *Nov.* 1724. My Lord, I have all the Secu-
'rities ſtanding in my Name, as in the within
'mention'd Accompt are ſpecify'd; as alſo the
'Tallies, Orders and Bonds in my cuſtody. And
'as to the Money, I am ready to give your Lord-
'ſhip ſatisfaction, that I am able to anſwer it to
'every Perſon that is entitled thereto.

Tho. Bennet.

Mr. Serj. Pengelly. Your Lordſhips obſerve, he hath left out the Words *To a Demonſtration*, becauſe he thought that he could not ſo clearly make it out. I beg leave to mention, that theſe Accompts and Subſcriptions thus alter'd, were actually deliver'd in, and laid before the Council, and are the Original Accompts.

Mr. Serj. Probyn. My Lords, I would ask Mr. *Bennet*, when this Propoſal was offer'd to him, that he ſhould ſubſcribe as Mr. *Holford* had done, whether he made any Excuſe, or pretended he was not able to do it?

Mr. Thomas Bennet. No, I did not; I did as the reſt of the Maſters did.

Mr. Common Serjeant. I deſire he may inform your Lordſhips when this was?

Mr. Thomas Bennet. I think, it was the 11*th* or 12*th* of *November*; I can't be poſitive as to the Day.

Mr. Kinaſton *called.*

Mr. Serjeant Pengelly. My Lords, we deſire that Mr. *Kinaſton* may give your Lordſhips an account, whether he was preſent at this Meeting on the 10*th* of *November*, and what paſſed there relating to their Accompts?

Mr Kinaſton. Yes, my Lord, I was there the 10*th* of *November*.

Mr Serjeant Pengelly. What paſſed at that time at the Earl of *Macclesfield*'s?

Mr Kinaſton. I think I came there before the reſt of the Maſters, or only two or three were there before me. We gave my Lord an account, that we had drawn out our Accompts of the Securities and Caſh, and the Ballance in each Maſter's Hands. Soon after the reſt came. My Lord firſt receiv'd Mr *Holford*'s Accompt, being the Elder Maſter. A Letter at the End of his Accompt was read: My Lord ſeem'd to be affected with, and to approve very well of it. There was ſome Writing at the End of it relating to the Ability. My Lord ſaid, it would do very well to have ſomething to the ſame purpoſe at the End of the other Maſters Accompts, and mention'd to us to go down and write it; accordingly we did go down, and moſt of us, if not all, did write to that purpoſe.

Mr Serjeant Pengelly. Can you recollect what Expreſſions the Earl of *Macclesfield* uſed, to recommend it to the Maſters?

Mr Kinaſton. My Lords, I can't juſtly recollect; I think it was, It would look well before the Council, and prevent a further Enquiry, or a Parliamentary Enquiry, I am not poſitive which: But that I underſtood to be the meaning of it.

Mr *Serjeant Pengelly.* What was it that would look well to the Council?

Mr *Kinaſton.* What Mr *Holford* had writ at the Bottom of his Accompt, *That they were ready*, &c.

Mr *Serjeant Pengelly.* My Lords, I deſire he may be asked, whether there was an Enquiry made by the Earl of *Macclesfield*, as to his Ability or Sufficiency?

Mr *Kinaſton.* No, I am ſure as to my ſelf; and I don't know as to any body elſe.

Mr *Serjeant Pengelly.* I deſire he would inform your Lordſhips, what Subſcription he had firſt made, and what was added, or what Advice was given?

Mr *Kinaſton.* I had writ before: 'My Lord,
'the Perſon I employ'd to write out this Ac-
'compt, has only gone thus far as to the Num-
'ber of the Bonds. I have brought the Bonds with
'me, and deſire you'll appoint any Perſon to in-
'ſpect them, and the other Securities I have here
'given an account of.

Mr *Serjeant Pengelly.* What was writ afterwards? This is wrote with a different Ink than that before: *And as to the Money, I am ready to pay it to the Perſons entitled thereto.* That is with a different Ink.

Mr *Kinaſton.* I believe, upon looking upon it, I went down with the reſt, and writ that in the Parlour at my Lord's Houſe.

Mr *Serjeant Pengelly.* I deſire he may be aſked, whether he, or any other of the Maſters then receiv'd any Explanation how this Sufficiency or Ability was to appear?

Mr *Kinaſton.* Not then, I don't remember any thing of it.

Mr. *Serjeant Pengelly.* Or at any other time?

Mr *Kinaſton.* Some time after this, this was the 10*th* of *November*, and I believe, between that and the 16*th*, when we were to attend the Judges, the Maſters were ſummon'd to meet at Mr *Edwards*'s Houſe: I underſtood, it was a Summons from my Lord *Macclesfield*; and when we were here, there came Mr *Cottingham* and Mr *Dixon*. I don't remember all the Diſcourſe; but they were telling us what was to be done: Firſt, we were to produce our Securities, and there would be no great Nicety in producing them: And then, next, we were to produce the Ballance of Caſh: And I remember, on that, Mr *Cottingham* ſaid, You muſt ſtand by one another, and aſſiſt one another. Bank-Notes, ſaid he, will be beſt; but if you can't get them, then Goldſmiths Notes. You muſt get one ur other to produce and ſhew.

Mr *Lutwyche.* I deſire he may be ask'd, what hhe thought he meant by the Propoſal of getting Goldſmiths Notes, or Bank-Notes?

Mr *Kinaſton.* I did take the meaning in the worſt ſenſe, to be, for the Maſters barely to make a Shew of them; and that made me complain; and I ſpoke warmly, and ſaid, I ſaw what the Deſign was; and whoever borrow'd any Money on that Occaſion, was a Knave, and he that lent it was a Fool.

Mr *Lutwyche.* I deſire he may be ask'd, whether there was any Recommendation by Mr *Cottingham* or Mr *Dixon*, and in what particular Expreſſions thoſe Recommendations were made?

Mr *Kinaſton.* I believe, Mr *Lightboun* expreſs'd himſelf, That if they borrow'd Goldſmiths Notes, and they were detained, the Goldſmiths Shops would

would be ſhut, and People would be enquiring what Holiday it was.

Mr *Lutwyche.* I deſire he may be asked, what was ſaid about making a Shew? if Mr *Cottingham* own'd what was the meaning of thoſe Words?

Mr *Kinaſton.* I don't remember: They were pretty warm, and ſaid they would go to my Lord *Macclesfield*, which they did, and return'd again.

Mr. *Plummer.* My Lords, I deſire he may be ask'd, whether it was generally underſtood among the Maſters, that giving of Bank-Notes and Goldſmiths Notes was to be underſtood Borrowing?

Mr *Kinaſton.* I underſtood it ſo my ſelf, and I believe ſeveral others did; Mr *Lightboun*, and Mr *Holford*, and ſome of the others did ſo, by what they ſaid.

Mr *Serjeant Pengelly.* My Lords, we have done with this Witneſs.

Mr *Serjeant Probyn.* My Lords, I deſire to ask this Witneſs the ſame Queſtion that I asked the other; and that is, whether at the time when this Propoſal was made to him, that he ſhould ſubſcribe as Mr *Holford* had done, he made any Objection to it?

Mr *Kinaſton.* No, I did not make any Objection to it. I had been there firſt, and with my Lord, and at the farther end of the Room, that I remember leſs what happened at that time, than other People did.

Mr Lightboun *called.*

Mr *Serjeant Pengelly.* My Lord, we deſire that Mr *Lightboun* may give an account of what paſſed at this Meeting, relating to the bringing in of the Accompts?

Mr *Lightboun.* What Meeting? that at Mr *Edwards*'s, or that at the Earl of *Macclesfield*'s?

Mr *Serjeant Pengelly.* That at Mr *Edwards*'s.

Mr *Lightboun.* I was at Mr *Edwards*'s about that time, at ſome Meeting when our Accompts were talked of, but whether it was before they were delivered in, or afterwards, I cannot tell. We had ſo many Meetings about that time at Mr *Edwards*'s, that I don't remember exactly, which was before, and which was after. I remember, at the Meeting when Mr *Cottingham* and Mr *Dixon* both were there, there was ſome Diſcourſe relating to the Producing of the Securities, and of the Ballance of the Caſh. I then asked, whether we ſhould produce it in Bank-Notes, or Goldſmiths Notes, and I underſtood, it was hinted that the Goldſmiths that we had dealt with, would aſſiſt any Maſter that wanted Money, but by whom it was ſaid, I can't recollect. The Anſwer I made to that, was, that I ſhould be ſorry that any Maſter ſhould borrow Notes of a Goldſmith, and that they ſhould be ſtay'd or ſecur'd when produc'd, which I apprehended would be done; and next morning ſeveral Goldſmiths would be forc'd to ſhut up their Shops, and it would look like a Holiday in *Fleetſtreet*.

Mr *Lutwyche.* Do you remember any thing concerning a Net?

Mr *Lightboun.* I don't remember the Expreſſion of a Net.

Mr *Lutwyche.* What application was made to any of the Maſters to carry in their Accompts, and to whom?

Mr *Lightboun.* My Lord *Macclesfield* one morning ſent for me, and deſired me, that when the Accompts were brought into the Council, I would be thereabouts, that if there was any occaſion to clear up or explain any thing, or give farther ſatisfaction to the Council, I might be ready. I told his Lordſhip, I would give no ſatisfaction about any one's Accompts but my own. But if his Lordſhip pleaſed that I ſhould attend, I would be thereabouts; and if his Lordſhip pleaſed, I would have another Maſter with me: I nam'd Mr *Holford*, and my Lord deſir'd me to acquaint Mr *Holford* with it, which I did; who ſaid, he was ready to go with me to anſwer any Queſtions that ſhould be ask'd, ariſing on the Peruſal of his Accompts.

Mr *Lutwyche.* What did he deſire you to attend for?

Mr *Lightboun.* To reſolve any Queſtion or Difficulty that ſhould ariſe before the Council. After this, Mr *Cottingham* told Mr *Holford* at Mr *Edwards*'s, that my Lord deſir'd that Two of the Maſters ſhould attend the Council with the Accompts of the whole, and that Mr *Holford* being the ſenior Maſter, ſhould be one, and he was to chooſe whom he would have go along with him; and I having given Mr *Holford* intimation before of my Lord's Inclination, Mr *Holford* deſir'd me to go with him. I told him, I did not care to carry in any other Accompts than my own; as I had not concern'd my ſelf in other Maſters Accompts, I would not then begin; I would not carry any but my own, and no body elſe ſhould carry mine; I would not be a Repreſentative of the Body. Upon that, Mr *Holford* recollected himſelf, and ſaid, nor he neither; he would carry no Accompts but his own. I ſaid, the Accompts were call'd for by my Lord Chancellor, and not by the Privy Council, and thereupon I thought it proper to wait upon my Lord Chancellor, and deliver them to him.

Mr *Lutwyche.* Your Lordſhips will obſerve, the Perſons thought moſt proper to appear for the reſt of the Maſters, Mr *Holford* and Mr *Lightboun*, were ſo apprehenſive of the Maſters being deficient, that they did not care to appear for them. I deſire Mr *Lightboun* may be ask'd, what paſs'd on the 10*th* of *November*, when the Accompts were deliver'd to the Earl of *Macclesfield*?

Mr *Lightboun.* My Lords, upon the 10*th* of *November* my Accompt was not ready at the time I was to deliver it. I rather choſe it ſhould not be ready; becauſe I did not care that it ſhould be carry'd in by any body but my ſelf. However, I waited at the proper time; and when we came there, Mr *Holford* deliver'd in his Accompt, and a Letter he had writ to his Lordſhip, and fix'd to his Accompt, which was there read. My Lord ſeem'd to like the Letter, and took notice of it; and I think, another or two, who were my Seniors, deliver'd in their Accompts. When it came to my turn, I acquainted my Lord, that mine was not ready; but I would go home and finiſh them, and attend his Lordſhip with them at the *Cock-pit* by Eight of the Clock. Accordingly I did, and ſent it in to his Lordſhip.

Mr *Lutwyche.* What paſs'd farther relating to their ſigning of the Accompts?

Mr *Lightboun.* I know nothing of it; for I went away to finiſh my own.

Mr *Serjeant Pengelly.* My Lords, we deſire that Mr *John Bennet* may be call'd.

Mr. John Bennet *appear'd.*

Mr *Lutwyche.* My Lords, we deſire that Mr. *John Bennet* may be ask'd, whether he was at this Meeting at Mr *Edwards*'s Houſe, and what paſs'd at that time?

Mr *J. Bennet.* My Lords, I was at that Meeting at that time, when Mr *Cottingham* and Mr *Dixon* came in, and told us they came from my Lord Chan-

Chancellor; and Mr *Cottingham* ſaid, he had brought Mr *Dixon* with him, becauſe he was deaf, and could not well hear. Mr *Cottingham* ſaid, he had Two Queſtions to propoſe; firſt, whether we were willing that all our Bonds, and other Securities in our Cuſtody, ſhonld be inſpected by him or any other? All of us were willing, and agreed to that. The ſecond was, whether we were willing, or would produce the Ballance of Caſh in our hands before the Council? To this the Maſters made a Stand, and ſaid, The Caſh was conſiderable; and it could not be preſum'd that they kept it lock'd up in Cheſts or Trunks in their own Houſes; that was the way to have our Throats cut: But we believ'd we could do it in a reaſonable time. To which Mr *Cottingham* ſaid, Can't you produce it in Bank-Notes or Goldſmiths Notes? Bank-Notes, ſaid he, will be beſt; but do it in Goldſmiths Notes, if you can't get Bank-Notes. To which Mr *Lightboun* ſaid, If we produce them in Goldſmiths Notes, and there ſhould happen to be a Net thrown over 'em, and they ſhould be ſecur'd, the Goldſmiths might be oblig'd to ſhut up their Shops, and People would be enquiring what Holiday it was; and it might be a great Damage to thoſe Goldſmiths.

Mr *Lutwyche*. I deſire he may be ask'd, whether any thing was ſaid of aſſiſting one another?

Mr *J. Bennet*. Mr *Cottingham* preſs'd us very much to help and aſſiſt one another, as far as we were able.

Mr *Lutwyche*. Whether was any other Expreſſion made uſe of by him?

Mr *J. Bennet*. I don't remember there was: But he repeated it ſeveral times, that we ſhould ſtand by, and aſſiſt one another with Caſh.

Mr *Plummer*. My Lords, I deſire to ask this Witneſs, if, in purſuance of the Advice given by Mr *Cottingham*, he did aſſiſt any of the Maſters, or was aſſiſted by any of them?

Mr *J. Bennet*. One of the Gentlemen did aſſiſt me with Caſh, which is lock'd up in the Cheſt: I gave him Security for it. And as to my aſſiſting any body, Mr *Conway* inform'd me, he had a Real Security for 9000 *l.* and begg'd, if I could, that I would aſſiſt him with 5000 *l.* and in two or three Days I ſhould have it again: I told him, I had in my Accompt mention'd my Caſh, and that I had offer'd to make up the Ballance by my Real Eſtate, and ſo could not aſſiſt him with any Caſh. He ask'd me, if I had any Bonds by me? I told him I had 2000 *l.* Bonds; and if he could engage to bring them back to me in two Days, he ſhould have them: And upon lodging a Bag of Writings with me, which he told me was a Real Security for 9000 *l.* I accordingly did lend him them, and he brought them back again to me in two Days time.

Mr *Plummer*. I deſire he may be ask'd, what his Inducement was for lending the Bonds?

Mr *J. Bennet*. The Real Inducement was the Real Security which was given me: But it had been recommended by Mr *Cottingham* too.

Mr *Plummer*. I deſire to know whether he open'd the Bag, to ſee what the Security was, or took it by Content?

Mr *J. Bennet*. No, I did not open it; Mr *Conway* aſſured me it was ſo.

Mr *Plummer*. What uſe did he make of thoſe Bonds?

Mr *J. Bennet*. Indeed I don't know.

Mr *Lutwyche*. My Lords, I deſire he may be ask'd, whether thoſe Bonds belong'd to the Suitors of the Court?

Mr *J. Bennet*. They were brought in by the Suitors of the Court after my Accompt was deliver'd in, and I muſt give them in my Poſt-Accompt: Therefore I ſaid, I muſt have them again in two Days time.

Mr *Serjeant Pengelly*. I deſire he may be ask'd, whether this was after he had given in his own Accompt?

Mr *J. Bennet*. Yes, it was after I had given in my own Accompt of my Money-Securities, and the Accompt of my Eſtate.

Mr *Serjeant Pengelly*. I deſire to know what Subſcription Mr *John Bennet* made to his Accompt at firſt, and what afterwards?

Mr *J. Bennet*. I came to my Lord *Macclesfield* juſt after the Gentlemen had been delivering in their Accompts; and they were below, writing their Subſcriptions to their Accompts. I had then made no Subſcription to my Accompt; they told me what my Lord had recommended to them to write; and I had one of them laid before me. I took my Pen and Ink, and varied it in ſome meaſure, and made the Subſcription in this Manner: 'I have all the Securities in my Name, as 'ſpecified on the other ſide; and all the Bonds 'and Orders are in my Cuſtody; and I am 'ready to ſatisfy your Lordſhip, that I am able 'to anſwer the Money to every Party, that is 'Entitled, or ſhall have a Right to receive it.

J. Bennet.

Mr *Lovibond* Called.

Mr *Lutwyche*. My Lords, I deſire he may be asked, whether he was preſent at this Meeting (that hath been ſo often mention'd) at Mr *Edwards*'s?

Mr *Lovibond*. My Lords, I was there but a very little while.

Mr *Lutwyche*. I deſire he may be asked, while he was there, whether any thing was propoſed, and by whom, for the Maſters to lend one another Money or Notes?

Mr *Lovibond*. There was Mr *Cottingham* and Mr *Dixon*, and one of them ſaid, that the Maſters ſhould ſtand by one another, and recommended it to them to Aſſiſt one another with Bank-Notes or Goldſmiths-Notes.

Mr *Serj. Pengelly*. To what purpoſe?

Mr *Lovibond*. Neither of them ſaid to what purpoſe.

Mr *Serjeant Pengelly*. What was the Diſcourſe about at that time?

Mr *Lovibond*. The Diſcourſe was about the Accompts, and how every Man's Ballance was to be made up.

Mr *Serjeant Pengelly*. I deſire to know, during that time, whether Mr *Lovibond* obſerv'd that Mr *Cottingham* or Mr *Dixon* went to my Lord Chancellor?

Mr *Lovibond*. Yes, my Lords, they both went, and I came away, and did not ſtay till they return'd.

Mr *Serjeant Pengelly*. I deſire to ask, Whether Mr *Lovibond* did not lend ſome of the Maſters ſome Money?

Mr *Lovibond*. I lent ſome Money to Mr *Bennet*.

Mr *Serjeant Pengelly*. How much was it?

Mr *Lovibond*. It was 10,200 and odd Pounds.

Mr. *Serjeant Pengelly.* I desire to know, whether Mr *Lovibond* was present upon the Delivering in of the Accompts on the 10th of *November* last?

Mr *Lovibond.* Yes, my Lords, I was.

Mr. *Serjeant Pengelly.* I desire he would look upon that Subscription he at first made upon the Accompt, when he deliver'd it in.

Mr *Lovibond.* It is here.

Mr Serjeant Pengelly Read it.

Mr *Lovibond* reads 'All which before-'mention'd Particulars I am ready to answer on 'Demand, or to give Security so to do, whenever 'requir'd. *H. Lovibond.*

Mr *Serjeant Pengelly.* I desire he may be asked, whether my Lord *Macclesfield* made any Objection to any part of that Subscription, and what Part in Particular?

Mr *Lovibond.* He made an Objection to the latter Part of it, because that might imply that my Effects were not ready.

Mr *Serjeant Pengelly.* Whether did you alter it afterwards, or was it recommended to you to alter, and in what manner?

Mr *Lovibond.* My Lord *Macclesfield* mention'd, that Mr *Holford*'s Conclusion of his Accompt was most proper; and I had best alter it to that, and make that the Form; accordingly I did, I went down Stairs, and alter'd it as it now stands.

Mr *Lutwyche.* Read this Subscription.

Clerk reads.

'All these Securities standing in my Name as 'in this Account is specified, I am ready to pro-'cure Certificates from the proper Offices, 'that I have, and had them before this Account, 'if your Lordship requires it; and as to the Mo-'neys, I am ready to answer it upon Demand to 'every Person entitled thereto, and who can give 'me a Legal Discharge.

November 10*th* 1724. *H. Lovibond.*

Mr *Lutwyche.* My Lords, I beg leave to make one Observation upon this: I would not trouble your Lordships with observing upon every one of them; but there is something very particular and remarkable in this Case of Mr *Lovibond*'s. Mr *Lovibond* had said, as the Truth of the Case was, when he deliver'd in his Accompt, and this Subscription, that he was able to produce or give Security, *&c.* That would have look't before the Council as if the Money was not ready to be produc'd, it was only giving Security; and for that Reason this Alteration is to be made, to make it look as if he had the actual Ballance in his hands.

Mr *Serjeant Probyn.* My Lords, we desire he may be asked, whether at the time that he wrote this Subscription, he was not able to produce the Ballance?

Mr *Lovibond.* My Lords, I did in my Conclusion offer it; and I could have done it the next Day.

Mr *Strange.* I desire he may be asked, whether he could have done it out of his own Estate, or Effects?

Mr *Lovibond.* I could have done it out of my own Estate.

Mr *Strange.* Did not you mention the Sum of [illegible] and odd Pounds lent? I desire to know, whether you took Real Security for it?

Mr *Lovibond.* Yes, I have a Real Security.

Mr *Strange.* In Land?

Mr *Lovibond.* Yes, in Land.

Mr *Plummer.* I desire he may be asked, if my Lord *Macclesfield* asked him any Questions about his Ability?

Mr *Lovibond.* No, my Lord did not ask me any Questions about my Ability.

Dr *Sayer.* I desire he may be asked, whether at that time he did not believe, that all the Masters were sufficient and able to make good their Accompts?

Mr *Lovibond.* I did believe so, from what Discourse I heard pass among themselves. I had no Knowledge of their Affairs, or of their Estates.

Mr Edwards *called.*

Mr Serjeant Pengelly. My Lords, I desire *Mr Edwards* may give your Lordships an account of what passed at this Meeting at his House?

Mr Edwards. My Lords, I received a Message from *Mr Cottingham*, to know if I would give Leave for the Masters to meet at my House? to which I consented. Some came before Mr *Cottingham*, and asked me if I knew what this Meeting was about; I could give them no Account of it. Mr *Cottingham* soon after came, and the rest of the Masters. Mr *Cottingham* said, he had two or three Matters to lay before them; One was, whether we were willing that our Bonds and Securities should be inspected, by my Lord Chancellor, or by any Person he should Appoint? Every body consented hereto. I think, another thing was, my Lord Chancellor thought it proper, we should carry our Accompts to the Council: There were some objected to that, and we thought it not proper; and the Conclusion of that was, we were to deliver them to him, as being most proper for my Lord Chancellor to carry them to the Council.

Mr *Serjeant Pengelly.* Was that all that was offer'd at that Meeting?

Mr *Edwards.* Really I don't know but that there was a third thing mention'd. I can give you but a very imperfect Account of this Meeting; and that for this reason, it was not thought proper that my Servants should come in, and they oblig'd me to go often out, which I did; and afterwards I heard the chief Substance of this Meeting. And I remember, that after I had heard the main Matter, I said, Gentlemen, the chief Consideration is to get your Money ready as soon as you can; I think the intent is plain to get the Money away from you.

Mr *Serjeant Pengelly.* Whether do you remember any Advice that was then given, relating to the making up of the Ballance?

Mr *Edwards.* No, my Lords, I do not remember: I heard something afterwards by the Masters, about producing Notes; but if any thing was mention'd about it, it was when I was out of the Room.

Mr *Serjeant Pengelly.* Whether on the 10*th* of *November* you was present at the Earl of *Macclesfield*'s?

Mr *Edwards.* Yes, my Lords, I was.

Mr *Serjeant Pengelly.* Look upon that Accompt and Subscription.

Mr Edwards *looks upon it.*

Mr *Serjeant Pengelly.* I desire he may be asked, what Subscription he first made, when he gave it in, and whether any Alteration or Addition was made by him afterwards?

Mr *Edwards.* Some of the Masters were at my Lord Chancellor's before me: I did not think it necessary, nor had written any thing to my Accompt before I came there: So I went into a Room,

Room, and writ this that was firſt writ: 'My 'Lord, I am ready and willing, the Securities in 'the foregoing Accompt mention'd, ſhall be in-'ſpected by ſuch Perſon or Perſons as your Lord-'ſhip ſhall be pleaſed to appoint.

H. Edwards.

Mr *Serjeant Pengelly.* What other Subſcription was made after that?

Mr *Edwards.* After I had made this Subſcription, I carried my Accompt, and deliver'd it to my Lord Chancellor; who looking upon this Subſcription, did not ſeem to approve of it: But he thought Mr *Holford*'s more proper, and deſir'd me to alter it, that all might be as Mr *Holford*'s was: I then went out of the Room, and tranſcribed the Subſtance, if not the Words, of Mr *Holford*'s upon my Accompt, and then I delivered it to my Lord again.

Mr *Serjeant Pengelly.* Read that Subſcription.

Mr *Edwards* reads.] The ſeveral Sums of Mo-'ney and Securities mention'd in this Accompt 'are what have come to my hands ſince I was ad-'mitted a Maſter, ſeparate from what were in the 'hands of Mr *Dormer* during the time he was a 'Maſter (the Account whereof, by reaſon of the 'Shortneſs of time, I have not been able to ſet-'tle; but will as ſoon as poſſible) and for which 'I am ready to procure Certificates from the 'ſeveral Companies and Offices, if your Lord-'ſhip requires it. And as to the Moneys, I am 'ready to pay it to every Perſon lawfully 'intitled thereto, having a proper Diſcharge for 'the ſame.

Nov. 10. 1724. *H. Edwards.*

Mr *Serjeant Probyn.* My Lords, if they have done with this Witneſs, I deſire he may be asked, if he was not ready to pay his Ballance according to his Subſcription?

Mr *Edwards.* Yes, I was; I could have paid it in a Week ſooner than the time requir'd.

Mr Conway *called.*

Mr *Soll. Gen.* My Lords, I deſire that Mr *Conway* may give your Lordſhips an account whether he was at this Meeting?

Mr *Conway.* My Lords, I was preſent at the firſt Meeting at Mr *Edwards*'s Houſe, when Mr *Cottingham* deliver'd my Lord Chancellor's Command, that we ſhould provide and prepare our Accompts: But nothing more happen'd during the time of my ſtay at that Meeting: I went away immediately. At the ſecond Meeting Mr *Cottingham* and Mr *Dixon* were there: Mr *Cottingham* had a great Cold; and, as I remember, there were two Propoſals made: The firſt was, in relation to our Bonds and Securities; and the 2*d.* was in relation to the Mony and Caſh. After every Maſter had deliver'd his Opinion to theſe Points, Mr *Cottingham* and Mr *Dixon* went to wait upon my Lord Chancellor with an account of what the Maſters had ſaid; and before they came back, I was gone.

Mr *Serjeant Pengelly.* I deſire he may be ask'd, whether at that time, when it was propos'd to the Maſters to produce their Caſh, whether they ſaid they were able to do it?

Mr *Conway.* Every Maſter deliver'd his Opinion as he thought fit. *Mr Lightboun* merrily ſaid, If we produced Goldſmiths Notes, and they ſhould be ſecured, the Goldſmiths Shops would be ſhut up, and People would be enquiring what Holiday it was. *Mr Kinaſton* made ſome Obſervations; every one ſpoke as they thought fit.

Mr *Serjeant Pengelly.* I deſire he may be asked, whether they all declared, they were able and ready to make good their Accompts?

Mr *Conway.* I think they all did.

Mr *Serjeant Pengelly.* Whether to produce their Effects or their Caſh?

Mr *Conway.* I am not ſure, whether it was mentioned Caſh or Effects; we made no diſtinction at that time between Caſh and Effects.

Mr *Serjeant Pengelly.* I deſire he may be asked, whether he himſelf declared, that he was able and ready to produce his Effects?

Mr *Conway.* I did declare it at that time, as I afterwards writ, that I would endeavour to produce my Effects.

Mr *Serjeant Pengelly.* Whether there was any, and what Advice or Inſtruction given, relating to their aſſiſting of one another?

Mr *Conway.* No ſuch thing happened while I ſtaid there.

Mr *Serjeant Pengelly.* I deſire it may be asked, whether *Mr Conway* at any time afterwards borrowed any Money of any of the Maſters, and of whom?

Mr *Conway.* The firſt time I attended the Judges and the Directors of the Bank, I did bring my Securities, and an Account of my Effects at the ſame time, without borrowing a Farthing from any Perſon: Before the Securities were gone through, and the Account of my Effects taken, it was obſerved, that the ſame was liable to Objection, as conſiſting of Land, Morrgages, Bonds and Notes, and things of that kind. And before I went, I was told, that ſome of the Maſters had taken an Oath; I deſired to know what that Oath was: It was anſwered, that it was a voluntary Oath; and I ſaid, I could only ſwear, that I had Effects to anſwer; and that I would endeavour to turn thoſe Effects into Caſh, and ſo withdrew.

Mr *Serjeant Pengelly.* I deſire he may be asked, whether he borrowed any Money?

Mr *Conway.* Some time after this I waited upon Mr *Godfrey*; and before I came away, he asked me if I had any Bonds? I told him I had; then pray, ſays he, let me have what you can ſpare, and ſend them immediately: Whereupon I went home, and ſent him 5000 *l. India*-Bonds. Some Days after that I expected Mr *Godfrey* to return me the Favour; and I carried to him Effects to (as I apprehended) the Value of 6 or 7000 *l.* or more; and I deſired him to lend me Bonds, and he ſeemed unwilling without the Security, and he kept the Security.

Mr *Lutwyche.* He hath not anſwered to thoſe Queſtions, whether he borrowed Money, and what Sums.

Mr *Conway.* Mr *Godfrey* lent me upon the Bonds, 9000 *l.* and Mr *Bennet*, 2000 *l.*

Mr *Lutwyche.* Only to purſue this Queſtion; I deſire to know, whether the Securities were turned into Money, or into Notes?

Mr *Conway.* Yes, my Lords, they were turn'd into Notes.

Mr *Lutwyche.* I deſire he may be asked, whether they were lock'd up, or he did take them back again?

Mr *Conway.* I took them back again.

Mr *Lutwyche.* What became of them afterwards?

Mr *Conway.* Some of them I paid off, others I returned to the Perſon that had advanced me Money on thoſe Bonds.

Mr

Mr. *Lutwyche.* I take it, he ſays, he had the Effects that produced thoſe Notes from Mr. *Godfrey* and Mr. *Bennet*; therefore I deſire to know, what became of thoſe Notes after he carried them back from the Judges?

Mr. *Conway.* I returned them to the Perſon that had advanced me the Notes on thoſe Bonds.

Mr. *Lutwyche.* Who was that?

Mr. *Conway.* The Goldſmith, Mr. *Rogers*, at *Temple-Bar.*

Mr. *Plummer.* I deſire to know when he returned thoſe Bonds again?

Mr. *Conway.* In a few Days after.

Mr. *Lutwyche.* My Lords, it may be Neceſſary to Examine how it was that he perſuaded the Goldſmith to let him have thoſe Notes?

Mr. *Conway.* I gave him Bonds for them.

Mr. *Lutwyche.* Whether were thoſe the Bonds that you had from Mr. *Godfrey* and Mr. *Bennet*?

Mr. *Conway.* They were.

Mr. *Lutwyche.* Whether they were not Delivered to the Goldſmith in the Nature of a Pledge for thoſe Notes?

Mr. *Conway.* Yes, they were.

Mr. *Lutwyche.* What became of the Bonds?

Mr. *Conway.* I return'd them.

Mr. *Lutwyche.* To whom?

Mr. *Conway.* To Mr. *Godfrey* and Mr. *Bennet.*

Mr. *Serj. Pengelly.* When he carried back the Notes to the Goldſmith, at that time, whether he took up the Bonds?

Mr. *Conway.* I did.

Mr. *Serj. Pengelly.* As I apprehend, he ſays, he had lent Mr. *Godfrey* 5000*l.* *India* Bonds, and in return he expected that Mr. *Godfrey* ſhould Aſſiſt him; I deſire he may be asked this Queſtion, Whether the 5000*l.* in *India* Bonds he ſupplied Mr. *Godfrey* with, was after or before he produced his Caſh to the Committee?

Mr. *Conway.* After.

Mr. *Serj. Pengelly.* Was it before *Godfrey* had done it?

Mr. *Conway.* After he had produced his Securities.

Mr. *Serj. Pengelly.* Was it before or after he had produced his Caſh?

Mr. *Conway.* It was after he had produced his Securities, and before he had produced his Caſh.

Mr. *Serj. Pengelly.* My Lords, we think it will be very neceſſary to lay before your Lordſhips a General State or Account of the total Deficiency; to ſhew how much, upon the Examination and Enquiry that hath been made, the total of the Deficiencies in the ſeveral Offices amount to; and we apprehend, that we are able likewiſe to give an Account of ſome Additional Deficiencies that have been diſcovered ſince. I apprehend, there was at that time near 100,000*l.* Deficiencies.

Mr. *Serj. Probyn.* I deſire he may be asked, whether at that time when he wrote the Subſcription, he was able to pay the Ballance of his Accompt?

Mr. *Conway.* I was, in Effects I had, and I ſaid no otherwiſe.

Mr. *Sandys.* I deſire he may be asked, if my Lord *Macclesfield* asked him as to his Ability?

Mr. *Conway.* No, my Lords, he did not; to my remembrance he did not. I deliver'd my Accompt to Mr. *Cottingham.*

Mr. *Serj Pengelly.* I deſire he may be asked, what Deficiency there remains upon his Office; whether he can recollect how much it is?

Mr. *Conway.* My Lords, I believe it is 13,000*l.* my Charge, of which I can take off ſomething in my Poſt-Accompt.

Mr. *Serj. Probyn.* I deſire he may be asked, whether he is now able to make good the Deficiency in his Office?

Mr. *Conway.* Yes, my Lords, I am.

Mr. *Serj. Probyn.* Whether he hath made any Conveyance of any Eſtate as a Security for it?

Mr. *Conway.* I have.

Mr. *Serj. Pengelly.* I deſire he may be asked, whether any thing, or how much hath been rais'd out of that Eſtate?

Mr. *Conway.* It is made ſo very lately, that I don't know that any thing hath been raiſed ſince; it is but a few Days ago that it hath been made.

Lord *Lechmere.* My Lords, I would be glad to know, as there is a Ballance of 13,000*l.* whether he ſtands indebted to any other Perſons, but to the Suitors of the Court, and to whom?

Mr. *Conway.* No, my Lords, I don't owe any thing to any body, to my Knowledge.

Mr. *Lutwyche.* I ſhould be very glad if Mr. *Conway* could extricate himſelf out of the Difficulties on Account of the Deficiency in his Office. It is very proper to inquire how, and by what Eſtate, that is to be made good.

Mr. *Conway.* It is to be made good by an Eſtate in Land.

Mr. *Lutwyche.* I deſire to know whether that Eſtate is ſettled, whether it was not ſettled upon his Marriage?

Mr. *Conway.* It was never ſettled on my Marriage. I was Tenant in Tail, and Wife and Son joined with me in levying a Fine.

Mr. *Lutwyche.* Whether it is not ſettled by Will?

Mr. *Conway.* I was Tenant in Tail by the Will of my Father; I have levied a Fine, and my Wife and Son have joyned with me.

Mr. *Onſlow.* What Intereſt had your Son in it?

Mr. *Conway.* No Intereſt, as I apprehend; but I thought it was Neceſſary he ſhould joyn to take off all Difficulties and Objections to the Title.

Mr. *Onſlow.* Whether there are no Annuities charged upon that Eſtate, and what they are?

Mr. *Conway.* There are no Annuities charged on that Eſtate.

Mr. *Onſlow.* No Payment to the Mother?

Mr. *Conway.* There is out of another Eſtate.

Mr. *Onſlow.* What are the Rents of the Eſtate you have ſecured for the Payment of this Money?

Mr. *Conway.* Between 5 and 600*l.* a Year.

Mr. *Onſlow.* Is that your Computation, or is it let at ſo much now?

Mr. *Conway.* I can't ſay it is all let ſo; there are ſome Demeſns.

Mr. *Onſlow.* What are the Rents of that Part of the Eſtate that is let?

Mr. *Conway.* I take it to be 500*l.* a Year.

Mr. *Onſlow.* What, let at 500*l.* a Year!

Mr. *Conway.* Yes, or thereabouts.

Mr. *Onſlow.* Do you Reckon the whole Eſtate to be worth 500*l.* a Year?

Mr. *Conway.* No, I don't reckon in the whole Eſtate, but only that which is Conveyed for the Securing of this Money.

Mr. *Onſlow.* Then I deſire to know, what are the Rents of this Eſtate as it is let?

Mr. *Conway.* I take it to be 500*l.* a Year, or thereabouts, that is applied for, and as a Security to Anſwer my Deficiency.

Lord *Lechmere.* This 13,000*l.* Ballance due to the Suitors, which he ſays are ſecured by this Eſtate, I would be glad to know how the Deficiency came, and what is become of this 13,000*l.* that is due to the Suitors?

Mr. *Conway.* The Occaſion of it was, my coming into the Office coſt me to my Predeceſſor 6000*l.* I paid beſides 1500*l.* upon my Admiſſion, and 500*l.* Contribution towards making good Mr. *Dormer*'s Deficiency.

Mr. *Onſlow.* How was the reſt of the Debt Contracted? You have mention'd but about 8000 Pounds.

Mr. *Conway.* I believe I might, upon Account of my Brother, borrow 1500 or 2000*l.* to ſatisfie his Account to the Crown.

Mr. *Serj. Pengelly.* Out of what Caſh did you repay it?

Mr. *Conway.* I believe it might be out of the Office.

Mr. *Onſlow.* What is become of the reſt; how did you Apply the Remainder?

Mr *Conway.* The Remainder, I can't tell but I may have ſo much due among my Acquaintance; I believe I may.

Mr. *Onſlow.* Did you then lend your Acquaintance out of the Suitors Money?

Mr *Conway.* I believe I might at times lend Friends out of the Caſh that remained dead and uſeleſs, and becauſe I apprehended it was Secure.

Mr. *Onſlow.* You ſay, you have lent to ſeveral of your Acquaintance out of the Suitors Caſh; I would have you name any one Perſon to whom you have lent any of the Money of the Office?

Mr *Conway.* I remember a noble Perſon, if it is proper to mention his Name, to whom I lent 2600*l.* he is now dead.

Mr *Serj. Probyn.* I don't know whether your Lordſhips will not be pleaſed to confine the Managers to examine only to the particular Article they are now on.

Mr.

Mr. *Onſlow*. We are now upon the Article of the Deficiencies, and the Queſtion hath been asked by the Council for the Noble Lord, whether this Deficiency can be made up by Mr. *Conway*? therefore it is proper to know, whether this Deficiency is likely to be made up, and to know where the Money is, and therefore I would ask who this ſix and twenty hundred Pounds was lent to?

Mr. Serj. *Probyn*. My Lords, I ſubmit it, whether that Queſtion be proper, becauſe Mr. *Conway* hath given Land Security to make good this Deficiency; and therefore it is not material for your Lordſhip's Judgment to enquire how this Deficiency happened.

Mr. *Lutwyche*. I am very ſorry to lay before your Lordſhips the Reaſons and the Order upon which he was committed. I apprehend it extremely material upon this Point, and ariſeth from what the Councel for the Noble Lord have entred into themſelves; for they have asked, whether he was able to make good his Deficiency: Now is it not proper for us to ask the particular Circumſtances, to find out the Truth, whether he is ſo or not. Therefore I beg leave to ask one Queſtion, not waving the other, Whether he hath aſſigned over all his Debts that he could, to make good his Deficiency?

Mr. *Conway*. I have aſſigned over all my real Eſtate.

Mr. *Lutwyche*. Whether he hath aſſigned over this 2600 *l.* due to him?

Mr. *Conway*. That is applied.

Mr. *Lutwyche*. Applied, How?

Mr. *Conway*. Applied amongſt my Cauſes.

Mr. *Lutwyche*. Did he lend a Nobleman a Sum of Money, and apply it to a Cauſe?

Mr. *Conway*. That Sum of Money you are pleaſed to enquire after, I applied to a Cauſe.

Mr. *Onſlow*. He ſaid he lent a Sum of Money, *&c.* I deſire he may be asked, who this 2600 *l.* was lent to?

Mr. *Conway*. I was applied to by a Nobleman to lend him the Sum of 2600 *l.*

Mr. *Onſlow*. By whom was you applied to?

Mr. *Conway*. By my Lord *Bulkeley*, and accordingly it was advanced to him, and it is ſince applied in a Cauſe.

Mr. *Onſlow*. Applied, How?

Mr. *Conway*. Applied in a Cauſe, with the Approbation of the Parties.

Mr. *Onſlow*. Hath it been repaid?

Mr. *Conway*. No, It is applied in a Cauſe of a Suitor, and now it remains as Security.

Earl of *Abingdon*. I am ſo nearly related to that Noble Lord that is mentioned, that I muſt do that Juſtice, as to put Mr. *Conway* in mind, as I did Mr. *Hiccocks* before, That if any Queſtion is ask'd him, which may perſonally ſubject him to any Penalty, or as he hath the Bar Gown may concern his Client, he ought to be left to his Diſcretion, whether he will or will not anſwer.

Lord *Lechmere*. A Perſon is not obliged to anſwer any thing that may criminally affect him; but where the Enquiry is after a Debt, in Order to explain his Oath as to his Sufficiency, which is the Matter of Debate, ſurely that is material, and ought to be anſwered to; and I deſire to be informed, whether this 2600 *l.* which he ſaid was lent this Noble Lord out of the Suitors Money, was repaid to him by my Lord *Bulkeley*, and when?

Mr. Conway. It is not repaid. It is applied in a Cauſe, the Parties have approved of it as a Security.

Lord *Lechmere*. When was this Money in the Hands of my Lord *Bulkeley* applied to the Benefit of any Suitor, and by what Order or Authority?

Mr. Conway. It is ſome Time ſince, ſome Months ago, five or ſix Months ago.

Lord *Lechmere*. Was this by any Order of the Court of Chancery?

Mr. Conway. No, my Lords, by the Approbation of the Parties.

E. of *Macclesfield*. My Lords, if you pleaſe to give me Leave, I would ſuggeſt ſomething, that poſſibly may help towards the better underſtanding him. If my Gueſs be right, this relates to his Poſt-Accompt. He hath ſaid his Charge is 13,000 *l.* And he hath ſaid, he could diſcharge 2000 *l.* or more, of that Ballance by a Poſt-Accompt; Now I apprehend this he is ſpeaking of now, is that Article of the Poſt-Accompt. I don't know, if I gueſs his Meaning right, but I deſire he may inform your Lordſhips, in caſe it be otherwiſe.

Lord *Lechmere*. It may be for your Information to know who are the Perſons to whom this is applied; that it may be known whether it is in the Poſt Accompt or not?

Mr. Onſlow. My Lords, We deſire firſt to know, what Security my Lord *Bulkeley* gave?

Mr. Conway. He gave a Bond and Judgment.

Mr. Onſlow. Who is it you have applied the Security to?

Mr. Conway. It is in the Cauſe of *Faulconberg* contra *Faulconberg*.

Mr. Onſlow. Do you reckon this Part of the 13,000 *l.* now deficient?

Mr. Conway. No, I do not reckon it in that Sum.

Mr. Onſlow. Your Lordſhips will pleaſe to recollect, that his Deficiency is 13,000 *l.* We ask him how that Deficiency came; he hath given Your Lordſhips an Account of 10,000 odd hundred Pounds; and firſt ſaid the Reſidue was in the Hands of his Acquaintance, and named 2600 *l.* Money of the Suitors to be in the Hands of my Lord *Bulkeley*; now he ſaith this laſt Sum is not Part of the 13,000 *l.* Therefore now I would ask, how the Remainder of his Deficient Money was applied, or how the Debt happened?

Mr. Conway. If my Lords will pleaſe to give me Leave to explain it; As to the Remainder of the 13,000 *l.* you have been pleaſed to reckon 10,000 odd hundred Pounds to be made out; then there is 2100 *l.* odd Money I have laid out in Land, which I have ſince conveyed, which makes 12,000 odd hundred Pounds; and the reſt I have in Bonds and Notes, which I have to make up the Reſidue.

Mr. Lutwyche. I deſire he may be asked, whether he hath thoſe Notes, and they are ready? I deſire to know, whether they have not been paid into Court to make up his Deficiency?

Mr. Conway. No, I humbly hope to have it allowed me on my Poſt-Accompt, being applied in the foreſaid Cauſe with Approbation of the Parties.

Mr. Onſlow. We have done with him; and leave him to Your Lordſhips Obſervation.

Mr. *Thompſon* called.

Mr. Serj. *Pengelly*. My Lords, we beg Leave that Mr. *Thompſon* may give Your Lordſhips an Account, upon the Inſpection and Examination of thoſe Accompts, how much the Deficiency of the ſeveral Maſters amounted to?

Mr. Thompſon. So much as the ſeveral Maſters ſtood charged with by their own Accompts, and did not lock up or produce proper Securities for, I account a Deficiency; and by this Rule, I have collected the Deficiencies of the ſeveral Maſters, from the Reports made to the Committee of Council.

Mr. John Bennet's Deficiency amounts to *L.* 17,541: 15: 10.

Mr. *Conway*'s Deficiency in his Cash only amounts to *L.* 10,039: 4: 4 ½, but Mr. *Conway*, while his Accompts were under Examination, sold 2000 *l.* South Sea Annuity, and 3500 *l.* South Sea Stock; and of the Money arising thereby, he paid to the Suitors, to whom such Annuity and Stock did belong, no more than *L.* 2593: 9: 3. so that his Deficiency is increased by the Sum of *L.* 3550. somewhat more or less, according to the Price he sold at.

Mr. Serj. *Probyn*. Was what he sold, part of the Suitors Security?

Mr. Thompson. Yes. — Mr. *Kynaston*'s Deficiency amounts to *L.* 26908: 11: 3 ¼.

Mr. *Thomas Bennett*'s Deficiency amounts to 9075 *l.*

The Total of the Deficiency of the present Masters is *L.* 67,114: 11: 5 ¼.

The Charge that remained upon Mr. *Borret*'s Office, amounted to *L.* 56,050: 10: 1½. But Mr. *Bennet* and Mr. *Godfrey*, the Masters, who had the Care of his Effects, gave it as their Opinion before the Judges and Directors, that the Effects he left, would produce 44,000 *l.* and upwards; so that I compute the Deficiency of Mr. *Borret*'s Office at *L.* 12,050: 10: 1 ½.

The Total Charge upon Mr. *Dormer*'s Office, when he resigned to Mr. *Edwards*, amounted to *L.* 49,604: 11: 11; but Mr. *Edwards* has paid in Discharge of that Sum, the Sum of *L.* 23,725: 15: 9½. so that the Deficiency of Mr. *Dormer*'s Office amounts to *L.* 25,878: 16: 1½.

Mr. Serj. *Pengelly*. Whether in that is Mr. *Wilson*'s and Mr. *Poulter*'s Security included in *Dormer*'s Accompt?

Mr. Thompson. Mr. *Dormer*'s Deficiency I take to be *L.* 25,878: 16: 5 ½; and the whole Deficiency I take to be *L.* 105,043: 17: 8 ¼. And if any Securities or Sums of Money belonging to the Suitors are omitted in the Masters Accompts, such Securities and Sums are not included in this Estimate.

E. of *Macclesfield*. Have you had before you the Administrator, either of Mr. *Borret* or Mr. *Dormer*?

Mr. Thompson. No, my Lord.

Mr. Serj. *Pengelly*. My Lords, we shall beg Leave to call one Witness to give Your Lordships an Accompt of another Deficiency of 2000 *l.* upon Mr. *Conway*, which is not charged in his Accompt. We desire that Mr. *Sanderson* may be called.

Mr. *Sanderson* sworn.

Mr. *Lutwyche*. We desire, that Mr. *Sanderson* may give Your Lordships an Accompt of any Money in Mr. *Conway*'s Hands, and how much it is, that is not brought to Accompt?

Mr. *Sanderson*. My Lords, I was concerned as a Solicitor in a Cause in Chancery, between Sir *Erasmus Norris* and *Alexander Norris*; soon after the Accompts were brought into the Registers Office, I went to look and see if Mr. *Conway* had charged himself with a Sum of Money paid in, in that Cause. I found by his Accompt, that it was not charged. I had drawn up the Accompt, and given a Copy of it to Mr. *Conway*, which he did not deny, but he said, there was not so much by 1 or 200 *l.* Said I, there is no Entry at all of the Cause, and no mention of any Sum. I told him, it was an Omission not to mention the Cause or Sum. He said, that he believed it was not so much, he did therefore not mention it. I asked him, why he did not insert, how much it was as he thought it? He said, because he would pay in all.

Mr. Serj. *Probyn*. We desire he may be asked, how much the whole Money in that Cause was?

Mr. Sanderson. *L.* 2274: 8: 11. besides Interest from Lady Day last was Twelve-month.

Mr. Sol. Gen. My Lords, this is the Sum of the Account we had to lay before Your Lordships of the Deficiencies, notwithstanding the Masters represented themselves as able to pay the whole. We would not represent it to Your Lordships, that this will certainly be the Loss, because some of the Masters have given Security for some Part; tho' we apprehend the Security given will not be sufficient for half.

E. of *Macclesfield*. I desire to ask Mr. *Thompson*, whether this Charge he makes upon Mr. *Borret*'s Office be a Charge taken from the Office, or only an Account taken from Mr. *Meller*?

Mr. Thompson. This Charge was taken from the Vouchers, which Mr. *Meller* produced.

E. of *Macclesfield*. Are there any Payments allowed, made by Mr. *Borret* in his Life time?

Mr. Thompson. A great many.

E. of *Macclesfield*. Who gave You an Account of that?

Mr. Thompson. Mr. *Meller*, my Lord.

E. of *Macclesfield*. But I speak of the Money paid by Mr. *Borret* himself, not what Mr. *Meller* paid. Have You any Account what Mr. *Borret* paid out himself?

Mr. Thompson. The Account we had of this, was from one Mr. *Parker*, as I think his Name was, who was Clerk to Mr. *Borret*. He produced several Receipts for Sums paid: And the Masters in Chancery, who had the Care of Mr. *Borret*'s Effects, allowed the Books and Papers produced by Mr. *Parker*, to be the Books and Papers belonging to Mr. *Borret*'s Office.

E. of *Macclesfield*. As to the Effects belonging to Mr. *Borret*, who gave you the Account of them?

Mr. Thompson. Mr. *Bennett* and Mr. *Godfrey*.

E. of *Macclesfield*. Do you know who is Administrator to Mr. *Borret*?

Mr. Thompson. I have heard that *Mr. Paxton* is.

Mr. Nicholas Paxton. Yes, my Lords, I took out Administration to *Mr. Borret*, about the middle of *April* last.

Lord *Lechmere*. I desire to ask *Mr. Thompson*, whether the Computation he hath made of the several Deficiencies, amounting to an hundred and five thousand Pounds, whether they are taken from the Voluntary Accompts of the Masters delivered in, or whether any of the Suitors were concerned in those Accompts, or have been Parties to such Computations?

Mr. Thompson. From the Masters Voluntary Accompts only.

Mr. Serj. *Pengelly*. I beg Leave to ask one Question, which arises from the Question, which the Lord within the Bar hath been pleased to ask, whether *Mr. Godfrey* and *Mr. Bennet* were not the Masters that appeared, and were employed under the Earl of *Macclesfield* at that Time, and had the Custody of the Effects of *Mr. Borret*?

Mr. Thompson. *Mr. Bennet* and *Mr. Godfrey* were the Persons that appeared to us to have the Care and Custody of Mr. *Borret*'s Effects.

Lord *Lechmere*. As to the Nature of these Deficiencies, I think he says, these Deficiencies arise upon the Cash Ballance. Then I would be glad to know, whether in the Accompts that he hath perused, and in the Computation of those Deficiencies, the several Deficiencies of the Cash Ballance arise upon the whole Ballance, or is appropriated to any particular Suitors concerned in those Ballances?

Mr. *Thompson*. No Part of the Cash Ballance is appropriated to any particular Suitor.

Mr.

Mr. *West*. My Lords, the Commons have now produc'd a very long, and as they apprehend, a very full and convincing Evidence, in Maintenance of the Impeachment by them Exhibited againſt *Thomas* Earl of *Macclesfield*, for High Crimes and Miſdemeanors; and I am commanded to acquaint Your Lordſhips, That they do not intend to trouble this Houſe with any further Examination. But, my Lords, the Commons conſidering the Length and Variety of the ſeveral Facts and Circumſtances, that have been offer'd, are of Opi ion, It may be of Service to that Cauſe, in which their Zeal for publick Juſtice has made them to engage, that the whole of what they have inſiſted upon or produc'd, ſhou'd in ſuch Manner, as I am able to obey their Commands, be ſhortly recapitulated and preſented in one View to Your Lordſhips Conſideration.

The Charge in general, and the ſeveral Articles of it, have been fully open'd by thoſe Gentlemen, who preceded me upon this Occaſion. The Witneſſes who have been examined, and the other Evidence that has been read, have been fully conſidered, ſo far as they relate to thoſe Particulars, that were the immediate Occaſion of their being produc'd; I ſhall not therefore waſte Time, by enumerating once more the Articles of the Charge, nor by too minutely repeating the whole Evidence that has been given: But ſhall endeavour to reduce this long and various Examination to ſome general Heads, that may expreſs the Subſtance of the general Articles, and then remind Your Lordſhips of what I can recollect to have been moſt materially offer'd in Support of them. To this End, my Lords, I beg Leave in the firſt Place, to obſerve that ſtrict Union and Connection there is between the Crimes of which this Earl ſtands charged. Your Lordſhips cannot but remark, that the Articles mutually ſupport, and almoſt prove each other; ſo that if any one be admitted to be proved, it is difficult, if at all poſſible, to doubt the Truth of the reſt.

A wicked and corrupt Deſign and View to raiſe and procure to Himſelf exceſſive and exorbitant Gain and Profit, was the fatal Principle, from which all this Miſchief ſprung. It was this that prompted the Earl of *Macclesfield* to extort thoſe large Sums of Money, which he received from the ſeveral Perſons, whom he admitted to the Office of Maſters of the Court of Chancery. The *gratifying this Avarice* engaged his Lordſhip to neglect every other Conſideration, to overlook that Care he ow'd to the Suitors of the Court, and to admit Perſons of ſmall Abilities, and every way unqualifyed for the Diſcharge of ſo great a Truſt. —— *This*, obliged him to connive at, and permit the fraudulent Practice of paying the Exceſſive Price of their Places, out of the Money belonging to the Suitors of the Court. —— *That* again, forc'd him to ſuffer, or rather to encourage the purchaſing Maſters, to Traffick and Game with the Eſtates of the Suitors. —— There was no other way, by which theſe liberal Purchaſers, cou'd Reimburſe themſelves.— And *this Circumſtance*, even after it was apparent the Suitors were likely to looſe a great Part of their Effects, reduc'd him to the unhappy Neceſſity of refuſing to take thoſe Meaſures, that were neceſſary to prevent that Practice for the Future. And when the fatal Effects of this unbounded Liberty, which he permitted the Maſters to enjoy, began to appear, then was He compell'd to become a Confederate with the deficient Maſters, to prevent its being known to the World. —— From *hence* ſprung the unequal Compoſition with *Wilſon*: The partial Orders for the Payment of Money: The private Contribution, to anſwer the moſt preſſing Demands: And from *hence* his own Liberality to *Lockman*. But when all theſe Methods prov'd ineffectual, and he found the Cries of the Widows and Orphans had reach'd His Majeſty, then, my Lords, did the Lord High Chancellor of *Great Britain* combine with theſe Maſters, adviſe and perſuade them to make falſe Repreſentations of their Circumſtances and Accounts, in Order to deceive His Majeſty, to fruſtrate His moſt Gracious Intentions for the Good of His Subjects, and to prevent (what He moſt fear'd) a Parliamentary Inquiry.

Theſe, my Lords, are the malignant Conſequences of that Corruption of which the Earl of *Macclesfield* is accus'd; and which the Commons apprehend to be perfectly conſiſtent with the whole *Tenor of his Actions*, during the Time of his being Chancellor.

The Commons began their Evidence with that Oath, which it was prov'd the Earl had taken, in Conſequence of the Statute of the 12 *Ric.* 2. and which was adminiſtred in the uſual and accuſtomed manner. I ſhould not have reminded Your Lordſhips of this Circumſtance, if it was not for that unaccountable Attempt, to quibble away the Sanctity of an Oath, and to repreſent it as a meer Ceremony and Form, for no other Reaſon, but becauſe it was read to him in *French*, and when he kiſs'd the Bible, His Lordſhip and the Clerk ſaid nothing to each other. They afterwards gave other Evidence, relating to ſuch Profits as he had made of the Office of Chancellor, which he did not admit in his Anſwer. But I do not apprehend it neceſſary to mention them particularly to Your Lordſhips.

The firſt general Head of Accuſation againſt the Earl, is, That he *Corruptly, Illegally, and Extorſively inſiſted upon, and received great Sums of Money, for the Admiſſion of ſeveral Perſons into Offices relating to the Adminiſtration and Execution of Juſtice*.

To lead the Way to this Charge, the Commons began their Evidence with the 9th Article, which relates to his taking 100 Guineas from *T. Bennet*, for permitting him to reſign his Office of Clerk of the Cuſtodies, and for procuring a new Grant of that Office to *Hugh Hamerſly*.

The Commons choſe to begin with this Article, not becauſe they thought the Sum taken ſo conſiderable, as to have any great Influence upon the Judgment Your Lordſhips may give upon this Occaſion; but becauſe the Fact diſcovers the Man, and fully explains, what manner of Mind he muſt be endow'd with, who could ſtoop to an Action ſo low and ſordid. This Article does of it ſelf lay a Foundation of Probability for the others, in which he is charg'd with the extorting of much larger Sums. It is true, His Lordſhip in his Anſwer gives himſelf a very different Character, and offers to produce a Catalogue of his own Generoſities. What Argument there would be in this when produc'd, I cannot comprehend. I will therefore endeavour to ſave Your Lordſhips that Trouble. I can admit even more than is deſired. Inſtead of being Generous I will ſuppoſe his Lordſhip (far from the Truth) to have been profuſe. Yet ſtill would it prove nothing. For ſurely, it is not a new Character in Hiſtory, that even Squanderers ſhould be Rapacious.

To prove the Particulars of this Article, the Reſignation of *Bennett* and the new Grant to *Hamerſly*, were both prov'd. And as to the Payment of the Money, Mr. *Cottingham*, who was Secretary to my Lord *Macclesfield*, and who, thro' the whole Courſe of the Evidence, appears to have been his great Agent and Confident: He owns the Receipt of the hundred Guineas, and ſwears he paid 'em to the Earl, within a Day or two after he received them. He alſo owns the Conſideration, for which this Money was paid, That it was

for

for permitting *Bennet* to surrender his Place. —— Were there no Evidence but *Cottingham* alone, the Commons think they have sufficiently prov'd this Fact. But the Evidence of *T. Bennet* puts it beyond Contradiction, and makes it manifest, that the hundred Guineas were in a manner extorted. —— He swears soon after he was admitted a Master, he was desirous to part with his Place of Clerk of the Custodies; and to that End apply'd to *Cottingham* for my Lord *Macclesfield*'s Favour, and acquaints him with the Person, to whom he desired the new Grant should be made: *Cottingham* upon this speaks to my Lord, and some short time after tells Mr. *Bennet*, that neither my Lord nor himself knew *Hamersly*. Your Lordships may remember that the Earl by his cross Examination, seem'd to endeavour at some small Triumph upon this Circumstance. My Lords, it is not so wonderful, that *Cottingham* should not speak Truth, there is no giving Evidence to the Tone of the Voice, nor the Air and Manner, in which a Conversation is carry'd on; more especially, if it be considered, that *Cottingham* was a Man who doubtless upon these Occasions would not have known his Father without the mediation of Gold. *Bennet* was surpriz'd at this Speech, as well he might, when *Hamersly* lived next Door to *Cottingham*. However, *Cottingham* at last explain'd the Mystery, by letting him know, a Present *was expected by the Earl*, and *Cottingham* himself own'd, he did say the Earl *insisted upon a Present*.

Mr. *West* was here interrupted by the Earl of *Macclesfield*, who said that *Cottingham*'s Words were not, That he insisted upon, but that he expected a Present. Upon which Occasion Mr. *Onslow* represented warmly to the Lords, that the Behaviour of the Earl was Irregular, and that the Managers ought not to be broken in upon while they were speaking. And then Mr. *West* went on,

My Lords, It is my Duty to represent the Actions of this Earl in the strongest Light; and the strongest Light is the justest Light. Upon Recollection I do not think the Word I us'd to be of Force equal to the Fact. My Lords, The Expectations of a Chancellor, communicated by a Secretary to a new made Master, *is more than to insist*. But be that as it will; *Bennet* in Answer to these Expectations, represented the Hardship of being oblig'd to pay Money upon this Occasion, when he had so lately paid a very large Sum to the Chancellor; and by Way of Argument told him, that when he came into the Place himself, he paid nothing; and his Brother told him, that Lord *Cowper* upon the like Occasion had taken nothing, because as that Noble Earl said, Nothing was due. At last, my Lord *Macclesfield* and his Secretary, being both inexorable, *Bennet* agreed to pay *the One hundred and five Pounds*. After this Agreement was made, *Cottingham* acquainted his Lord with the Bargain, and then told *Bennet*, that the Earl agreed to it: But withal, that it was a great Favour he would take so small a Sum; and *Cottingham* at the same Time made this very remarkable Declaration, That if Mr. *Bennet* would bring the hundred Guineas, he need take no farther Trouble, for the Chancellor would apply to the King for Leave for him to resign, and would take Care of the other necessary Steps. And accordingly the Bargain was executed in that manner. For Mr. *Bennet* knew so little of the intermediate Proceedings, that he has told Your Lordships he knows not how, or by whom the Warrant came into the Hands of the Clerk of the Patents.

It is difficult not to feel some Indignation rise at the bare relating this Meanness! mean it would have been in any Man: But for a Peer of *Great Britain*, an Earl, Lord Chancellor of the Kingdom, and a Chancellor *so oblig'd and so dearly bought*, to prostitute so many illustrious Characters, in so low a manner as to become a Broker for the Hire of 100 Guineas, is astonishing! But, my Lords, when I consider that this Earl was at the same Time one of the Lords Justices of the Kingdom, in a Commission to execute some of the Functions of Majesty itself, I want Words to express such a Transaction in its proper Colours.

My Lords, I have mentioned the Evidence relating to this Point something the more particularly, because the Proof comes up to the express Words of the Statute of the 12 of *Ric.* 2. and proves, as I apprehend, beyond Contradiction, that the Earl of *Macclesfield* dispos'd of this Place *for Gift and Brokage*.

Before I quit this Article, I beg Leave to observe to Your Lordships, that my Lord *Macclesfield* in his Answer insists upon it to be the Right of the Chancellors to accept Presents; and therefore owns he did in this Case *accept a Present*. But then he avoids, as he every where else does, the naming any particular Sum that *he accepted*. I wou'd willingly ask, why this Precaution, if what he did was lawful and right? I would also observe, that there is something strangely equivocal in that Part of his Answer, where he denies he insisted on 100 Guineas, or any other Sum. This Answer, both explains his extorsive Method of proceeding, and almost demonstrates the Practice of it. For it is very remarkable His Lordship does not deny he insisted upon a Present in General, but only that he did not insist upon any particular Sum.

My Lords, Your Lordships will find by the Course of the Evidence, that this Artifice of not naming a particular Sum was not peculiar to this Instance; but my Lord *Macclesfield*, whenever a Master's Place, or any other Place was to be sold, carefully avoided fixing the Price by demanding a certain Sum. No. —— It was more gainful to set every Thing up to the best Bidder, and resolve never to dispose of any Office, till the Sanguine Purchasers, by bidding on each other, were artfully screw'd up (voluntarily to offer a Present, as his Lordship gently phrases it, but as the Commons think, they have prov'd the Fact to be) a *Corrupt and Exorbitant Price*, equal to the avaricious Wishes of the Seller.

The next Instance to which the Commons call'd Evidence, was the illegal Sale of several of the Offices of Masters in Chancery. Now, my Lords (not to be too minute in mentioning the Evidence) it is manifest from the Oath of Office, which they take, from the Commission granted to the Masters in Conjunction with the Judges, and from the Evidence given by Mr. *Meller*, relating to that subordinate Jurisdiction, which they exercise, *That these Offices do relate to the Administration and Execution of Justice*.

My Lord *Macclesfield*, in his Answer to this Part of the Charge, industriously is silent as to the particular Sums which he received, altho' Your Lordships will observe, that Payment of the individual Sums charged in the Articles has been prov'd by the Persons themselves, who paid the Money. *Kinaston* and *Bennet* are express as to the Payment of 1500 Guineas each; Mr. *Elde* is positive as to his carrying to the Earl 5000 Guineas in a Dutch Basket; and Mr. *Thurston* swears, he left 5000 Guineas with Lady *Macclesfield*. Now my Lords, as the Earl insists that it was a known Perquisite of the Great Seal to accept of Presents upon the admitting new Masters; why does he not own the Receipt of the several Sums, with which he is charg'd? If it was a known and establish'd Perquisite, doubtless the Sum payable would have been as known and estab-

lish'd.

bliſh'd. And this Conſideration I apprehend to be the Reaſon of his Lordſhip's Caution. He cou'd not but feel the Abſurdity of his own Argument, and yet I will admit as much as his Lordſhip or his Councel can deſire upon this Occaſion. His Predeceſſors poſſibly may have accepted ſmall Gratuities from new Maſters, *after* their Admiſſion. Therefore *He* may publickly, and without any other Conſideration, *ſell* them to the beſt Bidder for the moſt he cou'd get. My Lords, the Argument wou'd have been juſt as good, during the Time that it was uſual for the Gentlemen at the Bar, to give New Years Gifts to the Chancellor, to prove he might have ſold his Favours, and boldly ſuffer'd no one to plead before him, who wou'd not farm his Practice, and pay the full Price of what it might be worth.

To ſupport this *Imagination* of its being a common Perquiſite of the Great Seal, my Lord *Macclesfield* does in his Anſwer aver, that every one of the Maſters I have named, did *voluntarily and of their own Accord* ſend a Preſent to his Lordſhip *on Occaſion* of their reſpective Admittances. How far it was a Preſent the Evidence I ſhall mention to Your Lordſhips will fully explain. At preſent, I beg Leave to obſerve the Equivocalneſs of theſe laſt Words, *On Occaſion of their ſeveral Admittances.* This was not accidental, but calculated on Purpoſe to make the whole appear like a common and uſual Perquiſite. As the Words ſtand in the Anſwer, the natural Conſtruction is, that theſe Maſters *voluntarily* made the uſual Preſent to his Lordſhip, *after* they were admitted to their Offices: And yet the critical Senſe of the Expreſſion does not exclude the Payment of the Money, even by way of Bargain, *before* their Admiſſion. For even in that Caſe, the Money may as truly be ſaid to have been paid on *Occaſion of their Admittance.* I ſhould not have mentioned this Part of the Anſwer, if it was the only Inſtance of his Lordſhips deviating from Truth. I ſhould have imagin'd it to be an Overſight, of either his Lordſhip or his Councel. But by the Obſervations, that have been made by the Gentlemen who opened the ſeveral Articles Contradiction, Equivocation, and (I wiſh I cou'd not ſay) Untruth ſhine in every Part, and appear to be the predominant Qualities of the whole. My Lords, I mention this, not only as an Aggravation, but even as a Proof. For what Cauſe muſt it be that reduces a Man of the Abilities this Earl is known to poſſeſs, and of the Character *He* did once enjoy, to make uſe of ſuch mean, ſuch contemptible Arts? Arts! Unworthy a great Man; unpractic'd by an innocent Man, and I doubt not, will prove uſeleſs to the Guilty.

The Fact upon the Evidence appears to be thus, *Kinaſton, Bennet, Elde* and *Thurſton*, all concur in this Circumſtance, That they paid their Money before they were admitted into their Offices. Mr. *Cottingham* alſo owns that he received the Money of Mr. *Kinaſton* and Mr. *Bennet*, and carry'd up the Basket of Mr. *Elde* before any of them were ſworn. All theſe Perſons likewiſe agree, and *Cottingham* confirms their Teſtimony, that they apply'd to him as the proper Perſon to recommend them to my Lord *Macclesfield*, and to be inform'd of what Sum they muſt offer, in order to render themſelves acceptable to his Lordſhip. The Evidence of *Kinaſton* proves it to be a direct Bargain, for he ſwears, when he acquainted *Cottingham* of his having agreed with *Rogers* for the Purchaſe of his Place, that he offer'd but 1000 *l.* as a Preſent to the Chancellor: Upon which *Cottingham* ſaid, he wou'd not mention to my Lord any Sum under 1500 *l.* and when *Kinaſton* agreed to give that Sum, *Cottingham* again repreſented that it muſt be Guineas, upon which the 1500 Guineas were paid.

Mr. *Bennet*, he ſays, that when he had agreed with Mr. *Hiccocks*; he alſo applied to *Cottingham* to know what Sum was neceſſary to be paid the Earl. *Cottingham* agreed that a Preſent was neceſſary, but he wou'd not name the Sum. Upon this, after *Bennet* had conſulted with his Brother and Mr. *Godfrey*, he again went to *Cottingham*, and offered 1000 Guineas; but *Cottingham* diſſatisfy'd with this, ſhook his Head, and ſaid, *He would not go to the Chancellor with that Sum, a great deal more had been given, and he hoped he would not lower the Price.* *Bennet* however ſtill preſs'd *Cottingham* to offer the 1000 Guineas, to which *Cottingham* replied, there was *no bagling with the Chancellor; and that if he would not give more, he might be abſolutely refuſed, and loſe the Place.* *Bennet* ſtruck with this Reply, agreed to give the 1500 Guineas, tho' *Cottingham* graciouſly told him, he need not bring it in Money, for Bank Bills would do as well. I cannot help obſerving, that there was a ſtrange Caution uſed as to the Payment of this Money, altogether inconſiſtent with the Nature of an eſtabliſhed Fee, or regular Perquiſite. Mr. *Bennet* ſent his Clerk to take out the Bills in a feign'd Name, and for this Reaſon, becauſe otherwiſe they could not ſo eaſily be parted with. *Cottingham* it ſeems, was ſomething jealous of a Man, who had the Confidence to perſiſt ſo long in offering but 1000 Guineas, and therefore the firſt Word he ſaid to him, when he repair'd to the Chancellor to be ſworn in, *Have you brought the Money? Bennet* anſwered like a Man, who perfectly well knew the Family, He ſhould not have ventur'd to have come without it. Upon this the Money was paid, the Maſter was ſworn, and the whole Bargain fully executed.

Theſe kind of Bargains were now become ſo much the Subject of common Diſcourſe, that the Earl thought it neceſſary to be ſomething more Cautious, and even *Cottingham* was not now to be ſo much in the Secret as formerly. Mr. *Elde* applied to the Chancellor himſelf, and without any Ceremony offers his Lordſhip 5000 Guineas for this judicial Office. The Earl it ſeems, was not at all offended with this Liberty, but anſwered with the engaging Familiarity of a great Man; *Theſe and I muſt not make Bargains. I will treat thee in a different Manner from others.* My Lord *Macclesfield* was as good as his Word, for upon this *Elde* went to the Secretary, and offer'd him 5000 Guineas, and he reported to his Lord what paſſed: ſo that *Cottingham* was not diſmiſſed this Service at once and the matter was ſo far agreed, that Mr. *Elde* went in a Chair to the Earl's Houſe, with his Basket, in which he ſwears, he put 5000 Guineas, and delivered it to *Cottingham*, who carried it up to his Lord. But at the ſame Time he ſwears, he did not know what was in it. Upon this *Elde* was introduc'd, and ſworn into his Office. Your Lordſhips will obſerve that the BASKET was no Part of the *Bargain*, and therefore the *ſcrupulous Earl return'd it back to him Empty.*

The laſt Perſon examined as to this Point, was Mr. *Thurſton*, and *He* alſo was treated in *a Manner different* from all others. He was certainly better recommended than any of them, and in the Strength of that was very well received. Upon which he was Sanguine enough to expect he ſhould have the Place. But, my Lords, before he was recommended, Mr. *Thurſton* likewiſe apply'd to *Cottingham*, and offer'd 5000 Guineas. *Cottingham* ſaid he would report; but he was not truſted to return an Anſwer.—— In the mean Time Care was taken by the artful ſpreading of Rumors, That Mr. *Thurſton* ſhould hear the Chancellor intended to give the Place away to another Perſon. Alarm'd at this, and ſeeing all other Methods of Recommendation avail'd

nothing, he applied to my Lady *Macclesfield*; and after using several Arguments to no purpose, *As that his Name had been printed in the publick News to be the succeeding Master*; *That Persons applied to him for the Business of the Office*; *and That his Reputation and Character depended on his Success*; He at last told her he did not expect to have the Place for nothing, and therefore he left Bills for five thousand Guineas upon the Table, and so retir'd. These he found were the best Arguments, and the best Recommendation; for within two or three Days after he was sworn into the Office. This new Way of Proceeding, deceiv'd even *Cottingham* himself so much, that he even scrupled to take his own Fees. I know not whether I ought to mention any other Particulars; but by the Questions put to the Witnesses, when they were cross examined, it seems as if his Lordship would persuade you, that this was entirely a Transaction between Mr. *Thurston* and my Lady *Macclesfield*, and in which he was in no wise concern'd. If your Lordships can believe that the Earl intended really to give away this Place for nothing, the Earl will be fortunate: For Mr. *Thurston* himself own'd, he did not think he should have had the Place, if he had not left the Money.

I have repeated this Part of the Evidence more fully to your Lordships, because, as I apprehend, it clearly explains the Earl's artful Methods of Extortion, and also proves that in this whole Proceeding, *The Money, instead of being voluntarily given, was unjustly extorted, and that instead of being a Present or usual Perquisite, it was an illegal and corrupt Bargain and Sale of Offices, relating to the Administration and Execution of Justice.*

The last Thing I shall mention to prove this Point is an Evidence to his Lordship, most unexceptionable. I mean the Earl of *Macclesfield* himself; for my Lords, consider once more his Answer in Relation to this very Point. What Caution! What Equivocation! What Confusion of Mind! That could make him even forget the time of his own Impeachment. What other Circumstances of Guilt! That during the Course of this Tryal have been visible to your Lordships—Bank Bills taken out in feign'd Names, the Secrecy with which the Money was paid, the dead Silence as to the Price agreed: One five thousand Guineas in a Basket; another five thousand Guineas left on a Toilett; and lastly, his own Declaration to the Masters almost in a Body. How much they, how much himself might be affected. I submit to your Lordships what Inference is to be drawn from all these Particulars. The Commons are persuaded all flow'd from this Principle, That his Lordship, the Masters, the Seller, and the Buyer, were all conscious that the whole Transaction was illegal and corrupt.

Before I quit this Head of the Charge, I must take Notice of that part of his Lordship's Answer, wherein he hopes that the receiving Presents on such Occasions is not Criminal in it self, or by the Common Law of this Realm; and that there is not any Act of Parliament whatsoever, by which the same is made Criminal. I hope his Lordship intends that the Words, *Or by the Common Law of this Realm* should be understood as Explanatory of the Expression, *Criminal in it self*; otherwise it supposes a very strange Distinction. For surely an Action cannot be conceived to be *Criminal in it self*, and at the same time *not contrary to the Common Law of this Kingdom.* Is it possible for any one to imagine, that Corruption in the Officer is not the necessary Consequence of being obliged to purchase his Place? This is *in Terminis* the Reason of the Statute of *Edw.* VI. Is it possible for any one to imagine, that Oppression of the Subject must not be added to this Corruption? Or, can the Man, who sells these Places, with no other View than to satisfy his own Avarice, retain his Integrity, and be a severe or competent Check upon the Actions of those Officers, to whom he has sold? And that is the Reason of the Judgment reported by *Moor*, viz. *That the Sale of Offices is* Malum in se, *and therefore finable.* But when to what I have now said, I add the Consideration of the Oath enacted by the *Statute* 12. *Rich.* II. (his Lordship will be pleased to add his own Opinion and Apprehensions) I do not conceive it possible to doubt, but that *the Sale of Offices relating to the Administration of Justice, is Criminal in it self, Criminal by the Common Law, and Criminal by Act of Parliament.*

Moor 781. *Stockwith* and *North.*

The next Point to which the Commons gave Evidence, is the necessary Consequence of what I last mentioned: I mean the admitting Persons to the Office of Masters, who were of mean Substance, and every way unqualified for that Trust. The Evidence given of the Deficiency, now in several of those Offices, is so full and uncontestable, that I shall avoid the Repetition of it, and only just name Mr. *Thompson*, and refer your Lordships to the Report made to the Council, the Orders of the Court of *Chancery*, and the other Papers now upon the Table. Their being deficient at this time is a violent Presumption, and that in Point of Law is some Degree of Proof, that they were of small Substance at the time of their Admission. How else is it to be conceived! That Masters, who have been so short a time in their Offices, should be so much in Arrear? *Kinaston* was admitted but in *August* 1721, and in 1724 there appears a Deficiency of 26,908*l.* *T. Bennet* is admitted but in *June* 1723, and in little more than a Year there is a Deficiency of 16,075*l.* And it is remarkable, that both these Masters have sworn, all they were Owners of in the World, was not sufficient to have paid the vast Prices they gave for their Offices. Yet these Men were chosen out to be trusted, one with near 50,000*l.* and the other with near 100,000*l.* of the Money belonging to the helpless and the miserable. By the skill my Lord *Macclesfield* shew'd the other Day, in endeavouring to prove a Man illegally worth a 1000*l.* or 1500*l.* who had own'd himself to be worth nothing; your Lordships may see it was not want of Knowledge how to make an Inquiry, that made his Lordship neglect it. It was because he never once concern'd himself, whether they had Substance or not. The Sum he himself was to receive, *was his only Consideration, and therefore his only Care*; for as Mr. *Bennet* has expressly declared, he never once asked him, either before or after his Admission, any one Question in order to be inform'd of his private Circumstances.

And yet, my Lords, these are the Men, whom his Lordship, as Mr. *Waller* has particularly sworn, thought fit in open Court, and while he was sitting in the sacred Seat of Truth and Justice, to declare *Men of as great Fortune, Abilities and Skill, as had ever sat in that Court.* I much more readily concur in the Truth of the other part of his Lordship's Declaration, and proved by the same Witness, *That he had great Satisfaction in the having admitted most of the Masters himself.* The Reason Mr. *Waller* gave, in Answer to some quibbling Questions of his Lordship's, for his particularly remembring this remarkable Speech, is clear and convincing to every Man; *That the Astonishment he was struck with at the Hearing, made him to remember it.* And happy would it be for his Lordship, was it possible ever to be forgotten!

But what could make the Earl of *Macclesfield* break out into this Panegyrick? A Reason so mean, and at the same time so gross, that I almost wonder even his Lord-

Lordſhip would venture to act upon it in Publick. A Day or two before this happened, a Maſter died, and a new Purchaſer was to be invited.

I have juſt now mention'd the Satisfaction his Lordſhip had in the Sale of theſe Offices. The Effect of which was, that the Earl connived at and permitted the unjuſt Method that was practiſed, for the purchaſing Maſters to pay the Price of their Offices, out of the Money belonging to the Suitors of the Court. This Practice the Commons Charge to have been notorious, and the Evidence produc'd to your Lordſhips prove that it was ſo. *Godfrey*, *Conway*, *Kinaſton*, and *Bennet* ſwore, that this Circumſtance induc'd them to become Purchaſers; and indeed as to them, the Fact proves it ſelf, even though they had not ſworn it to be ſo. For they have both own'd, they were not able to buy without it; nay, they were ſo low, that even the fifteen hundred Guineas they paid the Earl himſelf, was out of the Suitors Money. And thus far the Earl of *Macclesfield* himſelf has own'd in his Anſwer. But alas! That would prove nothing, if it was not accompanied with a Fact, that cannot be disbelieved; *My Lords, He has repaid the Money!*

After this, I think, I need not repeat the Evidence ſo minutely as to explain the particular Method, in which this Fraud was tranſacted. The whole ſeems obviouſly calculated for no other End or Purpoſe, than to induce Perſons of ſmall Abilities to become Purchaſers, by facilitating and making eaſy the Method of Payment. And indeed it was ſo eaſy, that I wonder his Lordſhip did not meet with Perſons, who would agree to give one half of the Money, for an opportunity of running away with the other. And if they had, I do not ſee but his Lordſhip's Defence would have been juſt as good as it is now. Such a Price might with as much Reaſon be called a Perquiſite, as his condeſcending to take but five or ſix thouſand Guineas, when no one would give more. It is true, my Lord *Macclesfield* does in his Anſwer ſay, that he was ignorant of this Practice. But I apprehend his Lordſhip to be as much miſtaken in this, as he has been in other Particulars. For, my Lords, it appears by Mr. *Bennet*'s Evidence, that he not only knew of this Practice, but endeavoured to conceal it.

It happened that when this Mr. *Bennet* delivered his Accounts to the Privy Council, he concluded with a very remarkable Article; *Item, In the Hands of Perſons of Ability and Honour* 9075*l.* My Lord *Macclesfield*, at ſight of this Particular, asks him the Reaſon of it; Mr. *Bennet* explains it, That as to 1575*l.* he meant his Lordſhip, and as to the Reſidue, Mr. *Hiccocks*, of whom he bought, had detained ſo much of the Suitor's Money in his Hands, by way of Payment for his Place, and at the ſame time he complained to his Lordſhip of the Hardſhip with which he had been us'd. The Conſideration that induced him to give ſo large a Price, was his being immediately to receive a very large Caſh; and yet the firſt time he waited on Mr. *Hiccocks* for that purpoſe, he could get but 1500*l.* and that upon the hard Terms of giving a Receipt for 9000*l.* During this Converſation, *Bennet* ſwears, the Earl ſaid with ſome Concern, *That his Accounts were made up the worſt way in the World, for every Body would now judge, that what he paid for his Office, came out of the Suitor's Money, and that what had been ſo much ſuſpected would be now diſcovered, and what he himſelf had taken ſo much Pains to deny, whenever he was asked the Queſtion.* After this his Lordſhip and *Bennet* enter into a ſerious Conſultation, how to make up this Affair. The Chancellor bids him go to Mr. *Hiccocks*, to try what he would do. But it ſeems he could not be brought to do more, than to lend 2000*l.* which *Bennet* abſolutely refuſed, and inſiſted upon its being *given him, or not at all.* He reported this to the Earl, who diſpleas'd at it, ſaid, *Hiccocks* ſhould pay 2000*l.* and that he himſelf would repay the 1575*l.* but it ſhould be in ſuch a manner, as that *Bennet* ſhould not know in what manner it was done. Moſt profound Politicks this! *Bennet* afterwards told your Lordſhips, that he found the Earl intended to trick him out of this Money; for ſeveral Times and Places were appointed for Payment, without any Effect. And therefore the Accounts were delivered in, and the Story comes out. Your Lordſhips certainly obſerv'd, that my Lord *Macclesfield* was very much offended with Mr. *Bennet*'s Evidence, and therefore took Care to croſs examine him moſt accurately. But that Fatality which conſtantly attends Guilt, was ſo ſtrong upon him, that the Anſwers given by this and almoſt every other Witneſs, to the Queſtions propos'd by the Earl, and his Councel, evidently, as I apprehend, deſtroy his own Anſwer, and confirm our Accuſation. But, my Lords, it is not only the Anſwers of the Witneſſes, but even his Lordſhip's own Queſtions that afford Evidence againſt him. For to what part of the Charge am I now ſpeaking? Why to that, wherein he is accus'd of knowing and endeavouring to conceal the Practice of paying the Purchaſe out of the Suitor's Money. And what does his Lordſhip ask? *Did not you at this Meeting tell me, that if* Hiccocks *would pay* 2000*l. you then would make up the reſt your ſelf?* By his Lordſhip's own Confeſſion therefore, *Bennet was* with the Earl upon this Occaſion; they *did* talk upon the Subject *Bennet* has inform'd your Lordſhips. *Hiccocks* retaining the Suitor's Money, *was* part of the Converſation. Elſe why ſhould he pay 2000*l.*? His Lordſhip *did* concert how to make up this Affair, and conſequently how to conceal the whole. To this Queſtion of the noble Lords *Bennet* anſwers conſiſtently with what he had ſaid before, *That he did not ſay, if Mr.* Hiccocks *would pay* 2000*l. that then he would ſtand the reſt.* And the Reaſon he gives is good, *He was not worth the Money.* Your Lordſhips remember the other part of the Dialogue. I ſhall only add, That the Earl being angry at this Evidence, asks Mr. *Bennet*, *And how could you, as an honeſt Man, offer to buy a place, when you were not worth the purchaſe Money?* I ſubmit to your Lordſhips, whether it was not as honeſt for him to buy without Money, as for his Lordſhip to ſell without Right.

I have now ſtated to your Lordſhips the Fact, as to this ſcandalous Practice. And I think it can never be thought reaſonable to ſuppoſe the Earl of *Macclesfield* only ignorant of what every one elſe knew: Or that he did not know of what he endeavour'd to conceal. And if it is certainly true, that the Office of Chancellor is an Office of the higheſt Truſt, it is as true, that every wilful Neglect of what is neceſſary to be done, in order to diſcharge that Truſt, is criminal. It cannot be doubted, but that this Practice was unjuſt, and fraudulent upon the Suitors of the Court. It cannot be doubted, but that the Earl of *Macclesfield* knew of this Practice. It cannot be doubted, but that the Chancellor was the proper Perſon, becauſe in Fact, he was the only Perſon, who could, *ex Officio*, either remedy or prevent this Abuſe. What ought to be the Conſequence of theſe Premiſes, the World will learn by your Lordſhips Judgment.

Hitherto my Lord's Avarice, *uncorrupted Avarice!* has been the only Principle of this Earl. In what follows, your Lordſhips will perceive Apprehenſion and Fear begin to mingle in all his Actions; and for this Reaſon the Bankrupcy of *Dormer* was to be concealed, that the Clamours of the World might be huſhed. It has appeared in Proof to Your Lordſhips, that upon *Dormer*'s abſconding the Deficiency in his Office amounted

mounted to upwards of 52,000 *l.* for the Account upon the Table which reduces the Ballance to 49,000 *l.* was made up long after the Masters had been obliged to contribute their 500 *l.* each.—— When *Dormer* run away, it is natural to imagine, that even this Chancellor should have turned his Thoughts to the Security of the Suitors: Not because it was his Duty so to do, but as Mr. *Dormer* was a Master whom he had not had the Satisfaction to admit himself, he might with the more Security have given himself the Show at least, of acting vigorously in Relation to his Affairs. By the Evidence that has been given it appears his Lordship's Behaviour was quite the Reverse; my Lord *Macclesfield*, instead of being Sollicitous for the Good of the Suitors, was apprehensive only of the loss that might happen to himself, by sinking the Price of Places, and thereby defeating that gainful Trade he carried on in the Sale of them. But this Thought was attended with another Consideration, that this open Acknowledgement of the Bankrupcy of one Master might enduce the World to suspect the Abilities of the rest, and as he best knew what Care, what Circumspection he had used upon their Admission, so he was determined to prevent an Incident of that kind. With these Views therefore every Step that was taken was mysterious, and the Deficiency itself with the utmost Caution kept secret; so secret, that at last some of the Masters themselves, his own Masters, for that very Reason, refused to contribute any farther towards it. *It is a bottomless Pit*, says one; *we know not what it is*, says another.

The first Step the Earl took was to direct Mr. *Rogers* and Mr. *Hiccocks* to carry on a private Negotiation with *Dormer*, for his Return into *England*, assuring him in his Lordship's Name, that his Person should not be confin'd, provided he made an Assignement and Discovery of his Estate and Effects. Upon this *Dormer* returns, and executes an Assignment; but I do not find he was ever examin'd upon Interrogatories, or that any of his Creditors attended, in Order to enquire into the Truth of his Discovery. Your Lordships observe, that the Promise of Liberty was Conditional; but *Dormer*, and the Earl, tho' for very different Reasons, were equally afraid of this Commitment; and therefore his Lordship took Care not to direct any Proceeding, that might lay him under a Necessity of doing it. If there was nothing else in the Case, this Behaviour was sufficiently Gross. But, my Lords, it was still worse, for Mr. *Lightboun* has acquainted Your Lordships, that soon after *Dormer*'s Failure, he waited on my Lord *Macclesfield*, and told him, that he suspected the Account given in by *Dormer* was not Fair and Just; and that therefore he ought to be committed for Example sake. This Witness added another Circumstance, that justifies what I have before suggested to Your Lordships, as the Reason of the Earl's Conduct. He says, that in this Conversation with his Lordship he intimated and gave broad Hints of his suspecting the Abilities of some of the other Masters; he represented that the Year 1720 had been a very fatal Year, and might affect the Masters as well as other People; that what had been might be, and several other matters of this Nature. Your Lordships remember the manner, in which this Evidence was given, there was an Air of Probability and Truth, that appeared in it; he own'd indeed, when the Noble Earl ask'd the Question, for fear, I suppose, lest Your Lordships should want Proof of there having been such a Discourse, that he did not name any Master in particular whom he suspected. He did not know how far an Action might lye, and if known, it would make him unacceptable to his Brethren, and himself might be made uneasy in his Office, and several other Reasons of that kind; and therefore he chose to express himself in general Terms. Your Lordships will observe that the Earl was very early in this Resolution, some way or other, to patch up this Affair of *Dormer*s, so far at least, as to make it last his Time: For Mr. *Kinaston* has informed Your Lordships, that when he was in Treaty with Mr. *Cottingham*, to be admitted Successor to Mr. *Borret*, he objected this very Deficiency of *Dormer*'s as a Reason why the Chancellor should not insist upon so large a Sum, since the Consequence of it must naturally lessen the Value of the Office. But he made light of it, and said, it would soon be made up. Mr. *Edwards* also, who succeeded *Dormer*, said he never would have bought the Office, if he had not been assured the Deficiency would have been made good. Here Your Lordships may also remember, that my Lord *Macclesfield* by cross examining this Gentleman, laboured to prove, that the Masters had actually agreed, in all Events, to make good *Dormer*'s Effects. Mr. *Edwards* said, *he could not say 'twas actually agreed, he hoped they would, and by Conversation he had had, imagined they were inclined so to do*, &c. Upon this the Earl asked, *From whom then had you those Assurances that it would be done?* His Lordship (ever fortunate in his Questions!) I believe was not well satisfied with the Answer; for says *Edwards*, *I had 'em from Cottingham and Godfrey*. Their Names and Qualifications are well known to Your Lordships.

The next Step that was taken, relates to the Composition of a Debt of 24,046 *l.* due from one *Wilson* a Banker, to the Estate of Mr. *Dormer*. This Composition the Commons do aver the Earl did direct and establish, in an unwarrantable and clandestine manner. On the other hand, my Lord *Macclesfield* does in his Answer say, that it was done in the proper and usual manner: Your Lordships will judge of the Truth between us. The Commons, to prove their Averment, have produced the Original Instrument of Composition, by which it appears that this Debt of 24,000 *l.* was to be discharged for the Sum of 1463 *l.* in Money, and an Assignment of 10,000 *l.* or a proportional Part of what should be recovered of a desperate Debt of 22,600 *l.* due from one *Poulter* (who also is a Bankrupt) to *Wilson*.

The Introduction to this Affair was thus; Mr. *Edwards*, to whom *Dormer* assigned his Effects, acquainted the Chancellor that *Wilson* proposed a Composition, but apprehended he had not Power to conclude any such Agreement. To this the Chancellor agrees, and therefore advised him to apply to the Court by way of Petition for that Purpose. *Edwards* followed this Advice, and petitioned. Upon which the Earl referred the matter to Mr. *Hiccocks*, who made his Report, which being annexed to another Petition, the Composition was confirmed. In the Answer which the Earl gave to the second Petition, these Words are inserted, *Of which give Notice forthwith*: To what Purpose these Words were inserted, I cannot comprehend, unless it was to deceive the poor Master, who trusted him, into Ruin, by craftily laying a Ground Work for throwing the Blame of the whole upon him, unless he could divine to whom this Notice was to be given. For his Lordship took Care not to give any Directions, as to what Persons, or in what manner it should be done.—— During this whole Transaction *Wilson* was never examined upon Interrogatories: No one Creditor ever summoned to attend; the Character of *Poulter* perfectly unknown, or by what they did know, they might have reasonably suspected what afterwards happened: No Knowledge of *Wilson*'s Affairs, but what he communicated himself; the first Proposal he made was accepted; no Consultation with any other of *Wilson*'s Creditors; and to show how useful that might have been, it has been proved to Your Lordships, that *Wilson* has paid several of his Creditors their whole Debt.

This was the Care the Earl thought fit to take of the Suitors of the Court: Doubtleſs he imagin'd, that tho' more vigorous Meaſures might ſecure more Money, yet they might at the ſame Time make the Circumſtances of the Court too publick; for, at the ſame Time his Lordſhip took abundant Caution to prevent any of theſe Particulars coming to the Knowledge of the Suitors, or of the World. For, my Lords, not one of theſe Facts appear upon any Record or Regiſter whatſoever; the Whole was a private and clandeſtine Tranſaction between his Lordſhip, two or three Maſters, and the Bankrupt himſelf. Your Lordſhips have a Certificate from the proper Officers for what I now ſay, *That none of theſe Petitions, Reports, or Orders, were ever regularly drawn up, or filed.*

My Lords, this Caution, this Secrecy, this Myſtery, is a ſtrange Way of proceeding for Juſtice and Equity; but, if the contrary be ſuppoſed to have been his Intentions, the Whole is of a Piece, natural and conſiſtent.

Permit me, my Lords, once more to obſerve upon his Lordſhip's Croſs-Examinations. And, Firſt, He very nicely examin'd *Edwards*, as to what he had receiv'd by virtue of this Compoſition; and certainly it receives a wonderful Juſtification from Mr. *Edwards*'s owning that he received in *October* laſt 1000 *l.* The next Point he examin'd to, was his Lordſhip's Diligence in ſecuring *Dormer*'s Effects. The Commons brought Evidence to ſhew, that ſome of *Dormer*'s Eſtate had been conceal'd, and, for ought I know, it may be true, that one *Goodfellow*, by his Lordſhip's Means, did give the Adminiſtrator (appointed ſince his Lordſhip's Diſmiſſion) the firſt Notice of it. The Fact is, that a Parcel of old Hops, 500 *l.* the worſe for keeping, were not long ſince ſold for the preciſe Sum of 100 Guineas. To which I ſhall only ſay, that I wonder his Lordſhip choſe to recal *that Sum* into your Lordſhips Memory.

My Lord *Macclesfield* hitherto might poſſibly meet with the Approbation of thoſe Maſters, on whom he vouchſafed to ſmile: Both he and they ſeem to have conſider'd themſelves as in an Intereſt ſeparate, and quite oppoſite to that of the Suitors. *His* View was to keep the Circumſtances of the Court ſecret, and to prevent any Thing that might happen to leſſen his Profits in the Sale of Places: *Theirs* was to retain the Money of the Court in their Hands, and for that Reaſon to huſh any publick Clamour that might occaſion the taking it away. I think I am not miſtaken in this Conjecture, becauſe I find his Lordſhip himſelf was of the ſame Opinion: For this was the great Artifice and Machine, which his Lordſhip employ'd, to terrify them into a Contribution of 500 *l.* each, towards ſupplying the Deficiency of *Dormer*'s Office. To ſhew how much this Cuſtody of the Money was in the Maſters Thoughts, your Lordſhips will be pleaſed to remember, that all the Maſters own'd, that it made a very conſiderable Article in what they call'd, the Profits of their Places. Mr. *Holford* (on whom the only Blemiſh I know, is the Misfortune he has had of being a Maſter) acknowledg'd, in anſwer to a Queſtion propos'd by a Noble Lord, *That he underſtood it ſo; for he never propos'd to lock the Money up, but to employ it for his own Uſe.* In fact, it was what the Maſters bought, and what the Chancellor ſold, or rather, Widows, Orphans, Lunaticks, the Wards and Suitors of the Court were the wretched unhappy Merchandize, in which the Earl of *Macclesfield* thought fit to deal. When *Kinaſton* was to buy, he ſwears that *Cottingham*, or *Rogers*, or both, recommended it to him as being the Senior Office, and therefore the beſt. And *Cottingham* himſelf own'd the firſt Day of this Tryal, that he had acknowledg'd to a Committee of the Houſe of Commons, that he ſaid to Mr. *Kinaſton*, *You have purchaſed a very good Office; for there is a great deal of Money in it.* But, my Lords, the Thing proves itſelf: Conſider the Nature of the Office, the Attendance and Labour that is required; deduct the unlawful Intereſt made of the Suitors Money; how can the honeſt Fees (even ſuppoſing it lawful to ſell) be worth 6, 7, 8, or 9000 *l?* I leave this for my Lord *Macclesfield* to explain, and ſhall at preſent take it for granted, that the Maſters eſteem'd the Cuſtody of the Money to be Part of their Bargain.

That there was, in fact, a Contribution by the Maſters of 500 *l.* each, is evident from the Receipts now upon your Lordſhips Table; and Mr. *Holford* fully explains the Method that was taken to draw them into it. He received, ſoon after the Report of *Dormer*'s Bankruptcy, an Order from Mr. *Cottingham* to prepare and bring in his Accounts to the Chancellor; ſoon after that, it was intimated to him, that a Contribution of 500 *l.* was neceſſary towards ſupplying the Deficiency of *Dormer*: Upon which he paid his Money, and his Accounts (tho' ready, as he ſwears expreſly) were never afterwards called for.

Lightboun was another Maſter, who received Orders to prepare his Accounts; but not paying his Money, *Cottingham*, ſome ſhort Time after *Dormer* broke, ask'd him if he had not heard of the Propoſal to contribute 500 *l.* *Lightboun* own'd he had: *Cottingham* then ſaid, 'twas neceſſary to raiſe ſome Money to go on, and that, if he contributed, poſſibly the Money might be repaid. Still *Lightboun* was inflexible, and ſaid it was a dangerous Step, and he wou'd not pay the Money. Upon this Refuſal, he inform'd your Lordſhips, that he was look'd upon as a very troubleſome Fellow among the Maſters, and little Arts were us'd to make him uneaſy in his Office: But when this likewiſe prov'd ineffectual, the Earl himſelf, at laſt, condeſcended to talk with him, and in the beginning of the Year 1722, he was taken into his Lordſhip's Study; and the Earl told him, he was ſorry to hear he did not pay; deſired him to conſider the Conſequences, and how dangerous it was, not to take Care of *Dormer*'s Affair. Upon this, *Lightboun* ſtill refus'd to pay, ſaying he did not know how far a Contribution of this Kind might be conſtru'd to be an Undertaking of the Maſters to anſwer one for the other: At the ſame Time he boldly and honeſtly repreſented to the Chancellor, how cautious his Lordſhip ought to be; that this Method was no Cure for the Miſchief; and that as to its being propos'd by the Senior Maſters, 'twas no Argument to him, and ought to raiſe ſome Jealouſy in his Lordſhip, ſince they were viſibly endeavouring to withdraw from the Court, and came into a Project of this Kind, only to keep up the Credit of the Court, till they found an Opportunity of ſelling their Places at great Rates, and a great deal more to this Purpoſe; and concluded with a peremptory Refuſal to contribute.

However, as the other Masters paid their Money, the Earl was not discouraged, but depended upon it that some Time or other (as he told Mr. *Edwards*) he should be able to force Mr. *Lightboun* to comply, and therefore, as he thought, he had by this Means contriv'd a Fund to answer any Demands upon Mr. *Dormer's* Office, he went on, just as if there had been no Deficiency at all. By the Orders that have been read to your Lordships, and by the Evidence of Mr. *Edwards*, who paid the Money, it appears that he made several Orders for the Payment of Money, without any Regard to that due Proportion all the Suitors of the Court were entitled unto. His Lordship in his Answer says, It was not incumbent upon him, *ex officio*, to declare an Average. If it was not his Duty, my Lords, for God's sake, whose Duty was it? This is too gross to be a Sin of Ignorance. A Barrister of but a Term's standing knows, nay, it is obvious to the lowest Capacity, that where several Persons have Demands out of one Common Fund, and that Fund proves to be defective, all ought to be upon the same Foot, and be paid in an equal Proportion. Mr. *Lightboun*, Mr. *Edwards*, both represented to him the Hardship of one Creditor's receiving his whole Demand, and another Creditor, who had equal right, losing his whole Debt. The Reason therefore of this otherwise absurd Proceeding cou'd only be, that the Declaration of an Average wou'd publish that Deficiency to the World, which he had us'd so many Stratagems to conceal.

I cannot conclude this Part of the Evidence, which relates to that Criminal Design the Earl carried on of concealing this Deficiency, and of deceiving the Suitors of the Court, without reminding your Lordships of one other Instance of this Noble Earl's great Regard for Truth and Veracity. Mr. *Atwood*, who was the Sollicitor in the Cause of *Harper* and *Chase*, in which the Deficiency of *Dormer* being mention'd, the Earl took occasion to declare, *That indeed he had heard of the Deficiency, but nothing of it had ever come judicially before him; and that he knew nothing of it but as publick News.* This, my Lords, was after he had paid 1000 *l.* towards it himself. After what I have said, I shall not attempt to aggravate this Prostitution of the Seat of Justice. But this did not satisfy his Lordship: That his Dissimulation might for ever remain upon Record, he thought fit to pronounce an Order, that is now upon your Lordships Table, and dated no longer ago than in *December* last; in which he directs the Master to enquire, whether there was any Deficiency in *Dormer's* Office? and whether the Suitors were likely to lose any Part of their Money, or not?

Your Lordships know the Contract that was made between the Chancellor and the Masters: I therefore shall not waste your Time in mentioning Evidence to prove, that they, who gave such vast Prices for the Custody of the Money, did not neglect the Opportunity of employing it for their own Use. The Proof is but too visible: They who are rich, confess it; and they who are poor, dare not deny it: It was the necessary Consequence of his Lordship's Extortion; and that put it out of his Power, to take those Measures that were necessary to prevent that Practice. The Misfortunes of the *South-Sea* Year were so universal, that surely any Man of even common Sense wou'd have been upon his Guard: *My Lord* Macclesfield *knew*, that these Masters gam'd with the Suitors Money themselves, or for an extravagant Interest lent it to those who did: *He knew* that this was the occasion of *Dormer's* Deficiency: *He knew* that the other Masters had it still in their Power to do the same; therefore he permitted it: He took no Measures to prevent it; therefore he encourag'd it.

But what cou'd engage this Earl (whose Understanding is no wise question'd) after so fatal a Year, thus to risque his own Character; and what perhaps he values more, his own Fortunes, not only upon the Understanding, the Integrity, but even the good Fortune of a parcel of Men, whom he had thus pick'd up, without either Enquiry or Care? My Lords, *as the Borrower is to the Lender, so a Corrupt Chancellor is the Servant of his Confederate Officers.* He durst not put a stop to their Practices (tho' his own Estate was embark'd with theirs) lest Resentment and Revenge shou'd make 'em discover the infamous Secrets, with which they were entrusted. How durst he demand Security from those whom he had admitted, knowing they were able to give none? Surely, my Lords, no Reason, but such as I have now mention'd, cou'd induce his Lordship to neglect (and a long Neglect amounts to a Refusal) the obliging these Masters to give Security, or else to call them to a strict Account, as to their Cash and Securities, after he had been inform'd by Mr. *Lightboun*, that some even of the Masters were to be suspected. But Mr. *Lightboun* this Day went farther; he represented the Danger of trusting Men with such vast Sums: That this Credit had been the occasion of all the Losses in the Court, and therefore propos'd a Scheme of Security, to prevent any Losses for the future. The Chancellor did not absolutely reject this Proposal; that was too gross *even for himself:* He therefore desires Mr. *Lightboun* to put it in Writing: 'Tis done; and his Lordship most carefully kept it by him for two Years, without taking any notice of it. But, my Lords, there is one Circumstance in this Neglect, that in Equity (and surely a Chancellor will not decline to be try'd by that Rule) makes his Lordship answerable for a very large Sum in one Case only, without entring into any the other Consequences of his Crime. Mr. *Kinaston*, your Lordships remember, was prov'd to be deficient in the Sum of 26,000 odd hundred Pounds; and yet, my Lords, this very *Kinaston* did, in the Year 1722, propose to his Lordship, to give Land, or other Security, for the Effects with which he was entrusted. I know his Lordship will object what this Gentleman has before sworn, in relation to his own Circumstances: But what is it to the Suitors, whose Land it is, provided it be pledg'd for their Safety? *What Answer, my Lords, must we give to our Fellow-Subjects, those unhappy People, who are undone, I will not say by* Kinaston's *and the other Masters Deficiency, but his Lordship's own wilful Neglect?* I will not take up any more of your Lordships Time upon this Head. In what I have already mention'd, it is proved, notwithstanding what the Earl in his Answer says to the contrary, that he knew the Masters converted the Money of the Suitors to their own Use. And he himself owns, that he did not insist upon any Security from them. In a late Order of his own making, he has recited it not to be usual in the Court of Chancery,

Chancery, for the Maſters to give Security; and therefore in his Anſwer covers himſelf under the Practice of his Predeceſſors. My Lords, the Reaſonableneſs and Neceſſity of Security depends upon the Greatneſs of the Truſt committed, and the Qualities of the Perſons intruſted. In Dr. *Eddiſbury*'s Caſe, tho' there was a Stop, yet there was no Loſs, for his Eſtate prov'd ſufficient to anſwer all Demands. And therefore his Lordſhip's Argument, in my Apprehenſion, amounts to this, That becauſe his Predeceſſors did not inſiſt upon Security from Perſons who wanted none, therefore he might juſtly entruſt thoſe who were able to give none.

My Lords, I am come to the laſt Head of our Charge, and your Lordſhips will now ſee the Earl of *Macclesfield* abandon'd to all his Fears! even Avarice forſakes him! The Dread of a Parliamentary Inquiry ſits heavy on his Mind; and I firmly believe, he now repents his having illegally taken this Money, becauſe he parts with it to prevent, if poſſible, that Puniſhment he moſt juſtly deſerves for having received it. He finds all his Arts in vain to hinder his Practices being known to the World; and therefore his whole Study is now bent how to ward off their coming into Parliament.

The firſt Inſtance of this appears in the Caſe of Mrs. *Chitty*. The Fact is thus: An Order was made for the Payment of 1000 *l.* to her, Part of a Sum upwards of 11,000 *l.* belonging to her, and which had been paid into the Hands of Mr. *Dormer*. She, it ſeems, aſſigns this Order to a very importunate Sollicitor, one Mr. *Lockman*, who, as he has told your Lordſhips, diligently purſu'd the Chancellor from *London* to *Kenſington*, from *Kenſington* to *Weſtminſter-Hall*, and the Court of *Chancery* it ſelf. He repreſented to his Lordſhip the Circumſtances he was in; that he had compounded ſome *South-Sea* Contracts, and abſolutely wanted, and inſiſted upon his Money to compleat his Agreement, and ſet himſelf at Liberty. The Chancellor finding himſelf ſo preſs'd, was at laſt forc'd to promiſe him, that he would take care to get the Money paid. Upon this he ſummons a meeting of the Maſters, in order to perſuade them to pay the Money, by a Contribution of fifty Pounds each; and in the mean while it had been given out among them, that ſuch a Contribution was expected. *Cottingham* himſelf, as Mr. *Lightboun* ſays, told it to him, and at the ſame time made a freſh Demand of the old Sum of 500 *l.* and ask'd him what Anſwer he would ſend to the Chancellor? *Lightboun* prudently replies, he would deliver his Anſwer himſelf; and in the mean while he applies to the other Maſters, tells them the ill Conſequences of what they had done, and works them all up to a Reſolution not to comply with this freſh Demand. He deſires 'em not to give the Chancellor falſe Hopes, but to ſpeak their Mind freely. And thus prepared, they all repair to his Lordſhip's Houſe. I need not upon this Occaſion repeat the Names of the Witneſſes, for all the Maſters preſent concur in giving the ſame Teſtimony. His Lordſhip began the Conference with asking Mr. *Lightboun*, in a very angry Tone and Manner, why he did not pay his 500 *l.*? Who reply'd, he had often told his Lordſhip the Reaſon, and that he neither cou'd nor wou'd pay, and was confirm'd in his Reſolution, by his having ſince heard all, or moſt of his Brethren, repent of their Compliance. The Earl, without regarding *Lightboun*'s Reaſon, propos'd the Neceſſities of the Court to the other Maſters, in relation to this 1000 *l.* The Maſters not ſeeming willing to comply, he us'd many Arguments to perſuade 'em to it: He deſires 'em to conſider the Conſequences; the Occaſion preſſes, and Clamours grow ſtrong; and if this Affair was not taken care of, *Dormer*'s Deficiency muſt break out; and therefore what he propoſed, was the only way to prevent a Parliamentary Inquiry. Upon this *Lightboun* interpos'd, and ſaid, If it was ſo, he could not help it: That he had rather loſe the keeping of the Money and Securities, than hold it upon thoſe Terms. The Chancellor reply'd, But that is not the worſt: Suppoſe the Houſe of Commons ſhould in a Committee of Juſtice reſolve, that your Offices relate to the Adminiſtration of Juſtice; that the Buying 'em is contrary to the Statute of *Edward* VI. and therefore forfeited. Conſider (ſays he) tho' it may affect me, as to the Diſpoſal of theſe Places for the future, yet it will affect you much more in the Loſs of your Places; and therefore, upon the whole, deſired them to agree to the Contribution. My Lords, the Maſters were Proof againſt his Lordſhip's Eloquence, and *ſeriatim* refus'd to comply. Upon which the Earl was ſtruck, and with a vaſt Concern ſaid, Then I will pay it my ſelf. What Guilt, what Fear, muſt this Noble Earl be ſenſible of, thus to part with that Money he had ſo ſacrific'd his Honour to get! In this manner the Earl parted with his Maſters, and *Lockman* returns again to the Charge; and at laſt, meeting the Chancellor in the Room behind the Chancery Court, he got a Promiſe from him, that Mr. *Cottingham* ſhou'd pay the 1000 *l.* But at the ſame Time his Lordſhip (I ſuppoſe, to get rid of ſo troubleſome a Suitor) advis'd him not to engage with the Widow *Chitty*; for if her Money in the Court of Chancery was all her Fortune, that Sum was all ſhe was like to have. Soon after this, *Cottingham* paid the Money. But it ſeems he forgot to deſire *Lockman* to keep the Secret; ſo he told it about ſo much, that *Cottingham* meeting him rebuk'd him for it, ſaying, *Can't you fare well, but you muſt cry Roaſt Meat?* Your Lordſhips undoubtedly remember, that the Earl endeavoured to ſhew, by Croſs-examining, that he had generouſly given this 1000 *l.* to Mr. *Lockman*, out of meer Charity and Compaſſion to his miſerable Circumſtances. *Lockman* reply'd very reaſonably, that his Circumſtances were not ſo low as to want his Charity; for he might have diſcounted the Order; and he did not think it a Favour that he was paid his own.

The Evidence I have now laſt mention'd to your Lordſhips, even without the Aſſiſtance of other Proof, almoſt maintains the whole Charge. By the Teſtimony of a Cloud of Witneſſes his Lordſhip here confeſſes the Sale of Offices, and owns that Sale to be illegal: He acknowledges his being acquainted with *Dormer*'s Deficiency; and at the ſame time endeavours to conceal it: He in a manner confeſſes his own Guilt, pronounces Sentence upon himſelf, and therefore propoſes Methods to prevent a Parliamentary Inquiry.

But, my Lords, there is ſtill more behind: There is not only a Connection among the Articles, but the Crimes charg'd in 'em riſe upon each other. Hitherto his Deceit has extended only to the Subject, but now he attempts the Throne it ſelf. His Majeſty graciouſly directed an Inquiry to be made into the Diſorders of the Court of Chancery. His Lordſhip knew that this dutiful Houſe of Commons wou'd not interpoſe in the Affair, till his Majeſty's Commands were obey'd, and therefore he now ſummons all his Arts and Skill to ward the Blow, and deceive his

his Majesty into a Belief, that the World had taken a false Alarm; and that the Circumstances of the Masters were much better than they were represented to be: That they were able to answer all Demands; and that consequently the Suitors of the Court were not in any Danger. His Agents are sent among the Masters, to encourage them to stand by each other; that they should make a bold Stand, and defeat the Designs of their Enemies. He himself becomes their Councellor, and advises, and (without Inquiry, or Regard to either Truth or Justice) he persuades them to make such a Subscription to their Accounts, as might mislead the Council in any Report they should make to his Majesty.

All his Thoughts, Counsels, and Measures, are now swift and precipitate. Your Lordships have heard Evidence of the several Discourses of *Cottingham* and *Dixon*; the meeting of the Masters at Mr. *Edwards's*, and the last Conference with the Chancellor himself; all within two or three Days of each other, and all tending to the same End of deceiving the King, and preventing the Parliament. My Lords, all the Masters concur in the meeting at the Chancellor's House; when, it seems, his Lordship, upon considering their several Accounts, declared his Approbation of Mr. *Holford's* Subscription; and without any the least Inquiry into their Abilities and Circumstances, he advis'd them all to make the same Subscription as Mr. *Holford* had done.

Your Lordships have likewise heard it prov'd, that the Masters, in order to make a Shew, were advis'd to assist and stand by each other. *Bennet* and *Conway* are both Instances of this Counsel's being put in Practice; and —— But why shou'd I abuse your Lordships Patience with particularly recapitulating the Evidence that has been this Day given? I observ'd the Attention with which it was heard, and any Thing I can say, will only weaken that Impression it must naturally have left on your Lordships Mind. I shall therefore conclude the Whole with an Observation from the Parliament-Roll of *Henry* IV. *Complaints and Subsidies belong to the Commons, Judgments belong to the Lords, and Redress is the Glory of the Crown.*

My Lords, The Commons have now discharg'd their Duty; they have declar'd their Grievances, explain'd the Crimes, and produc'd the Offender. They are assur'd the King will of his Fatherly Goodness, grant a just Redress, and apply a proper Remedy; and they doubt not but your Lordships will pronounce a righteous Judgment.

Then the House adjourned to Wednesday *next, at Ten of the Clock in the Forenoon.*

Wednesday, May 12. *The fifth Day.*

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence; as also another Proclamation, That all Persons concerned were to take Notice, that *Thomas* Earl of *Macclesfield* now stood upon his Tryal, and they might come forth, in order to make good the Charge.

L. C. J. King. Gentlemen, You that are Councel for the Earl of *Macclesfield*, may now proceed.

Mr. Serjeant *Probyn.*

May it please your Lordships,

I HAVE the Honour to be Councel for the Noble Lord within your Bar, the Earl of *Macclesfield*, who stands impeach'd for High Crimes and Misdemeanors in the Name of all the Commons of *Great Britain.*

My Lords, When I consider the Importance of this Charge, in respect to the Noble Earl impeach'd, the great Experience and wise Conduct of the several Gentlemen of the House of Commons, who are intrusted to manage the Prosecution, and the great Variety of Arguments they have used to enforce and aggravate their Charge, it is with the utmost Concern that I presume to appear before your Lordships in his Defence; not but that I am well assured of the Truth and Justice, the Strength and Fulness of the Defence which may be made in his behalf, but out of real Consciousness of my own Inability to discharge so great a Trust.

Unequal to it I should have been, had the longest Time been allowed me to prepare myself; but I shall now appear much less capable, having so very little, so few Days Notice of your Lordships Pleasure in appointing me for that Service.

If therefore I shall be so unhappy, as to offer any Thing in this Case less proper, or correct, than might otherwise be expected from me, I hope I shall obtain your Lordships greater Indulgence.

The Offences, which are charged to be committed by the Noble Earl impeach'd, are contained in many Articles, no less than twenty one in the Whole; but the Gentlemen of the House of Commons have been pleas'd to wave several of them, and, I hope, when your Lordships have heard us, and our Evidence, you will be pleased to acquit him of all the rest.

These Articles have been conceived with the greatest Caution, and open'd with the greatest Art, heighten'd with every Circumstance that may induce Resentment, and urged against the Noble Earl impeach'd with a particular Zeal, well becoming the great Concern which those Gentlemen always shew for what they apprehend the Publick Service, and the faithful vigorous Discharge of the great Trust repos'd in them by the House of Commons.

The impeach'd Earl is pursued back from his late Resignation of the High Office of Lord Chancellor, through every Stage of Publick Life; and, with inquisitive Eyes, they have also view'd and pry'd into even his most private Transactions, so as not even the least Indiscretion has passed unobserved.

Some Actions, which in themselves are truly innocent, and are declared to be so by the constant uniform Practice of all the Great and Honourable Persons that have gone before him, are here represented as highly culpable.

Others, which we humbly apprehend, are not only innocent, but commendable and meritorious, even his personal Acts of Charity, are imputed to him as Crimes.

But in one Respect I must beg leave to congratulate the impeach'd Earl, and think it is his great Felicity, that in this so publick an Examination, so strict and rigid a Scrutiny into his whole Conduct, at least ever since he was first advanced to the Great Seal, there is not one Objection made, one Instance given of Corruption, Partiality, or Oppression, in his own personal Administration of Justice; and therefore, I hope, I may well conclude (since it is admitted by the Prosecutors themselves) that he has deny'd Justice to no Man, he has delay'd Justice to no Man, he has sold Justice to no Man.

The principal Objection that seems to be rely'd on by the Learned Managers, and the only one which I humbly apprehend can any Way affect the impeach'd Earl in the present Case, is, that possibly he may have been too easily lead into a good Opinion of some Persons, who in the Eye of the World appeared

appeared to be Men of good Subſtance, and fair Reputation, Perſons that were recommended to him by others of undoubted Honour and Credit; that he has admitted theſe Perſons into Offices of great Truſt and Profit under him; and they have at length been found not to have deſerved the good Opinion, which he at firſt had been perſuaded to entertain of them.

Some of theſe Officers have been negligent, others unfaithful in the Diſcharge of their Duty; and in their Crimes 'tis now attempted to involve the impeach'd Earl as their Principal and Patron.

And, in regard the principal Complaints againſt the Noble Earl are founded upon the Diſpoſition of the Offices of Maſters in Chancery, therefore it has been thought neceſſary (in the Preamble of the Articles exhibited) to repreſent the Maſters in Chancery as Officers of very great Truſt, ſworn to ſerve the King and his People, and aſſociated to the Lord Chancellor by particular Commiſſions, for his Aſſiſtance in the due Adminiſtration and Execution of Juſtice.

My Lords, what Uſe Maſters in Chancery might formerly be of, and what Aſſiſtance to the Lord Chancellor they might antiently give, I know not, but at preſent they ſeem to be of very little Advantage to him in the Determination of Cauſes in Court.

They ſit indeed in Court, at proper Diſtances, on each ſide the Chancellor, and ſedulouſly attend his Motions, but never pretend to adviſe or interpoſe in Judgment.

They have likewiſe the Honour to be named in Commiſſions of Aſſociation to the Lord Chancellor; but the whole Body are not always named in ſuch Commiſſions, but only ſuch particular Perſons as his Majeſty is pleaſed to think fit: And this appears from one of the oldeſt Commiſſions that has been produced and read before your Lordſhips, I think it was the Commiſſion granted to *Robert Southwell* and others the 9th of *October*, 4 *Edw.* VI. wherein there were not more than four or five of the Maſters named; tho' I believe in the later Commiſſions their Names are uſually all inſerted. But what Power or Authority is given them by this Commiſſion? None at all, that they can execute of themſelves in the Abſence of the Maſter of the Rolls, or ſome of the learned Judges named therein; for the Judges and the Maſter of the Rolls are only included in the *Quorum*.

But, my Lords, Commiſſions of this Kind are not uncommon: Clerks of Aſſize, and other Officers, are named in the Commiſſions of Aſſociation to the Judges of Aſſize, in their reſpective Circuits, yet act as Miniſterial Officers only under them.

And I humbly apprehend, that in this Caſe it has been ſufficiently proved before your Lordſhips, by a Gentleman (that was once a very good Maſter in Chancery) that they now pretend to exerciſe no judicial Authority whatſoever.

They examine and ſtate ſuch particular Matters and Facts, as the Court is pleaſed to refer to them, for its better Information, and which the Court it ſelf has not Time to look into; they ſettle Accounts depending between the Suitors of the Court; they look into, and take Counſels Opinions upon Titles of Eſtates bought and ſold by Order of the Court; and they tax Coſts.

This ſeems to be their principal Concern; and yet in this they are not abſolute Judges, they determine nothing finally; for when they have made ſuch Enquiry as the Court directs them, they only certify their Opinions of the ſeveral Matters referred to them by way of Report, which Report is not concluſive to the Parties; for either of the Parties that thinks himſelf aggrieved by ſuch Report, may take Exception to it; and the Court, on hearing ſuch Exception, will controul the Maſter's Report, and determine as they think Juſt. And in caſe the Parties themſelves do not controvert the Matter reported, but totally acquieſce and ſubmit to it, yet is not the Maſter's Report a final Judgment, nor will bind the Parties thereto, till it be afterwards confirmed by the Order of the Court: It receives its Authority and Sanction from the Order of the Court, and has none without it.

But it was certainly very rightly judged by the learned Managers, and they have thought it very material for them, to advance the Reputation of theſe Offices, in order to make it more penal to have any Preſent or Compliment made to the Great Seal, upon the Admiſſion or Reſignation of the Maſters.

Another Obſervation was made by one of the learned Gentlemen of the Houſe of Commons, in relation to their general Charge, which is this; They charge, that the Earl, in or about *May*, One thouſand ſeven hundred and eighteen, by the great Grace and Favour of his Majeſty, was conſtituted Lord Chancellor, and did thereupon take the uſual Oath for the due Execution of that Office, and ſuch other Oaths as have been accuſtomed; in order, as I conceive, to inſinuate, that he had acted contrary to, or in Violation of ſome particular Oath, which had been adminiſter'd to him.

The Earl in his Anſwer admits, That on the fourteenth of *May*, One thouſand ſeven hundred and eighteen, he took the Oath of Office as Chancellor, which is ſet forth in his Anſwer; that at the ſame Time he took the Oaths of Supremacy and Allegiance, but no Oath of Office, except that above ſet forth.

To this Part of the ſaid Earl's Anſwer, the learned Managers are pleaſed to object, That the Oath preſcribed by the Statute of *Richard* the Second, had been frequently adminiſter'd to the Noble Earl, but that he had forgotten that Oath in his Anſwer, as well as in his Conduct and Practice.

And to prove this Fact, Mr. *Eyre* (one of the Officers of the Exchequer) was produced, on whoſe Evidence it did appear (as we apprehend the Fact truly is) that when the Honourable Privy Council are annually aſſembled in the Court of *Exchequer*, to prepare a Liſt of Names of proper Perſons to be preſented to his Majeſty, for his Choice of Sheriffs for the Year enſuing, and the Judges then alſo attending, one of the Officers of the Court reads over the very Words of the Statute of *Richard* the Second in *French*, and then the Bible is preſented to the Noble Lords, and others of the Privy Council, and alſo to the Judges preſent, which they kiſs, and then proceed to the Nomination of the Sheriffs for the ſeveral Counties in *England*.

My Lords, I muſt obſerve that upon this Occaſion no formal Oath is adminiſter'd, in purſuance of this Act of Parliament; nor any Entry or Record made of any Oath taken by all or any of the Perſons preſent.

The Words of the Act of Parliament are, That the Chancellor, Treaſurer, and other great Officers therein named, the Juſtices of the one Bench, and of the other, the Barons of the Exchequer, and others, who ſhall be called to ordain or make Juſtices of Peace, Sheriffs, or other Officers therein named, or any other Officers or Miniſters of the King, ſhall be firmly ſworn that they ſhall not ordain, name, or make ſuch Officers for an Gift or Brokage.

This Act of Parliament doth direct an Oath to be adminiſter'd, tho' the preciſe Form of the Oath is not preſcribed.

But the Act of Parliament it ſelf can't be called that Oath which it ſelf directs; nor the reading or hearing that Act of Parliament read, be called the adminiſtring or taking that Oath: The Oath muſt be ſomething diſtinct from the Act of Parliament which directs it.

Therefore, my Lords, I humbly ſubmit it to your Lordſhips, that the reading of this Act of Parliament, upon this particular Occaſion, is rather uſed as a particular Exhortation or Admonition to that Auguſt Aſſembly, how they ought to demean themſelves in that ſingle Inſtance of their Duty (the Choice of Sheriffs) than to have an univerſal Obligation in reſpect to the Nomination of all other Officers in general.

If this was intended to be adminiſter'd as an Oath of Office, then being once taken by any Perſon in Office, it need not be taken again, during the ſame Perſon's Continuance in the ſame Office; but this Act of Parliament is annually read over upon the Return of every Election of Sheriffs, and ſeems to be particularly applicable to that Duty.

Sheriffs are indeed very great Officers, have whole Counties under their Influence and Juriſdiction; and therefore very ſingular Care ought to be taken in their Nomination.

The Chief Juſtices and Judges preſent upon that Occaſion, uſe the ſame Ceremony of *Kiſſing the Book*; and if this ſhould be interpreted an Oath, it would be of great Extent, and the Conſequence of that muſt be, that the beſt Offices ſhould have no Candidates for them; for the latter Part of the Oath, directed by this Act, is, That none, who purſueth by him, or by other, privily or openly, to be in any manner of Office, ſhall be put in the ſame Office, or any other.

So, if this be conſider'd as an Oath, every one of the great Perſons that have taken it, muſt be indiſpenſedly obliged not to give any Office to any Perſon that hath even ask'd, or made Application by himſelf, or any one in his Behalf, for that or any other Office whatſoever.

If this Conſtruction, which is now contended for, was admitted, a great many Perſons might be thought guilty of Perjury, who themſelves never apprehended it; and how far the Guilt of this Perjury may be extended, is not eaſy to determine.

But, my Lords, it is not the Noble Earl's Intention to incur the Cenſure of quibbling himſelf out of the Obligation of an Oath, or the Letter of an Act of Parliament; we beg leave to inſiſt, that in whatever Light this Tranſaction is taken, it can't be conſtru'd to be the taking an Oath within the Intention of the Charge contain'd in the preſent Articles, which is, That he took the Oath of Office, and ſuch other Oaths as have been of Right accuſtom'd.

This Charge, my Lords, muſt be confined to ſome reaſonable Time, wherein theſe other Oaths charged muſt be ſuppoſed to be taken: I apprehend it can relate to ſuch Oaths only, as the Noble Earl took at the ſame Time, when the general Oath of Office was adminiſter'd to him.

And the Earl, by his Anſwer, certainly underſtood it in this Senſe; otherwiſe, to make a compleat Anſwer to ſo general a Charge, he muſt have been under a Neceſſity, to have ſet forth all the Oaths which he hath taken in his whole Life-time, at leaſt, ſince his firſt Oath as Chancellor.

He took the Oath of Office as Chancellor the fourteenth of *May*, One thouſand ſeven hundred and eighteen; this Proceeding in the *Exchequer* is proved to be in *November* following: Who would underſtand that this Charge intended to couple two Tranſactions together, that in themſelves were ſo diſtinct and remote!

Having thus endeavour'd to remove theſe Objections, which ſeem to be no Part of the Charge, but only uſed as introductory to it, I ſhall now proceed to the Charge itſelf.

The firſt and general Charge is, That the ſaid Earl, not regarding the Obligation of his Oath, or the Duty of his Office, but entertaining wicked and corrupt Deſigns and Views to procure himſelf exorbitant Profit, by divers unjuſt and oppreſſive Practices, whilſt he continued in the Office of Chancellor, did illegally, corruptly, and extorſively, take and receive to his own private Uſe great Sums of Money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

This is inſiſted on by the Gentleman, who firſt ſpoke, as an Offence of the deepeſt Dye, which ſtrikes at the very Root and Foundation of all Civil Government; and to render it more odious, it is introduced as an Act of the higheſt Ingratitude to his Majeſty, as well as injurious and oppreſſive to his Subjects. To demonſtrate this, it is repreſented, that upon the ſaid Earl's being appointed Lord Chancellor, in *May*, One thouſand ſeven hundred and eighteen, his Majeſty was pleaſed, of his Grace and Bounty, to beſtow upon him the Sum of fourteen thouſand Pounds in Money, and to grant him ſeveral other yearly Penſions and Payments, which another Gentleman (in obſerving the Evidence given on this Head) was pleaſed to ſay, did, together with the uſual Salary, Fees, and Profits, belonging to the Office, amount unto near ten thouſand Pounds *per Annum*; and this was ſtrongly urged as enough to ſatiate the Appetite of the moſt Avaricious, and prevent any illegal and corrupt Extortions of other Sums from his Majeſty's Subjects.

To this, my Lords, we hope your Lordſhips will think the Noble Earl has put in a very plain and ſatisfactory Anſwer.

That he had for ſeveral Years before his Advancement to the Great Seal the Honour of ſerving his Majeſty in the Office of Chief Juſtice of the Court of *King's-Bench*; and as a Reward for his good and faithful Services in that high Office, his Majeſty, out of his Royal Grace and Favour, upon the tenth of *March*, One thouſand ſeven hundred and fifteen, was pleaſed to advance him to the Dignity of a Peer of this Realm; and for the better Support of that Honour, to grant him a Penſion of twelve hundred Pounds *per Annum*, and to declare his Royal Intentions of giving the ſaid Earl's eldeſt Son an Office of conſiderable Profit, when Opportunity ſhould offer.

That in *May*, One thouſand ſeven hundred and eighteen, his Majeſty was pleaſed to appoint him Lord Chancellor; on the fourteenth of the ſaid Month

of

of *May*, he took the uſual Oath of Office, and at the ſame Time the Oath of Supremacy and Allegiance, and no other Oath of Office.

That during the Time he continued in the Office as Lord Chancellor, he enjoy'd the uſual Salary, Fees, and Perquiſites, which Mr. *Pincent* (who was called as a Witneſs to this Particular) proved to be about eleven or twelve hundred Pounds *per Annum*.

That his Majeſty alſo granted to him the Salary of four thouſand Pounds *per Annum*, during his Continuance in that Office; which was not particular in his Caſe, but conſtantly granted to, and enjoyed by all his Predeceſſors.

That to this, his Majeſty was further pleaſed to ſign a Warrant to him for fourteen thouſand Pounds, as mention'd in the Articles; whereof two thouſand Pounds was the uſual Allowance to other Lord Chancellors, or Keepers, towards the Expences in entring upon the Office; and the reſt was his Majeſty's Royal Munificence, and received as ſuch.

The Noble Earl likewiſe admits, that his Majeſty was alſo pleaſed to grant his only Son, then going to travel, an yearly Penſion of twelve hundred Pounds, determinable upon his Majeſty's granting him one of the Offices of Teller of the *Exchequer* for Life; which was accordingly granted, and he came into the Poſſeſſion of it, in One thouſand ſeven hundred and nineteen, whereby that Penſion determined; ſo that the yearly Payments to his Lordſhip were but ſix thouſand four hundred Pounds *per Annum*, beſides the Penſion of twelve hundred Pounds to his Son, which ſoon after determined, upon his coming into Poſſeſſion of his preſent Office.

This is all the Revenue which the Noble Earl received during his Continuance in this great Office: And, I humbly preſume, this can't be thought exceſſive, conſidering the great Fatigues, Difficulties, and Expences, that neceſſarily attend the Execution of this high Office: Perhaps other Offices might be found, that are leſs difficult in the Execution, and yet ſuperior in Profit.

But, my Lords, the Objection does not ſeem to turn that Way; but rather, that this Noble Lord, not contented with theſe ſeveral Inſtances of Royal Grace and Bounty, illegally, corruptly, and extorſively took and received other great Sums from other Perſons to his own Uſe.

This the Noble Earl expreſly denies, and ſays, That during his Continuance in the Office of Chancellor, or at any other Time, he never once had a Deſign or View, or even a Wiſh, to raiſe to himſelf any exorbitant Gain or Profit, much leſs to extort Money by any unjuſt or oppreſſive Methods whatſoever.

And indeed, my Lords, this is a Charge that gives the Noble Earl at once the greateſt Trouble and Surprize; he never ſuſpected a Crime of this Sort, ſo contrary to his Nature, and the whole Tenor of his Life, could ever be objected to him: And to ſhew, that this is without any Foundation of Truth, the preſent Circumſtances of his Family and Fortune (when laid before your Lordſhips) will abundantly demonſtrate and convince Mankind, that he is not that rich, that avaricious, and corrupt Man, as he is repreſented.

As he has received large Bounties from his Majeſty, he has been abundantly liberal to Perſons that were proper Objects of Charity; and his Purſe has been always open to ſuccour and relieve the Diſtreſſed.

This, my Lords, brings me on to the material and principal Part of the Charge, which is, That he did illegally, corruptly, and extorſively take and receive to his own private Uſe great Sums of Money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

The Inſtances given of this corrupt taking of Money refer to the ſeveral Sums mentioned in the five Articles, which the Gentlemen of the Houſe of Commons were pleaſed firſt to enter upon, and which relate to the ſeveral Sums of Money received from the four Maſters in Chancery, mentioned in the fifth, ſixth, ſeventh, and eighth Articles, and the Clerk of the Cuſtodies mentioned in the ninth.

If the Charge contained in theſe ſeveral Articles be a Crime, it muſt appear to be ſo in its own Nature, to be an Offence at Common Law, or made ſuch by ſome Act of Parliament. I ſubmit it to your Lordſhips, that taking a Preſent, or taking Money from Perſons upon their Recommendations or Nominations into Offices, though they do concern the Adminiſtration or Execution of Juſtice, is not a Crime in its own Nature; it is no Act of Immorality; it is no Act of Injuſtice to any Man; for no Perſon has any particular Right to theſe Offices, but his Advancement muſt be owing to the Favour or Friendſhip of him, who has the Right and Power of Nomination: And if the Office it ſelf be valuable, ſo is the Right of Nomination to it, and may be eſteemed as Part of the Eſtate of that Perſon to whom it belongs: And if we conſider it in this Light, I think it can't be denied but that every Man has a natural Right to diſpoſe of his own Eſtate or Intereſt, his own Friendſhip or Favour, upon what Conſideration he pleaſes: It is his own, and therefore he has a Right to make any juſt and legal Advantage of it.

From hence, my Lords, I would beg leave to infer, that the taking a Gratuity or Sum of Money from any Perſon, upon his Nomination to one of theſe Offices, is not criminal in it ſelf, if ſimply conſidered, and diſtinct from the Good or Evil Conſequences that poſſibly may attend it.

And, in the next Place, I humbly ſubmit it to your Lordſhips, that it is not a neceſſary Conſequence, that every one that buys an Office, muſt and will behave himſelf either unfaithfully or corruptly in it. Inſtances may be given, and thoſe very antient ones, of Offices of Juſtice, Offices of the higheſt Character in the Adminiſtration of Juſtice, that have been purchaſed, and purchaſed from the Crown.

In Mr. *Madox's* Hiſtory of the Exchequer, *Page* 43. we find that *Richard Fitz-Allured*, in the Time of King *Stephen*, fined fifteen Marks of Silver, that he might ſit with *Ralph Baſſett* to hold the King's Pleas; and in Page 743. of this Book it appears, that *Ralph Baſſett* was the King's Juſticier. Here we ſee one of the Juſtices of the *King's Bench* purchaſing his Office for fifteen Marks in Silver.

And

And in the ſame Page of the ſaid Book it appears, that in the ſeventh Year of King *John*, *Walter de Grey* gave the King five thouſand Marks *pro habenda Cancellaria Domini Regis tota vita ſua, & pro habenda inde Charta Domini Regis.*

Theſe, my Lords, are great Inſtances what the antient Uſage was, in purchaſing even the higheſt Offices of Juſtice.

Inferior Offices were doubtleſs diſpoſed of in the ſame manner; and if this had been thought Criminal, we ſhould have had ſome Inſtances in our Law Books, wherein they would have appeared to have been adjudged ſo.

I beg your Lordſhips leave to conſider in the next Place, and that very briefly, whether this can be taken to be criminal within the Words of the Statute of *Edward* VI. which has been taken Notice of by ſome of the learned Managers.

By the 5th and 6th of *Edw.* VI. *c.* 16. it is Enacted, *That if any Perſon or Perſons ſhall at any Time thereafter bargain and ſell any Office or Offices, or take any Money, Fee, or Reward, or any other Profit, directly or indirectly, for any Office or Offices, which ſhall in any wiſe touch or concern the Adminiſtration of Publick Juſtice; All and every ſuch Perſon and Perſons that ſhall ſo bargain and ſell, or take any Money, Fee, or Reward, for ſuch Office or Offices, ſhall not only loſe his Right, Intereſt and Eſtate in ſuch Office or Offices, but alſo every Perſon and Perſons that ſhall give or pay any Sum of Money, Reward, or Fee, ſhall be adjudged a diſabled Perſon in the Law, to have, occupy, and enjoy the ſaid Office or Offices.*

This is the Purport of this Act of Parliament, ſo far as it relates to the Offence charged in theſe Articles; and I apprehend it cannot be extended to the preſent Caſe.

Here are no prohibitory Words, that Perſons ſhall not bargain and ſell Offices, nor any Words declaratory that they could not do ſo before by Common Law.

And all Penal Laws are to be conſtrued favourably for the Benefit of the Subject, and not extended beyond the Letter.

But on the contrary, by the many Proviſoes after contained in this Act of Parliament, it is plain that all Offices, before the making of this Act, might be bought and ſold without Offence; and many Offices are authorized and intended by the expreſs Proviſoes of this Act, to continue to be bought and ſold for the future.

For by the firſt Proviſo in this Act, it is declared not to extend to any Office of Inheritance, which is an expreſs Declaration that Offices of Inheritance were to be bought and ſold even after the Act ſhould take place.

The ſecond Proviſo I apprehend is ſtronger to our Purpoſe; for by that it is declared, That this Act ſhall not extend to any Contract made or agreed before the firſt of *March* then next, but all ſuch Bargains and Contracts to be good, as if the Act had never been made.

And, my Lords, there is yet a further Proviſo, That this Act, or any Thing therein contained, ſhall not extend, or be prejudicial, or hurtful to any of the Chief Juſtices of the King's Courts, commonly called the King's Bench and Common Pleas, or to any of the Juſtices of Aſſize, as now be, or hereafter ſhall be, but that they and every of them may do in every behalf, touching and concerning any Office or Offices to be given or granted by them, as they, or any of them, might have done before the making of this Act, any Thing therein contained to the contrary thereof notwithſtanding.

What is that which theſe great Officers of Juſtice might have done before the making this Act? They might have given, granted, bargained, or ſold, the reſpective Offices under them, in ſuch manner as they thought fit; and by this Proviſo they may continue to do ſo ſtill.

What Alteration then is made in the Law by this Act of Parliament? Here is no new Offence created, but a particular Penalty given, to be inflicted on all that ſhall buy or ſell Offices, not contained in any of the ſubſequent Proviſoes; that is, the Contract made between the Buyer and Seller is declared void: The Party ſelling loſes his Eſtate and Intereſt in the Office; and the Party buying is render'd incapable to hold and enjoy it.

In *Caſtle's* Caſe, *Cro. Jac.* 644. it was adjudged, That when a Statute appoints a Penalty for the doing a Thing, which was no Offence before, and appoints how it ſhall be recovered, it ſhall be puniſhed by that means, and no other.

Therefore, my Lords, in the preſent Caſe, ſuppoſing that the Preſents proved to be ſometimes made to the impeached Earl, upon the Nomination of Maſters in Chancery, can be interpreted a ſelling of an Office, or taking Money for an Office, within the Intention of this Act of Parliament, it can be liable to no other Puniſhment than what the Act it ſelf directs; and this the Noble Earl has already ſuffered by his Loſs of the Great Seal. The Statute inflicts a Penalty upon the Seller of an Office, only of forfeiting the Nomination to the Office for the future; and no other Penalty or Puniſhment ought to be inflicted by virtue of this Act of Parliament; and conſequently the Offence as now charged againſt the Noble Earl, and the Facts as proved before your Lordſhips, cannot ſubject him to any Puniſhment or Judgment, that can be prayed in this Proſecution, upon the preſent Articles of Impeachment.

But, my Lords, there is another Anſwer, which the Noble Earl has been pleaſed to make to this Part of the Charge againſt him, and which I hope your Lordſhips will have great regard to.

It is the Example of the many great and learned Perſons, who have executed this high Office before him.

The Precedent is too antient, for us to diſcover when it was firſt made; and I humbly ſubmit it to your Lordſhips, that the immemorial conſtant Uſage and Practice of it in all Ages ſince, will ſufficiently eſtabliſh the Reaſonableneſs and Juſtice of the Precedent.

The ſame Objection, which is now made againſt the Noble Earl impeached, in this particular Inſtance, might undoubtedly have been inſiſted upon againſt every one of his Predeceſſors.

And I doubt not but we ſhall be able to prove, that theſe Officers have made Preſents to the Great Seal, as frequently and conſtantly as the ſeveral Vacancies have been ſupplied.

This Noble Lord has only followed the Example of his Predeceſſors; he has trodden in their Steps: And I muſt beg Leave to ſay, There muſt be ſomething peculiar in his Caſe, if the ſame Paths, which lead them to Honour and Immortality, ſhall betray him to Infamy and Diſgrace.

This Objection, my Lords, ſome of the Learned Managers of the Houſe of Commons were well aware of; and therefore they have endeavour'd to diſtinguiſh the preſent from the preceding Caſes.

They admit it to be true, that ſmall Sums have been formerly given to, and accepted by former Chancellors, upon Admiſſions into theſe Offices, by way of Compliment or Preſent, and this without a Crime: But then they urge, that the Sums now complain'd of are exorbitant; they are bargained, haggled for, and given unwillingly by the Purchaſer; and that there is a great difference between a Preſent given, and a Price bargained for and paid.

My Lords, I can't deny but that this Diſtinction is juſt: A Preſent implies a voluntary Gift of ſomething leſs than the Value of the Thing given, or promiſed, for which that Preſent is to be made; a Price, the full Value of the Thing contracted for.

And I think the preſent Earl's Caſe is exactly within this Diſtinction, and juſtifies the Earl's Anſwer in this reſpect.

The Preſent which Mr. *Kinaſton* made to the Earl, upon his Admiſſion, was One thouſand five hundred and ſeventy five Pounds. The Price he paid Mr. *Rogers* for the Purchaſe of his Office, was no leſs than Six thouſand Pounds.

The Preſent which Mr. *Thomas Bennet* made to the ſaid Earl, upon his Admiſſion, was One thouſand five hundred and ſeventy five Pounds. The Price he paid Mr. *Hiccocks* for the Purchaſe of his Office, was Seven thouſand five hundred Pounds.

Mr. *Elde*, upon his Admiſſion into the Office, upon the Death of Mr. *Fellowes* (the former Maſter) made a Preſent to the late Chancellor, of Five thouſand two hundred Pounds. But when his Lordſhip conſider'd the Greatneſs of the Sum, he returned him all but Eighteen hundred Pounds: When at the ſame time Mr. *Lucas* offered Six thouſand Pounds for the ſame Office.

Mr. *Thurſton* has alſo proved, that he left Bank-Notes to the amount of Five thouſand two hundred and fifty Pounds, ſealed up in a Letter at the Earl's Houſe, before his Admiſſion, upon Mr. *Borret*'s Death. But when the Lady, to whom the Letter was directed, diſcovered how great the Sum was, ſhe, without any Application made to her for that Purpoſe, return'd all but Two thouſand Pounds.

And this, my Lords, was done before the Seal before *Michaelmas*-Term laſt, before the Maſters were ordered by the Privy-Council to give in their Accounts; and when the preſent Proſecution was not in any ſort apprehended: And it is likewiſe proved, That Mr. *Lucas*, upon this Occaſion, renewed his Offer of Six thouſand Pounds for the Office; and Mr. *Thurſton* was admitted for a leſs Sum of Money.

Theſe, my Lords, we humbly hope and inſiſt are not Inſtances of a corrupt Mind, an avaricious, rapacious Temper, ſuch as ſome of the Gentlemen Managers have been pleas'd to repreſent them. On the contrary, we humbly hope, that upon the Evidence already given, it plainly appears, that theſe Payments were not Sums of Money extorted and unwillingly paid by the Gentlemen, who were admitted into the ſeveral Offices that have been mentioned, but Preſents voluntarily made, and preſs'd upon the Earl Impeached, with ſuch Application and Earneſtneſs that ſhews, that at the time they were offered, the Perſons offering, thought they were not equal to the Value of the Favour they expected. And their Importunity was ſo great, that Mr. *Thomas Bennet* one of the preſent Maſters, that has been ſo often Examined, would endure no Delay, but impatiently preſs'd to be Sworn into his Office, at a time when the late Chancellor was ſick, and by his Phyſician thought to be dying. This may rather be ſaid to be extorting a Favour from the Impeached Earl, than Money from Mr. *Bennet*, ev'n upon his own Evidence.

My Lords, We do humbly inſiſt, That as the Noble Earl within your Bar was not conſcious of any Crime in accepting theſe Preſents, ſo he is juſtified in ſo doing, by the Example of many ſucceſſions of great and learned Men, who have done the ſame in the like Caſe. And ſhould this now be adjudged Criminal, what Numbers of very good and juſt Men muſt be involved in the Imputation of this Guilt? It muſt neceſſarily ſpread an univerſal Cloud of Infamy and Reproach over the Aſhes of many juſt and upright Sages of the Law, whoſe Memories have hitherto been preſerved as venerable and ſacred; Men who deſpiſed Riches, and abhorred the remoteſt appearance of Bribery, and never were, nor were ſuſpected to be Corrupt: yet theſe Men thought it a juſt Duty, owing to themſelves and Succeſſors, to adhere to the known and juſt Rights, the ancient eſtabliſhed Fees and Perquiſites of their Offices; and believ'd it as juſtly due to them, as the Salaries which were annexed to their ſaid Offices.

My Lords, We ſhall beg Leave to ſhew that this has been the ancient Uſage and conſtant Practice of all Ages; and that the ſeveral Great Perſons, who ſucceſſively have preſided in the greateſt Courts of Law and Equity, from the earlieſt Times to the preſent, have diſpoſed of the ſeveral Offices in their Gift, as they became vacant, for Money.

Frequent Inſtances of this kind will be produced before your Lordſhips, in our Evidence.

My Lords, I would not be underſtood to mention this, ſo as to inſiſt that the Actions or Examples of the greateſt Perſons will alter the Nature of Good and Evil, or give a Sanction to any Action that in it ſelf is really Criminal; but only as an Argument (and I apprehend it a very ſtrong one) to prove, that it was the concurrent Opinion of all thoſe Great Perſons that have taken Preſents, upon their Diſpoſition of Offices, that it was not Criminal to do ſo.

The Opinion and Judgment of ſo many Learned Perſons muſt have very great Weight in a Caſe of this Nature: And if in ſtrictneſs it can't be ſaid to Juſtify the Action, it will certainly very much Extenuate the Guilt.

In the next place, the Gentlemen are pleaſed to proceed to ſhew, That Maſters in Chancery, being, as before repreſented, very great Officers in that Court; the Noble Earl within the Bar, for his own corrupt Gain, has admitted Perſons into that Office, that were not duly qualified for it, and forced them to give great Prices, and bartered and haggled for ſuch Prices.

This, my Lords, is urged as the greateſt Inconvenience, That Men who have no Subſtance of their own, ſhould be truſted with ſuch large Sums of other Perſons Money.

It is inſiſted, That Honeſty, Probity, and good Subſtance, are abſolutely neceſſary for the Suitors Security; yet Inferior Perſons have been put in by his Lordſhip, who had little or no Subſtance of their own: That they paid great Sums for their Places, yet paid it out of the Suitors Money; and that this was known, connived at, and encouraged by the Noble Lord that then preſided in the Court of Chancery. This therefore could only be with a view to enhance the Price of thoſe Places: For what would not People hazard, who had Nothing of their own to loſe? If any Profit could be made, it was their own; if any Loſs, the Suitors; for no Security was given to anſwer the Effects in their Hands.

My Lords, It muſt be confeſs'd, that this way of Arguing has a very popular Appearance, and finds an eaſy Acceſs to every Ear.

The Court of *Chancery* muſt be admitted to be the greateſt Court of Juſtice in the Kingdom: And it muſt be alſo admitted, That the Buſineſs of that Court has of late Years increaſed, in Proportion, more than any other Court; and conſequently, much greater Sums of Money are now depoſited in the Hands of the Maſters of that Court, than formerly.

This may poſſibly make it to be wiſhed, that ſome better Method might be found out for the Suitors Security, than has been formerly uſed.

But in what Manner this Reformation is to be made, is beyond the Power, or at leaſt the Prudence of any one Judge or Chancellor to determine; the ancient Practice of every Court is the Law of that Court; and it would be a dangerous Experiment for any one preſiding Judge to vary it: If any ill Conſequence to the Suitors attended ſuch an Alteration, he that made the Alteration would certainly be anſwerable for the Conſequences of it; for every Suitor will then ſay, Why was the ancient Practice vary'd? he that made the Alteration, ſurely did it for his own Advantage; and then every Argument that in the preſent Caſe is only colourably made uſe of, in that would be obvious and natural, and be apply'd with double Force.

He that acts without a Precedent, acts upon the Peril of his own Judgment: But he that acts againſt Precedents, againſt ancient, concurrent, uniform Precedents and Practices, is without Excuſe, and juſtly to be ſuſpected of ſome particular View, in the Language of the preſent *Articles*.

The Earl of *Macclesfield*, when he was firſt intruſted with the Great-Seal, found the Suitors Money in the Cuſtody and Care of the Perſons who were then Maſters of the Court, and without any Security given or demanded for it.

He conſider'd, that his Predeceſſors were a Succeſſion of Great and Honourable Perſons, of equal if not greater Sagacity and Learning, Probity and Experience, than any that ever had ſate in any Court; they found the Maſters in Poſſeſſion of the Suitors Money upon the ſame Eſtabliſhment, and they left them ſo.

Was it proper or prudent for him to oppoſe his ſingle Opinion to the united Judgment of ſo many wiſe and great Men that had gone before him? Surely, no. Inconveniencies had been ſeen before, and Deficiencies had happened, and thoſe Deficiencies had been ſupply'd by a voluntary Contribution of the other Maſters then in Being. Why was not Security then demanded? and why not all the other Maſters then called upon to bring in their Accounts, to prevent the like Deficiency for the future? If that Method had been thought either prudent or practicable, no doubt it would have been then taken: And this being then not done, or ever before or after attempted to be done, is a good Argument, that it was not expedient, or, it may be, poſſible to be done, at leaſt upon the ſingle Authority of one Lord Chancellor. And that therefore is a good Excuſe for the Omiſſion or Neglect in that Particular, in the preſent Caſe.

But, my Lords, It is now objected, That as the Sums of Money in the Maſters Hands are greater than ever, and it may not be proper to alter the ancient Method of the Maſters receiving and keeping it for the Suitors Benefit; yet greater Care ought to be taken of the Perſons to be admitted Maſters, upon Vacancies and Reſignations. And therefore another part of the Charge againſt the Honourable Earl Impeached, is, That he appointed Perſons to be Maſters of the Court, that were not proper or ſufficient either in Subſtance, Knowledge, or Probity.

Theſe are ſaid to be all eſſential Requiſites in the Character of every good Maſter; but groſsly neglected in the preſent Caſe: And a Reaſon is given, or (if I may preſume to ſay it) rather invented, in the preſent Caſe, that it was the Advantage of the Earl Impeached, to put in ſuch Unqualified Perſons; becauſe ſuch Perſons would be drawn in, to give larger Prices for their Places, and conſequently it redounded to the Earl's Advantage.

My Lords, I muſt beg Leave to obſerve, that in the Evidence that has been given, there has not been any one Inſtance proved (or at leaſt, that I can recollect) that any of theſe Maſters were really Inſufficient in any of the Particulars objected to, at the time of their reſpective Admiſſions into their ſeveral Offices; or at leaſt that the Noble Earl Impeached, then knew that they were Inſufficient, or had any reaſon to ſuſpect it: They were all Gentlemen of good Families, well Educated; each of them a Barriſter at Law (which, I ſubmit to your Lordſhips, is not the leaſt expenſive Education) and had all viſible Fortunes, and appeared as Perſons in very plentiful Circumſtances.

Ev'n Mr. *Conway* and Mr. *Thomas Bennet* (who are the Perſons intimated to be the leaſt qualified in Point of Fortune and Subſtance) had at that time very good Eſtates in their Poſſeſſions; Mr. *Bennet* had then alſo a very valuable Office, Clerk of the Cuſtodies; had married a Lady of conſiderable Fortune, kept a Coach and decent Equipage in Town; was the Son of Sir *John Bennet*, tho' a younger Son; and the whole Family then ſeemed to be in a very proſperous Condition. Mr. *Thomas Bennet* has proved to your Lordſhips, that he was worth Twenty thouſand Pounds, in the Year 1720. And it does not appear, that the late Lord Chancellor was ever inform'd of any Incumbrances upon his Eſtate (tho' now, he ſays, there are great ones) or that his Circumſtances were leſs at the time of his Admiſſion, than in the Year 1720. Surely then the late Lord Chancellor had at that time no reaſon to ſuſpect his being unqualified in Point of Subſtance.

Mr. *Conway*

Mr. *Conway* had alſo then a very good viſible Eſtate in Land, an Eſtate of Four or Five hundred Pounds a Year; had been Receiver-General of ſeveral Counties in *Wales*, had diſcharged his Office punctually, and produc'd his *Quietus* to the Lord Chancellor, before Admiſſion.

Mr. *Kinaſton* had, at the time of his Admiſſion, an Eſtate of Four hundred Pounds a Year in Land, Timber of very conſiderable Value, and a Perſonal Eſtate of Two or Three thouſand Pounds; and moreover, was a Gentleman of a very good Family and unblemiſhed in his Character.

Mr. *Thurſton*, I think, the Gentlemen of the Houſe of Commons don't object to in any reſpect. None of their Reputations, in reſpect of their Probity, have been called in queſtion, 'till their late Misfortunes: And as to their other Perſonal Endowments, their good Senſe and Judgment, I need only refer to your Lordſhips own Obſervations, upon their ſeveral Examinations in the preſent Tryal.

But, my Lords, great Streſs ſeems to be laid, upon the Maſters paying for their Offices, out of the Suitors Money; or replacing the Money ſo paid, out of the Suitors Money.

Suppoſe that was the Practice amongſt the Maſters; does it appear to your Lordſhips, that the Impeached Earl had any Notice, or the leaſt Information given him of this Practice? Or if he had known it, how could he poſſibly have prevented it? Certainly, no other way, than by ordering all the Money immediately out of their Hands. And then another Difficulty would have occurred, how that Money ſhould have been diſpoſed of. Publick Societies would not ſubmit to be under the immediate Direction of the Court of Chancery; and no private Perſon could be truſted with ſo great a Sum, or give Security for it.

The Maſters of the Court are in nature of Caſhiers; they ſubſiſt upon Truſt and Credit; and no Security can be expected to anſwer the Quantity of Caſh in their Hands, more than in the Caſe of a common Banker. People will truſt Men in Credit with the Cuſtody of a Thouſand Pounds; when if they propoſed to borrow an Hundred Pounds on Security, would ſcruple to let them have it. But the Objection is carry'd yet farther: It is ſaid, If Security could not be expected, why were not their Books inſpected, upon one's transferring to another, and Schedules taken of their Effects?

To this it muſt be anſwered, That the Lord Chancellor has not Leiſure to attend this Duty Perſonally. And what other Perſon can be appointed more fit to be truſted (as an Inſpector of the going-out Maſters Accounts) than his Succeſſor, who is to ſtand charged with all the Money and Securities, and the whole Effects transferred?

Can any Obligation incline a Man more ſtrongly to Care and Exactneſs in Buſineſs, than private Intereſt? And his own private Intereſt will oblige him not to make himſelf accountable for more than he actually receives, and has transferred to him. And when the ſucceeding Maſter has examined the Effects of his Predeceſſor, by proper Schedules approved of by himſelf, they are then transferred to him by a General Order of the Court, and he becomes accountable for what is ſo transferred.

This, my Lords, we humbly ſubmit, has been the ancient Uſage and Practice of the Court in theſe Caſes; and that the ſame Method was uſed by the preſent Earl Impeached, the ſame Care taken, as had been formerly in the like Caſes by any of his Predeceſſors.

But, my Lords, I would beg Leave to ſubmit it, That ſuppoſing it to be poſſible that greater Care might have been taken by the late Lord Chancellor, in inſpecting the Schedules and Transfer of the Effects of Maſters to their Succeſſors; Does it appear that the Suitors of the Court have been any way injured or prejudiced by that pretended Neglect? Or would the greateſt Care, the greateſt Exactneſs in this Particular, have given the Suitors any greater Advantage or Security? Certainly, not at all: For let the Effects of the preceding Maſter be never ſo carefully and juſtly Examined and Scheduled, and and after that transferred, and actually delivered to the ſucceeding Maſter; has not the new Maſter, to whom theſe Effects are thus carefully and juſtly delivered, the ſame Power over them, to manage and diſpoſe at his Pleaſure, as he would have had, in caſe ſuch Transfers had been made with leſs Caution and Exactneſs, as in the preſent Caſe?

If any corrupt Agreement had been made by any new Maſter, upon coming into his Office, and previous to this Transfer, to have repaid or replaced any Sum of Money, before borrowed by him, either for the Purchaſe of his Office, or any other Occaſion; Could not he have complied with this, and paid it out of the Suitors Money or Effects, the very next Moment after they were transferred to him? And would the previous Care and Caution in any degree obſtruct or prevent his ſo doing? I apprehend, not at all; for as ſoon as the Maſter is in Poſſeſſion of the whole Money and Effects, he may return any part that he pleaſes to his Predeceſſor, by virtue of any Agreement before made for that Purpoſe; which would be as much to the Prejudice of the Suitors, as if what was ſo returned to the Predeceſſor, after a Transfer made, had been retained in the firſt Inſtance by the Predeceſſor, and never actually delivered over to his Succeſſor.

Therefore, my Lords, this Security, as projected, is but Imaginary, and gives the Suitor no greater Advantage than he had before; and conſequently this ought to be no Ingredient of Complaint againſt the Impeached Earl.

But, in the next place, it is ſtrongly urged, That tho' the Noble Earl, during his High Offices, might not have Leiſure to attend little Occurrences, or regard ſmall Neglects; yet the Going-off of Mr. *Dormer* ſhould have awaken'd him; ſome Care ſhould, upon that Accident, have been taken. If what had paſſed before was only Supineneſs, this was a Wilful Neglect; and not enquiring into the State of his Affairs, and ſecuring his Perſon and Effects for the Suitors, was concurring in Defrauding the Suitors.

My Lords, This was indeed a remarkable Occurrence; The Going-off of Mr. *Dormer* was unforeſeen, and unſuſpected: His Perſon was withdrawn, and out of the Power of the Court; but all imaginable Care was taken to ſecure his Effects.

The two Senior Maſters immediately were directed to enquire into his Effects, ſecure his Chambers, and put a ſtop to all Transfers in his Office. What more poſſibly could be done in this Emergency, his Perſon being out of the Power of the Court?

A Propoſal is made on his Behalf, That if the then Chancellor would engage that his Liberty ſhould be ſecured to him, he would return, and diſcover

diſcover and aſſiſt to get in his Effects. This is thought reaſonable, and for the Suitors Benefit, and accordingly complied with; and thereupon the unhappy Man returns, and not only makes the beſt Diſcovery of his Effects, but delivers all in his Power, for the Benefit of the Suitors. Could any thing be more Advantagious to the Suitors, or contribute more to their Intereſt than this?

The Impeached Earl had indeed promiſed his Perſon ſhould not be Impriſon'd; and it would have been the higheſt breach of Faith to have departed from it. Had not that Promiſe been made, Mr. *Dormer* had not Return'd, nor any Diſcovery been made by him; but by this Means they had the Benefit of the beſt Diſcovery that could be had, and the beſt Aſſiſtance the Noble Earl could give them. He never deny'd or diſcouraged any Application that was made by or for the Intereſt of the Suitors in that reſpect, nor endeavour'd to conceal the true State of his Effects, and the Condition of his Office. And as to the Expreſſions inſiſted on to delude the Suitors, by ſaying, as has been objected, That Mr. *Dormer* was only gone to take the Air, and would ſoon return; tho' theſe Expreſſions have been much inſiſted on, in the Arguments againſt the Impeached Earl, I do not remember that they have been mentioned in the Evidence.

And, my Lords, to ſhew that the Impeached Earl did all that was in his Power to render what Aſſiſtance he could give the Suitors; when a new Maſter was to be appointed, he left the Diſpoſition of the Office to the Direction of the other Maſters: And Mr. *Edwards* gave no leſs than Five thouſand Pounds for that Office of Mr. *Dormer*'s, which was wholly apply'd towards the making up his Deficiency. By this Enquiry, *Dormer*'s Real Eſtate was ſecured to the Suitors; and it was expected by the Earl himſelf, and by Mr. *Edwards* that ſucceeded Mr. *Dormer*, that the reſt of his Deficiency, which was then uncertain, would have been ſupplied by the other Maſters, provided they could be continued in their Offices upon the old Eſtabliſhment.

It may not be improper to obſerve further in this Caſe, That Mr. *Dormer*'s Deficiency does not appear to have happen'd through any Extravagance of his own, or by his Miſapplication of the Publick Money: He employ'd Mr. *Wilſon*, then a Perſon in good Credit, as his Banker, and entruſted him with his Caſh. *Wilſon* had Dealings with *Poulter* in the fatal Year 1720. *Wilſon* was reduced, and ſtopped Payment; his Debt to Mr. *Dormer* was then Twenty four thouſand and forty ſix Pounds; this, Mr. *Dormer* aſſigns to Mr. *Edwards* his Succeſſor in the Office, it was all that Mr. *Dormer* had, all therefore that he could reſtore, and more than could be got in: For Mr. *Edwards* applying for this Money, found Mr. *Wilſon* not able to pay the whole Debt, and thereupon a Propoſal is made of a Compoſition.

The Maſters conſidering this, thought proper to Petition the Lord Chancellor, That it might be referred to the Senior Maſter, Mr. *Hiccocks*, to Examine and Report, Whether it was for the Benefit of the Perſons Entitled, that a Compoſition ſhould be accepted.

The Maſter to whom this Queſtion was referred, Reports it Reaſonable; and an Order is made, upon a ſecond Petition preferred, That the Compoſition ſhould be accepted.

This, my Lords, we apprehend, was an engaging in this Affair with all the Zeal that could be deſired on the Earl's part; no Evidence of any Deſign or Endeavour to conceal the Deficiency: All or moſt of the Maſters conſulted upon this Compoſition, and conſented to it: And as for thoſe that were not Parties to it, they are not bound by it.

But it is objected, That this Tranſaction was Private and Clandeſtine between the Maſters and the then Chancellor; not carried on in the uſual Manner, nor any Notice given to the Suitors in Reality, tho' a Pretence of uncertain Notice mentioned at the Bottom of the Order.

My Lords, we hope this cannot affect the Noble Lord within the Bar; it is the Duty of the Chancellor to pronounce Orders in Court; but it is the Care and Duty of the Solicitors or Clerks in Court to ſee them Drawn up, Entred and Regiſtred in proper Time and Form.

The Subſtance of the Order is pronounced by the Court: The Form is the Act of the Regiſter; and the Chancellor can't have Leiſure to attend the Entries of all his Officers.

Fourteen hundred Pounds was paid in upon this Compoſition; One thouſand Pounds has been brought in ſince out of *Poulter*'s Effects: So much has been ſecured at all Events by this Compoſition, and the Suitors have received the Benefit of it. Have the Gentlemen on the other Side ſhewn, that without this Compoſition any thing could have been ſecured to the Creditors in General, or that any other Creditor has obtained more advantagious Terms? It was ſaid indeed that other Creditors had received their full Demands: But I ſubmit to your Lordſhips, that no Proof has been made thereof, only an uncertain Hear-ſay of ſmall Sums lent, to give him new Credit after his firſt Abſconding. But when the Compoſition was made, a good Debt was ſubſiſting to *Wilſon* from *Poulter*, and Judgment obtained againſt him, and he committed to the *King's-Bench* Priſon in Execution. The Marſhal ſuffers him to Eſcape: Thereupon an Action is brought, and Judgment obtained againſt the Marſhal, for his Eſcape; and at length the Marſhal is run out of the Kingdom, to avoid making a proper Satisfaction.

What a Series of evil Accidents concur to increaſe this Misfortune, and prevent the juſt Deſign of the Earl to do the Suitors all the Juſtice in his Power! But to whom has he been Defective, if all prudential Steps have been taken? It is hard that he ſhould anſwer for the Conſequence, that he could not, it was not in his Power to prevent.

But, my Lords, in the 15th *Article*, it is objected to the Impeached Earl, That to carry on his unjuſt Purpoſes, in Concealing *Dormer*'s Deficiency, in *February* One thouſand ſeven hundred and twenty. he ordered the Maſters to bring in their Accounts of their Caſh, Effects, and Securities; not with a real deſign to Examine the Accounts, and Secure their Effects, but to terrify them into a Contribution; and threatned that the Caſh ſhould be taken out of their Hands, if they did not comply; by which means he got nine of the ſaid Maſters to contribute Five hundred Pounds a-piece out of the Suitors Money, and then no farther Proceedings were had upon their Accounts.

My Lords, One would have thought that theſe Proceedings, which ſo plainly tended to the Good of the Suitors, could not by any Artifice have been interpreted to their Prejudice.

In

In *February* 1720, my late Lord Chancellor (finding Mr. *Dormer*'s Deficiency like to be greater than at firſt it was apprehended) was willing to look into the State of the Accounts of the other Maſters, to guard againſt the like Misfortune; and at the ſame time propoſes to them to advance Money to help to pay Mr. *Dormer*'s Deficiency. Five hundred Pounds a-piece is raiſed by nine of them, and applied accordingly; the laſt of theſe Five hundred Pounds paid in *Auguſt* 1721. And upon the 7th of *November* 1721 a ſecond Letter is written to haſten theſe Accounts, and every Argument uſed that could be thought likely to induce them to it: But the Labour proved too difficult, and the Purſuit was forced to be given over 'till a more convenient Time and Opportunity ſhould preſent. What was done in this Inſtance alſo, I beg Leave to ſay likewiſe, was following the Example of another Great Man, in the Method he took in the Caſe of Dr. *Eddisbury*, and that has ſome Circumſtances leſs favourable than the preſent: Dr. *Eddisbury* was always in Town, or at leaſt within the Reach or Power of the Court, and yet his Perſon was not ſecured for many Years after his firſt Failure.

Upon the 29th of *January*, 7 *Annæ*, there is an Order entred in his Caſe, (the only one we can find on the File) for Dr. *Eddisbury* to deliver up his Effects to the two Senior Maſters: It recites, That Dr. *Eddisbury* had ſeveral Sums and Securities for Money in his Hands, and that ſeveral Orders had been made for Money out of his Hands; which were not complied with; and that he declared himſelf not able to pay; and that his Accounts given in were not full: It is therefore Ordered, That in four Days time after Notice, he do Account to the ſeveral Maſters, and deliver in to the ſaid Maſters what he hath in Hand, and the Report to be taken in ten Days.

My Lords, By this Order it appears that Dr. *Eddisbury* had ſeveral Orders made upon him for Money to be paid, not in Average, for ſome Time, and thoſe Orders not complied with; and that he had not given full Examination, and had Prevaricated with the Court; yet the laſt Extremity, the Committing his Perſon, and ordering Payment in an Average, was not thought of, 'till it was certainly known and he had actually confeſſed that he had not Aſſets to pay the Whole.

In the preſent Caſe, Mr. *Dormer* was Examin'd; diſcover'd his Eſtate, aſſigned the Whole in Truſt for the Suitors, but died before the Enquiry could be perfected.

In Dr. *Eddisbury*'s Caſe the other Maſters contributed at firſt to ſupply his Deficiency, as they ſince did in the Caſe of Mr. *Dormer*: And this without doubt was ſo done, in hopes that his Effects, when fully diſcovered, would in time prove ſufficient to anſwer all, or much the greateſt part of the Suitors Demands: And thus far both Caſes are parallel, and Orders made for Payments to the reſpective Suitors in general, as they applied for them. And no Average was directed in the Caſe of Dr. *Eddisbury*, 'till it appeared ev'n by his own Confeſſion, that his Aſſets were not ſufficient to make good the Suitors whole Demand: And when the *quantum* of the Deficiency was known, Payments were directed by the Court to be made in Average. So, in all probability, in due time the like Order would have been made in the preſent Caſe: But that could not poſſibly be done 'till the Value of Mr. *Dormer*'s Effects could be known and aſcertained, in order to fix the Proportion to be paid, in Average. And this, my Lords, to this time, through the many Accidents before mentioned, it has not been poſſible to effect: And therefore, the not directing Payments in an Average, can't be reaſonably objected to the preſent Impeached Lord as Criminal: His Intention throughout the Whole appears to be calculated for the alone Service and Benefit of the Suitors of the Court, without any Proſpect or Poſſibility of Advantage to himſelf. His Deſign was, to procure every Suitor full Satisfaction for his Demand: And if nothing had happen'd to interrupt ſo juſt a Deſign, 'tis poſſible that his great Zeal for the Publick Good, and his indefatigable Induſtry, might in due time have had their deſired Effect.

But greater Powers have now interpoſed, and this Difficulty being found to exceed the ſingle Authority of a Chancellor, may be thought to deſerve the greater Power, Care, and Wiſdom of the Legiſlature.

My Lords, What afterwards happened in the Caſe of Mrs. *Chitty*, is in part anſwered, in what has been obſerv'd upon the laſt *Article*; and I humbly apprehend, that a plain Narrative of that Fact, will be a ſufficient Anſwer to the Objection that has been made in this reſpect. The Earl of *Macclesfield* having no certain Account what Caſh of Mr. *Dormer*'s remain'd in his Succeſſor Mr. *Edwards*'s Hands, made Orders for Payment of Sums of Money, from time to time, as Application was made in Court; and particularly to pay Mrs. *Chitty* One thouſand Pounds, part of Eleven thouſand Pounds of her Money which had been brought into Court in Mr. *Dormer*'s time. Mrs. *Chitty* aſſigns this to Mr. *Lockman*. Mr. *Lockman* applies to Mr. *Edwards*, the preſent Maſter, for Payment, and is there diſappointed of his Money: Then he applies to the Lord Chancellor, and repreſents the preſſing Neceſſities they laboured under, That the Payment of One thouſand Pounds to him at that Juncture of Time, would be of greater Service to him than the whole Money could be at any future Day: That this Sum of Money, if immediately advanced, would make his Creditors eaſy; and without it, he muſt inevitably be thrown into a Goal.

This, my Lords, we ſhall be able to make out in Proof (tho' Mr. *Lockman*, upon his Examination, deny'd it,) and the late Chancellor, out of pure Compaſſion and Charity to this Gentleman, and believing his Circumſtances to be as he repreſented them, pays him the Money out of his own Pocket; and at the ſame time, or ſoon after, told him, that he muſt expect no more from him, but muſt wait 'till Mr. *Dormer*'s Effects could be got in, or the Money could be advanced ſome other way.

What Objection can be reaſonably made to this part of the Impeached Earl's Conduct? To deliver a Suitor in Diſtreſs; to extend a Charitable Arm to reſcue him from the very Gates of a Priſon juſt opening to receive him. If this be a Crime, and to be objected to him by the very Perſon who now enjoys his Liberty, as the Gift of this Noble Lord's generous but undeſerved Bounty; I muſt not pretend to ſay that he has many Virtues.

On the contrary, I hope it will abundantly appear to your Lordſhips, ev'n from this Inſtance, and from the whole Series of this Noble Lord's Conduct, that he firmly believ'd that all the Suitors of the Court, would, in due time, be made

eaſy, and their whole Demands be made good to them. And had the whole Body of the Maſters as chearfully concurred in this good Deſign, and contributed as generouſly to ſupport the Honour of the Court, and themſelves, 'tis more than probable that the Suitors would not long have had any juſt Occaſion of Complaining, nor your Lordſhips the Trouble of this Proſecution.

It was for this End, that the Maſters were ſo often called upon to make a reaſonable Contribution, and all Arguments made uſe of that would either perſuade or terrify them into a Compliance, in making the Suitors eaſy, 'till a proper Fund or Method could be found out to give them entire Satisfaction. Moſt of the Maſters, I think all but one, were convinced that this was a reaſonable and juſt Propoſal, and expreſs'd a Readineſs to come into it; and 'twas for this Purpoſe, that they were bid to conſider of the Conſequences of forfeiting their Offices, and of a Complaint in Parliament.

And for whoſe Benefit were theſe Arguments thus made and preſſed upon the Maſters? Who could profit by their Compliance, or ſuffer by their Refuſal? Not the Chancellor himſelf: He had no other Intereſt to ſerve, no Inclination to gratify, but a juſt Zeal for the Publick Good, and a generous Concern for the great Loſs that was like to happen to the Suitors of the Court, without his vigorous Interpoſition and Aſſiſtance.

This, my Lords, I humbly hope, appears to be the ſole and juſt Principle upon which this Noble Lord has founded all his Deſigns and Actions, to reſtore the Credit of the Court, which had been greatly injured by other Mens ill Conduct; to procure the Suitors in general the beſt Satisfaction that could be obtain'd; not partially preferring one to another, but endeavouring to do every Suitor full and equal Juſtice, in order as their Complaints were brought before him.

As to the Expreſſions proved to be made uſe of by the Impeached Earl, in the Caſe of *Harper*; ſurely they can have little weight.

Can it be imagined, that after ſo many Tranſactions had happened in the Court of *Chancery*, in relation to Mr. *Dormer*'s Misfortunes, and the great Loſſes that were like to happen to the Suitors thereby, the then Chancellor himſelf ſhould be the only Perſon that had never heard of it; and ev'n after ſuch time as he had been endeavouring to find out Means to remedy ſo great an Evil? Could any Man of leſs Sagacity than he muſt be allowed to have, conceive that he could be credited, ev'n in the Court wherein he preſided, in ſaying (as it is now repreſented) That he was a perfect Stranger to the Affair of Mr. *Dormer*; that he had heard nothing of it, but as idle News, a flying Report, that might be true or falſe? No, my Lords, that certainly could not be his Intention, in ſpeaking the Words that are ſaid to be uttered by him on this Occaſion.

But when a Purchaſer under the Decree of the Court, that had paid his Money into the Maſter, and required his Conveyances to be executed, could not procure the Parties intereſted to execute, without actual Payment of the Purchaſe-Money to them at the time of the Execution, and that Money was ſunk in Mr. *Dormer*'s Hands; this firſt brought the Deficiency of Mr. *Dormer* in Judgment before his Lordſhip; and it was the firſt time it came regularly before him in Judgment. Upon this he declared, That then it was a proper Time for him to make a ſtrict Enquiry into this Matter: He could not properly enter upon this Enquiry, upon the uncertain Reports of Perſons about the Town, or upon any private Converſation or Information that he might have received, and poſſibly might have the Expreſſion of common Talkers of News; but now that it came Judicially before him, he would throughly Examine into the whole Matter, and endeavour to apply a proper Remedy.

This, my Lords, we ſhall prove to be the Occaſion and Manner of the ſpeaking theſe Words, by Perſons that were then preſent in Court; and this happened but in *December* laſt was Twelvemonth; and accordingly it was ordered to be put under the immediate Examination of Mr. *Edwards*, who ſucceeded Mr. *Dormer* in the Office, and who muſt therefore be admitted to be the moſt proper Perſon to perfect that Enquiry, and alſo becauſe he was the moſt concerned in the Conſequences of it: But Time has been wanting to proceed as far as he intended in that neceſſary Work.

My Lords, Tho' by this time, it can't be pretended but the late Chancellor, as well as every other Perſon belonging to the Law, muſt know of Mr. *Dormer*'s Deficiency; yet I believe, that none had then diſcovered, or ev'n imagined how great it was; and that ev'n his Lordſhip, and moſt other Perſons, were perſuaded, that whatever ſhould appear to be wanting in his own Effects, would be ſupply'd by the other Maſters; or ſome other Method would be found out to prevent any real Loſs to the Suitors; and in Virtue of this Perſuaſion, Orders were made for Payment of Money to the Suitors, as they apply'd for it, without directing an Average.

This is exclaimed againſt, as contrary to all Equity; Some to have all, and others to loſe all, when they were all to be paid out of one Common Fund.

My Lords, Had it been proved to you, that when theſe Orders were made, it had legally appeared to the then Chancellor, that Mr. *Dormer*'s Effects would at all Events prove Deficient, and that no way had been foreſeen, whereby that Deficiency could have been ſupplied; I muſt admit this Objection would have been very ſtrong: And in that Caſe, to have order'd full Payment to thoſe Suitors who firſt applied, and left nothing for thoſe that came after, would have been a manifeſt Partiality.

But this is not the preſent Caſe. When the Court ordered the firſt Payments to be made, it does not appear in Proof (as I humbly apprehend) that there would at laſt be any certain Deficiency in Mr. *Dormer*'s Effects, or at leaſt no pretence of judging how great that Deficiency was like to be. And conſequently, the Payment of the whole Demand to the Suitors that firſt applied, does not neceſſarily infer that there would be any Loſs to thoſe which came after. His Effects, upon further Enquiry, might poſſibly come out to be more than were at firſt diſcovered; they might prove ſufficient to anſwer all Demands: Or in caſe the Deficiency was not very great, a moderate Contribution from the other Maſters, or, it may be, a reaſonable Addition intended to be made to that by the Chancellor himſelf, would have ſupplied

that

that Defect. And that this was really intended, I apprehend that the Evidence already given does abundantly demonstrate.

Another Objection has been made; That very great Sums of Money have been depositted in the Masters Hands, without any Security; and that some Proposals have been made to the Noble Earl, for securing in some measure those great Sums, and preventing the Masters having too great Power over so great a Cash.

Mr. *Lightboun*, one of the present Masters, first mentioned the Proposals: He had before communicated it to Mr. *Holford*. The Chancellor received it kindly, desir'd him to reduce it into Writing; took Time to consider of it, and frequently talked with him about it; always shewed an earnest Desire that this might be done, but thought the proposed Scheme not effectual. Many Consultations were had upon this Proposal; at last he summons all the Masters of the Court, the Registers, the Usher, and other Officers of the Court; obtains the Favour of the Master of the *Rolls* to joyn with him and them in the general Consultation; and every one expected some effectual Resolution would have been made, upon this grand Affair.

But the Master of the *Rolls* then taking notice that there were other Things in the Court that required a Reformation, as well as this; and taking notice that the Masters in *Chancery* had lately assumed to themselves a Power of Judicature in the Court, in opposition to him; insisted, That this pretended Power of Judicature in the Masters should be given up by them, before he would enter into the Debate of the other Question.

Mr. *Lightboun*, upon whose original Proposal this Great Assembly was convened, was the first, if not the only Person that opposed the relinquishing this new-assumed Power, tho' he knew the Consequence would be the Destruction of the other Proposition which himself had made.

He preferred the Affectation of this Power of Judicature in his Office, more than the Interest of all the Suitors; and upon this, the great Expectation of this solemn Meeting was disappointed, and nothing done.

What could a Lord Chancellor do more, that has the Honour of the Court and Interest of the Suitors the most at Heart?

Mr. *Lightboun* himself tells your Lordships, That after this last Attempt proved unsuccessful, he began to think there was but one single Lord in the World that had sufficient Spirit to undertake it.

But during all this time, nothing had happened to give the late Chancellor any just Jealousy or Suspicion of the Deficiency of any of the other Masters. They are proved to have often declared they were Sufficient; nay, they have themselves sworn, upon the giving in their Accounts, that they were able to make good the Balance. The Noble Earl Impeached, sincerely thought they were so; and therefore when their Accounts were brought to him, in order to be laid before the Council, in Obedience to His Majesty's gracious Commands, he did all that was in his Power or Capacity to forward that good Design, and make it successful: He ordered the Masters to speed their Accounts: And when they were brought before him, he observing that the Senior Master had under-written his Account in a full, and plain, and more direct Manner than the other Masters had done, he told them, He liked the Form which Mr. *Holford* the Senior Master had used, and thought it a proper Precedent for the rest. They all complied, without Hesitation or Objection; no one pretended they had not Sufficient then in their Hands to make good their Balance; and accordingly subscribed to it, That they were able and willing to Make-good their respective Balances; or to the like Effect.

Can it be imagined, that this so fair and candid a Transaction, intended for the Satisfaction of the Council, and the good Security of the Suitors, can by any means be interpreted an Imposition upon His Majesty, by the late Chancellor? It was for His Majesty's Service that the Accounts should be laid fully and truly before Him in Council; and it must likewise be a great Satisfaction to His Majesty, to find that his Subjects Money in the Masters Hands was secure, by seeing their Acknowledgment, under their Hands, that they were Able.

The late Chancellor knew no more than any of the rest of the Honourable Privy-Council, or His Majesty himself, that this Declaration was false; and therefore it was equally an Imposition upon Him and Them; but no Fraud, no Crime in the Chancellor himself; which is the Objection now made against him. And indeed, many of the Masters which have been now Examined before your Lordships, have, upon their Evidence, Declared, That the Subscription thus made to their Accounts, were true, and that in Fact they have given good and effectual Securities to answer the respective Balances of their Accounts.

How hard a Work this Regulation of this great Abuse in the Court of *Chancery* was, the late Experience has shewn; and a total Reformation of it hereafter, would have proved more difficult, without the prudent and cautious Preparation, which the Noble Earl within the Bar has made for it, and which in due time he might have been able to effect.

Thus, my Lords, I have endeavoured (but very imperfectly, I am sensible, and confusedly) to offer what occurs to me in the Impeached Earl's Behalf. I ask your Lordships Pardon, and His, for taking up so much of your Time so unprofitably. What Omissions I have made, I doubt not will be supplied by the several Learned Gentlemen that are to speak after me.

I have this very great Satisfaction, that before your Lordships, the Merits of this, or any other Cause, will not suffer through the Incapacity of the Advocate on the one side, nor the Solemnity of the Prosecution on the other. When Facts are proved before your Lordships, no Observations can be equally Instructing as your Own. And upon the Evidence given, your Lordships will undoubtedly form a Just Judgment: A Judgment, I humbly presume to hope, That the Impeached Earl is Not Guilty of any of the Articles exhibited against him.

Dr. *Sayer*. My Lords, I am likewise a Councel for the Noble Earl Impeached.

I am afraid it may seem somewhat improper, that I should engage in a Proceeding of so much Difficulty, foreign to the Profession in which I am bred: But as the very great Obligations I have to the Earl, prevail on me so far to forget my own Unfitness, I hope they will, on your Lordships, to excuse it.

The Articles exhibited by the Honourable the House of Commons, charge him with *Corruption*

tion and *Extortion*, in the moſt odious Manner; and the Learned Managers have heighten'd every Circumſtance with the greateſt Art and Eloquence; every Ill-Turn which his Actions, his Words, his very Omiſſions could be imagined capable to receive, hath been given; Suſpicions and Jealouſies have been rais'd; and every Conſideration forgot, which could interpret them in his Favour.

This, my Lords, was their Duty, as Managers; and tho', by ſome, undertaken with Reluctance; yet, I may venture to ſay, it has been perform'd by all with great Succeſs and Reputation.

But however unanſwerable their Eloquence may be, we hope to be able to defend the Earl againſt the Facts they have alledged; and ſhew, That they were either not done, or done with Innocence and Honour. Againſt *meer Imaginations*, nothing can ſecure him, but your Lordſhips Candour and Juſtice.

The words *Orphans*, and *Widows*, and *Lunaticks*, have been employ'd to raiſe Tenderneſs and Compaſſion, and arm your Lordſhips againſt every Argument which we can offer. Well was it commanded by the *Jewiſh* Law, *Not to reſpect the Perſon of the Poor, in his Cauſe*; knowing the Diſpoſition of Human Nature, and the Neceſſity of guarding againſt this generous Weakneſs. This Caution ought particularly to be remembred by *Engliſhmen*, who are allow'd to be more ſubject to an Exceſs of it, than thoſe of any other Nation.

The Learned Managers have very rightly obſerv'd, how much your Lordſhips *Honour* is concern'd in this Proſecution. My Lords, It was with the greateſt Satisfaction I heard them ſay it; for I am by it induced to think, that notwithſtanding the Zeal which has been expreſs'd, they will be much pleaſed to find *every Member* of your Lordſhips Body *Innocent*.

It appears from the Anſwer, and needs no Proof, That the Noble Earl was once *Lord Chief Juſtice of the King's-Bench*: And his Conduct in that great Station, will, I hope, be ſome Defence.

I may appeal to thoſe Gentlemen who are now Managers againſt him, whether they have not applauded him with Warmth? whether they have not commended his *Zeal* and *Intrepidity* in the Cauſe of *Liberty* and *our Country*? his *ſteady Adherence to the Proteſtant Succeſſion*? his *uninfluenced Behaviour*? My Lords, I would ask, whether then they did not praiſe and love him? whether they did not eſteem his being *placed* in that High Station (which he executed with Honour) their *Comfort*, their *Security*.

My Lords, I beg Pardon for replacing thoſe Times before your Thoughts, or for deſiring any to conſider, how an Accuſation againſt him, ſupported by *meer Refinements*, would at that time have been regarded. My Lords, his experienc'd Merit would then have ſilenc'd every Objection.

If there wanted any Evidence of the High Character he bore while in that Station, we might appeal to the *great Rewards* His Majeſty has beſtow'd upon him: *Thoſe very Graces* which have been *exaggerated* againſt him, are the nobleſt Teſtimony in his Favour. His Majeſty thought him worthy of the *Great-Seal*, becauſe he had found him *faithful* in his *other* Truſts. His Majeſty approved him, becauſe his Subjects had: It was for their Sakes (the conſtant Motive of his Choice) that He appointed him Lord Chancellor.

This once was the Earl's Character; this once his Merit: Theſe were, nay, are ſtill our Obligations to him. My Lords, *experienced Worth* has a Right to greater *Confidence* and *Credit*: This is a Rule of Evidence, and of common Juſtice; and unleſs the moſt convincing Proofs are offered, your Lordſhips never can believe, that one who has done ſo greatly Well, can do ſo Baſely as is ſuggeſted by the Charge.

But ſuppoſing, upon *ſo very ſtrict* an Enquiry into the Conduct of any Great Man, *ſomething amiſs* was found (for the Greateſt are but Men, and muſt have Failings) yet is former Merit not quite to be forgot. *Publick Services* are thought juſt Reaſons for *Remiſſion* of the higheſt paſt Offences, though done perhaps *meerly* with a *View* of obtaining it: And ſhall thoſe done upon a more generous Principle, ariſing from *an honeſt diſintereſted Heart*, deſerve a leſs Regard?

But, my Lords, that I may have the better Opportunity of obſerving, on the Evidence brought for the Commons, as well as on the Arguments offered, I ſhall beg Leave to follow the Learned Managers in the Method they took themſelves.

The Foundation of their Charge, is, The *diſpoſing of ſeveral Offices for conſiderable Sums of Money*. This is the *Corruption!* This the *Extortion!* And to aggravate the Guilt of this, and raiſe your Lordſhips Indignation, the Preamble ſets forth, "That in or about *May* 1718, the "Earl was appointed Lord Chancellor of *Great-*"*Britain*, and did thereupon take the uſual Oath "for the due Execution of that High Office, and "ſuch other Oaths as have been accuſtomed." And the ſubſequent Articles proceed to charge his Lordſhip *with Breach and Violation of his Oath, as Lord Chancellor*. The Learned Gentlemen who had the Conduct of the Evidence, juſtly ſenſible of the Expectation they had raiſed by this Aggravation, did *attempt* a Proof.

The Earl, in his Anſwer, had ſet forth at large, the Oath he took *as Lord Chancellor, when firſt appointed*; and had inſiſted, that he took *no other Oath of Office*. Was this the Oath the Earl had thus broke and violated? No, it was *not this*; but *one, which, by the Articles, he is no-where charged with ever having taken*. Upon the Choice of *Sheriffs*, it ſeems, the 12th of *Ric.* II. is annually, in *Old French*, read over by the Clerk; and all preſent at the Council kiſs the Bible. It is this Tranſaction with which they would affect the Earl. But, my Lords, it is notorious, that the Statute is ſo far grown obſolete, that in no other Inſtance beſides this of *Sheriffs*, is it at preſent taken notice of. And as the Oath upon this Occaſion muſt be abſolutely *confin'd* to the *Choice* of them; ſo is it evident, that the Statute it ſelf never did nor was intended to reach Officers of the nature with theſe in queſtion; as I ſhall further obſerve. And indeed, with the Oath directed, the Statute is ſo extremely rigid, that I muſt own, for my part, I do not ſee any Service it can do Society, in its full Extent. It may perhaps afford ſome *Protection* to a *Firſt Miniſter*, in laying him under the Obligation of an Oath, to put none into any Office who ſhall *purſue* or *ſolicit* by *himſelf* or by *other*.

However,

However I can't help thinking that the Learned Manager had but very ſmall pretence for the Reflection he was pleaſed to make, in ſaying, that *the Earl ſeemed to have forgot this Oath not only in his anſwers, but in his conduct*; when it appears that *he himſelf* had *forgot* how he had *charged* it in *his Articles*. If he will caſt his eye back upon them, he will find that the Preamble makes mention of *no Oaths*, but what were taken by the Earl *upon his Majeſty's Appointment of him to the Seal*, and the Articles charge him only with Violation of his *Oath, as Lord Chancellor*.

Having juſtifyed the Earl's *Memory* in this Point, I proceed to juſtify his *Conduct* in others; and I hope the Defence he has made by his Anſwer will have its Weight with your Lordſhips: the Earl has inſiſted, "*That the making Preſents has* "*been long uſed and practiſed in the Time of his Prede-* "*ceſſors*; *That ſuch Preſents have been reckoned amongſt* "*the antient and known Perquiſites of the Great-Seal*; "*that the making and accepting them has been Noto-* "*rious to all the World, and never before looked upon* "*as Criminal, or complained of as ſuch.*" My Lords, this (as far as Proof is requiſite) We ſhall make fully appear by great Numbers of Witneſſes, who are able to ſpeak to both the *Opinion* and *Practice* of the Earl's PREDECESSORS. To this, it has indeed been ſaid, that the Earl may be *Guilty*, tho' his Predeceſſors have *eſcaped uncenſured or unpuniſhed*. My Lords, the Examples we have followed are too Worthy to lead us into Guilt: but, my Lords, if the *Earl* has *only* done what *they* have done, and received what they eſteemed an honeſt Perquiſite; was the Practice in it ſelf not quite ſo regular at firſt, yet, *Sunt tolerabilia, quæ conſuetudo comprobat.*---Uſage (if antient) has ſo great Authority, that it makes the Common Law of *England*, and tho' with us it cannot repeal a Statute, or deſtroy its Force, which it does in other Countries, yet, my Lords, there is an Equity to be obſerved; and Reaſon as well as Humanity muſt inform your Lordſhips, that no Man ought to be treated with the utmoſt Severity, which an old Statute may direct; when great Examples may have *led* him to the Action, and a long Connivance of his Predeceſſors *promiſed him Security* from Cenſure.

But the Earl's Defence ſtops not here; he ſays, "*He humbly hopes that the giving or receiving* "*Preſents on ſuch Occaſions is not Criminal in it* "*ſelf, or by the Common Law, and that there is* "*not any Act of Parliament whatſoever, by which* "*the ſame is made Criminal, or ſubject to any Puniſh-* "*ment.*" To this the Learned Gentlemen have given but very general Anſwers. *Some* have by *Rhetorick*, inſtead of *Reaſon*, endeavoured to perſuade your Lordſhips, that the Act it ſelf is *highly Sinful*, and that the *Corruption* in *ſelling Offices* is greater and far more dangerous to Society, than even *ſelling Juſtice it ſelf*: *Others* have talked of Common Law, and Statutes, but have produced none, except thoſe *of* 12*th* of *Rich.* 2 and 5 and 6 of *Edw.* 6*th*, and a few Inferences drawn from them, which I ſhall ſpeak more largely to immediately: And as *the Learning* and *Experience* of thoſe Gentlemen are too great for any Law to *eſcape* their *Obſervation*, as is *their Honor* to *reſerve* any for their *Reply*, I ſhall take it for granted, that ſince no other has been mentioned, that there is no other.

My Lords, the Writers upon the Law of Nature have properly diſtinguiſhed between *ſelling Juſtice* and *Offices concerning the Adminiſtration of Juſtice*: and not as the Learned Managers have done. With them the *ſelling Juſtice* is abſolutely forbid, is abſolutely *Corrupt* and *Immoral*. The *ſelling Offices* is Matter of meer Policy, varied in different Governments, *prohibited* in ſome, *allowed* in others.

Among the *Romans* the Law in this Particular, fluctuated and changed, and tho' the *Sale of Offices* was generally forbid, yet it received great Alterations, as the Emperors or the People were diſpoſed: When Elections of the Magiſtrates were Popular, the *Suffragia*, or Votes of the People were bought and ſold; but as this Practice produced frequent Riots and Diſorders, frequent Laws were made to reſtrain it, which are ſtill extant, and part of the Body of the Civil Law: However, all proving unſucceſsful, the Emperors took occaſion from it to uſurp upon the People, and name the Magiſtrates themſelves: This Tranſlation of Authority carried the Benefit to *Courtiers*, and other Men of Power, who took a ſort of *Brokage* for their Intereſt. *Theodoſius*, the Emperor, ſo far gave Countenance to this Practice, that he even allowed an Action for the Recovery of what was promiſed for *Procurement of any Place*. In proceſs of Time the Emperors themſelves participated and took a Share of this Advantage, which introduced a diſtinction of *Suffragium Dominicum*, and *privatum*. *Suffragium privatum, quod Aulicis dabatur*; *& Dominicum, quod Imperialibus rationibus inferebatur*. This Diſtinction, as well as the Practice, is very Evident from the two *Novels* of *Juſtinian*, which were intended abſolutely to prevent for the future all Sale of Offices. In *Novel* 161. it is ſaid, *Ejuſmodi Dominica ſuffragia magnum reddebant pecuniarum cumulum*; and in *Novel* 8. that by the Prohibition, *Queſtus immodicus imminutur imperio*.

It is well known that in *France*, the Laws have varied in like manner. Sometimes the Sale of Offices were permitted, ſometimes forbid: but at preſent, and for this laſt Century, it has been ſo far incouraged, that Officers retain the Right of Reſignation even in *Succeſſion*, and tranſmit it to their *Heirs*, in caſe they have paid the *Annual Tax* or Duty within the Year.

I mention this to ſhew what the Opinion has been of other Governments, that they have not eſteemed this Practice ſo highly Criminal, or unreaſonable; and as they have not, ſo neither have we: for notwithſtanding what has been urged with ſo much Ingenuity (according to my poor Apprehenſion) *that very Statute* of *Edw.* 6*th*, ſo much inſiſted on, is the ſtrongeſt Proof which can be given, not only that in particular inſtances *the Sale of Offices* is now permitted, but that it *was in general* before that Statute, by the *Common Law of England*. This Statute in Sect. 3*d*. Enacts, that "*All Bargains, Sales, Promiſes*, &c. *ſhall be* "*void.*" And yet by Sect. 6*th*, it makes Proviſion, that "*It ſhall not extend to any Bargain,* "*Sale, Gift, Grant*, &c. *concluded and agreed* "*before the Firſt Day of* March *next coming, but* "*that the ſame Bargain and Sale ſo concluded* "*and agreed, ſhall always remain, continue, and be* "*in ſuch force, ſtrength, and effect, as if this Act* "*had never been had or made.*" If *Bargains* and *Sales*, agreed before the Firſt of *March*, are to *continue in ſuch Force*, &c. as if this Act had never been made, the Conſequence to me ſeems cer-

tain, that *thoſe Bargains and Sales had Force*, and that they were *before Effectual and Legal*; for otherwiſe the Proviſion would be abſurd and ridiculous.

The 7th Section of this Statute ſtill goes further, and makes a perpetual Proviſion, that "*This* "*Act, or any thing therein contained, ſhall not in* "*any wiſe extend, or be prejudicial or hurtful to any* "*of the Chief Juſtices of the King's Courts, commonly* "*called the King's Bench, or Common Pleas, or to* "*any of the Juſtices of the Aſſize that now be, or* "*hereafter ſhall be; but that they, and every of them,* "*may do in every Behalf, touching, or concerning* "*any Office, or Offices to be given or granted by them,* "*as they, or any of them, might have done before* "*the making of this Act.*"

If this Statute be *Explanatory* of what the Common Law was before, and as ſuch it was inſiſted on, it is certainly impoſſible to doubt, but that by the *Common Law* the *Sale of Offices* was allowed: "*the Chief Juſtices*, &c. *may* (*TOUCH-*"*ING THEIR OFFICES*) *do as they might* "*have done before:*" This Act is to *prevent* the *Sale* of *Offices*, and yet *not of their Offices:* They had been uſed to *bargain*, and *ſell* them, and *ſtill* may do it, for this Act is not to be in any wiſe *prejudicial*, or *hurtful*, to any of them. This is the plain Senſe, this the very Language of the Proviſion.

But I humbly conceive that this Proviſion is not only an Evidence of what the *Common Law it ſelf* was, but that the *Act of Richd. 2d.* (of which I before made mention) could never be intended to *reach Offices of this Nature*; for as the Act of *Richd. 2d.* directs an Oath, which the *Chief Juſtices*, &c. are expreſly *required* to take, can it be imagined without the greateſt Extravagance of Fancy, that the Legiſlature ſhould be ſo very forgetful, as to *guard* and *ſecure* to them a *Privilege*, which they could never exerciſe without the higheſt *Perjury?*

This, my Lords, is the only Statute, which, as I apprehend, any ways concerns the Charge brought againſt the Noble Earl: But does this Statute make the *Sale of Office Criminal?* Does it direct a *Puniſhment*, or even by any general Clauſe *forbid* the Practice of it? 'Tis true the *Bargains* are hereby made *void*, the Perſon who *ſells*, does *loſe* his *Right of Nomination*, and he who *gives* or *pays*, is to be adjudged *diſable* in Law to have the Office. My Lords, theſe are the *Diſcouragements*, which the Legiſlature then thought proper to lay ſuch Bargains under, theſe the *only Penalties:* If the Earl has by his Conduct done what this Statute diſapproves; if he has bargained and ſold Offices, which your Lordſhips judge within the Statute, and the *conſtant Uſage* of his Predeceſſors will not give *Protection*, the Statute points out your Lordſhips Juſtice. But, my Lords, this unfortunate Great Man, we think, has already more than *ſatisfyed* this Law, he has *reſigned the Seals*, and yet *ſtands Impeached* before your Lordſhips.

Offences are to be judged of by the *Penalties* and *Puniſhments* the Legiſlature has annexed; for in determining the Penalties, it determined the Senſe it had of the Offence: When Penal Laws are made, it muſt always be ſuppoſed, that a Conſideration was had of the Malignity of the Act forbid, and of its Influence on Society, and that the Puniſhment directed was eſteemed adequate and juſt: By this rate it is eaſy to gueſs what the Legiſlature thought of the Offence of ſelling Offices. And, indeed, it would have been (if I may uſe the Expreſſion) unbecoming the Legiſlature to have *inflicted ſeverer Penalties*, while by the ſame Law it *permitted* the *firſt Judges* in the Nation *to do* what it *ſeemed* to condemn in others.

When a Law is once paſt, the Tranſgreſſor of it is *ſubject only* to what that Law directs; to inflict a *greater* Puniſhment, would be deſerting Law, and acting *arbitrarily*. This Obſervation will hold in every Inſtance, in Matters of *Common Juſtice*, as well as *Publick Policy*: To forbid to *Rob*, or *Murder*, is only to enforce what was *always* Law; to forbid *to ſell Offices*, is to lay a *Political Reſtraint* on Acts indifferent. And yet in the former Caſe, to puniſh the Offender *beyond* the Law, would be *unjuſt* and *arbitrary*. Are Prohibitions *meerly Political more Sacred?* Or is a Treſpaſs againſt them more ſeverely to be treated, than one againſt the Law of Nature, the Law of God? No, Your Lordſhips (I ſay it with Submiſſion) are the Supreme Judges of the Nation; as ſuch, the Supreme Judges *of the Law*; for *by the Laws* your Lordſhips always *judge*: It is the peculiar Bleſſing of our Nation, to have *known certain Laws*, to be the *Guide* of our *Actions*, and the *Meaſure* of our *Puniſhments*; to ſecure to us *this* Bleſſing has been the *Labour* and the *Glory* of our Anceſtors. For the Sake of *this*, the REVOLUTION is *beloved*; and for a ſteady Adherence to *this Sacred Rule*, his MAJESTY is eſteemed the *Joy*, the *Safety*, the *Liberty* of his *People*.

I beg Pardon for dwelling ſo long upon this Subject; but the Honourable Gentlemen of the Houſe of Commons having made the *Sale of Offices* the *Foundation* of their whole CHARGE, I thought it of ſome Conſequence to prove to your Lordſhips, that it is no ways *Criminal* in it ſelf: And, my Lords, if it be not *Criminal*, Where is the *Corruption?* Where the *Extortion?* Is it in the *Manner* of receiving Preſents? How *that* was, the *Learned Serjeant* of Councel with me has already given your Lordſhips an Account: An Account, which we hope does ſufficiently *juſtify* the Earl againſt the Imputation of *Higgling*, or of *ſcrewing up the Candidates* to what they gave. But as theſe ſeveral Articles will be more fully ſpoke to, when we come to produce our Evidence, I ſhall paſs them over with an Obſervation or two. If the Earl had ſo great a *Thirſt for Gain*, and was ſo *reſolutely bent to amaſs ſuch exceſſive Sums of Money*, it is to me very ſtrange, that whenever his Opportunity offered, and he had the *free* and *full Diſpoſal* of an Office upon a *Vacancy by Death*, he ſhould always receive *a much leſs Sum*, than what from the very face of the Articles themſelves appears conſtantly to have been paid *by Maſter* to *Maſter*. Had the Earl *put the Office up to Auction*, or even *inſiſted* on a Price, Is it probable that he ſhould *not* be *able* to obtain one *as great?*

However, as I paſs, I can't help taking notice of the Circumſtance with which the Article of Mr. *Thurſton*'s admiſſion is introduced, "*That* Borret "*died inſolvent, greatly indebted to the Suitors, and the* "*ſaid Earl did without ſecuring a juſt Satisfaction admit* "*him:*" Your Lordſhips muſt have obſerved, that the Earl is not ſo much as *charged* here with a *knowledge of this inſolvency*; and, my Lords, *knowledge* only can *create* the *guilt*. If the Earl did not know it, can your Lordſhips cenſure him? If it be

asked

asked why he did not? Mr. *Godfrey*, who was produced and Examined by the Managers, has already given a full Answer: Mr. *Godfrey* was moſt intimate with the Affairs of *Borret*, and as ſuch was directed by the Earl to inſpect them; he has depoſed, that he told the Earl, he thought *there wou'd be no deficiency in his Office*, this (your Lordſhips may remember) he ſaid was his *own* ſincere Opinion, and he gave good Reaſons for it. Mr. *Borret* had a very good Income, reputed 400 *l. per An.* beſides his Place, he had lately married a Wife of Fortune, his Family lived with his Father-in-Law, and he himſelf a Man of no Expence; my Lords, Mr. *Godfrey* told you, he was ſo fully in this Opinion, that when Mr. *Green*, the deceaſed's Unkle, made a demand of a Debt, he was *greatly ſurpriſed, not Imagining that he had owed one ſingle farthing*. Whence this Deficiency (if there is any) none can tell: But, my Lords, that fatal Year of 1720 is not ſo long paſt, as to leave us quite without conjecture; a Year, my Lords, when the *contagion* was ſo virulent, that ſcarce any *virtue* was left *uninfected*; and thoſe who ſunk under it, remarkably deſerve our pity, as ſad inſtances of human frailty: *To this Year*, the Maſters *owe* their whole *diſtreſs*, and *to them* the Earl, tho' innocent, *this aggravated Charge*: But, my Lords, ſuppoſing a *deficiency* in *this* Office, and *known* too by the Earl himſelf, what *Satisfaction* to the Suitors was from him expected? What could he poſſibly *ſecure?* There is but *one Method*; which, I hope, he will not by the *Managers* be thought *criminal* in *not* taking, ſince it is *that*, which *they themſelves* condemn as *illegal* and *corrupt*.

It may be expected, that I ſhould ſhew ſome Regard to the 9th Article: But as it is that which the learned Gentlemen made choice of to *begin* with, I apprehend *greater* Difficulties than I ſee, and therefore ſhall leave the Conſideration of it to thoſe, who are much more able to ſurmount them than myſelf: But I muſt ask Pardon, that I can't reach a diſtinction on which great ſtreſs has been laid: It has been obſerved by more than one, that in this caſe, the Money was paid for the *reſignation*, and not for the *admiſſion*; Is there any real difference, whether the *Buyer* or the *Seller* pays the *Complement?* Muſt it not be ſuppoſed that it was conſidered in the Bargain, and part of it? Or is it imagined that a greater hardſhip was in this caſe done Mr. *Thomas Bennet*, by a ſeeming *obſtruction* of his inclination to part with an Office, when in fact the Earl could not *hinder* his reſigning it? For notwithſtanding the Obſervation made by a learned Gentleman, that the *Lord Chancellor* was the *King's Officer*, and therefore a reſignation *to the Crown* was the ſame as *to him*; yet am I from his very great Abilities perſuaded to believe, that he is not ſo entirely a ſtranger to the *Thought* of that *high Office*, as not to be able to diſtinguiſh the *Crown* from the *Seal*, and to know that in many inſtances of *Patronage* they are *different:* The *Lord Chancellor* being the *King's Officer*, a *reſignation* to *him* may in ſome caſes be equivalent in Law to one made to the *Crown* itſelf, but never *è contrario*. As to this particular Office, and indeed to many others of the like Nature, we ſhall make it fully appear, that tho' the *Officer* himſelf is in the *Nomination* of the *Crown*, yet has he always been under the *recommendation* of the *Seal*, and has as conſtantly *paid acknowledgment* to the *Lord Chancellor*.

Upon theſe Charges are built the whole of the following Articles: Every Expreſſion, every Action which could bear an ambiguity, has been collected to *form* a Crime. The Earl has *received* Money for *his Offices*, his *aim* is therefore *gain by Sale of Offices*, an eaſy inference; and whatever is after *ſaid* or *done*, or *vice verſa*, is at firſt *ſuſpicion*, and then an *Evidence* againſt him.

But, my Lords, before I proceed to try Particulars upon this Head, I muſt beg your Lordſhips patience to compute in general the very ſmall Advantage the Noble Earl could propoſe by the *Scheme*, the learned Gentlemen have *projected* for him: The *Office* of Lord Chancellor is *precarious*, and only *during Pleaſure:* The *King*, for his Subjects Welfare, *jealous* of every Miniſter, and *ready to remove* the greateſt Favourite upon the very firſt Offence; and upon this contingency, what would the *chance* of diſpoſing of a Maſter's Place be worth? A very trifle, I may boldly ſay, not ſo much as what he has *refuſed* the Opportunity of *gaining* upon *every compleat vacancy* he has diſpoſed of. And can your Lordſhips ſuſpect a Character *once ſo dear*, once allowed *ſo worthy*, of doing ſuch little Things, I ſhould ſay, ſuch baſe Things, for *no Advantage*, and yet to promote *this illegal and corrupt Gain on which his Heart was eagerly ſet?* The noble Earl is further charged "*with having admitted ſeveral Perſons to the Offices of Maſters, who were at the time of ſmall Subſtance and Abi-*"*lity:* Againſt this there lay an obvious Objection; Why Perſons of ſmall Subſtance? when the Earl *might have*, and indeed *always had*, when of his own Choice, others *of ſufficiency*. Wherefore, to make their Charge conſiſtent, a *fraudulent* Method is ſuppoſed to be introduced of *paying for their Places out of the Effects of the Court*; a Method *beſt ſuited* to *ſuch Perſons:* But your Lordſhips Juſtice muſt have led you to obſerve, that they *no where* ſo much as *inſinuate*, that the Earl *knew* them to have been as charged: They were ſenſible of the proper Caution he had taken, and (as it will appear in Evidence) that not only previous Inquiries were always made, and *none* admitted, who came not *well recommended*, or *perſonally known* to the Earl himſelf; but that when ſeveral Candidates have offered, his Lordſhip has been ſo unmindful of the *little Views*, he is ſuppoſed ever to have acted with, that he has *conſtantly preferr'd* him he thought the *worthieſt*, tho' the *preſent* to the Earl was far *leſs* than what others gave him Expectation of. This ſurely, my Lords, will be enough to *Vindicate* his *Care*; and tho' it ſhould appear, that he was *deceived* in any *ſingle Inſtance*; nay, tho' *the Man himſelf* ſhould be the *Evidence* of *his own Deceit and Fraud*, yet I hope, my Lords, *ſuch Perſon* will have his full Compliment of Credit, if he is *believed* in the Character he gives of *himſelf*. But to make ſome excuſe for the Earl's *good Opinion* of this Mr. *Thomas Bennet*, and his *Circumſtances*, I muſt obſerve, that it is Evident from his *own Account* which lyes upon the Table, that *when* he was admitted, he had an *Eſtate* of between 5 and 600 *l. per An.* he had beſides *an Office* for Life of 250 *l. per An.* he *kept* his *Coach*, and *then* lived in *Reputation:* However, I muſt confeſs, that in further Proof of his *great Integrity*, this Gentleman has depoſed, that *part* of his Eſtate was then *Mortgaged* for *more than it was worth*. I ſhould upon this

this Occaſion put your Lordſhips in mind of what happened upon this Gentleman's *Confrontation*, becauſe he has been *ſingular* in his Evidence on *more* Facts than *one*; but we ſhall take another Opportunity of diſplaying this *Worthy Perſon's Veracity*, that your Lordſhips may know *how much Regard* to pay to *him*, by ſeeing *how little Regard* he has for *Truth*.

As to the *Schedules*, the neglect of which is made ſo *Criminal*, it would be enough to ſay, that the taking them could not prevent *the Fraud* complained of; for what would be the difference in *deducting* the *Sum agreed on for the Purchaſe upon the transfer*, or *repaying in the minute after*? And if the new Maſter is *really able* and *ſufficient*, where is the *injuſtice* done in either caſe? But we ſubmit whether ſuch Schedules muſt not be made between Maſter and Maſter: For without them their Accounts cannot be ſettled; and as it is for the *Intereſt* of him who *ſucceeds*, ſo is it for the *Security* of the other who *reſigns*. But ſuppoſing the Practice to have been as charged, and their *Transfers* were not *compleat*, the only Conſequence I ſee is, that *both* Maſters are *bound*, and the Suitors have by it a *double Security*. It has happened ſo in the Caſes of both Mr. *Hiccocks* and Mr. *Rogers*; they imprudently *retaining* the Effects of the Court, for the Sale of their Offices, have thought it proper to Petition the Lords Commiſſioners to *repay* the Money: So that ſome good Fortune has attended this Practice, ill as it is, the Suitors have by it got ſo much Money more, than what otherwiſe they would have had.

My Lords, when *Dormer*'s Affair (tho' ſufficiently unfortunate) is conſidered by your Lordſhips, I hope that the noble Earl will not be thought to have acted otherwiſe than as *became* his Character: Upon the firſt notice of the misfortune, the Earl took all poſſible care both to *ſave the Effects*, and *ſecure the Office*; he ſent the two ſenior Maſters to *ſearch his Chambers*, and to *ſtop the Transfers* of all Stock, which ſtood in his Name, in any of the publick Companies. My Lords, had the Earl that *Eye on Gain*, had he had *that apprehenſion of diſcovery*, which is repreſented, he would ſcarce have taken *this laſt ſtep*, which muſt and did make a *ſuſpicion* of the Office *publick*: When Mr. *Dormer* was returned, and upon *ſuch Terms* as the Managers themſelves can't ſay were unreaſonable to grant to one, whoſe Perſon was out of reach, and whoſe Effects and Accounts were in the greateſt Confuſion: His Liberty was all he asked, and that upon Condition only of a *full diſcovery* and a *fair Aſſignment of all he had*. I ſay, my Lords, when Mr. *Dormer* was returned upon theſe Terms, which we hope he has honeſtly performed, his Office was Sold, and every Thing done, *not to Conceal*, but to *ſupply* the *Deficiencies*. I would not enter too minutely into the *Compoſition* with Mr. *Wilſon*: It will, I conceive, be a full and ſatisfactory Anſwer to the Charge, to obſerve, that as the Suitors were not *Parties* to it, they can no ways be *injured* by it. If the *Compoſition* be *precarious*, *trifling*, and *unjuſt*, the Suitors are ſtill *at Liberty* to proceed: If *more* could be had, they ſtill may have more; but till *more* is *recovered*, it muſt be admitted that the *little*, which is *gained*, is *owing* to the *Compoſition*. Had the Suitors been *Parties*, *the Order* ſo much complained of for its Irregularity would not have been made *without a Notice*; but as Mr. *Wilſon*, whoſe particular Intereſt it was to have them Parties, did not deſire it, we apprehend *the Order* to be *in uſual Manner*. My Lords, the Maſters (as is in Evidence) having in ſome Meaſure *engaged themſelves* to make good the Deficiencies, if any ſhould happen, the Earl could have no reaſon to doubt the Juſtice of the *Propoſal* of Mr. *Wilſon*, after Mr. *Hiccocks* had *reported* it, and Mr. *Edwards*, the *Succeſſor* in the Office, had *prayed* the Earl to *order him to accept it:*

It ſeems, my Lords, a very forced and unkind Conſtruction, which the Articles put upon the *Accounts* his Lordſhip had *required* of the Maſters: but the worthieſt Behaviour may be thus miſconſtrued. The Maſters themſelves had *made the Propoſal of contributing*, and it will appear that they all (except Mr. *Lightboun*) did pay their Money *voluntarily*. What occaſion then for ſuch Methods as are ſuggeſted to *terrify* and *oblige them to this Contribution*? Is it in Proof that the requiring the Accounts did *influence one ſingle Maſter*? No, my Lords, but, on the contrary, you will find that the *Payment* by the Maſters did not prevail on his Lordſhip to deſiſt; for it will be in Evidence, that the Earl *ſtill* perſevered, and that by the Earl's direction a *Letter* was wrote to the Maſters, *after* the ſeveral *Payments* were made, complaining of their Delay, and requiring their Accounts. The Earl, indeed, upon Repreſentations, did afterwards think the Method *impracticable*, which he is the better juſtifyed in ſaying, becauſe the very *ſame Method* has been *ſince* found ſo by *the Honourable Committee for Inſpecting their Accounts, and* departed from *as ſuch*.

Upon this Subject of *Dormer*'s Deficiency, I muſt beg Leave to remind you of what Mr. *Edwards* told your Lordſhips. He ſaid, "*That they* "*were all of Opinion, that the Deficiency would be* "*made up*; *and unleſs he had believed it, he would* "*not have entred into the Office.*" If Mr. *Edwards*, who was ſo much concerned, was in this Perſuaſion, why might not the Earl too with Innocence? And, my Lords, this Perſuaſion, this Expectation, is, I humbly conceive, a very ſatisfactory Reaſon, why the Earl, had he been obliged to have declared an Average *ex officio in common Caſes*, might be excuſed the doing it *in this*.

As to the Caſes of *Chitty* and *Harper*, when the Circumſtances which attend them, are laid before your Lordſhips, the Inferences drawn from each will appear equally unreaſonable: for the Earl can no more be ſuppoſed to have intended a *Concealment* of *Dormer*'s *Deficiencies by the Order* he made, *after* he had expreſsly mentioned *in open Court* the *ſeveral Accidents*, by which they had happened, than he could by *the payment of* 1000*l.* to Mr. *Lochman*, *when* he told him, *that it would be the laſt payment Mrs.* Chitty *was likely to receive, the reſidue being in great danger from* Dormer's *Deficiency*. But when we prove to you the very great diſtreſs Mr. *Lochman* repreſented himſelf to be in, your Lordſhips will be convinced that the Money was by the Earl advanced from *no other motive*, than *a generous and compaſſionate Regard to him*: This at *that time* was Mr. *Lochman's own Senſe* of it, this he has *often ſince acknowledged*, tho' upon his Examination he was pleaſed to *claim* it *as his Right*, and *own no Obligation*.

I think

I think it will be (I ſhould ſay, it is already) very full in Proof, that the Earl deſired a *thorough Reformation* of *his Court*; and tho' Difficulties have obſtructed it, yet ſurely, my Lords, it can't be imputed to any omiſſion of his in the light the Charge would place it. There were *Difficulties*, not only with Regard to the *Maſters* and their *Accounts*, but to their *Juriſdiction* and *Privileges*: *Difficulties* of ſuch a nature, that one of the Witneſſes thought, they required the *greateſt Reſolution* to *ſurmount them*. If the noble Earl had not a *Reſolution quite ſufficient*, it might perhaps be his misfortune, but ſurely not his Fault. But what *Propoſals of Security* the Maſters could poſſibly make, which *they* eſteemed *uſeful* or *convenient to themſelves*, and the *Earl* ſhould *refuſe*, I can't conceive. I imagined from *the Scheme*, on which the Charge is founded, that *their Intereſt* had been the *ſame*, had been *one*, and what ſerved *their* purpoſe, muſt have ſerved *the Earl's*; and yet now we are told the contrary.

How the Learned Gentlemen have made out the ſeveral *Deficiencies*, muſt be conſidered, when we are upon their Evidence to that Article: I will only obſerve, that no *permiſſion* or *encouragement* of the Earl's has been proved, by which they are *increaſed*; that *no Money* has been *compelled* into Court by any *Order he* has ever *made* to *advance* their Offices, nor any *Countenance* given by *him* to any one *ill Practice*.

How far the Earl is guilty of *obſtructing the inquiry his Majeſty had directed*, or how far he was inſtrumental in *deceiving the Council Board*, we ſubmit upon their own Evidence: It appears, that at the meeting at Mr. *Edward*'s Houſe, *all* of them *declared* they were *able* to anſwer their ſeveral Ballances; and when the Subſcriptions were Signed, *they* were *believed* to be as they had declared themſelves: If they were, where was the *Fraud* in the Propoſal *to aſſiſt each other?* Or how could it be underſtood *to make a falſe Appearance* with Propriety of Language, or common Juſtice? But it is remarkable, that this *Advice*, however fair and honeſt, was not given by the *Earl*, but by Mr. *Cottingham*, and without his *privity* or *knowledge*, and *occaſionally* in Converſation with the Maſters: And as to the *Subſcription*, which they *added*; did the Earl uſe any Arguments to perſuade them to it? Did he preſs them, or even *deſire* them to Sign it? No, they themſelves confeſs, that *he* but *barely recommended it, as being what their ſenior Maſter had, and better in Form than ſome others, which were then produced:* He uſed no Arguments, he preſt them not; and they, *honeſt Men* (as they themſelves have depoſed before your Lordſhips) made no Scruple or Objection to it; I beg Pardon: I ſhould do Juſtice to Mr. *Thomas Bennet*, who I think had *his Scruple* to the Word *Demonſtration*. So that if *falſe Repreſentations* have been made, they who have *made* them are the *guilty*, *they* have *deceived* the Council-Board, and *not the Earl*; the Action was their own, free and unſolicited.

But, my Lords, not to detain your Lordſhips longer; one of the Learned Managers ſeemed ſenſible of the force of *one* Evidence we have to offer in Vindication of the Earl from the Charge of *Avarice*; and therefore, without denying a *publick Fact*, he was pleaſed by his *Eloquence* to try whether he could not bring *Charity itſelf* under ſuſpicion: Whether he could not *confound* the difference between the *moſt worthy Generoſity*, and the *Luxury* and *Debauchery*, and *the Riots* of a *CATILINE!* What innocence is *ſecure* againſt the *Power* of *ſuch* Eloquence? My Lords, had he not thought *this* a Defence againſt the *very Foundation* of the whole Charge, he would not have *ſurpriſed* us with ſuch an Anſwer: He well knew that the Earl could have *Orphans* and *Widows*, *the poorer Clergy*, and *the Youth of the Univerſity*, to appear and acknowledge their *Obligations* to him; *Obligations* made *greater* by being *unasked*; I cannot ſay *unexpected*, becauſe every Object in diſtreſs within his Knowledge, had Reaſon to expect Relief. I would ask the Learned Gentleman, whether Expences of *this kind* were part of *CATILINE*'s Profuſeneſs?

This, my Lords, will be an Anſwer to their oft repeated Imputations, and muſt clear the Earl from all *ſuſpicion* of ever having acted from ſuch ſordid motives, or from any *thirſt* or *impotence of Gain*. Is it likely that he ſhould *incourage* the *higheſt Villany* to *raiſe* a Sum, and then *apply* it to *relieve the Poor* and *the Diſtreſt*? Is it credible, at the ſame time, that *Virtue* and *Baſeneſs* ſhould thus *jointly* govern him? Hard indeed is the Condition of the Earl, when *his very Virtues*, when *his moſt commendable Actions*, are *turned to his Diſgrace* and *Injury!* But under all, it is a great Satisfaction to him, that your Lordſhips are his Judges; and he ſubmits his whole Conduct to your Juſtice.

Mr. *Lingard*, Common Serjeant.

My Lords, the Gentlemen that have gone before me upon this Occaſion, have ſo fully opened the Nature of the noble Earl's defence in general, that I ſhall not preſume to take up any more of your Lordſhips Time, by following them in that Method; but ſhall confine myſelf to the 5th, 6th, 7th, 8th, and 9th Articles; and ſhall beg leave to inform your Lordſhips what we have to lay before you in relation to the Matters contained in thoſe Articles. But before I proceed, I ſhall beg your Lordſhips Permiſſion to go out of thoſe Articles, ſo far as ſhortly to obſerve, that in the Preamble to the Articles of Impeachment, where the ſeveral Favours and Advantages, which the noble Earl at the Bar received from the Crown, are enumerated, thoſe which were the peculiar Marks of his Majeſty's Royal Bounty to him, and thoſe which were the ordinary Benefits and Allowances, which the Earl enjoyed in common with his Predeceſſors in that Office, are ſo blended together, and ſet in ſuch a light, that at leaſt it gives an occaſion to miſtake ſome of the latter Sort, for thoſe of the former; if it does not amount to an Inſinuation to that Purpoſe, in order to enhance the particular Advantages which the noble Earl has received, above what they really were.

My Lords, I ſhould be injurious to that noble Lord, who is poſſeſſed with Sentiments of the deepeſt Gratitude to his Majeſty, ſhould I endeavour to leſſen the Inſtances of his Royal Munificence towards him: And I purpoſely omit mentioning any thing of the noble Earl's Merit upon this Occaſion (tho' I humbly apprehend that I ſhould be thought very excuſable in ſo doing) becauſe I am ſenſible, that he chooſes to owe every thing purely to his Majeſty's goodneſs: Yet as he has (very properly as we humbly apprehend) in his Anſwer, ſet one of thoſe Matters in its true Light; by informing your Lordſhips that the Annual allowance of 4000 *l. per Ann.* mentioned in the Preamble to the Articles, and which he admits to have been granted to him, during the Time he ſhould continue Lord Chancellor, is no way particular in his Caſe; but that the ſame has, for many Years paſt, been conſtantly granted to, and enjoyed by his Predeceſſors; give me leave, my Lords, for a Proof of what is ſo inſiſted on, to refer your Lordſhips to what appears upon your own Journal, in the Caſe of the Lord *Somers*, upon the Impeachment exhibited againſt him by the Houſe of Commons, for high Crimes and Miſdemeanors; wherein the Introduction of the Charge in the 8th Article, this Appointment of 4000 *l. per Ann.* to him is alledged in Aggravation of that Charge againſt him. His Lordſhip, by his Anſwer thereto, admits, that during his Cuſtody of the great Seal, he did receive the Profits and Perquiſites thereto belonging, which before his Time were become very inconſiderable; and that he did alſo receive an Annual allowance from his then Majeſty of 4000 *l. per Ann.* being the like Penſion that had been allowed to ſeveral of his Predeceſſors. This, we humbly apprehend, plainly ſhews both that this allowance has been uſual, and likewiſe the Reaſon of making ſuch allowance; which is the inconſiderableneſs of the ordinary Profits and Perquiſites belonging to that high Station.

I ſhall now proceed to the Articles I propoſed to ſpeak to; in which the Matter, which is charged as Criminal upon the Earl, is, That he did illegally, corruptly, and extorſively, inſiſt upon, take and receive, the ſeveral Sums of Money therein reſpectively mentioned, for the admitting the ſeveral Perſons named in the 5th, 6th, 7th, and 8th Articles, to be Maſters of the Court of *Chancery*; with a ſmall variation in the 8th Article, by way of Aggravation, that there was a deficiency in that Office; which is there taken notice of: And for permitting *Thomas Bennet*, as it is alledged in the 9th Article, to reſign his Office of Clerk of the Cuſtodies; which is agreed to be a Charge much of the ſame Nature with that in the four preceding Articles; and is alledged to be againſt the good and wholſome Laws and Statutes of this Realm.

It has been ſtrongly inſiſted on, by the Gentlemen appointed to manage this Proſecution, that this is a Matter which is *Malum in ſe*, and conſequently a Crime at Common Law, as well as expreſly againſt the Statute of 12. *Rich.* 2d. and 6th of *Edw.* 6th. and no Means, that could be thought of, have been wanting to repreſent it under all the moſt aggravating Circumſtances, and in the moſt odious and frightful Appearance, that the blackeſt Colours could give it.

My Lords, The Earl by his Anſwer denies that he did at any time inſiſt upon the Sum of 105*l.* or any other Sum of Money, to permit or accept of the Reſignation of *Thomas Bennet*, mentioned in the 9th Article; or did refuſe to permit or accept thereof, until the ſaid *Thomas Bennet* had agreed to pay the ſame, or any other Sum of Money on that Account: Which is a denial of that, which is properly the Charge in that Article: He does indeed admit, that he did receive a Preſent from *Thomas Bennet*, under the Circumſtances mentioned in the Anſwer to that Article; and likewiſe that he accepted the Preſents, which were freely and voluntarily ſent to him, by the ſeveral Perſons mentioned in the four preceding Articles; in two of which Inſtances, all, and in the other two, great part of what he ſo received, has been returned. But his Lordſhip very rightly (as we humbly apprehend) inſiſts upon it in general, that the acceptance of Preſents upon ſuch Occaſions has been long uſed and practiſed by his Predeceſſors; and that they have been reckoned as the antient and known Perquiſites of the ſaid Office: That it is not Criminal in itſelf, or by the Common Law, or againſt any Statute of this Realm; or ſubject to any Judgment, which can be prayed in this Proſecution.

The Gentlemen of the Houſe of Commons, my Lords, in order to ſupport what they have inſiſted upon, and to make it appear that ſuch an Acceptance of Preſents is Criminal, have cauſed the Statute of 12. *Rich.* 2d. to be read to your Lordſhips; and have produced Mr. *Ayres*, to give an Account of the Ceremony, which is annually practiſed upon the Occaſion of Nominating of Sheriffs.

I won't preſume to act the Caſuiſt, or trouble your Lordſhips with any Niceties, by queſtioning, whether what paſſes upon that Occaſion ought to be eſteemed an Oath or no; but, my Lords, I hope I may venture to ſay, that it is very plain, it is no Oath of Office in general, for this Reaſon, becauſe if it had been ſo, the once taking it had been ſufficient; and there would have been no occaſion of repeating it Annually, in the ſlight Curſory manner Mr. *Ayres* has given an Account of, upon one particular Occaſion; which likewiſe ſhews, that what is then done, is confined to that matter only, which is then tranſacting, and not intended to be generally obligatory in other Things.

If the accepting of Preſents, upon occaſion of recommending, or admitting Officers to Places, had been underſtood to be Criminal, in the Eye of the Common Law, or againſt the Statute of 12. *Rich.* 2d; no doubt, but in ſo great a length of Time, Precedents might have been produced, where Perſons had been cenſured, or puniſhed, for a Practice, which has been repreſented to your Lordſhips as the moſt vile, and pernicious Sort of Bribery and Corrup-

Corruption; and yet, notwithſtanding the many marks of the Severity of the Government againſt Bribery and Corruption, which have been taken Notice of, the Gentlemen of the Houſe of Commons have been pleaſed to acknowledge, that there is no Precedent, no Judgment to eſtabliſh and warrant what they aſſert to be Law in this Point.

My Lords, I beg leave to ſay, that a ſtronger Argument than this, can hardly be thought of, to prove that this Behaviour is not illegal: It is a method of reaſoning in our Law, and, I conceive, conſonant to the general reaſon of Mankind; That where a thing never has been done, it is to be ſuppoſed there is no ground or foundation for the doing it. Nor can this way of Reaſoning be avoided, but by ſuppoſing that there never has been any Inſtances of this nature before, or thoſe ſo rare, and private, that the Government had no opportunity of taking notice of them: A Suppoſition, my Lords, ſo extraordinary, that there is hardly room to admit of it: and therefore, when we ſhall, with your Lordſhips Permiſſion, lay before you, Inſtances of this thing having been frequently and openly done; it will not be ſo much, in order to prove the contrary of ſuch a Suppoſition, as to give an opportunity to your Lordſhips, and to intreat you to reflect on the great Abilities, and unqueſtionable Integrity of thoſe excellent Perſons, who have acted in the ſame manner; the Notoriety and Openneſs with which this has been tranſacted, and the perfect Silence of the grand Inquiſitors of the Nation, and the whole Legiſlature in regard thereto: and then to conſider, the clearneſs and force of ſuch a Comment upon the Law, both from the Actions of thoſe, whoſe Characters will not allow of a Suſpicion, that they would act contrary to what they apprehended to be the Law: And from the Silence of thoſe, who ſhould and would, no doubt of it, have taken ſevere Notice of it, if it had been thought to have been ſo.

But ſuppoſe, after all that has been ſaid, that this was ſtill a doubtful point, would it not, my Lords, be extremely hard to rouſe up an old antiquated Law, which for ſo many Centuries has quietly ſlept, without exerting it ſelf, without fixing any Mark, or leaving any Traces of its Force and Vigour, to point out the Danger attending ſuch a Practice; a Practice that has been owned and countenanced by ſuch great and unexceptionable Men, and objected to by none; and which from thence, might well receive the Appearance of being fair and innocent: Would it not, I ſay, my Lords, be very hard, without ſome previous Notice of the Danger, to put this Law in Execution, to unſheath this ruſty Sword, to wound this Noble Earl with? We hope your Lordſhips would think ſo, if it were capable of hurting him, which we humbly apprehend it is not; and that, if there is any doubt remaining with your Lordſhips, as to the Legality of the Earl's Behaviour in this Point, that the Statute of *6th.* of *Edw. 6th.* will clear it up beyond queſtion; and that it will manifeſtly appear by that Statute, that accepting of Preſents is neither *Malum in ſe*, againſt the Common Law, or the Statute of *Richd. 2d.* and that this Statute of *Edw. 6th.* muſt be looked upon as a declarative Law in thoſe Points, or otherwiſe, it muſt be allowed (which none ſure will ſuppoſe) that the Legiſlature of this Kingdom has made a Proviſion to ſanctifie a moral Evil; (for that is the Import of *Malum in ſe*) to allow, permit, and even encourage, contrary to the Statute and Common Law, a Practice not only immoral, and vile, but of the moſt pernicious Tendency and Conſequence, if the Repreſentation made of it by the Gentlemen of the Houſe of Commons is to be regarded.

My Lords, I ſhall paſs by the fourth Paragraph of that Statute, whereby it is provided, that the ſaid Act ſhould not extend to Offices of Inheritance: tho', I preſume, the Largeneſs of the Eſtate can hardly be thought to alter the moral Nature of the Action. By the *6th* Paragraph, there is a Saving for all Bargains, Sales, Promiſes, and Agreements, of or for any Office, made before the firſt of *March*; and ſuch Bargains, Sales, and Contracts, are exempted out of the force of that Act. Your Lordſhips will be pleaſed to obſerve, This Seſſion of Parliament began the *23d.* of *January*; ſo that this ſaving Clauſe makes a Proviſion for futurity. My Lords, this would be to eſtabliſh Iniquity by a Law, if the accepting a Preſent on occaſion of admitting a Perſon into an Office, was immoral and criminal, as has been aſſerted. But if it were ſo, and likewiſe againſt the Statute of *12. R. 2d.* and contrary to the ſuppoſed Oath, taken in purſuance of that Statute; what, my Lords, muſt be thought of the laſt Paragraph, which provides, that the Act ſhould not extend to the Chief Juſtices, or Juſtices of Aſſize, that then were, or thereafter ſhould be? Theſe all Annually take the ſame Oath (if it is to paſs as ſuch) upon the ſame occaſion of nominating of Sheriffs, as Mr. *Ayres* has informed your Lordſhips; and are conſequently, by virtue thereof, under the ſame Obligation in this reſpect, as a Lord Chancellor: And can your Lordſhips ſuppoſe that ſo many Reverend and Learned Perſons, who, from their known Duty of Attendance, muſt be preſumed to be preſent in your Lordſhips Houſe, whilſt this Law was there under Conſideration, would have forborn informing their then Lordſhips, how contradictory thoſe Parts of this Statute were to the Common Law, and the Statutes of this Realm, eſpecially that of *Rich.* 2d? Can it poſſibly be conceived, that the whole Legiſlature would paſs a Law, not only to allow, in ſeveral Inſtances, the Practice of what was ſo contrary to the Law of Reaſon, as well as the Common and Statute Law; but even to give a Licence, and Encouragement, to break an Oath preſcribed by Statute, and Annually repeated? And that no Body ſhould ever ſcruple the doing ſo, or diſcover the illegality of this Practice, but upon this unfortunate Occaſion? And yet, my Lords, monſtrous as theſe Suppoſitions are, they muſt (as I humbly conceive) be allowed of, or it muſt be granted that ſuch Acceptance of Preſents is not *Malum in ſe*, or contrary to the Statute of *Rich.* 2d,

2d. And I hope it is plain, that this Statute of *Edw.* 6th, is in effect a declarative Law in those Points.

My Lords, The Gentlemen of the House of Commons seemed sensible of these Difficulties; and therefore they have with great Industry, endeavoured to distinguish what the Earl has done, from the Common and Ordinary way of accepting of Presents, upon such Occasions. They have told your Lordships, that his method was Haggling and Extortive; and have given it abundance of other hard Names: they have, to confirm it, informed your Lordships, that the Prices lately given, have been higher than those formerly accepted upon the like Occasions: tho' they have not condescended to attempt the Proof of it.

My Lords, As the manner of the Earl's taking of Presents will depend in a great measure upon the Evidence, which has been offered to your Lordships, upon these Articles; I shall beg leave to take some short Notice of it. As to the 9th Article, Mr. *Thomas Bennet* has been pleased to inform your Lordships, that he did desire to have the Earl's Recommendation of Mr. *Hammersley*, to succeed him as Clerk of the Custodies; and that being told at the second meeting with Mr. *Cottingham*, that a Present would be expected, he said it was a very hard and unreasonable Thing to expect a Present from him, who had so lately paid a large Sum, upon his being admitted into his other Office: But upon its being insisted on, that an 100 Guineas should be paid, he was forced to comply therewith, and agree to pay it.

My Lords, I humbly insist upon it, that if an entire Credit were to be given to what Mr. *Bennet* has said upon this Occasion, it would not amount to a Proof of the Charge contained in this Article: The Corruption and Extortion therein complained of, being restrained to the Consideration of permitting and accepting the surrender of the Office there mentioned; all the other Parts of that Article being only introductory to, or in Aggravation of that supposed Offence. But Mr. *Bennet* has not mentioned to your Lordships one Syllable of the Earl's having refused to permit or accept a surrender of that Office, or of his having received any Sum of money in Consideration of his permitting or accepting Mr. *Bennet*'s Surrender thereof.

But, my Lords, we must beg leave to submit it to your Lordships Consideration, what Credit is to be given to Mr. *Bennet*'s Evidence, so far as it does go, for this purpose. The Gentlemen of the House of Commons have thought fit to call Mr. *Cottingham*, as a Witness to this Article; who owns that in his first Discourse with Mr. *Bennet* upon this occasion, he told him, he believed a Present would be expected to the Great Seal, and that Mr. *Bennet* freely offered 100 Guineas, before Mr. *Cottingham* spoke to the Earl about that Affair. He expresly contradicts Mr. *Bennet* in what he said of Mr. *Cottingham*'s insisting upon 100 Guineas, and Mr. *Bennet*'s Agreement to give that Sum at the second meeting, Mr. *Cottingham* swearing, that the offer of 100 Guineas was voluntary on Mr. *Bennet*'s part; and that it was at their first meeting. There are several other Contradictions in their Evidence; but I shall only take notice of that, where Mr. *Bennet* pretends, that Mr. *Cottingham* asserted he did not know Mr. *Hammersley*, his next door Neighbour. This Mr. *Cottingham* denies, and Mr. *Bennet* is forced in some measure to retract what he had so positively sworn; and comes down to a Belief only, that Mr. *Cottingham* said so, but will not be positive.

It is something surprizing, that after they have done Mr. *Cottingham* the Honour to call him as a Witness, and given him a Credit by so doing, Hints should be flung out, that Mr. *Cottingham* knows no body, except where there is Gold in the Case; that Gold is a great clearer of the Eye-sight, and the like Insinuations, to the lessening his Character. But why then did they call him as a Witness? Surely, my Lords, if he is a Person not to be believed, it was not altogether so proper to produce him as a Witness before this August Assembly. But, my Lords, we shall ease them in that matter, by throughly establishing Mr. *Cottingham*'s Reputation; tho' it is something unusual to support the Reputation of a Witness produced by the other side: And we hope your Lordships will then find no difficulty in determining, whether Mr. *Bennet* or Mr. *Cottingham* deserves most to be credited.

In support of the 5*th* Article, Mr. *Kinaston* is called as a Witness. I shall take no notice of any part of his Evidence, but what relates particularly to the Charge in this Article, the money paid upon his Admittance, and the Circumstances of that Transaction. Mr. *Kinaston* indeed has said, that he would willingly have paid but a 1000 *l.* upon his Admittance; and accordingly offered that Sum, which Mr. *Cottingham* would not hearken to; and therefore he submitted to pay 1500 Guineas; but he owns at the same time, that he has not a very exact Remembrance of what passed upon this occasion. Mr. *Bayley*, to whom Mr. *Kinaston* refers, and who was his Agent in this Business, in his Evidence has given your Lordships an Account, that Mr. *Kinaston*, when he understood that 1500 Guineas was apprehended to be the Present he intended to make, said, that he thought it was only 1500 *l.*; but mentions nothing of the Offer of a 1000 *l.* It is very strange, if that had been the case, that he should not have taken notice of that likewise. But Mr. *Cottingham*, who is again called as a Witness, shews the reason why no notice could be taken of such an Offer; and that is, because there really was none such. He denies that Mr. *Kinaston* offered 1000 *l.* and swears that the Sum offered by Mr. *Kinaston*, was 1500 Guineas, and withal declared, that he would aquiesce under what the Earl should think fit in that matter; and informs your Lordships, upon his being interrogated by the Gentlemen of the House of Commons to that purpose, that he never did acquaint the Earl with what passed upon that occasion, till the whole thing was agreed and settled; and that, when he was informed of it, he expressed himself to be well satisfied therewith. Surely, my Lords, here are no extraordinary Endeavours or Artifices used to enhance the Price; no haggling, by first naming one Sum, then another,

ther; but at once the matter is propoſed, and at once agreed and concluded.

To prove the 6*th* Article, my Lords, Mr. *Thomas Bennet* is called again; and here again the like misfortune happens as before; Mr. *Bennet* differs widely from Mr. *Cottingham*, who is called upon the ſame ſide to prove the ſame Article. Mr. *Bennet* ſays, that he acquainted Mr. *Cottingham*, that he thought a 1000 *l.* was enough to give upon his Admittance, and with his Reaſons for ſuch Opinion; but that, however, he was willing to give a 1000 Guineas. Mr. *Cottingham* has Sworn that no ſuch Offer was made, that nothing of that Nature paſſed; but that Mr. *Bennet*, upon being informed what had been done before upon the like occaſions, freely offered fifteen hundred Guineas.

My Lords, The very nature of the Thing, upon the Circumſtances agreed on all Hands, ſpeaks ſtrongly in favour of Mr. *Cottingham*, and in contradiction to Mr. *Bennet*, as to what is aſſerted by each of them upon this occaſion. Your Lordſhips obſerve in what condition the Earl is agreed to be in at that time; had Mr. *Bennet* apprehended that he had ſo very hard terms put upon him, as he would not have your Lordſhips believe he did: Would he not have ſtayed ſome little time, to have ſeen the effect of ſo violent a diſtemper, as a Pleuretic Fever? which his Lordſhip then laboured under in a very high degree; eſpecially when Mr. *Bennet* appeared at the ſame time to be in no very good State of Health himſelf; of which he was reminded by Mr. *Cottingham*, who was ſo far from acting the rapacious part, in behalf of the Great Seal (which was not in a way to ſuffer, by the admiſſion of a Perſon likely to make a new Vacancy by Death) that perceiving Mr. *Bennet* to look yellow, and out of order, he deſired him to conſider what he was going to do, when he took a Place for Life in his Condition. Mr. *Bennet* told him, it was only a Cold; and that therefore he would proceed. This Gentleman, who was ſo cautious, as he pretends, as to the Sum he was to give upon his Admittance, and which he then thought to be ſo unreaſonable, hurries on this Affair, under theſe Circumſtances of his own, as well as the Earl's State of Health; and tho' out of order, as he himſelf owned, preſſes an extorted Sum of 1500 Guineas, into the Hands of, probably, a dying Chancellor. Will not your Lordſhips think it more likely, that Mr. *Bennet* apprehended, that as the Price of Things then went, he might not, under a new Chancellor, come into the Office upon ſo eaſy Terms as were then offered him; rather than that he thought himſelf to be hardly uſed upon that Occaſion? And here, my Lords, I beg leave to take Notice of what has been urged, to induce your Lordſhips to look upon this Acceptance of Preſents, by the Earl in particular, to be Extorſive; which is, that the Sums of money given upon theſe, and the like Occaſions, are lately greatly encreaſed. Your Lordſhips will be pleaſed to obſerve upon what has hitherto appeared, that the Sums taken by the Earl upon the Admiſſion of a Maſter into the Room of one deceaſed, have been conſtantly leſs, than what the Maſters, who have reſigned, have had as a Conſideration for ſo doing. And it is very eaſy to account for the late increaſe of the Sums given upon theſe Occaſions, without any Extortion in the matter. As perſonal Eſtates have vaſtly increaſed within theſe few Years, and Settlements, and Proviſions for Families, have been made out of the Publick Stocks and Funds, the Buſineſs of the Court of *Chancery* hath increaſed proportionably; and conſequently, People would be more deſirous of, and give more money for, the Purchaſe of theſe Offices, which were improved by ſuch increaſe of Buſineſs. And as the common Intereſt of money is grown lower, it is natural to ſuppoſe, that People would be the more ready to inveſt their Fortunes in thoſe Things, which were likely to produce a better Income, even in Proportion to the riſque that was run upon their Lives, than could be made of money in an ordinary way. But whether that, which I have mentioned, or whatever elſe may be the Cauſe of it, it is ſo plain and notorious that all Places and Offices have of late Years increaſed in their Value, that it would be miſpending your Lordſhips Time to enter into the Proof of it.

My Lords, As to the Admiſſion of Mr. *Elde* into his Office, and the Acceptance of a Sum of money upon that Occaſion, which makes up the Charge contained in the 7th Article; and as to ſo much of the 8th Article, as relates to the like Tranſaction with Mr. *Thurſton*; there is not the leaſt Colour or Pretence from the Evidence, which has been given to ſupport thoſe Charges, to ground a Suppoſition of Haggling, or driving a Bargain. On the contrary, from that very Evidence it appears, that what was done by Mr. *Elde*, and Mr. *Thurſton*, was perfectly free and voluntary; and attended with a good deal of Solicitude and Uneaſineſs in the latter, leaſt his Offers ſhould not be accepted; the Circumſtances of which I ſhall not trouble your Lordſhips with repeating. And tho', from the Troubles he has ſince met with in that Office, he has ſomething altered his Opinion of it, your Lordſhips will be guided by what he then thought, and acted. Your Lordſhips will be pleaſed to obſerve from the ſame Evidence, that great part of the money preſented by thoſe Gentlemen, has been returned to them again; and tho' it is ſome time afterwards before it was done, it was plain, there was a much earlier Intention of doing ſo. Mr. *Elde* has informed your Lordſhips, that in *May* following his Admiſſion the Earl intimated to him, that he would return part of the money: And Mr. *Thurſton* received ſeveral Meſſages, which plainly appeared to be in order to a Return of part of the money which he had given; tho', on Occaſion of his being out of Town, it was ſome time after before he knew the meaning thereof, or had the money returned.

My Lords, There is one particular Circumſtance in the 8th Article, which has taken up a great deal of your Time; that I mean of the Deficiency in Mr. *Borret*'s Office. Why that matter was inſerted there, and why it has been ſo much laboured, and your Lordſhips troubled with ſo much Proof about it, I muſt own myſelf at a Loſs to conceive; unleſs it be allowed and admitted, that the taking of money, upon the Admiſſion of a Perſon to the Office of one of the Maſters of the Court of *Chancery*, is not purely and ſimply *Malum in ſe*, illegal, and contrary to the Statute of *Rich.* 2d: But that, if it be done to raiſe money to make good the deficiency in the Office, as was done in the Caſe of Mr. *Edwards*, which your Lordſhips have upon this Occaſion heard of, it is right and well. How otherwiſe can the Deficiency in the Office be an Aggravation of the ſuppoſed Crime of taking a Preſent upon the Admittance of a Perſon into it? Is it unreaſonable to admit a new Maſter into an Office wherein there is a deficiency? Is it not as neceſſary to fill up that Vacancy as any other?

Certainly more ſo, in order to have one, whoſe Duty obliges him to a more particular Care of the Affairs thereof, which ſeem more to want it. The Aggravation then of the Fault, or rather the Fault itſelf, muſt conſiſt in the not applying the money received, towards the diſcharge of the deficiency. But how can it be a Fault not to do ſo, unleſs there had been an Obligation ſo to have applied it? And how can there be an Obligation to make ſuch Application of the money, where there is ſo ſtrong an Obligation, as has been inſiſted on, not to raiſe any money at all by ſuch means? My Lords, we humbly apprehend, that the endeavour to aggravate what is charged as a Crime in this Article, has weakned, at leaſt, what is laid as the Foundation for its being a Crime; and this with little or no Succeſs in the Proof, attempted to be made of this matter; ſo far, I mean, as relates to the Earl's Knowledge of the Deficiency, or his want of Care to be informed of the State of that Office.

I won't repeat what Mr. *Godfrey* has ſaid upon this Occaſion; your Lordſhips perceive that he and Mr. *John Bennet* were thought the fitteſt Perſons to inſpect the Affairs of Mr. *Borret*, after his deceaſe; and were accordingly appointed to do ſo: And upon having examined Things, as well as they then could, were both of Opinion, as Mr. *Godfrey* ſays, that there was no Likelihood that there would be any Deficiency; and with this the Earl was acquainted. Mr. *Bennet* indeed, differs ſomething from Mr. *Godfrey*, as to the Account which he gave of this matter; but not ſo much, tho' his Account was to be taken, as would anſwer the Purpoſe for which he was called; the aggravating the Charge in this Article againſt the noble Earl, who, there is no Room to doubt, would have acted as generouſly in this Caſe, as he did in the Caſe of Mr. *Edwards*, upon his coming into *Dormer*'s Office, if the Circumſtances, as repreſented to him, had been in any near degree alike.

My Lords, I have thus ſtated the matter of theſe ſeveral Articles, to the beſt of my Remembrance, in its true Light, as it ſtands upon the Evidence already given: We ſhall beg leave to call ſome Witneſſes to prove, that ſeveral noble and great Perſons have taken Preſents upon theſe Occaſions: Men of excellent Characters, ſome of whom ſeveral of the Gentlemen of the Houſe of Commons have taken ſuch Notice of, that I may ſafely venture to ſay, that they will concur in the Opinion, that they were Perſons of ſo much Integrity, that they would not have taken ſuch Preſents, if they had thought it illegal ſo to have done; and of ſo great Abilities, that their Judgment muſt be of the greateſt weight in this Point. We ſhall further trouble your Lordſhips to explain the nature of the Payment of 64*l.* which Mr. *Thomas Bennet* told your Lordſhips he made, over and above the 100 Guineas, paid by him on Account of the Office of Clerk of the Cuſtodies. He might, no doubt, if he had pleaſed, have informed your Lordſhips, that the moſt part of this 64*l.* was either paid to the Clerks of the Office, or belonging to other Officers, and that not above 33*s.* came to the Great Seal; and we apprehend that to have done ſo, would have been more agreeable to the Sincerity, with which a Witneſs ought to ſpeak, than to have left it in that general manner, where it might look like another Payment to the Earl. And I hope your Lordſhips will excuſe my obſerving upon this Occaſion, the unhappy Circumſtances of the noble Earl at the Par: If he takes a ſmall Sum, as this of the 100 Guineas for Inſtance, it is poor, pitiful, and a Proſtitution of his Honour; if a larger Sum is taken, he is avaricious, greedy, rapacious, and I don't know what: Tho' your Lordſhips will obſerve, the Sums accepted are regulated according to the Nature of the Office, on Account of which they are given. My Lords, his very Care in other Inſtances is made his Fault, his Actions muſt be all ſuppoſed to be done with corrupt Views; and yet his not Acting is equally blamed; it is Careleſneſs, and Neglect. This is the Light in which his whole Behaviour has been ſet before your Lordſhips, and that with all the Aggravations and Vehemence imaginable. But it is your Lordſhips, who, in a ſuperior and calmer Station, are to weigh and judge of theſe matters. It is from you the noble Earl is to expect Judgment; and it is his Happineſs, that it is ſo. And in order thereto, when we have laid this Evidence before your Lordſhips, together with an Order, which ſhews the Payment of the moneys received from Mr. *Thomas Bennet* and Mr. *Kinaſton*, into the Court of *Chancery*; we ſhall ſubmit the matter of theſe Articles to your Lordſhips. And notwithſtanding all the ſevere Things which have been ſaid upon this Occaſion, we humbly hope your Lordſhips will be of Opinion, that the noble Earl at your Lordſhips Bar, is not guilty of any of the Charges contained in theſe Articles.

Mr. Serj. *Probyn*. My Lords, we now proceed to call our Witneſſes, and to prove the ſeveral Facts we have opened; and we beg leave to proceed in the ſame method as the Gentlemen, who are the Managers for the Houſe of Commons, have done. As they began with the 9th Article, ſo we in our Evidence ſhall likewiſe begin there; and ſhow that Preſents have conſtantly been made to the Great Seal upon all Admiſſions into the Office of the Clerk of the Cuſtodies; and that in many other Offices under the Direction of the Great Seal, Preſents have been uſually made by the reſpective Officers on their Admiſſions; and this hath been the known uninterrupted Uſage; and every Chancellor hath taken them as cuſtomary Preſents. We deſire, in the firſt place, that Mr. *Roger Lewis* may be called.

Mr. *Roger Lewis* ſworn.

Mr. Serj. *Probyn*. We deſire he may be asked, how long he hath been concerned as a Deputy in the Office of the Clerk of the Cuſtodies?

Mr. *Lewis*. I have aſſiſted as Clerk of the Cuſtodies of Lunaticks and Idiots, for the ſpace of about 35 Years.

Mr. Serj. *Probyn*. I deſire he may be asked, who was the firſt that came into the Office of Clerk of the Cuſtodies in his Remembrance?

Mr. *Lewis*. Mr. *Henry Wynne* was the firſt that came in after I was Clerk there.

Mr. Serj. *Probyn*. Who ſucceeded Mr. *Wynne*?

Mr. *Lewis*. Mr. *Roger Thompſon*?

Mr. Serj. *Probyn*. I deſire he may be asked, whether Mr. *Thompſon* be now living or dead?

Mr. *Lewis*. Mr. *Thompſon*, as I have been informed, hath been dead about theſe 9 or 10 Years paſt.

Mr. Serj. *Probyn*. I deſire he may be asked, whether any Preſent or Compliment was made to the Great Seal on Mr. *Thompſon*'s Admiſſion?

Mr. *Plummer*. My Lords, I object to the Anſwering of that Queſtion; and deſire to know, whether your Lordſhips will have Evidence againſt Gentlemen that are dead, who are no way capable of Anſwering for themſelves before your Lordſhips here? If my Lord can ſhew any Title or Right he had to ſell this Place, we are ready to hear him; but to give Evidence againſt a Perſon that is dead, and cannot ſpeak for himſelf; I ſubmit that to your Lordſhips.

Mr.

Mr. *Lutwyche.* My Lords, this matter is very proper to be objected to now, and it is very neceſſary for your Lordſhips Determination in the Beginning of this Affair. I ſee by this Queſtion, and their Opening, what large Compaſs the Gentlemen have taken, not only as to theſe Offices, but as to many other Offices Preſents were given. I take the proper Queſtion before your Lordſhips to be, Whether this be lawful by the Laws and Statutes of the Realm? and if that be the Queſtion, I ſubmit it whether it is material to give an Account what other Perſons have done? Whether, when a Perſon is brought upon a Proſecution for an Offence againſt the Law, it be material for him to ſay, that other Perſons have been guilty of the ſame Crimes? This is a Queſtion at Law upon the Conſtruction of the Statute; and they ſay it is neceſſary for them to give theſe Inſtances, to ſhew the Judgment of thoſe great Perſons upon the Act of Parliament; but ſure I am, it was never yet attempted to give in Evidence the Actions of other Perſons in order to expound a Statute. The Expoſition of a Statute muſt be founded on the Words of the Law, and not on the Actions of other Perſons. In all the Experience I have had in caſes of Proſecutions for Crimes founded on the Common Law, or on Acts of Parliament, Gentlemen argue from what the Law is, what Authorities have been in thoſe Caſes, and what the Conſtruction hath been in former Judgments. My Lords, this is a matter of great Conſideration to your Lordſhips, not only upon the Account of the Precedent, but alſo upon the Account of the Time that your Lordſhips are like to ſpend, if you are to go through all the Offices of the Law, to ſhew how many great men have accepted Preſents. It will take up a great deal of Time, without any Fruit at all. But, my Lords, there are other Conſiderations which will prove it unreaſonable to admit of this Evidence: At preſent your Lordſhips have under your Conſideration the Caſe of this noble Lord within your Bar; but would they in Defence of him impeach others, not here to defend themſelves? Many of them are dead, others are living: Will you try Perſons not accuſed, and without being preſent to anſwer for themſelves? But, my Lords, with reſpect to our ſelves, is it reaſonable for us to take upon us the Examination of ſeveral Facts, without knowing who the Perſons charged are, what the Circumſtances of the Caſe were? Are we to ſhew the Difference, or ſtate the Circumſtances? It is impoſſible for us to do it. My Lords, this being the Nature of the Caſe, it is a matter for your Lordſhips Judgment, now in the Beginning, that your Lordſhips may ſee the Extenſiveneſs of the Evidence they have hinted at, and intend to produce. That which we inſiſt upon is two things, that it is not material, and that there is no manner of Notice for the Perſons ſo charged to make any Defence, or to ſhew how the Circumſtances of the Caſe were. So, my Lords, we muſt beg leave to have your Lordſhips Judgment in this matter.

Mr. *Sol. Gen.* My Lords, if the noble Lord produceth any one to make out his Innocence, we do not oppoſe it. But if the noble Lord endeavours to ſhew what the Law is from the Practice of other People, it is altogether improper. It is impoſſible that the Law can be judged of by the Practice of other People in committing the ſame Facts. That can't have the Weight of the Opinion of a great Man. The Opinion of a learned Perſon, not concern'd in the Queſtion, is an Opinion of weight; but the Opinion of a Perſon concerned in the Queſtion, is not to be look'd upon as of any Authority. If the noble Lord makes Uſe of this Kind of Evidence, by way of mitigation, or of leſſening his Offence, in that View it can be of no Significancy: Becauſe the Aggravation or mitigation of the noble Lord's Offence muſt ariſe from the particular Circumſtances, Manner, and Facts of his Offence. We muſt ſubmit it therefore to your Lordſhips Conſideration, whether this is a proper Inquiry or no.

Mr. Serj. *Probyn.* My Lords, we beg leave to inſiſt upon it, that this is a proper Queſtion, and very material for the noble Earl's Defence. He hath inſiſted in his Anſwer, 'That what is objected to him in this Inſtance, hath been long 'uſed and practiſed in the Time of his Predeceſſors; and that ſuch Preſents have been reckoned 'among the ancient and known Perquiſites of the 'Great Seal; and the making and accepting there'of hath been notorious to all the World, and 'never before looked upon to be criminal, or 'complained of as ſuch; and that he humbly 'hopes, that the giving or receiving of a Preſent 'on ſuch an Occaſion, is neither criminal in it 'ſelf, nor by the Common Law of this Realm; 'and that there is not any Act of Parliament, by 'which the ſame is ſubjected to any Puniſhment 'or Judgment, which can be prayed in this Pro'ſecution; and the ſaid Earl further hath ſaid, 'that he thinks himſelf obliged humbly to lay this 'before your Lordſhips, not only in his own De'fence, but in Vindication of the Honour of ſo 'many great and excellent men, who have been 'his Predeceſſors in the ſame Office, and have all 'along done the ſame, for which he is now com'plained of; and alſo of others, who have been 'Lord Chief Juſtices of the King's Bench, and 'Common-Pleas, Maſters of the Rolls, and Judges, 'who have likewiſe received Preſents in money, 'upon the Admiſſion of the ſeveral Offices under 'them in the reſpective Courts of Juſtice wherein 'they preſided; and who, the ſaid Earl is aſſured, 'never apprehended themſelves to be guilty of 'any Crime againſt any the good and wholeſome 'Laws or Statutes of this Realm: And there'fore we take it to be our Duty to give proper E'vidence to ſupport this Part of the noble Earl's 'Anſwer. But, my Lords, it is objected by the Gentlemen that are Managers for the Houſe of Commons, that they are not prepared to enter into this Proof, becauſe they had no Notice that ſuch Evidence would be given: In Anſwer to which we humbly ſubmit it, that the Anſwer the noble Lord hath given, that ſeveral preſiding Officers in the Courts of Law and Equity have always received ſuch Preſents, is ſufficient Notice to them to be prepared to anſwer ſuch Evidence as might be offer'd to ſupport this Allegation. My Lords, as to the other Objection, that the Opinions of great men are not Evidence in their own Caſes, we ſubmit it that in this Caſe it is a material Circumſtance. Though the Precedents of great men, (whoſe Names they are unwilling to hear) who have taken Preſents in like Caſes, and not thought it criminal, may not controul your Lordſhips Judgment in this Particular, yet I humbly apprehend that ſuch Inſtances cannot but have great weight in the Event of this Caſe. They are material Circumſtances, ſtrong Inducements to incline your Lordſhips to believe, that this noble Lord

had

had no avaritious, no corrupt Deſign, in accepting the common cuſtomary Preſents that were voluntarily tendred to him. And ſince it is made ſo material a Part of his Defence, and that he might well think himſelf innocent and ſecure in following the Examples of ſo many honourable and learned Perſons, of which we are prepared to give your Lordſhips many Inſtances in Evidence; and ſince they have Notice of it, and that the noble Lord hath inſiſted upon it in his Anſwer, we humbly beg your Lordſhips will admit us to give the ſeveral Inſtances in Evidence.

Mr. *Com. Serj.* My Lords, I beg your Lordſhips Patience. My Lords, we humbly apprehend this is very proper and regular Evidence. I think there can be no Evidence more proper. If the noble Lord ſhould have the Misfortune to be thought culpable, will he not appear under another View to your Lordſhips, when he hath had the Concurrence of ſeveral great Perſons, of whoſe Integrity, Honour, and Knowledge, no Queſtion hath ever been made? If he himſelf hath introduced this Practice, and ſet it up by himſelf, it will then moſt certainly be an Aggravation; if he hath done no more than others have done, it will be an Extenuation. My Lords, taking it in that Light, there is no Reaſon why this Evidence ſhould not be given. But, I hope, your Lordſhips will further conſider of the preſent Caſe: Here is a Law inſiſted upon of ſeveral Hundred Years ſtanding, that makes this Criminal: It is owned that there hath been no Determination or Judgment at Law, that this is Criminal: Practice, eſpecially in Reſpect of old Statutes, hath oftentimes been allowed and admitted to explain the Senſe and meaning of thoſe Statutes. There are no Records preſerved of this, and therefore we are under a Neceſſity to confine our ſelves to ſuch Evidence as we can produce of living Witneſſes, and therein we apprehend we are proper, as it is Part of the matter in Iſſue before your Lordſhips. Your Lordſhips are as well to try the Earl's Anſwer, as the Common's Articles. Another Circumſtance they are pleas'd to mention againſt receiving this Evidence, is, the taking up of your Lordſhips Time. Your Lordſhips have had the Goodneſs and Juſtice to hear, with great Patience, a very long Evidence, with repeated Obſervations and Openings of the Articles, in order to prove a noble Peer, one of your own Body, to be Guilty: Can it be ſuppoſed that your Lordſhips will not have that Patience, which is due to all People in Favour of Innocence, and when one of your own Body ſtands impeached? For theſe Reaſons we humbly hope that this Evidence ſhall be admitted; and that the noble Earl ſhall have the Benefit of this Explanation, what the Senſe of ſo many great and excellent men hath been of this old and doubtful Statute.

Mr. *Robins.* My Lords, we apprehend your Lordſhips will not be of Opinion, that this will be to defend the preſent Impeachment, by the Impeaching of others. We lay it down as the Foundation of our acting, that our Predeceſſors have done the ſame, notwithſtanding this Statute of *Edward* the *6th.* and therefore it is a reaſonable Inference, that this was not taken to be within the ſaid Statute. We apprehend it cannot reflect upon any that are either Dead or Living; and that, as we are in Defence of this noble Lord, we are at Liberty to examine Witneſſes, to prove that other Perſons, his Predeceſſors, have done the ſame.

Mr. *Strange.* My Lords, I apprehend we have the ſame Right to juſtify our ſelves by Precedents, as they have to accuſe us by Precedents. What the noble Earl's Predeceſſors in other Inſtances have done, hath been mentioned by Way of Aggravation. The Caſe of Dr. *Eddisbury* hath been mentioned over and over by the Gentlemen of the Houſe of Commons; and they have aggravated the Offence of the noble Earl, for not following that Precedent; and as they had a Right to aggravate the Earl's Offence, by not following the Precedents of his Predeceſſors, ſo we think we have the ſame Right to ſhew in other Inſtances, that we have followed the Examples which have been ſet us by our Predeceſſors. But they ſay, this is againſt Law: Whether that is ſo, or not, is the Queſtion; and it will be material for the Deciſion of that Queſtion, to take into your Conſideration, what hath been the Opinion of great Men in all Ages, upon this Act of Parliament. Continual Uſage, from Time to Time, even from the making of the Act of Parliament, is the beſt Expoſition of that Law. Contemporary Uſage, or the Opinion of thoſe, who were at the Time of the making of a Law, hath always been eſteemed the beſt Interpretation of that Law; and therefore, as we ſhew the Uſage to be conformable to what we now inſiſt upon, I humbly hope it will have a great Influence upon your Lordſhips, as to the Expoſition to be now put upon this Act of Parliament: It hath been ſaid, This Way of Proceeding tends to accuſe great Perſons of Honour, *&c.* ſome that are Dead, and ſome that are now Living; we ſhall not enter into ſo nice a Debate: it is ſufficient for us that it is proper and neceſſary Evidence for the Defence of our Client. It is a material Evidence in this Caſe, whether other Perſons have diſpoſed of theſe Offices, and have incurred any Penalty; if they have done it, I humbly apprehend that no Objection remains againſt our entring into the Evidence of that Kind. Whatever is your Lordſhips Judgment in Point of Law, it is material for your Lordſhips Conſideration, whether this noble Lord hath ſet this on foot of his own Accord, or hath not trod in the Paths of his noble Predeceſſors? Your Lordſhips will take it into your Conſideration, and whatever the Point of Law may happen to be, it muſt be ſaid, that if this noble Lord did err, he erred with his Predeceſſors.

Earl of *Macclesfield.* My Lords, I would not trouble your Lordſhips, if I did not think it neceſſary to inſiſt upon your Lordſhips admitting this Evidence: Indeed, if I thought it would impeach the Character or Reputation of any of the noble Lords, who have been my Predeceſſors, whether they be now dead or alive, I would undergo any Puniſhment rather than do it. But I hope it was innocent, both in them and me; and that its being done by Perſons of ſuch unblemiſhed Honour, will be one ſtrong Argument of its being ſo; and, my Lords, I proteſt their Example was the ſingle Reaſon with me for doing of it; and if it had not been done before, I would not have done it: This was the true Ground of what I have done. For what theſe Gentlemen ſay, my Lords, that this is not material, and that the Law muſt be proved by Law Books and Judgments, I thought the Common

Law

Law was common Uſage, and that which hath conſtantly and openly been done without being cenſured or blamed, cannot be contrary to Common Law. If this be not allowed, I am highly obliged to theſe Gentlemen, that they have not accuſed me for taking Money in many other Inſtances, relating to my Office; to inſtance in one only, upon the paſſing of every Patent there is a ſmall Fee due, and conſtantly paid to the Great Seal; if they had accuſed me of this, and called it criminal, I know not what to have ſaid to it, unleſs Uſage and Cuſtom had juſtified it; I claim it as a Right, and unleſs Uſage will prove the Right, I know no other Way. I own this is ſomething different: In that Caſe, I inſiſt on a particular Sum by Uſage: I do not inſiſt in this Caſe that there is a particular Sum due as a Fee, but that I had a Right, or Liberty, to accept of ſuch a Sum as the Party ſhould give: But, ſay the Gentlemen, this Evidence is to make other Perſons Criminal; That is very true, if this be a Crime. Theſe Gentlemen take it for granted; but whether it be a Crime or no, will be for your Lordſhips final Determination: And I hope your Lordſhips will not be of Opinion, that it is a Crime. If it ſhould come out to be in your Lordſhips Judgment a Crime, it will be a great Cenſure upon my Predeceſſors, who all, as it is well known by every Body, did the ſame Thing. But if this be underſtood to be a Matter, that is admitted to have been practiſed, and to need no formal Proof, I had rather let this Examination alone: It is uneaſy to me, to enter upon any thing that can draw a Reflection upon any Perſon: therefore I ſubmit it to your Lordſhips.

Mr. Serj. *Pengelly*. My Lords, The Managers are accountable to the Commons for any Thing they admit without their Direction; therefore, unleſs they are ſatisfied and convinced that they ought to admit it, it is not to be expected for the Managers to do it. It is ſaid, that the Things offered are in Extenuation; that it would be a greater Guilt, if there were not former Examples to juſtify it: I apprehend for that Reaſon it is an improper Time to inſiſt upon this now: Becauſe Matters of Aggravation or Extenuation muſt come ſubſequent to your Lordſhips Determination on the Articles, and will be the Conſideration of your Lordſhips, when you come to conſider of the Judgment that is to be given. I have known by frequent Experience, in Proſecutions of a Criminal Nature, that where the Defendant hath been convicted, he hath been allowed to lay Circumſtances before the Court in Mitigation of the Puniſhment: And if, hereafter, this comes to be conſidered of in this Manner, the Managers will have an Opportunity to give a proper Anſwer thereto. If in this Anſwer he had inſiſted on it as an eſtabliſhed Fee ſupported by Cuſtom, and had claimed it as of Right, it had been proper to have examined Witneſſes in Support of that; but when he inſiſts upon it as a Matter of Diſcretion, and of Explanation of an Act of Parliament, we cannot admit it. It is not proper to give in Evidence that, which doth not make good the Defence in Anſwer to the Articles. We cannot admit a Thing of this Nature, which may be attended with great Inconveniencies. We do not know what may be grafted on ſuch an Admiſſion; therefore we beg Leave to ſubmit it to your Lordſhips Determination.

Mr. *Lutwyche*. My Lords, It is ſaid very roundly, That this is an old doubtful Statute, and therefore you ought not to take Notice of it. As to the Doubtfulneſs of it, I believe it is too plain; as to the Obſoleteneſs of it, it is a Statute that is read every Year in the Court of Exchequer. And therefore whatever Doubts may be of this Matter at the Common Law, yet this Statute makes it plain. And I deſire the Councel for the Noble Lord to tell us, where any Statute is more plain and poſitive; and wherein they have ſhewn the leaſt Doubtfulneſs in the World, but rather object that it hath gone too far. Doth any Judge, in Point of Evidence, on an Indictment for Breach of a Statute-Law, permit Perſons to give Evidence, that others have been guilty of the ſame Facts, and that therefore it is no Breach of the Law? Suppoſe this is to be conſidered as doubtful, on Conſtruction of the Statute, what then is the common ordinary Method? It is well known, that the Jury find the Fact ſpecially, and it is referred to the Court for their Opinion on the Law. My Lords, give me Leave to mention how this Matter is; here is an Act of Parliament, a general Act, the Judges are to take Notice of it, it is plain and poſitive. The Councel make a Doubt on the Conſtruction of this Statute; it is inſiſted upon that other People have done it, and have not been puniſhed; and would ſuch a thing be ever permitted to be found by a Jury, or would any Regard be had to it if found? I apprehend the noble Lord, who hath been a great Maſter of Evidence in his Time, would not have permitted it to be done: they have ſhewn no Precedent for it: In its own Nature it is unreaſonable. Are we to examine into the particular Manner and Circumſtances of every particular Caſe of the ſeveral Perſons that are now either Dead or Living? It is unreaſonable, it is unprecedented, to offer ſuch Evidence; and I hope your Lordſhips will not admit of it.

Mr. *Plummer*. My Lords, the Councel for the noble Lord take that for granted which we deny. The admitting theſe Witneſſes to be examined, is admitting that it is not a Crime. Reputation is of great Value, and great Care ought to be taken of it; and we are willing to take Care of the Reputation of the noble Lord's Predeceſſors. I am not a Lawyer, but I never heard that that was not a Crime, which an Act of Parliament ſays is ſo. And that this is a Crime, I beg Leave to remind your Lordſhips, that he himſelf declared ſo to the

Maſters in Chancery, that they had bought their Places againſt Law. I take that to be a fair Confeſſion that his Opinion was, that it was a Crime.

Lord *Lechmere.* Before the Councel withdraw, I would have this Queſtion explained to me by the Councel of the noble Lord, whether this Practice be inſiſted on as a Proof of a Right in the Great Seal to take this as a Perquiſite, or whether it be offered as an Extenuation?

Mr. Serj. *Probyn.* My Lords, we inſiſt upon it in both Reſpects.

Then the Managers and Councel were order'd to withdraw; and after ſome Time, being called in again,

Lord Chief Juſt. *King.* Mr. Serjeant *Probyn,* It is their Lordſhips Judgment that you are at Liberty to proceed in your Evidence, as you were going on.

Mr. Serj. *Probyn.* My Lords, we deſire Mr. *Roger Lewis* may be called again.

Mr. *Lewis* called.

Mr. Serj. *Probyn.* My Lords, I deſire this Witneſs may be asked, how long he hath been a Deputy in the Office of the Clerk of the Cuſtodies?

Mr. *Lewis.* About five and thirty Years.

Mr. Serj. *Probyn.* Who was then in the Office?

Mr. *Lewis.* Mr. *Henry Wynne.*

Mr. Serj. *Probyn.* How long did he continue in that Office?

Mr. *Lewis.* About Twelve Months.

Mr. Serj. *Probyn.* Do you know who ſucceeded him?

Mr. *Lewis.* Mr. *Roger Thompſon.*

Mr. Serj. *Probyn.* My Lords, I deſire he may be asked, whether any Preſent was made by Mr. *Thompſon,* on his Admiſſion into the Office?

Mr. *Lewis.* I do not know of any Preſent made by Mr. *Thompſon.*

Mr. Serj. *Probyn.* By Mr. *Wynne,* or Mr. *Thompſon?*

Mr. *Lewis.* No; but Mr. *Wynne* told me ——

Mr. Serj. *Probyn.* Is Mr. *Wynne* living or dead?

Mr. *Lewis.* He is Dead.

Mr. Serj. *Pengelly.* My Lords, we beg Leave to object to this, what a particular Perſon told him is not Evidence, we hope this ſhall not be admitted.

Mr. *Lutwyche.* They know this was never allowed.

Mr. Serj. *Probyn.* If the Man be living, the Objection is good, but now he is dead, we hope it may be allowed.

Mr. Com. *Serj.* The Gentlemen object, that we are not at Liberty to ask what hath been declared concerning that Matter by a Perſon that is now dead; we humbly apprehend it is within the Rule of Evidence, and I muſt appeal to the Memory of your Lordſhips, whether it is not good Part of the Evidence that hath been given by the Managers.

Earl of *Macclesfield.* My Lords, what we are giving Evidence of, is of a Thing tranſacted thirty five Years ago; the Parties are all dead: he is about to give you an Account of what he did, and was ſaid to him at that Time by his Maſter, in his tranſacting that Affair. If the Perſon that ſaid it were now alive, to be examined to it himſelf before your Lordſhips, it would not be Evidence without examining him; but if dead, what he ſaid concerning this Fact may be given in Evidence, it is concerning the Party's own Act, and what he told him at the Time it was doing. Therefore we hope they will not oppoſe this Evidence, which in the Nature of the Thing is all that poſſibly can be now given.

Mr. Soll. General. My Lords, I hope this is what your Lordſhips will not ſuffer to be done. I never knew the Sayings of a dead Man given in Evidence to prove a particular Fact: They have been only admitted in Proof of general Uſages and Cuſtoms; but as for a particular Fact, lying in the Knowledge of a particular Perſon, by his Death you have loſt your Evidence.

Earl of *Macclesfield.* My Lords, if they will inſiſt upon it, we muſt withdraw.

Mr. *Plummer.* This Man here is upon his Oath; but the Evidence that he muſt give of the Saying of another, muſt be of a Saying not upon Oath.

Lord *Trevor.* If there be a Difference in Opinion between the noble Lord and the Managers, they muſt withdraw. But I don't ſee any Reaſon to withdraw. I will tell my Opinion, that ſuch an hearſay Evidence is no Evidence.

Mr. Com. Serj. I deſire he may inform your Lordſhips, whether he knows any Thing as to the Tranſaction of his own Knowledge?

Mr. *Lewis.* I know that Mr. *Wynne,* whether he had ſurrendred, or was going to ſurrender, I don't remember, but he told me ——

Mr. Serj. *Pengelly.* My Lords, they are going on again in the ſame Way.

Mr. Serj. *Probyn.* Do you know any Thing of your own Knowledge?

Mr. *Lewis.* I had Money in my Hands of Mr. *Wynne's.* He told me ——

Mr. Serj. *Pengelly.* Evidence of this Sort is by your Lordſhips Judgment not to be permitted.

Mr. Serj. *Probyn.* He informs your Lordſhips, that he hath known this Office thirty five Years. Now, I deſire that he may declare what hath been the Uſage on Surrenders and Admittances into this Office of Clerk of the Cuſtodies, whether any Preſent, or Gratuity, hath been made to the great Seal?

Mr. Serj. *Pengelly.* This is the ſame Thing again.

Mr. Soll. General. If Gentlemen put this general Queſtion with no other View but to draw out what your Lordſhips have determined to be no Evidence, we muſt oppoſe it. It is a plain Queſtion, Whether he knows of his own Knowledge that any Money was given? And we deſire he may be confined to his own Knowledge.

Earl of *Macclesfield.* The Gentlemen ſay, that as to Matters of Uſage, it is uſual to enquire what old Men have ſaid and declared. I apprehend this is a Matter of Uſage we are

now

now inquiring after; but if your Lordships are of Opinion that this should not be asked, I believe he doth not know any Thing of his own Knowledge of the Money being actually paid to the great Seal.

Mr. Serj. *Probyn.* My Lords, we desire that Mr. *William Oaker* may be called.

Mr. *Oaker* sworn.

Mr. Serj. *Probyn.* My Lords, we desire that Mr. *Oaker* may be asked whether he knows of any Demand, or Claim, made upon the Admission, or Surrender, of the Clerk of the Custodies, and by whom?

Mr. Serj. *Pengelly.* My Lords, this Question is contrived in an odd Manner. The Question must arise upon the Fact, not antecedent to the Fact. The Question of any Claim before, should be whether he knows of any Money paid, and in what Manner?

Earl of *Macclesfield.* It is the stronger, if it is claimed and paid: But I apprehend, if it were only claimed, it is Evidence.

Mr. *Oaker.* I don't well understand the Question as it is put, but I remember in my Lord *Cowper*'s first Time, in the Year 1710, that Office was transferred from Mr. *Thompson* to Mr. *Edwards*; I was then Secretary of the Lunaticks, and I remember I inquired of one or both of those Gentlemen, if any Present was made to my Lord on that Occasion, and was answered, that nothing had been usually given in the Case of that Office, and that they had satisfied my Lord thereof. Afterwards, when my Lord *Cowper* had the great Seal again, and I was again Secretary of the Lunaticks, his Lordship was pleased to observe to me, that he had suffer'd himself to be imposed upon in several Matters, when he had the Seal before, and instanced particularly in the Affair of transferring the Office of Clerk of the Custodies; and said he was very well satisfied those Gentlemen had imposed upon him, by assuring him that nothing had usually been given on transferring that Office; for he was well assured there had been Presents on that Occasion, and did not see any Reason why there should not: And his Lordship ordered me to enquire, as particularly as I could, what had been given, and by whom, that he might know what to do if a Thing of that Kind should happen again.

Mr. *Plummer.* My Lords, I believe this Gentleman was Servant to my Lord *Cowper*, when he was Chancellor last; I desire to know if any Vacancy of this Office happen'd in the last Time that he was Chancellor.

Mr. *Oaker.* There was a Vacancy in the last Time. I don't know what Sum of Money was given for it?

Mr. *Plummer.* My Lords, I desire this Witness may be asked, if he ever knew that my Lord *Cowper* did take any Thing for the Surrender of this Place?

Mr. *Oaker.* I don't know, I believe he had nothing the first Time, but he thought himself imposed upon in it, and bid me inquire about it. As to the second Time, I never could inform my self what was done in it.

Lord *Lechmere.* I desire he may be asked, Who it was that surrendred this Place of Clerk of the Custodies, and to whom? Name them.

Mr. *Oaker.* The first was Mr. *Thompson*, who surrendred to Mr. *Edwards*, he surrendred to Mr. *John Bennet*, and Mr. *John Bennet* surrendred to Mr. *Thomas Bennet*.

Mr. *Onslow.* My Lords, I desire before Mr. *Oaker* goes, that he may explain himself which of those two Times it was that my Lord *Cowper* said he was imposed upon?

Mr. *Oaker.* It was the first Time.

Mr. *Onslow.* I desire to know if he took any Thing at either Time?

Mr. *Oaker.* I don't know, otherwise than as I have before declared.

Mr. Serj. *Probyn.* My Lords, we desire that Mr. *Edward Dupper* may be called.

Mr. *Dupper* sworn.

Mr. Serj. *Probyn.* My Lords, I desire that Mr. *Dupper* may be asked, whether he knows of any Sum of Money that hath been paid, or received on the Surrender, or Admission, of any Clerk of the Custodies?

Mr. *Dupper.* I did not see any Money paid: I did give my Lord *Macclesfield* an Account that there had been 250 Guineas paid upon a former Surrender of that Office before this Mr. *Hammersley* was admitted.

Mr. Serj. *Probyn.* From whom had you that Information?

Mr. *Dupper.* My Lords, I don't know how far I may be permitted to name that Person's Name.

Many Lords. Name him.

Earl of *Macclesfield.* Was it from one that had the Custody of the great Seal?

Mr. *Dupper.* Yes, my Lords.

Lord ——— Who was it from?

Mr. *Dupper.* I had it from my Lord *Harcourt*. My Lords, I cannot say I saw the money actually paid; neither can I say, that his Lordship received this money. But I was a Servant to my Lord *Harcourt*, and his Lordship kept an Account of the Profits of the Office of Lord High Chancellor in his Time, in his own Writing; and I made two Copies of that Account in a large hand-writing for his Lordship's Use; and I generally made two Copies of each, for fear one should be lost or mislaid when wanted. One of these Copies I kept by me, which I have here; in it is an account of the yearly Profits of that Office, and there is this particular; *Item*, of 250 Guineas received for the Surrender of the Office of Clerk of the Custodies, which I copied from a *Memorandum*, or Account of his Lordship's own hand-writing.

Mr. Serj. *Pengelly.* My Lords, I don't know what he is going to do. I hope there is very little notice to be taken of what he hath said. A Man tells a Story that is a Servant: I hope no Credit will be given to what he says.

Mr. Com. Serj. My Lords, I desire he may inform your Lordships, when it was that he gave an Account to the Earl of *Macclesfield*, that so much money had been paid, and upon what Occasion it was?

Mr. Serj. *Pengelly.* Give an Account! he knows nothing.

Mr. Com. Serj. My Lords, I hope you will not think it an improper Question. He says, that he gave an Account, I desire to know what he

he gave an Account of, and if he knows upon what Occaſion it was?

Mr. *Dupper.* My Lords, the Reaſon of my giving this Account was, There was a Diſcourſe between Mr. *Cottingham*, who was my Lord *Macclesfield*'s Secretary, and my ſelf, about the Office of Clerk of the Cuſtodies. Mr. *Cottingham* told me, that Mr. *Bennet* was going to ſurrender his Place of Clerk of the Cuſtodies: I asked him, to whom? He told me, it was to his Neighbour Mr. *Hammerſley*. I anſwered, I am very glad to hear it; there will then be a piece of money for my Lord Chancellor. Mr. *Cottingham* ſaid, That is more than I know; was there ever any money paid upon the Transfer of this Office? I ſaid, Yes, I remembred there was, and I never knew any Offices or Places under the Great Seal transferred without an Acknowledgment paid to the Great Seal. He asked me what? I told him I had a Copy of the Account of the Profits of the Great Seal, kept by my Lord *Harcourt* in his Time, and that I would look into that Copy, and tell him what had been paid on the Surrender of that Office. I did look into that Copy, and the next day I told Mr. *Cottingham*, that 250 Guineas had been paid on the Surrender of that Office. And afterwards, and before the Transfer, I told my Lord *Macclesfield* of it.

Mr. *Strange.* When Mr. *Hammerſley* was named, I deſire to know if Mr. *Cottingham* did not at that time call him his Neighbour?

Mr. *Dupper.* I did not know Mr. *Hammerſley* at that time; but Mr. *Cottingham* called him his Neighbour.

Mr. *Plummer.* My Lords, I deſire he may be asked, if he told my Lord *Macclesfield* of this before Mr. *Bennet* reſigned to Mr. *Hammerſley*?

Mr. *Dupper.* Yes, I did my Lords.

Mr. *Lutwyche.* My Lords, I deſire to ask him one Queſtion. I think he is pleaſed to ſay there is no Place under the Great Seal, but what an Acknowledgment is taken for: I deſire to know whether he himſelf hath not a Place given him by that noble Lord for his Life?

Mr. *Dupper.* No, my Lords.

Mr. *Lutwyche.* Had you no Place at all given you?

Mr. *Dupper.* I have the Reverſion of a Place, which is not fallen as yet.

Mr. *Lutwyche.* What Place is that?

Mr. *Dupper.* The Sealer's Place.

Mr. *Lutwyche.* Do you enjoy that Place?

Mr. *Dupper.* No.

Mr. *Lutwyche.* Was there any Money given for that Place?

Mr. *Dupper.* No, Sir: It is what I had for fifteen Years Service. I was his Clerk, and I acted as his Steward, in Town and Country, a great many Years; and his Lordſhip was pleaſed to give me that Reverſion as a Reward for the Labour and Pains I took in his Service.

Mr. Serj. *Pengelly.* My Lords, I deſire he may be asked, how long after it was that he carried this Account to Mr. *Cottingham*, that he ſpeaks of, how long after he had found it?

Mr. *Dupper.* I don't exactly remember: But as near as I can gueſs, it was the next Day, the firſt time that I ſaw him afterwards.

Mr. Serj. *Pengelly.* I deſire he may be asked, whether at that time he gave Satisfaction to Mr. *Cottingham*, that it ought to be inſiſted upon?

Mr. *Dupper.* I told him ſo much had been given for the Surrender of that Office, and I never knew of any Office under the Great Seal transferred without Money.

Mr. *Lutwyche.* I deſire Mr. *Dupper* may acquaint your Lordſhips what the yearly Value of that Office is, that was given to him?

Mr. *Dupper.* I never was in Poſſeſſion of it.

Mr. *Lutwyche.* Do you know what is the yearly Value of it?

Mr. *Dupper.* No.

Mr. *Lutwyche.* Can you give no Account of it?

Mr. *Dupper.* No: The Man hath been in Poſſeſſion of it, I believe, theſe threeſcore Years, and I believe he will live theſe threeſcore Years longer.

Mr. Serj. *Probyn.* My Lords, we deſire that Mr. *Laiton* may be called.

Mr. *Laiton* ſworn.

Mr. Serj. *Probyn.* I deſire he may be asked, whether he was not formerly a Curſitor?

Mr. *Laiton.* I was a Curſitor almoſt three and forty Years.

Mr. Com. Serj. I deſire that he will inform your Lordſhips, whether any Money was paid, either by him, or any other?

Mr. Serj. *Pengelly.* My Lords, we beg Leave to underſtand your Lordſhips Reſolution, whether it extends to allow an Examination as to the ſelling of any other Offices not contained in the Articles?

Mr. Serj. *Probyn.* My Lords, we ſhall endeavour to prove that Acknowledgments have been anciently and uſually paid upon Admiſſions into all Offices under the Great Seal. And this is Part of this noble Lord's Defence, That it is uſual for the Great Seal to take Money for the transferring of thoſe Offices. This Witneſs was one of the Curſitors in the Court of Chancery; therefore I hope it is proper to give Evidence of Money given for thoſe Offices, as being Offices under the Great Seal. Therefore, my Lords, I deſire he may be ask'd, whether he hath known of any Money paid to the Great Seal upon the Surrender, or Admiſſion of any Curſitor?

Mr. *Lutwyche.* My Lords, I ſubmit it whether it is proper for your Lordſhips to let them into this Evidence. I take it, that the immediate Queſtions before your Lordſhips are only upon two ſorts of Offices, one of the Clerk of the Cuſtodies, the other the Maſters in Chancery. Now whether your Lordſhips will let them into an Evidence of all the Offices of the Kingdom, which is very extenſive, I ſubmit to your Lordſhips Conſideration.

Mr. *Plummer.* Your Lordſhips obſerve, that we have not gone upon the 10*th* Article, where we have laid that he ſold ſeveral other Offices: conſidering the great Extenſiveneſs of it, and that it would draw this Tryal into a great length, we have waved it; and therefore ſubmit it to your Lordſhips Conſideration, whether he ſhall make his Defence to any thing we have not yet given Evidence to.

Earl of *Macclesfield.* This would be to put a great difficulty upon me. The Charge againſt me being founded upon a Suppoſition, that the taking

taking money upon admitting Persons into Offices in the Court of Chancery is criminal; part of my Defence is, that the constant practice of my Predecessors shews the general Opinion to be otherwise; and therefore I have by my Answer insisted upon it generally, that not only for the one particular Office of the Clerk of the Custodies, or Masters in Chancery, but for all other Offices under the Great Seal, money hath been given; therefore whether the Office for which I prove the money to be given, be one of the Offices charged in the Articles, and proceeded upon, or another not charged, or charged and waved, it will be the same thing. The Argument is the same with respect to the foundation of the Accusation, if in all other Offices, of which Persons now living can give an Account, monies have been taken without Crime, and without Blame; by parity of Reason it may be taken in these: I offer this Evidence, not to shew I am not criminal with respect to the Cursitors Offices, their waving that general Article which comprises them, admits it; but to make out that Branch of the Induction, in order to infer from the whole my not being criminal in the Particulars they do proceed upon; for if it was no Crime to take money from the Cursitors, and all the rest, besides the Masters in Chancery and Clerk of the Custodies, it is no more so to take it from them: If this Objection be allowed, the Proof, which in its full Latitude would be of great Extent, and go to all my Predecessors within 50 or 60 Years, will be confined to a very narrow compass, when restrain'd to what Account can be given in only two Sorts of Offices, by Persons who saw the money paid, and happen to be still alive. Besides, for strengthening that Argument from other Instances, I have in another Part of my Answer insisted, that other Persons of great Wisdom and Honour, have likewise, without Scruple, and without Censure, disposed of other Offices for money; that this hath been constantly practised in the Disposal of all Sorts of Offices in *Westminster-Hall*, money hath been taken for them all along; this Proof I must be cut off from too, if I am to give Evidence only of what was done in the case of those Offices for which they proceed against me: I hope therefore the Gentlemen will not oppose the going on to make the Proof proposed by my Councel.

Mr. Serj. *Pengelly*. My Lords, if it be put in this general manner of all other Courts, and in all other Instances, we apprehend it will be a very extraordinary Examination. A Person is charged with a particular Charge of one Fact, and he would examine to another, with which he is not charged. This is besides the Issue, and not before your Lordships. Here is a Charge by the Commons of *Great Britain*, and an Answer and Defence to that, which can go only to those particular Offices charged. Now to introduce an Evidence of this Nature, is exceeding any Rule or Instance that hath been ever heard of. If they apprehend by proposing and insisting on it in this High Court of Judicature, they shall be allowed to proceed in a method wholly new, we can't tell the Consequence of such an Allowance; and it is to no purpose for the Managers to come prepared to examine to a particular Fact stated between us, when there may be ten thousand things insisted on that are not in Issue.

Lord Viscount *Townshend*. I can't say this is within the Rule your Lordships laid down. If it is insisted upon, the Councel must withdraw.

Earl of *Macclesfield*. My Lords, I don't know whether this will not go through a great part of my Defence, which will be to shew that other Offices have been disposed of by the Master of the Rolls, the Chief Justice, and other Judges. This is in my Answer: The Commons had Notice of it; and they have joyned Issue upon it. I wonder to hear it said they have not joyned Issue, when in the Answer it is insisted upon, and they have replyed thereto. This is a Thing that those Gentlemen are very well aware of; it is so general and universal a Thing, that every body knows of it. I don't know whether it is intended to make any Distinction between this Case, and what is done in other Cases; if they do, I would be glad to hear it; if they do not, then I would beg your Lordships Determination upon it.

Mr. Serj. *Pengelly*. My Lords, we are not to declare our Opinion, whether there is any Difference, or not; the Question is in Point of Evidence.

Mr. *Sol. General*. My Lords, I don't apprehend that we have joyned Issue on every Thing that the Noble Earl hath thought fit to put in his Answer. The Commons have charged him with several Crimes: He hath answered to those Crimes: The Commons reply, that they are ready to make good their Charge. By this, Issue is joined upon every Thing in the Charge; but not upon every foreign Thing that he hath put into his Answer. We insist that he is not to give Evidence of the Sale of any other Offices, but of those that he is particularly charged with. As to the Cursitors Office, and other Offices that he is not charged with, we say he is to give no Evidence.

Mr. *Lutwyche*. My Lords, because it is insisted upon, that whatever this Noble Lord hath said in his Answer, we have replyed to; I would observe that the very Replication takes Notice of this very Thing, and was one of the Things considered of by the Commons, and therefore the Reply is, "That he hath endeavoured to "evade the Enquiries into his own Crimes, by "insinuating Facts not material to the matters "charged." And therefore, my Lords, we insist that he may not enquire into those matters which we have not charged.

Mr. *Com. Serj.* I don't know whether I may be at Liberty to add, that I humbly apprehend, that what the Gentlemen of the House of Commons now insist upon, is contradicting your Lordships Resolution already taken.

Then the Managers and Councel were order'd to withdraw, and being afterwards called in again, and returned.

Lord Chief Just. *King*. Mr. Serjeant *Probyn*, The Lords have resolved, that the Councel for the Earl of *Macclesfield* be not permitted to give Evidence touching the Sale of the Office of Cursitors, for that no Evidence hath been given in Relation thereto by the Managers of the House of Commons.

Mr. Ser. *Probyn*. Then (if it be your Lordships Pleasure) we beg leave to call one Witness more, in Opposition to the Evideuce given by Mr. *Thomas Bennet*, in Relation to a Sum of money paid by him upon the Surrender of his Office of Clerk of the Custodies; he gave your Lordships an Account that he had paid the Sum of Sixty four Pounds, (besides the Sum of One hundred and five Pounds, which he at first agreed to give the Great Seal) upon his Surrender of that Office. Now, my Lords, we shall shew your Lordships, that no part

of that Sum of Sixty four Pounds was really paid to the Great Seal, as Mr. *Bennet* ſeems to inſinuate, but was all laid out in the Fees and Expences of paſſing his Patent through the ſeveral Offices that are proper upon that Occaſion. And to this End we deſire that Mr. *Tench* may be called.

Mr. *Tench* ſworn.

Mr. Serj. *Probyn*. My Lords, we deſire Mr. *Tench* may inform your Lordſhips, if he was imployed in taking out the Patent for Mr. *Thomas Bennet*, upon his Surrender of the Clerk of the Cuſtodies?

Mr. *Tench*. My Lords, I was imployed by Mr. *Thomas Bennet* to ſue out the Patent, and I paid the Fees of every Office of paſſing the Patent, which comes to between 60 and 70 *l*.

Mr. Serj. *Probyn*. We deſire he may tell us what Officer he is?

Mr. *Tench*. I am Clerk of the Patents to the Attorney General, and Deputy Clerk of the Patents in Chancery.

Mr. *Com. Serj*. I deſire he may be asked, what part of thoſe Fees are paid to the Great Seal?

Mr. *Tench*. There is a Dividend of the money ariſing from the Patents, of this 1 *l*. 8 *s*. 4 *d*. and 3 *s*. went to the Great Seal.

Mr. *Com. Serj*. I deſire he may be asked, whether any more came to the Great Seal out of the 64 *l*. than 1 *l*. 11 *s*. 4 *d*?

Mr. *Tench*. I don't know that there is any more of the Dividend of the Patent. The reſt went amongſt others for their ſeveral Fees at the ſeveral Offices.

Mr. *Com. Serj*. I won't trouble your Lordſhips to ask to whom the reſt of the money belongs, but whether the Remainder is paid over to other Offices?

Mr. *Tench*. I don't know that any thing is paid to the Great Seal, upon paſſing the Patent Office, but the Dividend of 1 *l*. 11 *s*. 4 *d*.

Mr. *Com. Serj*. I deſire he may inform your Lordſhips, whether the Remainder is paid to other Offices?

Mr. *Tench*. Yes, to other Offices, to the Hanaper Office, the Secretary's Office, the Signet, and Privy Seal.

Mr. Serj. *Probyn*. My Lords, we ſhall trouble your Lordſhips with no further Evidence on this Article: But beg your Lordſhips Favour to begin our Evidence on the 5*th*, and other Articles.

Mr. *Sandys*. My Lords, I deſire he may be asked, where he found the Warrant for paſſing the Patent at that Time?

Mr. *Tench*. I had the Warrant from the Secretary's Office.

Mr. *Sandys*. I deſire he may be asked, if he knows how it came there, and by whoſe Direction, if he knows who procured it?

Mr. *Tench*. My Lords, I drew a Petition by Mr. *Bennet*'s Direction, to the Secretary of State, upon that the Petition was referred to the Attorney General, and upon his Report, there was a Warrant. I know of no other Proceedings relating to it.

Mr. *Sandys*. My Lords, I deſire he may be asked, at whoſe Inſtance he drew up that Petition?

Mr. *Tench*. I drew it up at Mr. *Thomas Bennet*'s Requeſt.

Mr. *Sandys*. To what Purpoſe was that Petition?

Mr. *Tench*. The Petition recited that the Patent was granted to his Brother, and that upon his Brother's ſurrendring, it might be granted to him.

Mr. *Sandys*. It is the laſt Petition we deſire to be informed of, what the Purport of that was; not the Petition of Mr. *John Bennet*, when he ſurrendred to Mr. *Thomas Bennet*, but the Petition of Mr. *Thomas Bennet*, when he ſurrendred to Mr. *Hammerſley*?

Mr. *Tench*. It was a Petition reciting the Grant to Mr. *Thomas Bennet*, and that he might reſign to Mr. *Hammerſley*'s Uſe, who was a Perſon well affected to his Majeſty and the Government.

Mr. Serj. *Probyn*. My Lords, we now proceed to the other Articles, which relate to the Preſents made by the Maſters in Chancery to the Earl of *Macclesfield*.

Upon this the Houſe adjourned to the next Morning Ten a Clock.

Thurſday *the* 13*th of* May, 1725. *The Sixth Day.*

The Lords being ſeated in their Houſe, and the two Proclamations being made as on the former Days:

LORD Chief Juſt. *King*. Mr. Serjeant *Probyn*, you may go on with your Evidence.

Mr. Serj. *Probyn*. My Lords, we beg leave to lay before your Lordſhips ſome inſtances, where, upon former Admiſſions of Maſters in Chancery, Sums of Money have from time to time been taken by the Great Seal. We deſire Mr. *Meller* may be called again.

Accordingly Mr. *Meller* appeared.

Mr. Serj. *Probyn*. We deſire Mr. *Meller* may be asked, whether he knows of any Sum of money paid to the Great Seal, upon the Admiſſion of a Maſter in Chancery, and what Sum?

Mr. *Meller*. My Lords, I humbly apprehend, that the Subjects of *Great Britain* are not compellable in any caſe to give an Anſwer to any matter that may be to their Prejudice. I ſpeak it with the greateſt Submiſſion to your Lordſhips. For my part, I am very unwilling to do any thing that may any ways leſſen the Security of the Subject, therefore I humbly hope your Lordſhips will not compel me to give an Anſwer to any Queſtion of this Nature. I humbly ſubmit it to your Lordſhips Judgment.

Earl of *Macclesfield*. My Lords, the Queſtion he is asked is a general Queſtion, whether he knows of any money paid to the Great Seal by any Maſter in Chancery upon his admiſſion. Whether he knows, or doth not know it?

Mr. Serj. *Pengelly*. My Lords, we beg leave to acquaint the Houſe of the Circumſtances of Mr. *Meller*, from whence the Objection riſes. He was formerly a Maſter, but before the late Act of Parliament he quitted that Office, and hath no Indemnification,

demnification, as the preſent Maſters have by that Act. Therefore, as I apprehend, his Objection is, that he can't give an Anſwer to this Queſtion, without ſubjecting himſelf to a Penalty, and accuſing himſelf of an Offence againſt the Law.

Mr. *Lutwyche.* This general Queſtion tends to make him accuſe himſelf, and ſubject himſelf to a Penalty.

Earl of *Macclesfield.* My Lords, I would gladly know whether theſe Gentlemen object to this Queſtion or not; if they object themſelves to it, they have a right ſo to do, and to offer their Reaſons, and they muſt be left to your Lordſhips Judgment. But they have no Right to inſtruct a Witneſs.

Mr. *Lutwyche.* I never endeavoured to inſtruct any Witneſs. It is very well known I never attempted any ſuch thing; and that noble Lord knows it. I am now here, not as Councel, but as one of the Managers for the Houſe of Commons, and by their Command, and ſo have more Reaſon to take Notice of this Reflection. We do not inſtruct Witneſſes, this is no ſuch thing. It is an Objection which we have a Right to make. We have done it already, and have had your Lordſhips Determination upon it. It is not ſo very long ago, but the noble Lord may remember this very Queſtion was directly asked of Mr. *Bennet*, and then refuſed; the next Day asked again by a ſide-wind, whether he knew any, and what money had been given for the Place? and rejected by your Lordſhips; and then a Queſtion was asked, How much he knew the Place ſold for? and your Lordſhips likewiſe refuſed that: Here now is a Queſtion asked of a man that hath been a Maſter in Chancery, and not indemnified by the laſt Act, whether in Effect he paid any money for his Office? Your Lordſhips thought this induced a penalty, becauſe you thought it neceſſary to paſs an Act of Parliament to indemnify the preſent Maſters; but it is well known it doth not extend to thoſe who were Maſters before; and therefore as there is a Penalty annexed to it, he ought not to anſwer this Queſtion. Beſides, for the ſake of our Proceedings, it ought not to be anſwered, and we have a Right thus to interpoſe, that when your Lordſhips have refuſed the ſame thing in another man, the ſame is not to be inſiſted upon again.

Mr. Serj. *Pengelly.* My Lords, it is the Duty of the Managers to take Notice of the Behaviour of the Lord impeached. Whether he apprehends that he hath a Right to controul the Managers in this Houſe, and whether that ariſes from the Seat he enjoys, your Lordſhips will conſider the Conſequences of this Behaviour. When the firſt Day we were told, that we were working up the Witneſſes, and now that we are inſtructing them, whence could this Lord have this Imagination, but from his own former Practice?

Earl of *Macclesfield.* My Lords, as to that Gentleman that thought himſelf reflected upon, he greatly miſtakes me. I did not intend to reflect upon him as going to inſtruct the Witneſs in his Evidence; I believe him as far from it as any man in *England.* I know him to be a perſon of too much Honour; and I had not the leaſt Thought when I ſpoke it, of his inſtructing a Witneſs in that Senſe. But here a Witneſs is making ſome Difficulty in anſwering a Queſtion, and I thought that that Gentleman who ſpoke firſt, was ſtating that which made the Witneſs's Objection; which I apprehended did not belong to the Managers to do. That is what I meant by inſtructing. The Queſtion that is asked is, whether he hath known of any money given to the Great Seal, upon an Admiſſion of a Maſter in Chancery? Say they, he was a Maſter in Chancery himſelf, therefore it may include his giving money upon his being admitted: But be that ſo, he may know of other Perſons beſides himſelf that gave money. My Queſtion therefore is general, whether he knows of any money given to the Great Seal on Admiſſion of a Maſter in Chancery? The Queſtion your Lordſhips reſolved was as to Mr. *Bennet* himſelf, and confined to his ſingle Office; and had I asked Mr. *Meller* what he had given on his Admiſſion to his own Office, it had been another matter, and within your Lordſhips Reſolution. But the Queſtion that is now asked, includes what he knows hath been given by other Maſters; therefore he may give an Anſwer without charging himſelf. If he anſwers that he doth not know of any money given by any other Maſter except himſelf, then it will come to the Queſtion the managers would bring it to. In the mean time give me leave to ſay, that thoſe Gentlemen, by being Managers of the Houſe of Commons, have not a Right of treating Perſons in a different manner than what they ſhould do if they were not Managers. That that Gentleman ſhould ſay, that what I ſpoke about inſtructing of Witneſſes, ariſeth from a Practice of my own, is Language unbecoming the Dignity of your Lordſhips Bar. Is this a Way of treating Mankind? Is this a fit method of carrying on a Proſecution? Is this decent ſpeaking before ſo auguſt a Judicature as this? What I ſaid of inſtructing a Witneſs, imported no faulty way of Inſtruction. —— (*After a ſhort Pauſe*) I have a great deal of Preparation not to be diſturbed at any Expreſſions that fall upon this Occaſion. It is a faulty Way of inſtructing a Witneſs, to tell him what he ſhall ſay; but to tell him he hath a legal Objection to a Queſtion that is asked, I know no Crime in that. My Lords, I beg Pardon for taking ſo much Notice of this matter; but I inſiſt upon an Anſwer to this Queſtion, whether he knows of any money given to the Great Seal, on an Admiſſion of a Maſter in Chancery? He may anſwer affirmatively, without at all affecting himſelf; and I ſubmit, whether he ought not to do it.

Mr. *Plummer.* My Lords, if the Councel for the Noble Lord have done, I beg Leave to reply. The Noble Lord ſays, that this Gentleman may poſſibly anſwer, and not accuſe himſelf. But if by the Anſwer he may accuſe himſelf, it is a Reaſon why he ſhould not anſwer. The method propoſed, that he may ſay, he doth not know of any but himſelf, it is accuſing himſelf. As for the other Point about inſtructing Witneſſes, it is not our Witneſs, but his own Witneſs, who refuſes to anſwer.

Mr. *Onſlow.* The Managers cannot but obſerve the indecent Behaviour of this Lord, and his unworthy manner of treating us. What we ſay here, we are ready to ſay any where. We do not think the Lord at the Bar ſhould be directing the Managers, as if he ſat in his Place as Judge: If we do any thing unbecoming, we are ſubject to your Lordſhips Judgment. We appear not here as common Proſecutors, and are not to be treated as common Councel by him, as he would have treated Councel in another Place. We are here Advocates for all the Commons of *Great Britain*, to demand Juſtice againſt this Earl; and ſubmit it to your Lordſhips, whether he is to treat us in this unbecoming manner. As for the Queſtion, the very Reaſon he now gives for asking it, i the

ſame

ſome that was given by him for examining Mr. *Bower*, and your Lordſhips then over-ruled it. It is only by a nice Wind aſking a Queſtion of a Witneſs the Anſwer whereto will unavoidably charge him with a Crime: He cannot anſwer without charging himſelf. This Lord hath laid a Trap for the Witneſs to accuſe himſelf. He ſays he may anſwer that he knows nothing of any money given by any Maſter but himſelf; which is directly laying that he himſelf hath given money. We hope therefore this Queſtion ſhall not be aſked; and we inſiſt upon the Objection.

Mr. *Palmer*. In Duty to the Houſe of Commons, I think my ſelf obliged to take Notice of the ſtrange Behaviour of this Lord in this Inſtance. According to your Lordſhips own Rule, tho' he ſits within the Bar, yet he is not a Judge; and therefore I muſt beg for my ſelf, in the Names of the Managers, and in the Names of all the Commons of *Great Britain*, that no ſuch Language or Behaviour be again uſed; if it ſhould, we cannot bear it, but muſt retire.

Earl of *Macclesfield*. My Lords, I deſire the general Queſtion that I have propoſed may be asked; I do not know what is your Lordſhips Pleaſure; I think I have a Right to have it anſwered.

Mr. *Plummer*. I object to the Lord's going on. The Lord hath anſwered; we have replyed; and I inſiſt upon it he hath not a Right to ſpeak any more.

Duke of *Argyle*. I hope they will withdraw.

Ordered to withdraw.

Then the Managers and Councel withdrew, and being called in again, and returned:

Lord Chief Juſt. *King*. Mr. Serjeant *Probyn*, the Queſtion propoſed by the Noble Earl to Mr. *Meller* was, whether he knew of any money paid to the Great Seal by any Maſter on his Admiſſion; and Mr. *Meller* inſiſting that he had been a late Maſter in Chancery, and was not obliged to anſwer the Queſtion, becauſe it might tend to accuſe himſelf; the Lords upon Debate are of Opinion, that he is not bound to anſwer that Queſtion.

Mr. Serj. *Probyn*. My Lords, then we deſire he may be asked, whether he knows of any Sum of money paid by any other Perſon, except himſelf, upon the Admiſſion of any Maſter?

Mr. *Com. Serj*. I would not preſume to ask any Queſtion that is improper, I underſtand your Lordſhips Reſolution to be, that we are not to ask the general Queſtion of Mr. *Meller*, becauſe it might affect himſelf; this Queſtion, we think, will not; whether he knows of any Sum of money given upon the Admiſſion of any other Maſter?

Mr. Serj. *Pengelly*. My Lords, we ſubmit it, whether this Queſtion differs at all in Conſequence; tho' it be not in the ſame Words, yet it is to the ſame Effect: It is in other Words to ask the ſame Queſtion over again. We hope they will not give your Lordſhips this Trouble.

Mr. *Lutwyche*. My Lords, the Queſtion implies that he gave money himſelf.

Lord *Lechmere*. If the Councel would explain themſelves more particularly, name the Maſter, the Perſon who received it, or any other particular Fact; then it will appear whether that be a proper Queſtion.

Mr. Serj. *Probyn*. My Lords, we humbly apprehend, that we are at Liberty to ask this Queſtion in the Form propoſed, otherwiſe we ſhall in a great Meaſure be precluded from the juſt Defence of the Noble Earl. We could not preſume to ask theſe Witneſſes beforehand, who were the Perſons that gave, or the particular Perſons that received; but as theſe Perſons have been in the Office, and muſt know the Nature of admitting the Maſters in Chancery; we hope they will explain it in their Evidence, and name the particular Perſons, who either gave, or received Money upon that Occaſion. We are not proper to ask more particularly.

Mr. *Com. Serj*. My Lords, I ſhall be very loth to give any Diſtaſte to this Honourable Houſe, therefore I beg Leave to know, whether or no we have Liberty to ask this Queſtion, and whether your Lordſhips Reſolution extends to it? I humbly take it, we are at Liberty to ask the Queſtion, and the Witneſs is not obliged to anſwer, if he apprehends that as the Queſtion is formed he cannot anſwer without an Inconvenience to himſelf. I would not willingly ask any Queſtion that I thought the Houſe would think improper.

Lord *Trevor*. If the Noble Lord inſiſts upon this Queſtion, it is proper that he ſhould name ſome Perſon, concerning whom he would ask; otherwiſe, it is indirectly to overthrow your Lordſhips Reſolution.

Earl of *Macclesfield*. My Lords, I am very unfortunate in this Matter. I would ask him the Queſtion in ſuch a Manner, as ſhould not carry any the leaſt Imputation on him: but if I ſhould firſt name one Maſter, and afterwards another, in ſo great a number of Maſters, it would be tedious; I only ask in ſhort, what he knows of any Money taken by the great Seal for, or on the Admiſſion of other Maſters? I don't ask him concerning himſelf, but only concerning other Maſters; Whether he knows any thing of the Tranſactions of other Maſters Admiſſion beſides his own? I hope your Lordſhips will think this may be asked, with this Explanation and Declaration, that it don't extend to any thing relating to himſelf; but only whether he knows any thing concerning any Money paid by any other Perſons? and to name them particularly.

Lord Chief Juſt. *King*. You hear the Queſtion.

Mr. *Meller*. Is it your Lordſhips Pleaſure that I ſhould anſwer to the Queſtion as it is now form'd? My Lords, I don't know, or remember, that ever I had a Diſcourſe with any Maſter about what he gave, or what he was to give, for any Place; except I have heard Dr. *Eddisbury* ſay——

Mr. *Lutwyche*. My Lords, we object to this as not being Evidence, but only hearſay.

Mr. *Meller*. Except Dr. *Eddisbury*, I don't know one indeed.

Mr. Serj. *Probyn*. My Lords, we deſire that Mr. *Lovibond* may be called.

Mr. *Lovibond* called.

Mr. Serj. *Probyn*. My Lords, we hope that Mr. *Lovibond*, being one of the preſent Maſters, and conſequently within the Indempnity of the late Act of Parliament, may be examined, as to what happened in his Caſe: And we deſire that he may be asked what Sum of Money was paid to the Great Seal, on his being admitted a Maſter in Chancery?

Mr. *Lovibond*. My Lords, as to that Tranſaction, it is many Years ago, above twelve Years ago, I will recollect what I know of it to the beſt of my Remembrance. My Lords, I never had any Treaty in that Affair with the Great Seal, nor with any Officer belonging to the Great Seal; nor did I employ any Body in it. But there was an Acquaintance of mine, a Maſter in Chancery, ſince deceaſed, who apprehending it to be for my Service, without my Knowledge tranſacted it.

Mr. Serj. *Probyn*. Who was it?

Mr.

Mr. *Lovibond.* Mr. *Browning,* He came to me, and told me, I have ſettled the whole Matter, you muſt be ſworn in this Night, and you muſt ſend to Mr. *Cottingham* or Mr. *Appleby,* then Officers under the Great Seal, 700 *l.* in Money or Bank Bills. I did ſend it that Night, and was then ſworn in.

Mr. Serj. *Pengelly.* My Lords, I deſire he may be particular as to the Time: It is neceſſary he ſhould be certain.

Mr. *Lovibond.* Mr. *Browning* ſaid, he had ſettled it with the great Seal, that I ſhould be ſworn in that Night; my Lord *Harcourt* was then *Chancellor.*

Mr. *Strange.* My Lords, I deſire he may be asked, Whether he was admitted upon a Death or a Surrender?

Mr. *Lovibond.* I was admitted upon a Surrender.

Mr. *Strange.* By whom?

Mr. *Lovibond.* Mr. *Pitt.*

E. of *Strafford.* Before the Witneſs goes, I deſire to ask him how much he gave to Mr. *Pitt* upon his Surrendring?

Mr. *Lovibond.* It was 2000 *l.*

L. *Harcourt.* My Lords, If the Gentleman is not gone, I deſire to ask him a Queſtion or two.

Mr. *Lovibond* called again.

L. *Harcourt.* My Lords, I deſire he may be asked, Whether he was worth ſo much Money as to pay 2700 *l.* of his own Money at that Time?

Mr. *Lovibond.* Yes, my Lords, and much more.

L. *Harcourt.* I deſire he may be asked, Whether he paid it out of his own Money, or out of the Suitors Money?

Mr. *Lovibond.* I paid it out of my own Money.

L. *Harcourt.* I deſire he may be asked, Whether Mr. *Pitt,* at the Time of his Admiſſion, transferred and actually delivered over to him all the Money of the Suitors that then was in his Hands?

Mr. *Lovibond* Mr. *Pitt,* to the beſt of my Belief, delivered over every Thing that was in his Hands to me.

Mr. Serj. *Probyn.* My Lords, We deſire that Mr. *Cottingham* may be called again.

Mr. *Cottingham* called.

Mr. Serj *Probyn* My Lords, We deſire that Mr. *Cottingham* may be asked, Whether he knows any thing of any Tranſaction relating to the Payment of any Sum of Money on the Admiſſion of Mr. *Holford.*

Mr. *Cottingham.* My Lords, if I remember right, there was 800 *l.* paid.

Mr. Serj. *Probyn.* How long ago?

Mr. *Cottingham.* It is ſeveral Years ago: There was 800 *l.* or 800 Guineas given or paid on his Admiſſion, ſeveral Years ago.

Mr. Serj. *Probyn.* To whom?

Mr. *Cottingham.* My Lords, Sir *Richard Holford* deſired me to recommend his Son to the noble Lord that then had the Great Seal.

Mr. Serj. *Probyn.* Who was it?

Mr. *Cottingham.* The Lord *Harcourt,* Sir *Richard Holford* was my old Friend and Acquaintance: I accordingly did recommend him; Mr. *Holford* came under a good Character to my Lord *Harcourt*; my Lord agreed to admit him, but he firſt deſired to know whether he had any Eſtate in Poſſeſſion ſufficient to anſwer the Suitors Money? Upon my ſaying this to Sir *Richard Holford,* Sir *Richard* ſaid, He had none in Poſſeſſion, but agreed to ſettle an Eſtate upon his Son: and to the beſt of my Remembrance, it was either 800 *l.* or 800 Guineas that was given on his Admiſſion, for the Uſe of my Lord *Harcourt.*

L. *Lechmere.* To whom was it paid?

Mr. *Cottingham.* I can't ſay whether it was paid to me, or to Mr. *Appleby.*

Dr. *Sayer.* Who carried the Propoſal?

Mr. *Cottingham.* I carried the Propoſal. Sir *Richard Holford,* as I told you, being my Friend and Acquaintance, deſired me to do it: Accordingly I tranſacted the whole Matter; being an upper Secretary, it was left to me.

Mr. *Lutwyche.* My Lords, I deſire to ask this Witneſs one Queſtion as to this Matter. He ſays, That Mr. *Holford* was recommended as a Man of a good Character; I deſire to know whether he hath not ever ſince maintained that good Character?

Mr. *Cottingham.* Yes, he hath made an admirable good Maſter as ever I knew; and hath executed his Office with as much Honour and Integrity as any Maſter. I never heard any Complaint againſt him in my Life.

Mr. *Lutwyche.* Can you recollect who paid the Money, Mr. *Holford,* or Sir *Richard Holford?*

Mr. *Cottingham.* Sir *Richard,* I believe: I can't recollect. He was a Young Man, I preſume, Sir *Richard Holford,* his Father, paid the Money.

Mr. *Com. Serj.* I deſire he may inform your Lordſhips, whether it was on a Death or Surrender?

Mr. *Cottingham.* As I told you before, It was on a Surrender: Upon the Surrender of Sir *Robert Legard,* If I remember right.

L. *Harcourt.* My Lords, If that Witneſs is not gone, and the Councel for the Earl, and the Managers for the Houſe of Commons have done with him, I deſire to ask him, If he can tell whether any Account was taken of the Suitors Money by his Predeceſſor, and whether all the Suitors Money was delivered up by Sir *Robert Legard* to Mr. *Holford* at the Time of his Admiſſion?

Mr. *Cottingham.* My Lords, I believe it was. But I was not privy to that, I did not tranſact that Matter; I have heard that an Account was made up.

E. of *Strafford.* I would not ask the ſame Queſtion twice; I think no Body hath asked it already; I deſire to know, If he knows of his own Knowledge, what was given to Sir *Robert Legard* for his Surrender?

Mr. *Cottingham.* I know nothing of it.

L. *Harcourt.* My Lords, If I might have your Lordſhips Indulgence, in order to have this Matter a little further explained, I deſire Mr. *Holford* himſelf, or Mr. *Appleby,* or both of them may be called.

Mr. *Holford* called.

L. *Harcourt.* I deſire to know of Mr. *Holford,* Whether at the Time of his Admiſſion, when he was ſworn Maſter, Sir *Robert Legard* transfer-

red and delivered over to him all the Effects of the Suitors?

Mr. *Holford* He did, my Lords.

L. *Harcourt*. I desire to ask him, Whether the Money, that it was said he presented to the great Seal on his Admission, was his Father's Money, or his Money, or whether it was out of the Suitor's Money?

Mr. *Holford*. My Father paid it before any thing was delivered to me.

E. of *Strafford*. I desire to ask the Gentleman this Question, What Money he paid to Sir *Robert Legard* on his Admission to his Place?

Mr. *Holford*. My Lords, I did not give it my self; I can tell your Lordships what I believe was given, and I have some Reason to think I know the Truth; I believe it was 2000 *l.*

Mr. Serj. *Probyn*. My Lords, I desire he may be asked, How long it was after his Admission before these Accompts and Effects were delivered over to him?

Mr. *Holford*. My Lords, When I came to my Lord *Harcourt* to be sworn in, my Lord *Harcourt* had an Account delivered there of what was in Sir *Robert Legard*'s Hands. My Lord *Harcourt* took the Paper in his Hand, and asked me, If I was satisfied to be charged with that? I told him, Yes. I was then sworn in, and a Day or two after the Things were delivered over to me by Sir *Robert Legard*.

Mr. *John Bennet* called.

Mr. Serj. *Probyn*. I desire he may be asked, What Money was paid by him to the great Seal on his Admission?

Mr. *Bennet*. I gave Mr. *Woodford* the Secretary of the great Seal at that Time 500 *l.* I don't know that it was given to the great Seal; I gave it with that Design.

Mr. Serj. *Probyn*. When was it?

Mr. *J. Bennet*. About two or three Days before I was admitted.

Mr. Serj. *Probyn*. When?

Mr. *J. Bennet*. It was in *March*, 1716.

Mr Serj. *Probyn*. Who was Chancellor then?

Mr. *J. Bennet*. My Lord *Cowper* was Chancellor.

Mr. Serj. *Probyn*. Whether was it paid before his Admission?

Mr. *J. Bennet*. It was paid before my Admission.

Mr *Com. Serj*. I desire he would inform your Lordships, Whether he came in upon a Surrender or a Death?

Mr. *J. Bennet*. It was upon a Surrender.

L. Ch. J. *King*. Upon the Surrender of whom?

Mr. *J. Bennet*. Of Mr. *Medlicot*.

L. *Bathurst*. I desire he may be asked, Whether he paid it out of his own Money?

Mr. *J. Bennet*. It was my own Money.

L. *Bathurst*. I desire he may be asked, Whether he had any Account of what was in the former Master's Hands, and when delivered over to him?

Mr. *J. Bennet*. The Effects were all deliver'd over to me in a Week's Time, except some very small Matters.

L. *Bathurst*. What was the Money that was given to your Predecessor?

Mr. *J. Bennet*. 3000 *l.*

L. *Bathurst*. Was that paid out of the Suitors Money, or out of your own?

Mr. *J. Bennet*. It was paid out of my own Money.

Sir *Thomas Gery* called.

Mr. *Com. Serj*. My Lords, The Question that I shall propose to Sir *Thomas Gery*, is under the Apprehension that I mentioned before, that we are at Liberty within the Meaning of your Lordships Resolution to propose it, he being at Liberty to answer or not to answer, if the Question carry any Imputation upon him. I would not ask a Question that is improper: I desire that Sir *Thomas Gery* will inform your Lordships what he knows hath been paid to the great Seal, upon the Admission of a Master in Chancery?

Sir *Tho. Gery*. My Lords, I never did know, of my own Knowledge, of any Sum paid to the Hands of any Lord Chancellor whatsoever.

Mr. Serj. *Probyn*. I desire he may answer the Question, Whether he hath known any Sum of Money paid to the Use of the great Seal, or of my Lord-Keeper or Lord-Chancellor, upon the Admission of any Master?

Sir *Thomas Gery*. I can't tell how that may affect me; I refer that to your Lordships. I think I am not bound to answer.

E. of *Macclesfield*. I think he said, He doth not know of any Money paid to a Lord Chancellor. Doth he intend to include Lord-Keeper?

Sir *Thomas Gery*. Neither Lord-Keeper, nor Lord-Chancellor.

E. of *Macclesfield*. It may be, not into the Hands of a Lord-Chancellor or Lord-Keeper. I desire he may be asked, If he hath not known it paid to the Use of the Lord-Chancellor or Lord-Keeper?

Sir *Tho. Gery*. That, I hope, I shall not be obliged to answer. I submit that to your Lordships.

M. Serj. *Probyn*. If the Gentleman is not pleased to give a more particular Answer, we must submit.

L. *Harcourt*. I desire to ask this Witness one Question, which will not draw him into any Inconvenience, Whether ever he was required in any Lord-Chancellor's or Lord-Keeper's Time, to make up an Account of the Suitors Money, and whether ever he did so?

Sir *Tho. Gery*. Yes, I did it three several Times; once in my Lord's *Cowper*'s Time; and when the noble Lord that asks me the Question was in that place, I did the like; and I did it again when my Lord *Cowper* was Chancellor. At all those Times I gave a particular Account of the Sums of Money in my Hands, the Time it came in, and how it was disposed of, and the distinct Securities, in distinct Columns.

E. of *Strafford*. He says twice in my Lord *Cowper*'s Time: I take it, he means both the Times that my Lord *Cowper* was Chancellor?

Sir *Thomas Gery*. Yes, my Lords; and the same in my Lord *Harcourt*'s Time.

L. *Harcourt*. I desire he may be asked, Whether all the rest of the Masters did so as well as himself?

Sir *Thomas Gery*. I believe they did; I have heard them all declare so.

Mr. Serj. *Probyn*. My Lords, We have now called all the living Witnesses that are willing or compell-

compellable to ſpeak to this Article. We have a great many other Witneſſes that would ſpeak to this, as a conſtant Uſage time out of Mind: But we apprehend it to be againſt your Lordſhips Reſolution to call and examine any Witneſſes but to what they can ſpeak of their own Knowledge, and them we have produced. We ſhall now beg leave to proceed to prove, That the Offices in the Court of Chancery are increaſed in their Value beyond what they were formerly, that not only theſe, but all other Offices, as they have increaſed in Value, have increaſed in the Price; all Offices have riſen in Value, and the Price given in this Inſtance, is no more than in Proportion to the Prices given for others.

Mr. *Common Serj.* We apprehend, my Lords, it is ſo notorious, that all Sorts of Offices have riſen in their Value, that a very ſmall Evidence will be ſufficient. We have a great many Witneſſes to this purpoſe, we will only call ſome few. We deſire Mr. *Steele* may be called.

Mr. *Steele* ſworn.

Mr. Serj. *Pengelly.* My Lords, We deſire to know before they proceed, Whether they deſign to ask as to thoſe Offices your Lordſhips gave them Direction laſt Night not to ask to. Your Lordſhips gave them Directions not to ask any Queſtions, but to the particular Offices mentioned in the Articles; this is a Piece of Dexterity to elude that Reſolution.

Mr. *Lutwyche.* My Lords, I ſubmit it to your Lordſhips, Whether this Attempt is not directly the ſame as that which was over-ruled Yeſterday. If the Witneſs is to give an Account whether the Price of the Curſitor's Office, or other Offices have riſen, they muſt then ſhew that they were ſold; which is the very Queſtion your Lordſhips determined they ſhould not ask to.

Mr. Serj. *Probyn.* My Lords, We were then directed by your Lordſhips not to prove any Money was paid to the Great Seal for any other Offices, but thoſe particularly mentioned in the Articles. We don't pretend now to ask as to the Payment of Money to the Great-Seal, but only whether Offices in General have not much advanced in their Prices?

Mr. Serj. *Pengelly.* My Lords, It is extraordinary Uſage to tell us of Offices in General; there are private Offices, there are Offices in other Courts in *Weſtminſter Hall.* We apprehend your Lordſhips Determination is ſo ſtrong againſt what is now attempted, that they would not urge it, unleſs they thought that the Managers had forgot every Thing that happened.

Mr. *Common Serj.* My Lords, The Queſtion we ask is, as to Employments in General, Offices in the Law, or any other Offices; we deſire to inform your Lordſhips in General, that the Value of all Employments, not of the Law only, hath riſen.

E. of *Macclesfield.* I will inform your Lordſhips how the Matter is. I believe this Gentleman is not intended to be asked what Offices belonging to the Great-Seal are Worth, but what Difference there is in the Value of other Offices, to what they were heretofore; particularly how the Prices of the Seats in the Six Clerks Office are increaſed, that they were once at ſuch a Rate, and what they are now; that is the Matter, as I take it.

Mr. *Lutwyche* My Lords, I apprehend the Direction was given to the Noble Lord, not to ask concerning the Sale of any Office but what was in the Articles, and the Managers had given Evidence to. Now to ask the Difference or Increaſe of the Prices of a Clerk in Chancery's Place, is, we apprehend, to ask to the very Thing that your Lordſhips have over-ruled already.

E. of *Macclesfield.* My Lords, this is not like the Curſitors-Office, which is in the Diſpoſition of the Great-Seal; your Lordſhips Reſolution was, That the Witneſs was not to anſwer as to their giving Money to the Great-Seal. The Evidence we are now upon, is an Inquiry that relates not to any Money given to the Great-Seal, but what thoſe Perſons paid to one another for an Office that doth not belong to the Great-Seal

Mr. *Onſlow.* At the End of your Lordſhips Reſolution Yeſterday, the Reaſon given why they ought not to be let into the Examination as to the Offices then in Queſtion, was, becauſe no Evidence had been given thereto by the Managers, and it was not charged nor mentioned in the Articles, altho' the Noble Lord did inſiſt that he ſhould be let into that Examination, becauſe in the Preamble of his Anſwer, he had taken Notice of thoſe Offices. This Caſe is ſtronger, becauſe the Offices now deſired to be Examined into, are neither in the Articles nor Anſwer, nor hath any Evidence been given to them; and therefore we hope he ſhall not be let into this Examination.

Mr. *Common Serj.* We humbly hope your Lordſhips will permit us to Enquire whether the Buſineſs of thoſe Offices in the Court of Chancery is not greatly increaſed, and whether the Value of the Offices be not increaſed with it?

Mr. Serj *Probyn.* Notwithſtanding your Lordſhips Direction in the former Queſtion, we ſubmit whether we may not be permitted to ask this Queſtion, Whether the Offices in the Court of Chancery are not increaſed in Value much beyond what they were Seven Years ago?

Mr. Serj. *Pengelly.* My Lords, That is the very Queſtion that we Object to.

E. of *Macclesfield.* What I before offered was, that there had been a Uſage to make Preſents to the Great-Seal; I apprehend your Lordſhips over-ruled it as to the Curſitors-Office, becauſe there was no need of an Excuſe as to that Office, as there is no mention made of it in the Articles, nor any Proof offered againſt me. This is not of any Payment to the Great Seal, but goes by way of Excuſe as to the Sums, to ſhew the Increaſe or Difference of the Prices of Offices in General. It is notorious that Money now carries a leſs Intereſt, and that the Price of all Offices is increaſed. I don't know whether the Gentlemen will deny it. If they do not, I will not trouble your Lordſhips any farther about it.

Mr. Serj. *Pengelly.* We have no Occaſion either to Confeſs or Deny any Thing that is not before your Lordſhips in Judgment. Therefore, if they expect any Anſwer, we give this, That it is not before your Lordſhips in Judgment.

Mr.

Mr. *Lutwyche.* I apprehend the Reaſon of your Lordſhips Reſolution Yeſterday, was, That there was no Charge in the Articles concerning thoſe Offices; the ſame Reaſon equally holds to what they are asking now in relation to Clerks in Chancery.

Mr. *Plummer.* My Lords, I ſhould be extreme ſorry to make any Objection to any Evidence that is Material: But, if he is pleaſed to Examine this Gentleman how far by the Increaſe of Buſineſs the Value of any Office is riſen, that muſt be of the Annual legal Value, and not according to the Liberties he left to his Maſters.

Mr. Serj. *Probyn.* I deſire he may be asked, Whether he doth not know that the Prices of Offices are greater now than they were formerly?

Mr. Serj. *Pengelly.* My Lords, we don't underſtand they have any ſuch Permiſſion to ask that Queſtion. To repeat the ſame Thing over and over again, we apprehend they think we are aſleep.

E. of *Macclesfield.* Your Lordſhips ſeem not to be of Opinion that this Queſtion ſhould be asked; therefore to ſave your Lordſhips time, I will wave the Queſtion.

Mr. *Goldesbrough* ſworn.

Mr. Serj *Probyn.* We will proceed in the next Place, in Confirmation of that Part of the Anſwer to this Article, That two Sums of Money, mentioned to be paid to my Lord *Macclesfield* by Mr. *Kinaſton* and Mr. *Bennet*, were both paid back into the Court of Chancery. We deſire Mr. *Goldesbrough* may be asked, Whether he knows of the two Sums of 1500 Guineas, and 1500 Guineas, that were paid by my Lord *Macclesfield* into the Court of Chancery.

Lord *Lechmere.* My Lords, I beg pardon. I think the Queſtion that the Noble Earl hath waved, if I miſtook not, was about the Riſe and Increaſe of Value of the Offices in Chancery. Now, notwithſtanding the Noble Lord hath waved, yet it may be proper for your Lordſhips Conſideration, whether he ſhould not have Liberty to ask it, if he thinks fit.

E. of *Straff.rd.* I think what the Noble Lord hath ſaid is conſiderable, and it may be proper for our Judgment.

Ld. Viſc. *Townſhend.* I move that they may withdraw.

Ld. *Lechmere.* It may be proper to have the Queſtion repeated again. I therefore deſire that the Councel for the Earl would repeat the Queſtion again that they would have asked of Mr *Steele.*

Mr Serj. *Probyn.* My Lords, The Queſtion is, Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office, particularly, are increaſed now more than antiently they were.

Thereupon the Managers and Councel withdrew, and being returned,

Ld. Ch. J. *King.* Mr. Serjeant *Probyn,* the Lords have conſidered the Queſtion on which you whithdrew Their Lordſhips are of Opinion, That you are at Liberty to ask the Queſtion, Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office particularly, be increaſed now more than heretofore they were?

Mr. *Steele.* My Lord, I came to be a Clerk in the Chancery Office in the Year 1687. I ſerved my Clerkſhip in the Office, and in that Year, and for ſeveral Years afterwards, I know that waiting Clerks Places were bought at 50 Guineas, or leſs, and after I was out of my Clerkſhip, I was offered a Waiting Clerks Place in the Office for 50 Guineas. They are not ſworn, nor have Power to take a Clerk; and ſince that Time I have known them Sold for 3, 4, and 500 *l.* My Maſter was a ſworn Clerk, and he ſold his ſworn Clerks Place for 230 *l.* It was a Clerk at the Seat; and by the Cuſtom of the Office, he that hath one Clerk cannot take another till the firſt Clerk be provided for; but I having a Propoſal to go into a Seat of greater Buſineſs, that induced me to give a Note to the Gentleman that bought the Seat, that I would not be an Incumbrance on the Seat, otherwiſe he would not have given ſo much. Since that Time I have known a ſworn Clerks Place Sold for 800 *l.* Particularly I tranſacted a Sale upon a Brother-in-Law's Account, I contracted for 500 *l.* and then there was a Clerk upon the Seat that had not ſerved half his Clerkſhip out.

Mr. Serj. *Probyn.* What Sum of Money had they upon taking a Clerk at that Time, and what now?

Mr. *Steele.* I did treat in Order to put my Brother-in-Law Clerk to one Mr. *Atkinſon,* in the Office.

Mr. Serj. *Probyn.* What time was that?

Mr. *Steele.* To the beſt of my Remembrance it was in 1703, or 1704, and he had 100 Guineas. Since that time, my Brother-in-Law, while he was there, had 300 *l.* or 300 Guineas with a Clerk.

Mr. *Common Serj.* I deſire he may Explain to your Lordſhips what he means by a Clerk being an Incumbrance to a Seat?

Mr. *Steele.* By the Cuſtom of the Office, he that is put a Clerk, muſt be provided for before his Maſter can take another. The Maſter ſo taking him, cannot take another Clerk, till he is provided for by a ſworn Clerks Place, or a waiting Clerks Place.

Mr. *Lutwyche.* If the Councel have done, I deſire to ask one Queſtion, that is, The Gentleman ſays, he came into the Office in the Year 1687. I deſire to know how many Clerks there were at that Time?

Mr. *Steele.* There were at that Time but 60 ſworn Clerks; there was an Addition made, to the beſt of my remembrance, in my Lord *Jeffery's* time, Sir *John Trevor* was then Maſter of the Rolls, I think there was an Addition of 30.

Mr. *Lutwyche.* I deſire to know whether they are not reduced from 90 to 60 again?

Mr. *Steele.* They are not at preſent yet reduced.

Mr. *Lutwyche.* Whether they are not intended to be reduced?

Mr. *Steele.* If any one Dies without ſurrendring his Office, they don't fill up the Place of that Perſon with another; but any one may ſurrender.

Mr. *Lutwyche.* How many are there now?

Mr. *Steele.* I have been told there are about 12 or 13 leſs than 90: They are to be reduced

duced from 90 till they come to the ancient Number of 60; and they are reduced as they die without ſurrendring.

Mr. *Lutwyche.* We don't expect you to give an exact Account; How many may there be?

Mr. *Steele.* I can't take upon me to ſay how many; but, as I have been informed, I believe there are about 16 or 17 above the 60 remaining: I may be miſtaken, I am not certain; but there are ſeveral Gentlemen here, who can give an exact Account.

Mr. *Lutwyche.* I deſire to know whether the Offices are not a great deal better, by there being fewer of them?

Mr. *Steele.* Certainly, I believe that is pretty Natural; the fewer the Offices are the better; but the Offices are not ſo good as they were when I came Clerk. They have reduced ſeveral Profits belonging to them ſince I came out of the Office, by the Act of Parliament made *For the Amendment of the Law.*

Mr. *Lutwyche.* You ſay they are ſold for more than formerly they ſold for; I deſire to know whether ſome of thoſe Clerks, whoſe Predeceſſors have had good Buſineſs belonging to the Office, have not made that Seat ſell better?

Mr. *Steele.* Certainly it doth; if the Perſon ſurrendring had good Buſineſs, that Seat will ſell for more than a Seat of leſs Buſineſs

Mr. *Common Serj.* I deſire that he will inform your Lordſhips, when it was in point of Time that theſe Offices ſold at ſo low a Rate?

Mr. *Steele.* It was in the Year 1694 that the Gentleman to whom I was Clerk ſurrendered his Seat.

Mr. *Common Serj.* And when was it you knew 50 Guineas paid for the Place of a Waiting Clerk?

Mr. *Steele.* The 50 Guineas I ſpeak of for a Waiting Clerk's Place, was in the Year 87, or thereabouts.

Mr. *Common Serj.* Whether was that before the Increaſe of the additional Number of Clerks?

Mr. *Steele.* Much about the Time that the Additional Number of Clerks was added.

Mr. *Common Serj.* I deſire he would inform your Lordſhips, whether the Prices began to Riſe before any Reduction was made?

Mr. *Steele.* Yes, before the Reducing of them.

Mr. Serj. *Probyn.* When was the Reduction of them made?

Mr *Steele.* I can't tell the exact Time. There was an Order made, that they ſhould not be filled up as they died without Surrender.

Mr. Serj. *Probyn.* I deſire he may be asked, Whether there was not a Difference of Price between thoſe Seats which were full or empty of Buſineſs, or whether they were all at a *Par*?

Mr. *Steele.* The Price always varied, as there was much or little Buſineſs.

Mr. Serj. *Probyn.* But every Seat, whether great or leſs, had a Riſe in Proportion?

Mr. *Steele.* Yes.

Mr. *Cary.* I deſire he may be asked, Whether there hath not been an Act of Parliament ſince the Time he mentions, which hath been Beneficial to the 60 Clerks?

Mr. *Steele.* There was an Act of Parliament, called, *An Act for the Amendment of the Law*; by which the 60 Clerks had the Term Fees inſtead of the Tenour Bill, which was a conſiderable Profit; and to make up that to them, the Fees of the ſmall Writs were given to them, and the Term Fees; but in my Apprehenſion, the Tenour Bill was a greater Advantage than thoſe Fees that have been given in Lieu of it.

Mr. *Common Serj.* That worthy Gentleman's Queſtion hath occaſioned me to deſire, That he would inform your Lordſhips, Whether, upon the whole of the Act, the Six Clerks Offices are better or worſe?

Mr. *Steele.* In my Opinion, they were better before the Act, than they are now.

Mr. Serj. *Probyn.* My Lords, we have more Witneſſes to this purpoſe; but we apprehend that Mr. *Steele* hath ſpoken ſo fully to it, that we ſhall not trouble your Lordſhips with any others, as to this Matter. The next Witneſs which we ſhall beg leave to call, is in Relation to the two Sums of 1575*l.* that were paid into the Court of Chancery by the Noble Earl, for which we did call Mr. *Goldesbrough.*

Dr. *Sayer.* Before your Lordſhips enter into an Examination of this Fact, I will only beg leave to take Notice as to the Time of this Repayment: The Learned Managers were right in their Obſervations, That it was after the Vote for the Impeachment; but it was before the Articles were Exhibited. This is miſtaken in the Anſwer, but I am ſure the Honourable Houſe of Commons will be ſo candid as to think it was a Miſtake only, and that 'tis impoſſible it could be with any View of Deceiving the World, ſince both Facts were upon Record; the Earl was ſo very impatient to have his Anſwer in, that no Delay might be charged upon him, that I aſſure your Lordſhips the Anſwer was not ſettled till 3 or 4 a Clock in the Morning of that Day that it was delivered in. In ſuch a Hurry, a Miſtake of this Nature, I hope will not be taken amiſs, nor be looked upon by the Houſe as deſigned. My Lords, I thought it my Duty to obſerve this before your Lordſhips entred into this Examination.

Mr. *Goldesbrough* called.

Mr. *Common Serj.* There are two Sums of Money taken Notice of to be given by Mr. *Kinaſton* and Mr. *Bennet* to my Lord *Macclesfield*, I deſire you would inform my Lords, whether thoſe two Sums were paid back again, and when, and in what Manner?

Mr. *Goldesbrough.* My Lords, The 23d of *February* laſt my Lord *Macclesfield* came into Court, and depoſited in Bank Notes and Money to the Value of 3000 Guineas. The Lords Commiſſioners were pleaſed to direct the inveſting it in *South-Sea* Annuities, in the Names of Mr. *Holford* and Mr. *Lovibond*, the two Senior Maſters of the Court, for the Benefit of the Suitors of the Court.

Mr. *Common Serj.* I think, my Lords, we need not ask whether Mr. *Goldesbrough* be the proper Officer?

Lords. No, No.

Mr. *Common Serj.* I would with Submiſſion ask another Queſtion of Mr. *Goldesbrough*; I would beg leave to inform your Lordſhips what the Queſtion is. There hath been an Examination on the Part of the Gentlemen of the Houſe of Commons into the Nature of theſe Offices,

and I hope it will not be improper, Mr. *Goldesbrough* being now at Your Lordships Bar, to ask him as to the manner of the Money coming into the Masters Hands, whether it be by Compulsion, or at the Instance of the Parties.

Mr. *Serj. Pengelly.* This must appear by the Order. No Money is paid in but by Order.

Mr. *Com. Serj.* The Orders are infinite, but Mr. *Goldesbrough* being the Register, may be properly asked, what the Practice and Usage of the Court is in this Instance. It is usual to ask the Officers of the Court, what the Practice and Usage of the Court is. If we should produce 20 Orders, they might object that others are not so; and therefore I beg Mr. *Goldesbrough*, the proper Officer, may inform Your Lordships, what the Practice of the Court is.

Mr. *Goldesbrough.* Upon Decrees, when Causes are heard, the Councel pray what Decree is proper: Where Estates are to be sold, they order the Money to be brought before the Master.

Mr. *Lutwyche.* My Lords, I desire to ask one Question; Mr. *Goldesbrough* is a very experienced Officer of the Court, hath been a good while in the Place, and probably may give Your Lordships some Light into this Matter. The Question I would ask, is, When he first knew the Office, whether it was usual to direct the Money to the Masters, in the manner it hath of late been directed?

Mr. *Goldesbrough.* I can't say it was.

Mr. *Lutwyche.* The next Question is, When the present Usher of the *Rolls* had given Security, whether there were not some Orders made by the late Lord *Chancellor*, as well as by the Masters of the *Rolls*, for Payment of Money to the Usher of the *Rolls*; that is, into Court?

Mr. *Goldesbrough.* Yes, there was.

Mr. *Lutwyche.* I desire him to explain the Difference between paying the Money into Court, and paying the Money to a Master. What is understood by paying it into Court?

Mr. *Goldesbrough.* Paying it into Court, is paying it to the Usher.

Mr. *Lutwyche.* I desire to know, whether there were not some Orders made, after Mr. *Trevor* the present Usher had given Security, for Payment of Money to him?

Mr. *Goldesbrough.* Yes, there were.

Mr. *Lutwyche.* I desire to know, how soon after those Orders were varied?

Mr *Goldesbrough.* I can't remember when the Orders were varied; as to those made before Hearing, and for continuance of an Injunction, I don't know they are altered yet.

Mr *Lutwyche.* What I ask is, Whether he had any Directions touching the varying of Orders, for the Payment of Money; any Direction, I mean, from my Lord *Macclesfield*, to vary the Order?

Mr. *Goldesbrough.* Money paid before Hearing, was paid into Court; Money paid upon the Decree, was brought before the Master. I had no Direction from my Lord *Macclesfield* to vary the Order.

Mr. *Lutwyche.* Was there any Variation or Difference in drawing up the Order, for some time after the Usher gave Security, from what it was some time before?

Mr. *Goldesbrough.* Upon interlocutory Motions, the Money was brought before the Usher, and so it hath been ever since.

Mr. *Lutwyche.* Was it always so?

Mr. *Goldesbrough.* It hath been so ever since.

Mr. *Lutwyche.* Ever since what time?

Mr. *Goldesbrough.* Ever since the time that Mr. *Trevor* gave Security.

Mr. *Lutwyche.* What I would know is, Whether the Orders and Directions at first were not in general, to pay the whole Money into Court?

Mr. *Goldesbrough.* No, my Lords.

Mr. *Lutwyche.* How was it?

Mr. *Goldesbrough.* On all Orders interlocutory before Hearing, it was paid in to the Usher: On all Orders for Money, subsequent to the Hearing, it was brought before the Master.

E. of *Macclesfield.* This Question hath been asked Mr. *Goldesbrough*, with relation to the paying of Money into Court, and being brought before a Master; I desire he would inform Your Lordships what the Difference between them is?

Mr. *Goldesbrough.* Money brought into Court, is Money brought in before Hearing, and is subject to the Order of the Court, to be paid out either before the Hearing, or after, as the Nature of the Case requires. Money brought in after Hearing, is Money to be put out on Security, and is brought before the Master.

E. of *Macclesfield.* Whether when Money is ordered to be brought in to be disposed of, as upon a Purchase, or upon a Decree, to pay Debts *&c.* The Course of the Court in all his Time hath been to bring it into Court, or before a Master?

Mr. *Goldesbrough.* I can't say it hath been so in all my Time: Since the Revolution it hath been generally brought in before the Master, before it was brought into Court.

E. of *Macclesfield.* Have the Orders made by me, since the Usher gave Security, been made in the same manner as those by myPredecessors?

Mr. *Goldesbrough.* Yes, They have been the very same.

E. of *Macclesfield.* I desire to know, when first the Money paid into the Hands of the Usher went into another Course, that is, upon the Usher's Death, or not giving Security; and what Method was taken then?

Mr. *Goldesbrough.* I believe, after the Revolution, there was looked upon to be a Defect in the Security of the Usher, and it was upon that Consideration, that the Money was ordered before the Master.

E. of *Macclesfield.* And afterwards was there not an Alteration made of all the Money that used to be paid to the Usher? Was it not ordered to be brought before the junior Masters?

Mr. *Goldesbrough.* In my Lord *Cowper's* Time, when there was a Difference between the Usher and his Deputy, my Lord *Cowper*, upon that, did order the Money to be brought, and lodged in the two junior Masters Hands. They were each to keep a Key, and the Usher another: When any Money was paid, it was paid out of the Chest, kept under those Keys; and the Money that was paid in, was paid in there.

E. of *Macclesfield.* Was not the Money that used to be paid in to the Usher's Hands, directed in to the junor Masters Hands?

Mr. *Goldesbrough.* It was so.

E. of *Macclesfield.* As to the Money appointed to be disposed of, for payment of Debts, or otherwise, how was that paid? was that put into the Chest, or into the Hands of the respective Masters, to whom it was referred?

Mr. *Goldesbrough.* I think it was put into the Cheſt; there was then no Difference at all.

E. of *Macclesfield.* Had no other Maſters then any Money brought before them? was all brought before the junior Maſters?

Mr. *Goldesbrough.* The general Order was, for the Money to be brought before the junior Maſters, to be kept in a Cheſt there.

E. of *Macclesfield.* Mr. *Goldesbrough* miſtakes the Queſtion. I don't ask how the Money was uſually brought, but had no other Maſter Money brought before him in my Lord *Cowper*'s Time?

Mr. *Goldesbrough.* Yes, My Lords.

E. of *Macclesfield.* What Money was that? upon what Occaſion?

Mr. *Goldesbrough.* The bringing the Money to the two junior Maſters, was found to be inconvenient; whereupon, after that it was altered, and the Money was brought before the Maſters, to whom the Reference was in Court.

E. of *Macclesfield.* Whether the Money that was paid in to the two junior Maſters, was not ſuch Money as was before ordered to be paid into Court?

Mr. *Goldesbrough.* Yes.

E. of *Macclesfield.* I deſire you would recollect, whether you was not preſent at a Meeting of the Maſter of the *Rolls*, and Uſher, and others; whether this was not under Conſideration, what Money ſhould be paid into Court, and what ſhould be brought before the Maſter?

Mr. *Goldesbrough.* Yes.

E. of *Macclesfield.* Whether you was not then asked, whether Money directed after a Cauſe is heard, to be diſpoſed of, was not brought before a Maſter?

Mr. *Goldesbrough.* Yes, I was asked that Queſtion.

E. of *Macclesfield.* What Account did you give of the Courſe of the Court in that Particular?

Mr. *Goldesbrough.* I gave the ſame as now, That the latter Practice had been to bring it before the Maſter, to whom the Cauſe was referred.

E. of *Macclesfield.* Do you remember, whether the Uſher was not asked, whether he had any Precedents of Money paid into his Hands, to be diſtributed amongſt Legatees, or Creditors, and what the Anſwer was?

Mr. *Goldesbrough.* He ſaid he had none.

E. of *Macclesfield.* Do you apprehend the Courſe of the Court to be, that Money brought in before Hearing, is to be paid in to the Uſher; and Money after Hearing, to be brought in before the Maſter?

Mr. *Goldesbrough.* Yes, I do.

E. of *Strafford.* I deſire he would inform Your Lordſhips, what the Security is, and how much, that is given by the Uſher; and whether it is the ſame now, as it was before my Lord *Cowper* made that Alteration?

Mr. *Goldesbrough.* I can't ſay any thing as to that, I know nothing of it, it doth not lye in my Province.

Mr. *Serj. Probyn.* Your Lordſhips will pleaſe to remember, in the Caſe of Mr. *Elde*, though he paid 5250 *l.* all the Money was returned, except 1850 *l.* So the ſame as to Mr. *Thurſton*, 5250 *l.* that all was returned in a reaſonable Time, except 2000 *l.* ſo that to theſe Facts, we ſhall not trouble Your Lordſhips with any Witneſſes. But now we ſhall beg leave to lay before Your Lordſhips another Evidence, that when Mr. *Thurſton* was admitted into this Office, upon the Payment of 5000 Guineas, another Gentleman offered 6000 *l.* Mr. *Cottingham* proved the ſame as to Mr. *Elde*. This we do to ſhew, that his Lordſhip was not that avaritious Perſon, as he hath been repreſented; he refuſed 6000 *l.* and took leſs from another. We deſire Mr *Ellis* may be called.

Mr. *Ellis* Sworn.

Mr. *Serj. Probyn.* We deſire Mr. *Ellis* may be asked, what he knows of any Sum of Money that was offered for the Maſterſhip in *Chancery*, to which Mr *Thurſton* was admitted, and what that Sum was?

Mr. *Ellis.* Upon the Death of Mr. *Borret*, Mr *Richard Lucas* came to me at my Lord *Macclesfield*'s, and told me, That his Brother deſired to have the Place of a Maſter in *Chancery*, then vacant: And he ſaid, that as I was in my Lord *Macclesfield*'s Family, I might be of Service to him, in conveying Mr *Lucas*'s Propoſal to my Lord. He then told me, what I was to offer my Lord *Macclesfield* for that Place; he ſaid he was ſo ſenſible of my Lord *Macclesfield*'s Honour and Generoſity, that he would leave it entirely to his Lordſhip, what he would have in Conſideration of his coming in. But if my Lord *Macclesfield* did not approve of a Propoſal ſo undetermined as that was, I was to offer 6000 *l.* or 6000 Guineas; I don't remember which of thoſe two Sums, but one of them I am certain it was. I did offer it to my Lord, who told me Mr *Lucas* had been well recommended to him, and he was ſatisfied with his perſonal Character, and with this Offer. My Lord *Macclesfield* ſaid no more; and I could not preſs his Lordſhip to explain himſelf any further. I returned that Anſwer to Mr *Lucas*, and heard nothing further of that Matter, till my Lord *Macclesfield* had declared that Mr *Thurſton* ſhould have it.

Mr. *Com. Serj.* I deſire he may be asked, whether the Gentleman that applyed to him, was not his Friend and Acquaintance?

Mr *Ellis.* Mr *Richard Lucas* was my Acquaintance; when he deſired me to do this, I told him it was not proper for me to apply about Matters of ſuch Nature; but in Friendſhip to him, I would ſpeak to my Lord about it.

Mr. *Plummer.* I don't know whether the Counſel have done; if they have, I deſire to ask this Witneſs what Mr. *Richard Lucas* is himſelf?

Mr. *Ellis.* He is a Clergyman.

Mr. *Plummer.* I deſire to ask him, If Mr. *Richard Lucas* did not, at the ſame Time that he propoſed the 6000 *l.* lay ſome Reſtriction or Condition, upon which he was to pay it. Had not you ſuch Inſtructions?

Mr. *Ellis.* No, I don't remember he did any.

Mr. *Plummer.* Then I deſire to ask you, If he did not ſay, provided Mr. *Borret*'s Deficiency was made good?

Mr. *Ellis.* He mentioned no ſuch Condition to me; he did ſpeak of Mr. *Borret*'s Deficiency; I told him I had heard there would be no Deficiency there. Upon which he ſaid, he had been aſſured there would be none by a Gentleman known to us both; but however that be, ſays he, my Brother is willing to enter into a Treaty with my Lord *Macclesfield* upon theſe Terms.

Mr.

Mr. Serj. Probyn. My Lords, we ſhall trouble your Lordſhips no further upon theſe Articles we have been upon, the other Gentlemen will anſwer what is to follow.

Mr. Robins. May it pleaſe your Lordſhips, I am likewiſe by your Lordſhips Permiſſion aſſigned of Counſel with the noble Earl, who has the Misfortune to lye under the Weight of ſo heavy a Charge, as an Impeachment of the whole Body of the Commons of *Great-Britain*, and ſhall beg Leave to open to your Lordſhips the Nature of his Defence, and the Strength of his Evidence, with regard to the *Eleventh* and *Twelfth* Articles of this Impeachment.

I am ſenſible, my Lords, that the Solemnity of this Proſecution, from the Weight and Number of thoſe, who are become the Accuſers of this noble Earl, and the awful Appearance and Wiſdom of thoſe who are to be his Judges, and the Name of an Impeachment in Parliament, may ſeem to carry an Argument of greater Crimes and greater Guilt, than are to be met with in the ordinary Courts of Juſtice below.

But, my Lords, with the greateſt Submiſſion, if the Solemnity of the Proceedings on this Occaſion has not altered the Nature of Things, and imprinted a Guilt where there is no Guile, we humbly hope we ſhall be able to lay before your Lorſhips ſome few Obſervations and Circumſtances of Evidence, that will, at leaſt, extenuate, if not wholly abate and take out the Sting and Malignity of the ſeveral Crimes, whereof this noble Earl ſtands accuſed.

Your Lordſhips, without Queſtion, will have long ſince obſerved, That the Loſſes and Sufferings of Widows, of Orphans, and others, who, from the Diſtreſs and Impotence of their Condition to help or defend themſelves, have fled to the Court of Chancery, when this noble Earl preſided there, for Sanctuary and Protection; that theſe have been juſtly made uſe of as the greateſt Aggravations of the Crimes wherewith he is charged, and they have been diſplayed with the utmoſt Force of Eloquence, and in the moſt moving Strains of Commiſeration and Pity.

And I believe, my Lords, every one that heard them have ſhared and gone along with the Honourable Managers for the Houſe of Commons, in the Concern and Indignation they have ſo juſtly ſhewn towards thoſe, who have been the Authors and Contrivers of them.

Theſe, my Lords, are Subjects, wherein the richeſt Fancy may almoſt loſe it ſelf, and the pooreſt can never be at a Loſs for ſomething to offer to move and affect the Paſſions of Mankind.

And the learned Managers for the Honourable Houſe of Commons, have adorned and ſet off their Charge againſt the noble Earl on this Head, with ſo many Beauties of Expreſſion, and ſo great a Propriety and Choice of Language, to engage and win over all the Paſſions of Humane Nature to their Side, that 'twill be difficult, if not impoſſible, for Us, who may ſeem to have undertaken an Argument leading to diſprove and reaſon againſt the Force and Truth of all theſe, to hope for Succeſs, but by ſhewing to your Lordſhips, that the noble Earl entirely joins with the learned Managers in their juſt Reſentment and Concern on this Occaſion, that he is deeply affected with the Loſſes, the Depredations and the Havock, which has been made of the Fortunes of the Unhappy Suitors of the Court of Chancery.

That he has long been endeavouring to put a Stop to them, that at one Time he has contributed his Reaſon, his Judgment, and his Underſtanding, to find out effectual Methods for the Cure of them; at other Times has made Uſe of his Power, his Authority and that Majeſty wherewith, as Lord Chancellor, he ſeems to be inveſted, to enforce and haſten the compleating of them.

That he has conven'd the Maſters, the Regiſters, and the ſeveral Officers belonging to his Court, to conſult, adviſe and aſſiſt, in finding out Means to ſtop the growing Evil; that he has aſſiſted with his Purſe, has advanced conſiderable Sums of Money of his own, and when Nothing would do, when the Miſchief appeared too big for his ſingle Endeavours to oppoſe, that he then at laſt preſumed humbly to lay the Whole before his Majeſty in Council, as well for his Majeſty's Aſſiſtance and Direction, as to teſtify how much he had at Heart the finding out a Remedy for the Cure of thoſe overgrown Diſeaſes, this Epidemical Contagion, which was ſpreading through every Part of the Court where he preſided, and ſeemed to threaten Deſtruction and Ruin to the whole.

Theſe, my Lords, we humbly hope will prove the noble Earl not to have been an idle and unconcerned Spectator at the Tragedy that was acting around him; that he ſaw and felt the Commotions it had raiſed, and was fully determined to put an End to them as ſpeedily and effectually as he could.

But when, my Lords, a Stop was put immediately to his Endeavours; when he was diſarmed almoſt in the very Beginning of his Onſet, and when the great Seal, and therewith his Power to proceed further, was taken from him, your Lordſhips will not impute it to him, that he was forced to ſit ſtill, and leave it to others to effect what he had, ſo proſperouſly and happily, begun.

Your Lordſhips, without Queſtion, will have already obſerved, That theſe fatal Miſchiefs did not ſpring up all at once, That they had long been growing, That the Seeds of them had lain buried and concealed for a conſiderable Time, and, That they hardly appeared at all, till they were grown too ſtubborn and obdurate, to yield to an eaſy Cure.

Your Lordſhips will likewiſe, no doubt, have obſerved, that however in the ſtricteſt way of conſidering Things, the Chancellor may poſſibly be thought to be anſwerable for them; yet, that they did not originally proceed from him, that he had not the immediate Cuſtody or Ordering of the Suitors Money or Effects.

That the Maſters in Chancery, who are no leſs than Eleven in Number, by the Conſtitution of the Court, and the Nature of their Office, were neceſſarily to be entruſted with that Part of the Buſineſs thereof.

And when Your Lordſhips ſhall likewiſe be pleaſed to obſerve further, That enough, and more than enough for the ſtrongeſt Conſtitution of Body, and the greateſt Abilities both of Mind and Underſtanding, remained ſtill for the Chancellor's own Share, in the Diſpatch of the daily and neceſſary Buſineſs of the Court where he preſided, the innumerable Avocations, by his Attendances on Your Lordſhips, on His Majeſty, and the Council, and other Services, which the Duty of his High Station required from him; Your Lordſhips, no doubt,

will

will eaſily reflect, that he had but little leiſure, ſuddenly, and immediately to go through ſo arduous, ſo difficult, and ſo tedious an Undertaking, as the ſtating and ſetling of the Maſters Accounts, for no leſs than almoſt a Million of Money, which has now appeared to be in their Hands. And, your Lordſhips, we are perſuaded, are no ſtrangers to the many and almoſt inſuperable Difficulties, which even at laſt have attended the Proſecution of that Affair, the great length of Time it has taken up, the number and variety of Meetings and Conſultations with Perſons of the greateſt Abilities and Experience, to go to the bottom of it, and whether even yet they have been able fully to effect it, or have fix'd on ſuch Methods of Enquiries as have laid open the whole Scene, or will certainly prevent the like Miſchiefs for the time to come; theſe, my Lords, we humbly apprehend are Conſiderations that will not be thought altogether unworthy of your Lordſhips Notice, in determining the Guilt or Innocence of this noble Earl of the Crimes laid to his Charge.

It muſt indeed be admitted that they have for the preſent, taken away the Money, Effects, and Securities of the Suitors out of the Maſters Hands, and ſo have prevented any loſs for the time to come on their Part.

But whether, my Lords, they are even yet diſpoſed of in ſuch Manner as fully to Anſwer the Ends propoſed, whether the Eaſe and Convenience of the Suitors of the Court will appear to be more effectually provided for, than they were before, by the Methods that have now been taken to diſpoſe of their Money and Securities; theſe, my Lords, I am afraid are Queſtions more eaſily asked, than anſwered.

But, my Lords, all I would be underſtood to mean by this, is, and I mean nothing more by it, than that the ſettling and adjuſting of the Maſters Accounts for ſuch great Sums of Money, placed and diſpoſed of in ſuch variety of Hands, ſo difficult to be throughly conſidered or underſtood; and ſo little to be depended on if they were underſtood; that this, my Lords, was rather the work of Perſons at full leiſure, of Perſons converſant in the Nature and Manner of Accounts, that 'twas the work of variety of Perſons of different Capacities and Abilities, and ſo the taking of theſe Accounts lately has abundantly verified and proved them to be.

And then, my Lords, we humbly hope that the ſingle Endeavours of a Chancellor to the ſame end, by being unſucceſsful, will not be made Criminal, and that he will not be obliged under the pain of an Impeachment in Parliament, to do what, with the greateſt Submiſſion, has never yet been attempted, or if attempted, has met with the ſame ill Succeſs with the Endeavours of the preſent Earl, and could never hitherto be compleatly or perfectly effected.

But, my Lords, with great Submiſſion, if the ſtating and ſettling of theſe Accounts, on a juſt and laſting Foundation, ſhould be admitted to be the Duty and Office of a Lord Chancellor, and that he is bound under Pain of an Impeachment to take care of them, yet as this is a Work of the greateſt Moment, Judgment, and Conſideration, and muſt unavoidably take up a very great portion of Time, and put a total Stop and Obſtruction for the preſent to all the other Branches of his high Office, we humbly hope, my Lords, that his being cut off in the midſt of his Endeavours of that kind, and thereby prevented from further Purſuit of them, that this will be a Conſideration of the greateſt Weight with your Lordſhips in determining the Fate of this noble Earl, and that he will not be made Criminal for leaving it unfiniſh'd, when his Power of proceeding further therein, was ſuddenly and unexpectedly taken from him.

My Lords, your Lordſhips very well know that the Buſineſs, not only of the Court of Chancery, but of all the other Courts of *Weſtminſter*-Hall, and even of your Lordſhips Supream Court of Judicature, is, and muſt neceſſarily be diſtributed and diſpoſed of into variety of Hands, that ſome are aſſigned to one Province, ſome to another, and all of them concurring to the ſame End, the carrying on the Buſineſs of the reſpective Courts to which they belong.

And, my Lords, the Officers and Miniſters of each of theſe Courts of Juſtice, on their being admitted thereto, give each of them the ſecurity of an Oath, or ſome perſonal Security for the due and faithful diſcharge and execution of their Duty, whilſt they continue in their Offices.

Now, my Lords, what can be the End of requiring and reſting on theſe Securities, but to relieve and eaſe the Minds of their Superiors from the neceſſity of prying and examining daily into their Behaviour and Conduct, to the hindrance and neglect of their own greater and more immediate Duty?

The Officer is at the Peril of his Oath, or the Security he has given, nay, even at the Peril of the Office itſelf, to diſcharge his Duty as he ought, and juſtly forfeits his Office by a neglect or breach of any part of his Duty therein; and if one or two of them ſhould have no regard to all or any of theſe Tyes, muſt the ten Righteous that are left, nay, muſt the Chancellor himſelf be puniſhed for their Sakes?

But, my Lords, Maſters in Chancery are generally, if not always, choſen from the Profeſſion of the Law, and the manner of their Education and the nature of their Studies are juſtly ſuppoſed to ſet them above the Temptation of mean, of baſe, or little and unjuſt Actions.

Many of that Profeſſion your Lordſhips will permit me to obſerve, do now, and have in all Ages, worthily adorn'd even the Auguſt Body of the Houſe of Peers, and have been advanced to the higheſt Dignities in the State.

And then, my Lords, I humbly hope 'twill not be thought an Obſervation altogether improper, that when one of this liberal Education, when one brought up in the ſtudy and practice of a Profeſſion, whoſe very Principles conſiſt in the knowledge of Virtue and Honour, of the Rules of Juſtice and Equity, and all the Accompliſhments which can adorn Life, or make him uſeful to his King and Country; I ſay, my Lords, I humbly hope 'twill not be improper to Obſerve, that when ſuch a one applies for an Office in the Civil Government, which he is in any Degree qualify'd for, 'tis no wonder that he ſhould meet with a more favourable Reception than other Perſons, who perhaps may have nothing but their Eſtates or Fortunes to recommend them.

The very Profeſſion of ſuch a one is, my Lords, almoſt a ſufficient Security and Recommendation of itſelf, and immediately induces a Perſuaſion and Belief, that they will do nothing to forfeit their Honour, their Reputation, or that Credit and Eſteem, which they ſo juſtly do and ought to Regard and Value.

But when, my Lords, 'tis remembred that the additional ſecurity and ſanction of an Oath is likewiſe required from them, when they invoke the Majeſty of Heaven to Bleſs them as they perform their Duty, what higher, what greater or better Security can be taken from them for the due and faithful diſcharge of their Duty in the Office they are entring upon?

The Oaths they take upon that Occaſion, your Lordſhips have already heard, and no doubt will have obſerved, that they differ little from the Oath, which even the Lord Chancellor himſelf takes on his being admitted to his own high Office.

And as they ſit with him in Judgment on the Bench, ſhare with him in carrying on the moſt important Buſineſs of that Court, which is next in Dignity to the Supream Court of Judicature we are now before, when they are in moſt Caſes neceſſary for the diſtributing and dealing out Juſtice and Equity, and fixing the rules and bounds of Property to the Suitors there. Can it, or will it, my Lords, be eaſily or readily imagined, that they ſhould have no Regard to all theſe ſacred Tyes of Duty, that they ſhould proſtitute their Honour, their Conſcience, and every Thing that is dear and valuable to them, for the ſake of any worldly or temporal Conſideration whatſoever?

Theſe, my Lords, we humbly apprehend are ſome of the Reaſons, which may be offered, why no perſonal ſecurity has ever been required from a Maſter in Chancery, on his Admiſſion into that Office, any more than from the Chancellor himſelf.

And if this be ſo, tho' there could be no need, or occaſion for the Chancellors making any Declarations concerning their Ability or Subſtance, yet we humbly hope we ſhall be able to ſhew to your Lordſhips, that this Declaration, which is made one of the Articles of an Impeachment againſt this noble Earl, that even this too, was not without it's juſt Foundation of Reaſon and Truth.

And this, my Lords, leads me to obſerve a little on the Eleventh Article of this Impeachment.

[*Article* XI.] My Lords, the Eleventh Article contains a two-fold Charge againſt the Earl; Firſt, That whilſt he continued in the Office of Lord Chancellor, in order to advance and increaſe the illegal and corrupt Gain ariſing to himſelf from the ſale and diſpoſal of the Offices of Maſters in Chancery, he did admit ſeveral Perſons to thoſe Offices, who at the time of their Admiſſions were of ſmall Subſtance and Ability, unfit to be truſted with the great Sums of Money and Effects of the Suitors lodged in their Hands.

The Second Charge againſt the Earl in this Article, is, That he did publickly in open Court falſly repreſent the Perſons by him admitted to the Offices of Maſters of the Court of Chancery, as Perſons of great Fortunes, and in every reſpect qualified for the Truſt repoſed in them.

Theſe, my Lords, are the two Branches of this Article againſt the Earl, and I would beg leave to obſerve upon it in general, that 'tis not ſo much as charged or inſinuated in any part of it, that the Earl knew or had the leaſt Notice of any inſufficiency or inability in the Maſters at the Time he admitted them to take upon them that great Truſt.

If that had been the Caſe, or could have been clearly made out, the Commons without doubt would not have omitted ſo material an Aggravation of this part of their Charge againſt the Earl.

They have indeed proved, that the Earl did not think fit to take the Maſters own Words for their Abilities and Fortunes, and therefore never ask'd them the Queſtion.

But, my Lords, we hope we ſhall be able to ſhew to your Lordſhips, that the Earl took a much more proper and effectual Method, to be ſatisfied of the Truth of their Circumſtances and Abilities, than by any Appeal he could have made to themſelves; that he did not content himſelf with barely asking the Queſtion for the ſake of an Anſwer, which he ought to have had no regard to, whether true or falſe, but that he weighed, conſidered, and judged of the Account he received of them on his Enquiry from others, and determined accordingly, whether they were or were not fit to be placed in an Office of ſo great Truſt.

That in Conſequence thereof, he abſolutely rejected ſome, though their Friends offered him a greater Preſent, or if it muſt be called ſo, a greater Price for their Offices than others, for want of an Eſtate or Fortune in Poſſeſſion of their own, that might be ſome ways adequate to the great Charge they were going to be entruſted with.

That from the ſame Views of Security to the Suitors of the Court, he refuſed to admit others, from an Apprehenſion that the Sums they offered, though conſiderably greater than was offered by others, would too much exhauſt and leſſen their own Fortunes, to be able with any Degree of Eaſe or Credit to ſupport themſelves, or be conſiſtent with the Safety and Security of the Suitors Money and Effects, to be entruſted with them.

Theſe Inſtances, my Lords, we ſhall be able to produce to your Lordſhips; and when we have ſo done, we hope we ſhall need to be in very little Pain for the Second Part of this Charge, which the Earl by his Anſwer has partly admitted to be true, that is, that he believes he may upon ſome Occaſions have declared, That he thought the then Body of Maſters as good, with Reſpect both to their Eſtates and Ability for the Diſcharge of their Office, as had been at any Time before.

This, my Lords, the Earl owns by his Anſwer, That he may on ſome Occaſions have ſaid; and if it were true, where was the Crime of it? 'twas indeed more than he needed to have ſaid, as no One had Authority to require him to make any Declaration at all about the Maſters.

But, my Lords, if he ſaid more than he needed to have ſaid, and yet his ſaying was true; we hope, my Lords, that will never be imputed to him as criminal.

Indeed, my Lords, the Honourable Managers for the Houſe of Commons, both in their Opening, and the Courſe of their Evidence, have tack'd to this Declaration a Circumſtance ariſing from the Death of Mr. *Fellows*, one of the Maſters, which happened juſt before this Declaration was made, from whence they would infer, and one of them was pleaſed to ſay, 'Twas a neceſſary Declaration to be made at this Time, to give Notice that the Office was worth buying, or to that Effect.

But, my Lords, we humbly hope, how ingenious ſoever the Obſervation may be, that it will have no Weight with your Lordſhips, if the Truth and Nature of the Caſe it ſelf will ſupport the Declaration that was made upon that Occaſion.

But, my Lords, before I leave this Article, I would beg Leave to add one Obſervation more to what I have already ſaid upon the firſt Part of it, concerning the Obligation on the Maſters in Chancery to be faithful in the Diſcharge of their Duty, from the Honour of their Profeſſion, and the Nature and Sanctity of the Oath they take on their being admitted Maſters.

And, my Lords, I the rather chuſe to take Notice of it, becauſe 'tis an Argument, which the Honourable Managers for the Houſe of Commons have themſelves furniſhed us with.

Your Lordſhips were pleaſed to obſerve, That in the very Beginning of their Evidence, they took great Care and Pains to exalt and dignify the Office of Maſters in Chancery as high as poſſible, and therefore they read to your Lordſhips ſeveral Commiſſions, and put in others to the Table, from the Time of *Edward* the VIth, down to this Time, to prove, That the Maſters in Chancery were joined in Commiſſion with the Maſter of the Rolls, and the Judges themſelves, for the hearing and determining of Cauſes in Equity, in the Abſence of the Chancellor

And 'twas ſaid by one of the learned Managers in the firſt Day's Opening upon that Occaſion, That the Maſters in Chancery were next in Power to the Chancellor himſelf, after the Maſter of the Rolls.

From which I would humbly preſume to infer, That if this be ſo, if they are Perſons of ſuch Eminence and Worth, and ſo nearly related to Juſtice it ſelf, on their commencing Maſters, 'tis ſtill a higher Obligation on them to be careful in the Diſcharge and Execution of their Office; and then, whether theſe Conſiderations, whether the Tyes of Honour, of Conſcience, and of the Venerable Company they are from thenceforth joined with, and made equal to; whether theſe may not in a great Meaſure be ſuppoſed to ſuperſede that ſtrict Enquiry, which a Lord Chancellor would otherwiſe think himſelf obliged to make; this, my Lords, we humbly hope will not be thought an Argument altogether foreign to the preſent Queſtion before your Lordſhips, but will, we hope, at leaſt extenuate, if not wholly wipe off any Guilt, that for want of ſuch Enquiry might poſſibly be imputed to the Earl on his Admiſſion of Maſters.

But, my Lords, there is one Obſervation further, which I cannot let paſs on this Occaſion, though 'tis not ſtrictly to the Article I am now upon.

And that is, my Lords, what the ſame learned Manager obſerved in his Reaſoning upon that Point, That the Offices of Maſters in Chancery being Offices of ſuch great Truſt and Dignity, that no Offices were more improper to be bought and ſold than they, except thoſe of the Judges themſelves.

This, my Lords, might, and no doubt, was a very juſt and proper Obſervation to be made, in ſupport of the Point they were then endeavouring to maintain.

But, my Lords, it falls out very unfortunately, to diſparage and weaken another Part of their Articles, which, without doubt they have equally at Heart to maintain, and that is the obliging theſe great Men, theſe Judges, theſe Maſters in Chancery, to give Security for the Suitors Money and Effects in their Hands, as if they were not to otherwiſe to be truſted with them.

They are juſt before made a ſort of Petty Chancellors, equal in Dignity and Power to the Judges themſelves, and fit to be entruſted with the Diſpoſal of the Properties and Fortunes of all the Suitors of the Court of Chancery, and therefore their Places muſt not be bought or ſold; but here they are reduced and abaſed to the low and ſervile Condition of a common Receiver or Rent-Gatherer, and muſt give Security for all the Suitors Money or Effects that ſhall happen to come to their Hands for fear they ſhould run away with it.

All, my Lords, I ſhall preſume to add further under this Head, is, That though one of the Maſters has indeed frankly owned, That he was worſe than Nothing when he came into his Place of a Maſter in Chancery, yet from another part of his Evidence, he owns, and it fully appears, that he groſsly abuſed and impoſed upon the Earl in concealing it from him, of which the Earl, when he came to have Notice, very juſtly complained and expreſſed his Surprize and Reſentment, that he ſhould pretend to come into an Office which he was not able to pay for.

And how far the ſame Gentleman will in time to come remember the kind and generous Return made him by the Earl, of the Fifteen Hundred Guineas, when he came to find him in Diſtreſs afterwards for want of it: This, my Lords, muſt be left to his own Conſcience, and the Gratitude of his own Heart; as muſt alſo the like Return of Fifteen Hundred Guineas made to another of the Maſters under the like Diſtreſs and Inability to bear the Want of it; Theſe, my Lords, are Inſtances of the greateſt Generoſity, Honour and Tenderneſs, I had almoſt ſaid Charity, in the Noble Earl, that perhaps can be produced in Private Life on the like Occaſions, however, they have been diſfigured and diſguiſed, by the Learning and Ingenuity of the Honourable Managers for the Houſe of Commons.

In the mean time, my Lords, I would beg leave to obſerve, that the ready Paying and Producing of theſe Sums to the Earl, for their Places at firſt, their not giving him the leaſt Notice or Intimation that it was not their own Money, and the Figure and Appearance they made in the World; theſe all concurring might eaſily miſlead the noble Earl into a Perſuaſion and Belief, that they really were what they appeared to be; that they were well able and ſufficient to bear the Expence of it. And neither of theſe Two, or of the other Maſters, have given any Sort of Evidence, that the Earl knew, or had reaſon to entertain the leaſt Suſpicion to the contrary: And if now, at laſt of all, the Deficiencies of theſe, and of all the other Maſters placed in by the Earl ſhall appear to have been already made good, or to be ſo far ſecured, as to prevent any Danger of a Loſs to the Suitors of the Court, from their ſeveral Offices (which we humbly hope, on the ſtricteſt Examination, will appear to be the Caſe) We may then humbly preſume to hope, that the Earl will not be thought to be Criminal under any Part of this Article; but that Your Lordſhips great Juſtice will acquit him wholly of it.

[*Article* XII.] But, my Lords, I would now humbly beg leave to offer a few Words and Obſervations on the Twelfth *Article*, which comes next to be conſidered of. This

This, my Lords, charges that whilſt the Earl was Chancellor, an unjuſt and fraudulent Method was practis'd in the Court of *Chancery*, on the Sale of Maſters Places, and on the Admiſſions of new Maſters; that the Sums agreed to be paid for the Purchaſe thereof, were paid out of the Suitors Money, either by way of Retainer, or by replacing the ſame again, in the Hands of the Selling Maſter, immediately after the Admiſſion of the new one: And that by this Practice the Price and Value of theſe Places was greatly advanced, and Perſons of ſmall Ability and Subſtance were encouraged to contract for the ſame, which has occaſioned great Deficiencies.

This Part, my Lords, ſhews only the Contrivances amongſt the Maſters themſelves, how to get into thoſe Offices; and ſo far the Earl ſeems to be but little concerned in it.

But then comes the Charge againſt the Earl, that though this Practice was notorious and publick, and the Earl was fully acquainted therewith, yet, for his own unjuſt and corrupt Profit, in the Selling of thoſe Places, he took no Meaſures to prevent or reform that Abuſe, either by cauſing Schedules to be taken of the Money and Effects of the Suitors, delivered over to the new Maſter, or by appointing any Perſon to ſuperviſe or inſpect the Transfer, and Delivery thereof: But on the contrary, ſuffered that fraudulent Practice to continue without controul, whereby great Embezzlements have been made of the Suitors Money and Effects.

My Lords, the noble Earl, by his Anſwer, ſays, That he was totally ignorant of this Practice amongſt the Maſters; but admits, that he never gave any particular Directions for Delivery of the Suitors Money and Effects, by a Schedule to the ſucceeding Maſter; and ſays, he never heard that his Predeceſſors ever ordered ſuch Schedules to be made; but ſays, he believes ſuch Schedules were made, between the new Maſter and the old, on the general Order of Transfer, made of Courſe on the Admittance of the new Maſter.

This, my Lords, is the Earl's Anſwer to this Article. And as he has in general denied his Knowledge of theſe Practices amongſt the Maſters, it was certainly expected by Your Lordſhips, that the Honourable Managers for the *Houſe of Commons*, would have fully proved it upon him, and thereby have ſatisfied his Anſwer to this Part of the Charge.

But, my Lords, if I did not greatly miſtake the Evidence to this Point, it has proved nothing more, than that the Earl knew of this Practice, at the ſame time that all the reſt of the World did, that is, a little before *Chriſtmas* laſt; when the Curtain drew up, and diſplay'd the Maſters in their true Colours.

Then it was, and not before, that the Earl was let into this Secret by the kind Aſſiſtance and Help of Mr *Thomas Bennet*, and the Affidavits that were made by him and others on that Occaſion.

But, my Lords, with great Submiſſion, the Earl's knowing of it at that time was a little too late for him to give any Orders for preventing or redreſſing it for the time to come; for the great Seal was taken from him ſometime before, and then all his Knowledge after could be of no uſe to him, but only to ſhew how treacherouſly he had been dealt with, in not being let into this uſeful Part of Learning, whilſt it might have done him any good.

And, my Lords, if this be ſo, as it can be no ways Criminal in the Earl not to put a Stop to a Practice he was wholly ignorant of and which the Maſters kept private amongſt themſelves, We humbly hope, how ill ſoever the Maſters may be thought to have deſerved of this noble Earl, that the Earl himſelf will not be thought to have deſerved ill of Your Lordſhips, in not endeavouring to prevent it; and that in Conſequence thereof, Your Lordſhips great Juſtice will acquit him of this Part of the Impeachment.

And, my Lords, As to the laſt Part of this Charge, the not cauſing proper Schedules to be taken of the Suitors Money and Effects, delivered over to the ſucceeding Maſter, as a Method, which might in all probability have prevented the Practices amongſt the Maſters, complained of in the firſt Part of this Article; this, my Lords, we humbly apprehend, neither can, nor is intended, even by the Articles themſelves, to affect the Earl further or otherwiſe, than as a Means he ought to have made uſe of, to put a Stop to theſe dangerous Contrivances, formed and ſet on foot amongſt the Maſters, to diſpoſe of their Places to the beſt Advantage

But, my Lords, If the Earl himſelf knew nothing of theſe Contrivances, if he was wholly a Stranger to, and unacquainted with the Miſchief, 'twill ſurely, we hope, be no Crime in him, that he did not look out for a Cure

But, my Lords, It may, perhaps, be worth while, juſt to conſider of the wonderful Diſcovery that ſeems to have been made of theſe Schedules, and how far they would have anſwered the Ends propoſed, admitting the Earl had known of theſe Practices amongſt the Maſters and had been better diſpoſed than the *Commons* are pleaſed to think he was, for the Remedying of them.

And, my Lords, I am afraid this would have proved very far from being an infallible Method of remedying theſe Evils for the time to come; for, my Lords, if the Maſters would but truſt one another, or any Body would truſt them for a very few Days, might they not have done juſt the ſame thing they did before? might they not have immediately replaced the Money again in the Hands of the Selling-Maſter? or have paid off a Bond or any other Security they had given on the Borrowing of the Money, as ſoon as ever they were admitted, and had got the Suitors Money into their Hands? And if they had ſo done, and this had been diſcovered and complained of, would it not, with great Juſtice, have been called inſtituting a trifling and fallacious Method of Security for the Suitors, which could do them no manner of Service, but tended only to amuſe and deceive them; and then whether this would not have made a better Figure in an Impeachment, than what is here fixed upon, may we humbly hope, be thought deſerving of Your Lordſhips Notice; eſpecially, my Lords, when it might have been ſo eaſily explained and urged as no doubt 'twould have been by the learned Managers, that the very taking of theſe Schedules was for the ſake of ſeeing into the Nature and Value of the Office to be ſold, that he might the better know how to ſet his Price upon it.

But, my Lords, I ſhall only beg leave to add one or two very ſhort Obſervations more upon this Head, and then call ſuch Witneſſes, as we have, to ſpeak to theſe two Articles.

And, my Lords, the firſt Obſervation I would beg leave to mention, is, that the Earl by his Anſwer

ſwer owns that he did not, neither did he ever hear, that any of his Predeceſſors ordered ſuch Schedules to be made; neither is there the leaſt Proof on the Part of the Honourable Managers for the Houſe of Commons, that any ſuch Schedules ever were made, or thought of, 'till Mr. *Lightboun* very happily hit upon them.

Indeed, the Earl owns by his Anſwer, that he believes ſuch Schedules were uſually made between the Old Maſter and the New, on the General Order of Transfer made of Courſe in the Admittance of the new Maſter.

But, my Lords, theſe are not the Schedules the Articles mean, as I apprehend, or, if they are, the Earl at leaſt was to have one Part of them; or elſe they could be of no Uſe to him in guarding againſt any fraudulent Practices of the Maſters. And if he had had one, what Security that could have been to the Suitors of the Court, if the Maſters ſhould have been diſpoſed to make Uſe of their Money afterwards; this, my Lords, I have already endeavoured to conſider of.

The next Obſervation, my Lords, I would beg leave to make under this head, is, That if ſuch Schedules had been made, what Security would this have been to the Earl, that they were in all Reſpects true, or with any certainty to have been depended on?

Some, my Lords, even of the Maſters themſelves, in the Hurry they were lately obliged to give in their Accounts, diſcovered afterwards ſeveral Miſtakes and Omiſſions therein; and though they were given in upon Oath, yet on a Review, and a more narrow and careful Inſpection and Examination of them, 'twas found they were not altogether to be relied on; and therefore the Maſters were forced to ſet them right in their Poſt-Accounts, given in at ſome diſtance of Time after; and whether any, or what other, or better Security for the Truth of thoſe Accounts has been yet found out, I am wholly ignorant of.

My Lords, the Third, and laſt Obſervation, I would beg leave juſt to mention, and ſubmit to your Lordſhips under this Head, is, Whether there be any, and what real Miſchief in the Practice it ſelf, ſo grievouſly complain'd of in this Article?

It is, my Lords, notorious, That in every one of the Offices of theſe Maſters in Chancery, there is always neceſſarily a much greater Sum of Money lying dead in the Office, than goes to pay for their Places, either for want of Securities whereon to place the Money, or from the different Claims of Perſons entitled thereto; or to ſatisfy the Demands of Creditors, and other Perſons, as they ſhall from Time to Time come in and prove their Debts, and from ſeveral other Cauſes, which I need not here enumerate.

And then, my Lords, Whether there be any great Difference between paying for their Places out of the Suitors Money, lying dead in their Hands, or raiſing ſo much Money out of their own Eſtates and Fortunes, in order to let the Suitors Money lie dead; whether a Practice of this Nature, which does no Sort of Hurt to the Suitors, is of no Advantage to the Maſters, and which the Earl himſelf was wholly a Stranger to, and which, if he had known, could not have been prevented; whether this can be heightned or improved into ſo heinous a Crime in the Earl, as to need or deſerve the moſt ſolemn Proſecution, which we are acquainted with, a Proſecution by the Repreſentatives of the whole Body of the Nation; this, my Lords, we humbly hope will deſerve to be thought of. In the mean time, as the Commons have choſen your Lordſhips to be the Judges, the Earl himſelf with the greateſt Pleaſure joins with them, and humbly appeals to your Lordſhips Juſt and Impartial Judgment.

Mr. Serj. *Probyn*. My Lords, the Evidence, which we have next to lay before your Lordſhips, relates to the 11th Article, by which it ſtands charged that ſeveral Maſters admitted by the Noble Earl, were Perſons of ſmall Subſtance and Ability; and in that reſpect very unfit to be truſted with the Great Sums of Money, and other Effects belonging to the Suitors, which were lodged in their Hands by Order of the ſaid Court; notwithſtanding which the Noble Earl did publickly in open Court declare them to be Perſons of great Fortunes, and in every reſpect qualified for the Truſt ſo repoſed in them, to the manifeſt Deceit and Prejudice of the Suitors of the ſaid Court: But, my Lords, tho' the Charge of this Article be conceived in general Terms, yet I apprehend we are now only to account for the Abilities and Circumſtances of ſuch of the Maſters, as they have deſcended into any particular Evidence againſt, upon that Head: Now the Maſters, who have been admitted in by his Lordſhip, and againſt whom any Inſinuations of this kind have been levelled, are Mr. *Kinaſton*, Mr. *Bennet*, Mr. *Elde*, and Mr. *Thurſton*: But I ſhould in the firſt Place obſerve, as to Mr *Elde* and Mr. *Thurſton*, that there is not the leaſt Pretence of any Deficiency in either of their Offices, from any Evidence that has been yet offered by the learned Managers, they ſtand both of them without Objection in point of Subſtance; as to Mr. *Kinaſton*, indeed, I do own, That at the Time, when he delivered in his Accounts, there appears to have been a Deficiency in his Office; but ſince that Time he hath given ſuch Security, as the Court thought fit to accept of, for anſwering it to the Suitors concern'd. At the time of his Admiſſion he appears to have been a Man of Fortune; he had a good Eſtate in Land, and a conſiderable ſum of Money in Bank; and had a great deal of Wood upon his Eſtate: If he really was a Man of a conſiderable Fortune at that time, and if he appeared ſo, and came well recommended in other reſpects to the noble Lord, what Foundation is there left to ſupport that part of the Charge againſt the noble Earl? As to Mr. *Thomas Bennet*, indeed, tho' he did make an Appearance in the World, equal to a Man of Fortune, yet he now pretends it was far from being ſo, tho' he had an Eſtate in Land; yet he has told your Lordſhips it was incumbred; but, with Submiſſion to your Lordſhips, it doth not appear that any of theſe Incumbrances were made known to the noble Earl; on the contrary, he appeared to him in the ſame Light as in the Year 1720. when he ſaith he was worth 20,000 *l.* and that theſe Incumbrances being private, it is impoſſible the noble Earl ſhould then know them; we ſhall ſhew that at this time he was not only a Man of viſible Subſtance, but of real Subſtance, equal to thoſe, who are uſually admitted into theſe Offices; and if he was equal, both in Reputation and Fortune, with thoſe admitted by the noble Earl's Predeceſſors, we hope it ſhall not be imputed a Crime in him, to have trod in their ſteps in that particular: In order to make this out againſt Mr. *Bennet*, we ſhall prove that about the time when he applied to *Hiccocks*, to get back part of the 7000 *l.* he then declared his Subſtance was ſo good, that if he could but have 2000 *l.* he would pay the reſt himſelf; he denied before your Lord-

ſhips that he ſaid ſo, but we have Perſons of undoubted Character to prove, that he did ſay ſo. And when that appears, we hope you will give the leſs Credit to Mr. *Bennet*'s Teſtimony in any other particular, which concerns his Fortune; we ſhall likewiſe prove, as to Mr. *Hiccocks* and Mr *Rogers*, that the Sums of Money, which they retained, are now ſubmitted to be returned by them reſpectively to the Court, to anſwer any Deficiency, ſo far as the Eſtates of their Succeſſors ſhall fall ſhort in ſatisfying the ſame; ſo that upon the whole, the Suitors are in no poſſibility of ſuffering by any Tranſaction of *Bennet* or *Kinaſton*. We ſhall beg leave to call our Witneſſes, and prove the ſeveral Facts I have opened to your Lordſhips upon this Article.

Mr. *Com. Serj.* My Lords, we humbly apprehend, that in this Caſe the noble Earl is not reſponſible for the bad Circumſtances of the Party; if he, upon inquiry, have received ſuch an Account as is proper to rely upon, and to ſatisfy a reaſonable Man, it is ſufficient: The greatneſs of the Truſts repoſed in theſe Maſters, hath been magnified, and great it is; but your Lordſhips will pleaſe to conſider, that it is not to be expected from the Nature of the Thing, that Perſons of great or overgrown Fortunes, ſhould take upon them thoſe Offices. They have informed your Lordſhips, that 120,000 *l.* hath been in one of theſe Gentlemens Hands. I believe no Perſons of ſuch vaſt Eſtates as 100,000 or 150,000 *l.* would give themſelves the trouble of executing theſe Offices, attended with ſuch riſque, and requiring ſo great attendance. I believe the Office of a Maſter in Chancery will never find either ſuch buyers or ſellers; all that can be expected is, that they muſt be Men of reaſonable Fortunes, Perſons of 4 or 500 *l.* a Year, brought up with a liberal Education; Perſons, who are of good Characters as to their Integrity and Abilities; this is all that can be reaſonably expected, and we apprehend it hath appear'd to your Lordſhips, that theſe Maſters, which the Evidence hath been given of, were ſuch, and ſuch a Repreſentation was made of them to the noble Earl. My Lords, I muſt ſubmit it upon the Evidence given in that behalf by the Gentlemen of the Houſe of Commons in this Proſecution, that Mr. *Kinaſton* did appear no way unfit, but a Perſon proper to be admitted into ſuch an Office; no Objections are made either to Mr. *Elde* or Mr. *Thurſton* As to Mr. *Thomas Bennet*, it will appear that his deficiency will be made good, and that is the beſt proof of his Ability; and, we hope, Mr. *Kinaſton*'s will be ſo too: As to Mr. *Thomas Bennet*, he hath denied that ever he told Mr. *Hiccocks*, that if he would return 2000 *l.* he would pay the reſt: Being ask'd, whether he had declared to any Body, that he had made that offer to Mr. *Hiccocks*, he anſwered directly in the Negative, that he had not, no he was ſure he had not; he was asked the Queſtion over and over. But, if my Inſtructions don't fail me, we ſhall produce three Witneſſes to ſhew your Lordſhips, that Mr. *Bennet* declared the ſame thing over and over again, and conſequently it could not be a ſlip of his Memory.

Mr. *Steele* called.

Mr. Serj. *Probyn*. I deſire he may inform your Lordſhips, as to what Reputation and Character Mr. *Bennet* was, in point of Fortune, when he was admitted Maſter?

Mr. *Steele*. Which of the *Bennets*?

Mr. Serj. *Probyn*. Mr. *Thomas Bennet*.

Mr. *Steele*. It is near two Years ago ſince Mr. *Thomas Bennet* came to be admitted a Maſter in Chancery, he was looked upon then to be a Man of good Subſtance and of good Reputation; and ſince that he had Married a Lady of a good Fortune, he made a good Appearance in the World, and was generally eſteemed to be a Man of Subſtance.

Mr. Serj. *Probyn*. Did he keep his Coach?

Mr. *Steele*. I have heard ſo; I don't know that of my own Knowledge.

Mr. *Plummer*. My Lords, if the Councel have done, I deſire to know what Character Mr. *Bennet* had as to his Integrity, whether he was accounted an honeſt Man or no?

Mr. *Steele*. My Lords, I never heard to the contrary in my Life; nor ever knew any thing to the contrary.

Mr. *Walker* Sworn.

Mr. Serj. *Probyn*. We deſire that Mr. *Walker* will inform your Lordſhips, what he knows of any Propoſal or Agreement for the Repayment of any Money by Mr. *Hiccocks*?

Mr. *Walker*. My Lords, Mr. *Hiccocks*, by order of the Court of Chancery, was to be examined upon Interrogatories, whether he had paid over all the Monies and Securities of the Suitors of the Court of Chancery, to his Succeſſor Mr. *Bennet*? It having been alledged by Mr. *Bennet*, that he retained out of them 7500 *l.* Mr. *Hiccocks* did think fit to ſubmit to the Payment of that Money, to make ſo much good to the Suitors of the Court, as the Eſtate of Mr. *Bennet* ſhould prove defective in ſatisfying, as appears by the Petition delivered by him, and the Anſwer to the Petition.

Mr. *Lutwyche*. We ſhall ſee that by the Petition. We deſire that the Copy of the Petition may be read; they are giving an Account of written Evidence: I deſire to ask you, whether you are not concerned as Clerk for Mr. *Hiccocks*?

Mr. *Walker*. I am concerned for Mr. *Hiccocks* as his Solicitor.

Mr. *Lutwyche*. Whether you had any Authority from Mr. *Hiccocks* to preſent that Petition?

Mr. *Walker*. I had Authority to preſent that Petition.

Mr. *Lutwyche*. When did you preſent the Petition?

Mr. *Walker*. About three or four Days ago.

Mr. Serj. *Pengelly*. We deſire to ſee what the Petition is? It hath been preſented ſince the Great Seal was in Commiſſion: Read it.

Mr. *Walker* reads it.

To the Right Honourable the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*.

The humble Petition of *John Hiccocks*, Eſq; late one of the Maſters of this Court,

Sheweth,

THAT *by an Order of the* 23d *of* Feb. *laſt, upon the Affidavit of* Thomas Bennet, *Eſq; your Petitioner's Succeſſor, (who ſwore that the Sum of* 7500 *l. part of the Monies belonging to the Suitors of this Court, did remain*

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in your Petitioner's Hands, and was never paid over to him.) It was Ordered that your Petitioner ſhould be Examined upon Interrogatories, whether all the Monies, Securities, and other Effects, belonging to the Suitors of the Court, were delivered over by your Petitioner to the ſaid Thomas Bennet, *and whether your Petitioner kept away any, and what part, by him.*

That Interrogatories have been accordingly prepared, and your Petitioner is Ordered to put in his Examination, or ſtand Committed.

That your Petitioner, by Reaſon of his Indiſpoſition, is not in a Capacity to put in his Examination.

That though your Petitioner did pay over, ſatisfy, and aſſign to the ſaid Thomas Bennet, *all the Monies, Effects, and Securities of the Suitors of the Court in your Petitioners Hands; and the ſaid* Thomas Bennet *hath given your Petitioner a Receipt in full for the ſame, yet, ſo far as the Eſtate of the ſaid* Thomas Bennet *ſhall fall ſhort to ſatisfy the juſt Demands of the Suitors of the Court; your Petitioner is willing to pay the Sum of 7500 l. into Court, Subject to the Order of the Court, ſo ſoon as your Petitioner can raiſe the ſame; and your Petitioner is willing to pay the Sum of 2000 l. part thereof within ten Days, and the Reſidue thereof within three Months, ſo as the ſame (as between your Petitioner and the ſaid* Thomas Bennet) *may not be conſtrued to extend to eaſe the ſaid* Thomas Bennet's *Eſtate from being liable in the firſt place to anſwer the Demands of the Suitors of the Court; but ſo as the ſame may abide as a Security to anſwer any deficiency of the ſaid* Thomas Bennet's *Eſtate; and to the end it may appear whether there will be any deficiency or not, that the real and perſonal Eſtate of the ſaid* Thomas Bennet *may be forthwith ſold, and diſpoſed of; and in the firſt place apply'd to anſwer the Demands of the Suitors of the Court; and the rather, for that your Petitioner is informed, the ſaid* Tho. Bennet *hath, purſuant to ſome Order of this Court, by Recognizances, and other Aſſurances, ſubjected his whole Eſtate towards making good thoſe Demands.*

Your Petitioner therefore moſt humbly prays your Lordſhips, that, upon Payment into Court of the ſaid 7500 l. on the Terms aforeſaid, Subject to the further Order of the Court, all further Proceedings upon the ſaid Order, for Compelling your Petitioner to be examined upon Interrogatories, may be ſtayed.

And your Petitioner, &c.

He Reads the Order, May 8th, 1725.

UPON Payment of 3000 l. into Court, and giving Security, ſuch as Mr. Holford *ſhall approve of, for Payment of the further Sum of 4500 l. alſo into Court, in a Month, both Sums to be Subject to the further Order of the Court; let all Proceedings for the Compelling the Petitioner to be examined upon the Interrogatories before the Maſter, be ſtayed. Hereof give notice forthwith*

J. Jekyll, *C. S.*
R. Raymond, *C. S.*

Mr. Serj. *Pengelly.* I would be glad to know, Whether we can rely upon this as an Authentick Order. Did he examine it?

Mr. *Walker.* The Original Petition and Anſwer are in the Regiſter's Office, to draw up an Order.

Mr. *Lutwyche.* Is it a right, a true Copy?

Mr. *Walker.* It is.

Mr. *Lutwyche.* Did you examine it?

Mr. *Walker.* Yes, I did.

Mr. *Com. Serj.* If it is not wholly immaterial to examine into the Circumſtances of this Gentleman, I would ask whether Mr. *Hiccocks* is a Perſon of Ability, ſufficient to make good this Sum?

Mr. *Walker.* My Lords, I don't know the Circumſtances of Mr. *Hiccocks*, nor his Riches. I believe he is able to do what he hath propoſed. I believe he hath paid the 3000*l.* in Money this Morning; he told me he would; and he hath propoſed Security for the Remainder 4500 *l.* and I believe the Security will be approved of.

Mr. *Lutwyche.* If they have done, I deſire he may be asked, How long ago it was ſince Mr. *Hiccocks* was ordered to be examined upon Interrogatories?

Mr. *Walker.* I think the Order is dated the 29th of *February.*

Mr. *Lutwyche.* And how long ago is it ſince this Propoſal was made?

Mr. *Walker.* The Petition was preſented the 8th of this Inſtant *May.*

Mr. *Lutwyche.* Was the Petition preſented before his Examination? When was it anſwered?

Mr. *Walker.* It was anſwered the 8th of *May.* It was preferred a little while before. I believe, two or three Days. There was an Order, That Mr. *Hiccocks* ſhould put in his Examination in four Days, or ſtand committed; thereupon this Petition was preſented.

Mr. *Lutwyche.* I think it was on Payment of ſo much Money, and giving Security for the reſt, that all Proceedings were to ſtay. I don't find Mr. *Walker* can ſay the Money is paid, or Security given.

Mr. *Walker.* Mr. *Hiccocks* told me the 3000 *l.* was paid, and I know he hath offered Security for the 4500 *l.*

Mr. *Lutwyche.* One or two Securities?

Mr. *Walker.* I believe only Sir *John Buckworth.*

Mr.

Mr. *Richard Rogers* ſworn.

Mr. Serj. *Probyn.* I deſire he may be asked what he knows of the Payment of any Money, or the Directing the Payment of any Money into Court by Mr. *Rogers*, the late Maſter, in Satisfaction of the Deficiency of Mr *Kinaſton*?

Mr. *Rogers.* I did, my Lords, by the Direction of Mr. *Rogers*. the late Maſter, prefer a Petition about the latter End of *April* laſt, upon the 28th. or 29th of *April*, to the Right Honourable the Lords Commiſſioners, and thereby did offer to give a Recognizance to make good to the Suitors of the Court any Sum not exceeding 6000 *l.* as the Eſtate of Mr. *Kinaſton* ſhould prove Defective in Anſwering the Effects of the Suitors of the Court. The Petition is anſwered, and I believe they deſign to pay the Money.

Mr. Serj. *Probyn.* Have you the Petition?

Mr. *Lutwyche.* Is the Order Drawn up?

Mr. *Rogers.* The Petition it ſelf I have in my Hand.

The Clerk Reads.

To the Right Honourable the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain.*

The humble Petition of *William Rogers*, Eſq; late one of the Maſters of the High-Court of Chancery,

Sheweth,

THAT by an Order, made by your Lordſhips the 20th of January *laſt*, it was Ordered that Mr. Kinaſton, one of the Maſters of the ſaid Court, who ſucceeded your Petitioner, ſhould in a Week depoſite the Sum of 26,908*l.* 11 *s.* 3 *d.* ¼ in the Bank of England (being the Ballance of the Account of Money and Securities of and belonging to divers Suitors of the ſaid Court, paid into the Hands of the ſaid Maſter Kinaſton, and your Petitioner) Or in Default thereof, that the ſaid Maſter Kinaſton ſhould enter into a Recognizance, in the Penalty of 53,817*l.* with two or more Sureties to anſwer and pay the ſame as your Lordſhips ſhould direct.

That the ſaid Kinaſton not having paid the ſaid 26,908*l.* 11 *s.* 3 *d.* ¼ into the Bank, or given Security for the ſame, as the ſaid Order directed; and having before propoſed towards Satisfaction of the ſaid 26,908 *l.* 11 *s.* 3 *d.* ¼ to aſſign over a Debt of 20,850 *l.* owing to him from one De la Hay, for the Benefit of the ſaid Suitors; it was by an Order made by your Lordſhips the 29th of Jan *laſt*, Ordered, That the ſaid Maſter Kinaſton ſhould aſſign over De la Hay's Debt to Mr. Holford, one other of the Maſter's of the ſaid Court, for the Benefit of the ſaid Suitors, and ſhould give his own Recognizance for the ſaid 26,908*l.* 11 *s.* 3 *d.* ¼ in the Penalty of 53,817*l.* And upon his ſo doing, the Time for his performing the ſaid former Order ſhould be enlarged to the Wedneſday following.

That by another Order made the 3d of Feb. *laſt*, your Lordſhips Ordered, That upon Mr. Kinaſton's aſſigning of the ſaid Debt, and upon his ſignifying his Conſent to be examined upon Interrogatories for Diſcovery of all other his real and perſonal Eſtate, and that the ſame might be aſſigned, and conveyed to the ſaid Maſter Holford in Truſt for the ſaid Suitors, the time for performing the former Order ſhould be enlarged to the Wedneſday following.

That purſuant to the ſaid Order, the ſaid John Kinaſton aſſigned over the ſaid De la Hay's Debt, but the ſame not being ſufficient to anſwer the ſaid Sum of 26,908*l.* 11 *s.* 3 *d.* ¼ Nicholas Paxton, Sollicitor for, and on Behalf of the Suitors of the ſaid Court, on the 15th of Feb. *laſt*, preferred his Petition to your Lordſhips, ſetting forth the ſeveral Proceedings aforeſaid; and that it appeared by Mr. Kinaſton's Affidavit that 6000 *l.* part of the ſaid 26,908 *l.* 11 *s.* 3 *d.* ¼ was retained by your Petitioner, at the time your Petitioner ſurrendered his ſaid Office to the ſaid Mr. Kinaſton; and that the ſame ſtill remained in your Petitioners Hands: It was therefore prayed that your Petitioner might forthwith pay the ſame for the Benefit of the ſaid Suitors, or to ſuch Perſons, and in ſuch manner, as your Lordſhips ſhould direct.

That upon hearing the ſaid Petitioner, upon the 23d. of Feb. *laſt*, your Lordſhips were pleaſed to Order your Petitioner ſhould be forthwith ſtrictly examined before Mr. Holford, one of the Maſters of this Court, whether all the Monies, Securities, and Effects, belonging to the ſaid Suitors, were delivered over by your Petitioner to the ſaid Mr. Kinaſton, and whether he kept any, and what part thereof by him.

That in purſuance of the laſt Order Interrogatories have been exhibited for the examination of your Petitioner; and in Caſe your Petitioner ſhould put in his Examination thereto, he doubts not, but it would appear that your Petitioner hath acted with great Juſtice towards the ſaid Maſter Kinaſton, and that Mr. Kinaſton ought to anſwer and make good the ſaid 6000 *l.* to the Suitors of the ſaid Court; however your Petitioner being unwilling that any part of the Deficienty in the ſaid Maſter Kinaſton's Office ſhould be imputed to your Petitioner, or that the Suitors of the Court ſhould be put to any Expence or Trouble, in making any further Enquiry touching the ſaid 6000 l. your Petitioner is willing (if your Lordſhips ſhall think fit) to give his own Recognizance, or a good and ſufficient Mortgage, to be approved of by one of the Maſters of this Court, to ſuch Perſon or Perſons as your Lordſhips ſhall direct, to anſwer and make good to the Suitors of this Court any Sum not exceeding 6000 l. as the Eſtate and Effects of the ſaid Mr. Kinaſton ſhall fall ſhort of ſatisfying the ſaid 26,908 l. 11 s. 3 d. ¼, which he was ordered to depoſite in the Bank of England as aforeſaid; or if your Lordſhips ſhall think it more for the Benefit and Security of the ſaid Suitors, that your Petitioner ſhould bring 6000 l. into Court, your Petitioner is willing to bring in ſuch Sum for the Purpoſe aforeſaid, having a reaſonable Time allowed him to raiſe the ſame.

Foraſmuch therefore as it is not pretended, but that your Petitioner has paid and delivered over to Mr. Kinaſton all the Money and Securities belonging to the Suitors of this Court, which were in your Petitioner's Hands at the Time when he ſurrendred his ſaid Office to the ſaid Mr. Kinaſton, except the Sum of 6000 l.

Your Petitioner humbly prays your Lordſhips will be pleaſed to make ſuch Order in the Premiſes, as to your Lordſhips ſhall ſeem meet; and that in the mean Time all Proceedings upon the ſaid Order of the 23d of *February* laſt, for examining your Petitioner upon Interrogatories, may be ſtayed.

And your Petitioner, &c.

The Clerk reads the Order. 29th of *April*, 1725.

Upon the Petitioner's paying the ſaid 6000 *l.* into Court, ſubject to the further Order of this Court, let all Proceedings upon the ſaid Order of the 23d of *February* laſt, for examining the Petitioner upon Interrogatories be ſtayed. Hereof give Notice forthwith.

Jeff. Gilbert, *C. S.*
R Raymond, *C. S.*

There was another Petition preferred, but never anſwered.

Clerk

To the Right Honourable the Lords Commiſſioners for the Cuſtody of the Great Seal of Great Britain.

The Humble Petition of William Rogers, *Eſq; late one of the Maſters of this Court,*

SHEWETH,

THAT Mr. *Paxton*, in behalf of the Suitors upon Mr. *Kinaſton*, being 26,928 *l.* 11 *s.* 3 *d.* deficient in his Accounts, to anſwer the Suitors Monies in his Hands, having, by his Petition to your Lordſhips, repreſented *(inter alia)* That your Petitioner, upon ſurrendring your Petitioner's Office to him, detained, and ſtill hath in his Hands, the Sum of 6000 *l.* of the ſaid Suitors Money; your Lordſhips, upon hearing the ſaid Petition, on the 23d of *February* laſt, were pleaſed to Order your Petitioner ſhould be examined before Mr. *Holford*, one of the Maſters of this Court, Whether all the Monies, Securities and Effects, belonging to the ſaid Suitors, were delivered over by your Petitioner to the ſaid Mr. *Kinaſton?*

That your Petitioner, on the 29th Day of *April* laſt, preferred the annexed Petition to your Lordſhips; and your Lordſhips were, thereupon, pleaſed to make the Order thereunder ſubſcribed.

That your Petitioner is informed, the ſaid Mr. *Kinaſton* hath, purſuant to a former Order of your Lordſhips, by Recognizance and Aſſurances, ſubjected his whole Eſtate towards making good his ſaid Deficiency.

That your Petitioner, upon ſurrendring his Office, received from the ſaid Mr. *Kinaſton*, proper Diſcharges for all Monies, Securities and Effects of the ſaid Suitors, then in your Petitioner's Hands, which your Petitioner is ready to produce and prove: And the ſaid Mr. *Kinaſton* from that Time, never pretended but that the Account delivered in to him, contained a full Account of all the Money, Effects and Securities of the Suitors of the Court in your Petitioner's Hands, except the Sum of 70 *l.* or thereabouts, which your Petitioner was always ready to pay him, provided he would have given your Petitioner an Account wherein the ſaid Omiſſion or Miſtake conſiſted; and your Petitioner, upon Examination of his Vouchers, found the ſame to be true; but the ſaid Mr. *Kinaſton* hath hitherto neglected ſo to do, though your Petitioner hath ſent to him ſeveral Times for that Purpoſe.

That your Petitioner, upon the Terms mentioned in the annexed Petition, is willing to pay a ready Obedience to your Lordſhips Order thereupon; and for that Purpoſe, now humbly offers, in Six Days time, to pay 2000 *l.* part of the ſaid 6000 *l.* into Court, ſubject to the further Order of the Court, ſo far as may be neceſſary to make good any Deficiency to the Suitors of the Court, which Mr. *Kinaſton*'s Eſtate ſhall not be ſufficient to anſwer.

And your Petitioner humbly prays, he may have a Month's Time to pay in the remaining 4000 *l. (your Petitioner being obliged to borrow the ſame on his Eſtate) and that all Proceedings on the ſaid Order of the* 23*d of* February *laſt, againſt your Petitioner, may, in the mean Time, be ſtayed: And your Petitioner further humbly prays your Lordſhips, That the ſaid Order, made by your Lordſhips on the* 29*th of* April *laſt, may be ſo far explained, that as between the ſaid Mr.* Kinaſton *and your Petitioner, the ſame may not be conſtrued to extend to eaſe the ſaid Mr.* Kinaſton's *Eſtate from being liable, in the firſt Place, to anſwer the Demands of the Suitors of the Court; or, if all, or any Part of the ſaid* 6000 *l. ſhall be applied for that Purpoſe; that your Petitioner may then ſtand in the Place of the Suitors of the Court, to have Satisfaction out of the Eſtate of the ſaid Mr.* Kinaſton, *for all, or ſo much of the ſaid* 6000 *l. as ſhall be ſo applied; and that the ſaid* 6000 *l. ſo to be depoſited by your Petitioner, or any Part thereof, may not be applied towards making good the ſaid Mr.* Kinaſton's *Deficiency, till after Sale and Diſpoſal of all the ſaid Mr.* Kinaſton's *real and perſonal Eſtate for that Purpoſe.*

And your Petitioner ſhall ever pray, &c.

Mr. Serj. *Pengelly.* Is there any Order upon this?

Mr. *Rogers.* This was never anſwered.

Mr. *Lutwyche.* If they have done, I deſire he may be asked, if he hath given any Notice to the Sollicitor of the other Side, of the Order on the firſt Petition?

Mr. *Rogers.* I did acquaint Mr. *Paxton*, that I had ſuch an Order; but I did not ſerve it upon him.

Mr. *Com. Serj.* I deſire to aſk you, Whether, when you told Mr. *Paxton* of it, he inſiſted upon a formal Service?

Mr. *Rogers.* Mr. *Paxton* ſaid, Let it be done as ſoon as poſſible.

Mr. *Com. Serj.* What Anſwer did you give to Mr. *Paxton*, when he deſired it might be done as ſoon as poſſible?

Mr. *Rogers.* I told him, I was raiſing the Money by Direction of Mr. *Rogers.*

Mr. *Com. Serj.* I ask you, If you had any Directions from Mr. *Rogers*, for the Payment of, or for raiſing the Money?

Mr. *Rogers.* Yes, I had. I believe it will be paid in a Day or two. I can't directly ſay what Day. Such a Sum is not immediately raiſed.

Mr. *Com. Serj.* I deſire he may be asked, Whether there is any Reaſon to doubt of his Ability to raiſe the Money?

Mr. *Rogers.* I believe he is able to give a Security; but, as he lives in the Country, he may not be able at preſent to pay ſo much Money; but he is now in Town, and endeavouring to raiſe the Money.

Mr. *Com. Serj.* My Lords, we beg leave to call two or three Gentlemen, with reſpect to Mr. *Thomas Bennet*, what he hath ſaid; and that he ſaid he was able to pay all the reſt of the Money, if Mr. *Hiccocks* would pay 2000 *l.*

Mr. Holford *called.*

Mr. *Serj. Probyn.* My Lords, we beg leave to begin with Mr. *Holford*, and to ask him, Whether he was not employed, or concerned as a Friend to Mr. *Thomas Bennet*, to go to Mr. *Hiccocks*, and what Propoſals he was to make to Mr. *Hiccocks?*

Mr. *Holford.* Preſently after the Article was delivered in by Mr. *Thomas Bennet*, relating to the Money he ſaid was in the Hands of Perſons of Ability and Subſtance, to the Judges and Gentlemen of the Bank, Mr. *Bennet* did ſend to me, to deſire I would ſpeak to Mr. *Hiccocks*, that if he would pay him but 2000 *l.* he would pay the Remainder of the Money. I did not much care to undertake it; but upon ſome Importunity, I did go upon the ſaid Meſſage; and it was this, That he deſired me to tell Mr. *Hiccocks*, that if he would

pay him back 2000 *l.* he could or would take care that the reſt ſhould be paid, and Mr. *Hiccocks* ſhould not be troubled about the Remainder.

Mr. *Serj. Probyn.* I deſire he may be asked, Whether he had any Diſcourſe with Mr. *Thomas Bennet*, concerning what paſſed between him and Mr. *Hiccocks*?

Mr. *Holford.* Mr. *Hiccocks* told me ——

Mr. *Lutwyche.* That is no Evidence.

Mr. *Holford.* I am only relating the Anſwer he returned to my Meſſage; which was, That Mr. *Bennet* had given in that Article, and brought his Name in Queſtion, without ever acquainting him of it; and therefore he would never have any thing to do with him. I did give him that Anſwer, and never troubled myſelf any more about it.

Mr. *Lutwyche.* I deſire Mr. *Holford* would recollect the Time.

Mr. *Holford.* I believe it was the next Day after he had given in that Article.

Mr. *Lutwyche.* I think they call this Witneſs to prove a Contradiction in Mr. *Bennet*'s. Mr. *Holford* ſays, He ſaid he was willing, he would take care the reſt ſhould be paid. I deſire to know, Whether he declared he had the Money to pay, the Money in his own Hands?

Mr. *Holford.* No, my Lords, I can't ſay he told me ſo.

E. of *Macclesfield.* I deſire to ask him, If Mr. *Bennet* did not expreſly tell him, That he was able to pay the Money; or if Mr. *Holford* would have gone upon the Errand, without being ſatisfied that he was able to pay the Money?

Mr. *Holford.* Mr. *Hiccocks* was my old Acquaintance and Friend, I did not intend to deceive him; if I had not believed what Mr. *Bennet* ſaid to be true, and that he could make good what he at that Time ſent me to deſire Mr. *Hiccocks* to accept, I would not have gone on that Errand to him.

Mr. Thurſton *called.*

Mr. *Serj. Probyn.* My Lords, we deſire Mr. *Thurſton* may inform your Lordſhips what he hath heard Mr. *Thomas Bennet* ſay, in relation to Mr. *Hiccocks*, about his paying back 2000 *l.*

Mr. *Thurſton.* I do remember Mr. *Thomas Bennet* told me, and I think I was then ſitting in the publick Office, that if *Hiccocks* (as I think his Expreſſion was) would pay him back 2000 *l.* he would make up the reſt himſelf.

Mr. *Serj. Probyn.* I deſire Mr. *Thurſton* to explain himſelf, whether he expreſſed himſelf in that manner that Mr. *Thurſton* apprehended he was able to do it?

Mr. *Thurſton.* I can't ſwear critically to the laſt Words, that he would make up the reſt himſelf; but he ſpoke in ſuch Words, that I underſtood he meant ſo; that was the Senſe of thoſe Words, as I have delivered it now to your Lordſhips.

Mr. *Serj. Probyn.* Had you any Diſcourſe at any other Time with Mr. *Thomas Bennet* about it?

Mr. *Thurſton.* I believe I had ſome Diſcourſe with Mr. *Thomas Bennet* at another Time; and I asked him, Why he would not pay in as much as he had undertaken, if Mr. *Hiccocks* had paid him 2000 *l.*? The Reply he gave me was, All he had in the World would not do it.

Mr. *Serj. Probyn.* I deſire he may be asked, if he had any Diſcourſe with Mr. *Thomas Bennet* at any Time, about his Ability to pay this Money, or whether he was able to pay it?

Mr. *Thurſton.* I had no Diſcourſe with Mr. *Thomas Bennet* directly, of his Ability to pay in this Money, when theſe Accompts were called for; but I do remember, at a preceding Time, he was talking of *Hiccocks*'s detaining his Money by way of Retainer; explaining the Reaſon, why he paid for the Place that he bought of Mr. *Hiccocks* out of the Suitors Money, that it was the moſt Compendious Method of doing in that Caſe, and prevented the Trouble of Mortgaging his Eſtate.

Mr. *Serj. Probyn.* Did he ſay any thing in caſe of his Death, Whether he ſhould leave ſufficient to ſatisfy it?

Mr. *Thurſton.* He ſaid at that Time, if he died, there would be Eſtate ſufficient to anſwer it; therefore he had the leſs Occaſion to trouble himſelf to raiſe the Money, but to pay it in the particular Manner I have mentioned.

Mr. *Plummer.* I deſire to ask him, If Mr. *Bennet* explained to him in what Manner the Money was to be raiſed, to make good the Deficiency?

Mr. *Thurſton.* He did not at all explain to me, how he was to raiſe it.

Mr. *Plummer.* I deſire to ask you more particularly, Whether he mentioned to have inſured any Money upon his Life?

Mr. *Thurſton.* Not at that Time, as I remember; I have heard him at other Times talk of inſuring of Money on his Life.

Mr. *Serj. Pengelly.* When was the firſt Time that Mr. *Bennet* told you, that if Mr. *Hiccocks* would pay him Two thouſand Pounds, he would make up the reſt himſelf?

Mr. *Thurſton.* My Lords, I can't remember diſtinctly the Time, never having imagined I ſhould be called upon to repeat it on this Occaſion; but it muſt neceſſarily be after the Accompts were given in before the Judges. I can't exactly remember the Time, or Day, or Week.

Mr. Elde *called again.*

Mr. *Serj. Probyn.* My Lords, we deſire that Mr. *Elde* may inform your Lordſhips what Diſcourſe he had with Mr. *Bennet*, in relation to the Money in Mr. *Hiccocks*'s Hands?

Mr. *Elde.* Some ſmall Time after I had given in my Accompt, I ſaw Mr. *Bennet*; and he came up to me and ſaid, That it was hard that he could not have any Money from Mr. *Hiccocks*. He ſaid, If he would pay him 2000 *l.* he would, or could pay the reſt. I do not remember which.

Mr. *Serj. Probyn.* Whether he thinks he might have been able to pay it, if he had thought fit?

Mr. *Elde.* I know nothing of Mr. *Bennet*'s Circumſtances; I am as little acquainted with him, as with any I muſt neceſſarily have Correſpondence with.

Mr. *Serj. Probyn.* My Lords, We ſhall not trouble your Lordſhips with any further Evidence on the 11th Article, in which we think we have ſufficiently contradicted Mr. *Thomas Bennet*, as to the Charge he hath made on the Noble Lord. As to the 12th Article, that principally relates to that Part, That the Purchaſe Money was paid out of the Suitors Money; that is a Fact that lies upon the Gentlemen of the Houſe of Commons to prove: It is impoſſible for Us to prove a Negative, they are to prove the Affirmative, and they have not attempted to prove it by any Witneſs; but by Mr. *Thomas Bennet*: Now this being a Fact that reſts intirely upon Mr. *Bennet*'s Evidence, we ſubmit, Whether your Lordſhips can believe any thing upon the Credit of his Teſtimony?

Mr. *Com.*

Mr. *Com. Serj.* My Lords, We humbly apprehend the Gentlemen of the Houſe of Commons, by joining theſe Two Articles together, did it as if they were the ſame, and did depend upon one another: for unleſs the Matter in the 11th Article be eſtabliſhed, what was done on the 12th, will be of no great Significancy; For if Perſons of good Ability, who are reſponſible, and fit to anſwer the Money that comes to their Hands, be admitted to be Maſters, it is not very material whether the Forms of transferring in like Tranſactions of that Nature are ſtrictly purſued or no; becauſe the Perſon, being ſufficient and reſponſible, will anſwer that Money that is ſo detained. I chooſe to call them Forms; for, with Submiſſion, if we examine them, they are Forms, and nothing elſe: whether they take all the Money from the preceding Maſter, or replace with the Succeſſor's own Money, what is detained by the Predeceſſor, it comes to the ſelf ſame Thing, and are only different Forms or Methods of Payment. Upon the whole, we apprehend, We have eſtabliſhed our Anſwer to the 11th Article; we think the other follows of Courſe; and that there is no Neceſſity to give your Lordſhips any further Trouble on this Head; but that the Noble Earl will ſtand clear as to any Accuſation on theſe Two Articles.

Then all Perſons concerned in the Impeachment, were directed to withdraw, and then the Houſe adjourned to Ten o' Clock the next Morning.

Friday, 14 May, 1725. *The Seventh Day.*

THE Lords being ſeated in their Houſe, the Serjeant at Arms made Proclamation for Silence; as alſo another Proclamation, That all Perſons concerned, were to take Notice, That *Thomas* Earl of *Macclesfield* now ſtood upon his Tryal; and they might come forth in order to make good the Charge.

L. Ch. J. *King.* Mr. Serjeant *Probyn*, you may go on.

Mr. *Strange.* My Lords, We who are Councel for the Noble Earl within the Bar, beg Leave to proceed to his Defence againſt the 13th and 14th Articles of the Commons Charge.

My Lords, The Facts contained in theſe Two Articles, are laid to be done with a View of concealing a Deficiency, that had happened in the Office of Mr. *Dormer*, a Maſter of the Court; upon whoſe Failure it is charged, that there was a total Neglect, either to ſecure his Perſon or Effects, or to enter into any Inquiry into the Deficiency: And that altho' the State of this Affair was fully known to the Earl of *Macclesfield*, yet a Declaration was afterwards made in open Court, That Mr. *Dormer* was only gone into the Country to take the Air; That he would return again in a little while, and all would be well: And that in further Proſecution of this Endeavour to conceal the Deficiency in *Dormer*'s Office, a precarious and trifling Compoſition was made with a Creditor of Mr. *Dormer*'s; and this without any Notice to the Suitors of the Court.

My Lords, I ſhall, for my Part, confine myſelf at preſent to theſe Two Articles only, reſerving any thing I may have to offer in general to the Cloſe of the Defence; but before I proceed to obſerve upon the Evidence brought to ſupport the Charge contained in theſe Two Articles, it will be proper to take Notice to your Lordſhips, That the Honourable Managers for the Houſe of Commons, have not offered one Tittle of Proof, as to the Declaration pretended to be made, relating to Mr. *Dormer*'s being gone to take the Air, though they were pleaſed to inlarge upon it in their Opening; but we have the Satisfaction to know, That we are before your Lordſhips, who are incapable of receiving any Impreſſions from Facts that are barely opened, and not proved; and therefore we reſt aſſured, that no Weight will be laid upon this Circumſtance, ſince no Evidence has been produced in Support of this Part of the Charge.

My Lords, As to the other Matters contained in theſe Articles, we humbly hope to give your Lordſhips abundant Satisfaction in the Noble Earl's Behaviour on that Occaſion; that all the proper Steps were taken to ſecure the Intereſt of the Suitors; and that, if there ſtill remains any Deficiency, it is not to be imputed to any Neglect of the Noble Earl within the Bar.

Your Lordſhips were pleaſed to obſerve in the Courſe of the Evidence produced by the Honourable Managers for the Houſe of Commons, That Mr. *Dormer*'s Failure happened about *Chriſtmas*, 1720. My Lords, it was about that Time that Mr. *Wilſon*, who had large Effects of Mr. *Dormer*'s in his Hands, ſtopped Payment; which unfortunately obliged Mr. *Dormer*, without the Knowledge or Suſpicion of any one, to retire himſelf to *Holland*; and ſoon after, Notice was given of it to Mr. *Cottingham*, who immediately acquainted the Earl of *Macclesfield* with it.

Upon this, my Lords, no Time was loſt; for the Two Senior Maſters, Mr. *Hiccocks* and Mr. *Rogers*, were appointed to inquire into Mr. *Dormer*'s Affairs: His Chambers were ſearched; the Transfer of any Stock in the publick Funds was ſtopp'd; and all Endeavours uſed to procure a full Satisfaction for the Suitors of the Court: But, my Lords, though theſe Methods were very proper to prevent the embezeling of Mr. *Dormer*'s Effects, yet your Lordſhips will readily perceive, that no Steps, that could be taken whilſt Mr. *Dormer* was on the other Side of the Water, could be in any Degree effectual towards the Payment of his Debts.

And therefore, my Lords, it was, that upon a Propoſal of Mr. *Dormer*'s, to come over and diſcover his Effects for the Benefit of the Suitors, in caſe he might be aſſured of his Liberty, and not be left to die in a Gaol in his old Age (as himſelf expreſſes it) the Noble Earl within the Bar, was prevailed upon to give him thoſe Aſſurances; but upon Condition, That he made a full Diſcovery, and aſſigned over all he had.

Suppoſe, my Lords, the Propoſal had not been complied with, would the Suitors have been in a better Condition than they now are in? The Perſon of Mr. *Dormer* was out of Reach; the Stock could not be transferred without his Preſence or Conſent, nor were there any Means to procure it under theſe Circumſtances, without ſome Compliance on the Side of the Noble Earl. To ſay, My Lords (and it was only ſaid) That Dr. *Eddisbury*'s Perſon was ſecured, is, in my humble Apprehenſion, an Argument of no Weight in this Caſe, ſince it does not appear, that he was out of the Reach of the Court before his Failure,

lure; and, I am perſuaded, the Gentlemen, who mentioned this Inſtance, don't deſire to have it thought, That the Noble Lord, who then preſided, was capable of ſo great a Breach of Faith, as to deprive him of his Liberty after a Promiſe to the contrary: It muſt be ſubmitted, therefore, to your Lordſhips, whether the committing a Man in the Power of the Court, was a Precedent that could be followed in the Caſe of Mr. *Dormer*.

My Lords, To finiſh this Part of the Defence in not ſecuring the Perſon of Mr. *Dormer*, I ſhall beg Leave only to obſerve, That though it is alledged in the Articles, and was inſiſted on in the Opening and Summing up, That Application was made to the Earl of *Macclesfield* for that Purpoſe, yet the Honourable Managers forgot to call any Witneſſes to the Proof of that Particular; which muſt therefore reſt upon the Denial in the Anſwer of the Noble Earl.

My Lords, It was inſiſted upon, That Mr. *Dormer* had not complied with his own Propoſal in diſcovering and delivering up his whole Effects; and for that Purpoſe a Witneſs was called to inform your Lordſhips of a very great Diſcovery that has been ſince made of a Quantity of Hops, that belonged to Mr. *Dormer*: Your Lordſhips remember how very lamely they were proved to belong to Mr. *Dormer*, and how reaſonable an Account was given of their being kept ſo long in Hopes of a better Market. My Lords, we ſhall not preſume to entertain your Lordſhips with any Counter Proof of ſuch a trifling Evidence (as a learned Manager was pleaſed to call it) but beg Leave to infer from thence, That it is evident a more than ordinary Care was taken in looking after Mr. *Dormer*'s Effects, ſince, after Four Years, which have paſt from the Time of aſſigning his Eſtate, a few muſty Hops are all that are diſcovered.

My Lords, We humbly hope to make it fully appear to your Lordſhips, That the complying with Mr. *Dormer*'s Propoſal was the only Means to procure any Satisfaction: Had not Mr. *Dormer* been induced to come over, his Books and Accounts would never have appeared; and had he died Abroad, as he did ſoon after his coming Home, I am perſuaded the Deficiency would have been much greater: And if a full Diſcovery of his Effects was not made (which, however, I apprehend there is no Foundation to believe, after the Hops are laid out of the Caſe) the ſame will appear to be owing to his Death, which happened in a ſhort Time after his Return.

My Lords, The ſeveral Steps that were taken towards ſecuring the Effects of Mr. *Dormer*, muſt neceſſarily promulge his Failure in ſome Meaſure; the Chambers could not be ſearched; there could not be Caveats enter'd in the Books of all the publick Funds; nor could *Lockman* be caution'd againſt expecting any more out of the Effects of Mr. *Dormer*, without making ſome Noiſe, and giving People Notice: And, therefore, when we have made out theſe Facts, I humbly hope, the Noble Earl will ſtand acquitted of any Deſign to conceal the State of *Dormer*'s Office, in Prejudice of the Suitors; but that, conſidering all the Circumſtances of the Caſe, he took the wiſeſt and propereſt Courſe to ſecure as ample a Satisfaction for the Suitors, as it was in his Power to do.

My Lords, The 14th Article, relating to the Compoſition with *Wilſon*, will give me no Occaſion to take up much of your Lordſhips Time. It is called a precarious and trifling Compoſition, and was aggravated in the Opening, and ſo, of courſe, in the ſumming up, by a Matter, which they failed in the Proof of, That that *Wilſon* was ſuffered to compound this Debt, though he paid others their whole Demand with Intereſt.

My Lords, The Witneſs, who was called to prove this, did by no means come up to what was opened: He did, indeed, ſay, That he was informed, That *Wilſon* had paid ſome Perſons their whole Debt; but he, at the ſame Time, acquainted your Lordſhips, That theſe were ſmall Debts; and that he did not pay them out of his own Effects, but from a Supply adminiſtred by a Friend, only to give him a Credit at his ſetting up again; and the unfortunate End of this Man (of which I am juſt now informed) is an unanſwerable Proof of his Inability to pay the Whole.

My Lords, As a further Argument to prove the Reaſonableneſs of this Compoſition, I beg Leave to appeal to another Part of the Evidence produc'd on this Article by the Managers of the Houſe of Commons; whereby it appeared, That Mr. *Wilſon*'s Books were peruſed by two Maſters, and himſelf was put upon his Oath; and that he ſwore the Compoſition he then offered, was all he was able to make; which I humbly ſubmit to your Lordſhips, as an Anſwer to what an Honourable Manager was pleaſed to object, when he inſiſted, that there ought to have been a Commiſſion of Bankruptcy againſt *Wilſon*, that thereby his Effects might have been diſcovered upon Oath.

My Lords, There were many other Creditors of Mr. *Wilſon*'s, beſides Mr. *Dormer*, who might have applied for a Commiſſion of Bankruptcy, if it would have been for their Advantage; but, as every-body is acquainted with the great Expence and Delay of ſuch a Procedure, I believe they will be thought to have taken the wiſeſt Courſe: Here was all the Benefit of a Commiſſion, by the putting *Wilſon* upon his Oath, and none of the Expence and Delay that attend ſuch an Inquiry.

My Lords, Another Thing opened, and not proved, is, That at the Time of this Compoſition, *Poulter*, who was *Wilſon*'s Debtor, was worth nothing: It is true, my Lords, he was afterwards in Execution, and eſcaped; but if we make it appear to your Lordſhips, That at the Time of the Compoſition he was a viſible Perſon, and not ſuſpected, I humbly hope, whatever has happened ſubſequent to the Compoſition, will be no Ingredient in ſhewing it to have been a trifling and precarious one at the Time of making it.

My Lords, I beg Leave humbly to obſerve, That the Honourable Managers have not been pleaſed to inſtance, how the Suitors would have been in a better Condition, in caſe this Compoſition had not been made: Could they have ſhewn your Lordſhips, that if Part of the Debt had not been taken, the Whole might have been obtained, I muſt confeſs, there would have been ſome Reaſon to have called this a trifling Compoſition; but, ſince nothing of that Nature has been attempted, I muſt ſubmit the whole Tranſaction, upon what I have already offered, to have been a Tranſaction moſt for the Advantage of the Suitors, conſidering the Circumſtances that attended this Compoſition.

My Lords, An Honourable Manager, who ſpoke Second upon this Article, was pleaſed to ſay, That by this Compoſition the Suitors were

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tied down to a certain Loſs of Half their Demand. My Lords, I humbly apprehend the Conſequence to be directly otherwiſe; and that the Suitors are not tied down at all: As they were no Parties to the Compoſition, they were not bound by it; nor is Mr. *Wilſon*, by this Compoſition, in any degree diſcharged as to the Suitors of the Court; ſo that if *Wilſon* be able to pay the Whole, he is ſtill as liable to the Demands of the Suitors, as if this Compoſition had not been made; and if this be ſo, it will be to the Advantage of the Suitors, that they had no Notice, which, however, I apprehend, was, in the Nature of the Thing, impracticable.

My Lords, It was inſiſted upon, That the Petitions, and Orders, and Reports on this Occaſion, were in an unuſual and clandeſtine Manner; and a Certificate has been read to your Lordſhips to prove, That they were never filed and regiſtred, as is uſual in other Caſes: But do they, my Lords, pretend to ſay, That this was by the Order, or with the Privity of the Earl of *Macclesfield?* The Buſineſs of a Chancellor, is to make Orders; but I never yet heard it was his Duty to ſee them drawn up and regiſtred; and therefore, if there was any thing unuſual in this, it is not to be imputed to the Neglect of the Noble Earl, unleſs it was proved to have been by his expreſs Direction.

My Lords, It has already appeared, that this Compoſition, and the Proceedings upon it, did not proceed *from* the Noble Earl; but were propoſed *to* him; Mr *Edwards* did acquaint your Lordſhips, That it was himſelf, who firſt propoſed it to the Earl, after having adviſed with Mr. *Hiccocks*, who put him into that Method.

This, my Lords, is the Nature of our Defence againſt the 13th and 14th Articles of the Commons Charge: We humbly hope the ſeveral Steps that were taken, will appear to have been for the Benefit and Advantage of the Suitors, and with no other View, than the ſecuring them their whole Demand; that the Compoſition ſo much complained of, was given into, only as a Means towards the attaining that End, and could in no Event be prejudicial to the Suitors of the Court, as the Gentlemen of the Houſe of Commons would repreſent it to your Lordſhips.

Mr. *Dormer Parkhurſt* ſworn.

Mr. Serj. *Probyn*. My Lords, we deſire Mr. *Parkhurſt* may be asked, What Converſation paſſed between him and Mr. *Dormer*, previous to his going Abroad, and upon what Occaſion he was obliged to go Abroad?

Mr. *Parkhurſt*. Mr. *Dormer* came to me about the latter End of *November*, 1720, at my Chambers. I had then ſome-body elſe with me; upon that Account he ſaid nothing to me, but deſired I would come next Morning early to him. I went, and when I came to him (he lived then in Chambers in *Lincoln's-Inn*) he ſhut the Door, and told me, he had a Thing of great Importance to communicate to me in Relation to himſelf; and then told me, he deſigned to go Abroad: He ſaid Mr. *Wilſon*, his Goldſmith, the Day before had been with him (this was on a *Sunday* Morning, and he had been with him the *Saturday* before) and had acquainted him, That the *Monday* following he ſhould be obliged to ſhut up Shop, and ſtop Payment: He had a great deal of Money in his Hands, and he was afraid, that as ſoon as it was known, that Mr. *Wilſon* was unable to pay; the Sollicitors, and Practicers belonging to the Court, who knew he kept Mr. *Dormer's* Caſh, would immediately be alarmed; and that Application would be made thereon, to my Lord Chancellor; and he believed, that the firſt Thing to be done, in relation to himſelf, would be to confine him; and that there would be an Order for his being committed; and therefore to prevent that (for he could not live a Week without Air and Liberty) he was reſolved to withdraw himſelf, and retire to ſome Place or other. Upon this, I expreſſed a great deal of Concern, and endeavoured to perſuade him againſt it: I deſired him to make his Circumſtances known to my Lord Chancellor and the Maſters: He ſaid No; he was ſure the Conſequence would be his Confinement, and was come to a Determination with himſelf, to ſecure his Perſon; his Uneaſineſs, was from the Fear, that he ſhould be confined; but he would leave every thing fairly behind him, and hereafter come over and obey any Order from my Lord Chancellor; but the firſt Thing he would do, he was reſolved to withdraw, to ſecure himſelf from being Confined.

Mr. *Serj Probyn*. What happened after he was gone Abroad? and what Notice was taken of it?

Mr. *Parkhurſt*. In a little time after this, I underſtood he had put this Reſolution in Execution, and had withdrawn himſelf. He had deſired me, that I ſhould not mention it to any Body; and gave out by his Clerk, that he was gone into the Country. I did, after this, in about three Weeks, receive a Letter from him, that he was then at *Rotterdam*; and there was a Letter incloſed, which he deſired me to ſhew to ſome of the Maſters. I think I ſhewed it to Mr. *Rogers*; afterwards, according to his Directions in the Letter to me, I carried it to Mr. *Cottingham*. It was directed to Mr. *Cottingham*, who was then Secretary to my Lord Chancellor; I carried the Letter to him, and left it with him.

Mr. *Serj. Probyn*. If you can, recollect what were the Particulars of that Letter, the Contents of it, relating to any Terms of his coming over again.

Mr *Parkhurſt*. It is a great while ago; I have but a faint Remembrance of it; but I think it was much to the ſame Purpoſe with what he communicated to me at firſt, after he had acquainted me with the unhappy Affair, as hath been mentioned. He ſaid he had a great Sum of Money in Mr. *Wilſon's* Hands; and when he found *Wilſon* unable to pay, he was apprehenſive of an immediate Confinement, which he could not poſſibly bear; therefore he had withdrawn himſelf; but that he had left his own Eſtate intire behind him, and every thing relating to the Suitors; and he was willing to come over to give an Account of the State of the Office, and of his own Eſtate; and he was willing to make over all his own Eſtate, to anſwer the Deficiency of the Office, as far as it would go, and to do every thing the Court ſhould think fit to order him, provided he might have his Liberty both before and after: He deſired he might not be confined, and he would do every Thing that the Court would order him to do, or ſhould be deſired of him, as much as if he was confined.

Mr. *Serj. Probyn.* We desire he may be asked, If he knew how it was, that Mr. *Wilson* came to have so much of Mr. *Dormer*'s Effects in his Hands, and upon what Account?

Mr. *Parkhurst.* I did not know, till this Affair happened of *Wilson*'s failing, what Money he had in his Hands belonging to Mr. *Dormer*. I used to see Mr. *Wilson* with him; I knew Mr. *Wilson* had Cash of his in his Hands; but afterwards, by way of Justification of himself, for losing so much Money, I heard him say, It was an unlucky Accident, he had a considerable Sum of Money paid into his Hands, by Order of Court, and a considerable Sum, which came in upon the Land-Tax, and he did not know at that Time, what to lay it out in; the Stocks were so High and Precarious, he would not buy any; and he thought *Wilson*'s Hands as safe a Place as any at that Time; he could not keep it by him in his Chambers, and he was going into the Country for three or four Weeks; and when he saw Things were settled, then he would lay it out: But when he came back to Town, he found Mr. *Wilson* in those declining Circumstances. This was after he returned from *Holland*. I knew nothing before of this, nor that he had any great Sum of Money in his Hands.

Mr. *Serj. Probyn.* He saith that he did propose, That he would come over and make a Discovery of, and deliver up his Effects, in case his Person was secured; now I desire he may recollect, before he did come over, if he knew of any Steps taken to secure his Effects; and whether any Thing in his Chambers was taken Care of, and by whom?

Mr. *Parkhurst.* I can give but one Instance of it, that is, Mr. *Rogers*, a Master in *Chancery*, came to me one Morning, and desired me, upon the Account of being a Relation, for I was no otherwise concerned, that I would go along with him to look into Mr. *Dormer*'s Chambers, to see that there was, what Securities, or any thing of what Nature belonging to the Office. I remember we did find several Things, several Land Tax Tallies which Mr *Rogers* gave an Account of. I don't know what the Number was.

Mr. *Serj. Probyn.* Who took Possession of them?

Mr. *Parkhurst.* Mr. *Rogers*, the Master in Chancery.

Mr. *Serj. Probyn.* By whose Direction did you understand that Mr. *Rogers* took this Care?

Mr. *Parkhurst.* I understood it was by the Direction of the Court. He came to me, and desired me to go along with him, to see that no Person meddled with any Thing but what belonged to the Suitors; and he took them, and locked them up in his Closet or Scrutore.

Mr. *Serj. Probyn.* My Lords, we have done with this Evidence.

Mr. *Plummer.* I think he says, the Reason of Mr. *Dormer*'s having so much Money in the Hands of Mr. *Wilson*, was, that there was a great Sum of Money come in upon the Land-Tax: I desire to know, if Mr. *Dormer* left this Money dead in the Hands of Mr. *Wilson*, or if he had any Interest for it?

Mr. *Parkhurst.* I know nothing of that. By way of Justification, he said, It was unlucky he had so much Money paid into his Hands at that Time; Times were so precarious, he did not know how to lay it out.

Mr. *Serj. Pengelly.* I desire he may be asked, Whether Mr. *Wilson* did not usually keep Mr. *Dormer*'s Cash, and the Cash of the Office?

Mr. *Parkhurst.* I believe he did. I know but few Instances of it.

Mr. *Serj. Pengelly.* Whether he never heard him declare that Mr. *Wilson* paid him Interest?

Mr. *Parkhurst.* I never heard him declare he did: He never spoke to me about it particularly.

Mr. *Lutwyche.* I desire he may be asked, Whether he can inform your Lordships, how long Mr. *Wilson* had been Banker to Mr. *Dormer*?

Mr. *Parkhurst.* I can't say exactly how long: I believe some Years.

Mr. *Com. Serj.* If the Gentlemen have done with this Witness, we beg leave to call another, to prove what Care was taken to stop those Effects, that were in the publick Funds.

Mr. John Elphinstone *sworn.*

Mr. *Com. Serj.* My Lords, we desire that Mr. *Elphinstone* may inform your Lordships what he knows of any Orders or Directions given, in relation to the Effects of Mr. *Dormer* that were in the Publick Funds; and by whom those Directions were given?

Mr. *Elphinstone.* My Lords, I have been to search the Books of the Bank, the *South-Sea*, and *East-India* Companies, to see what Stock *Fleetwood Dormer*, Esq; one of the Masters of the Court of *Chancery* had in the Books of those Companies, and what Orders there were for stopping Mr. *Dormer*'s transferring such Stock. My Lords, I went first to the Bank, and searched a Book of that Company, called a *Leidger*, where Mr. *Dormer*'s Accompt was stated by way of Debtor and Creditor. I found in that Book, a *Memorandum* written over Mr. *Dormer*'s Account in red Letters, as follows, *Q. No Transfer.* I likewise enquired, if there were any Orders of the Court of *Chancery*, for stopping the Transfer of such Stock? I was told by the Clerk, That he knew of none. I enquired of the Clerk at the Transfer-Office, if there was any Order of the Court of *Chancery* for transferring Mr. *Dormer*'s Stock to Mr. *Edwards*, the succeeding Master; after some search, he brought me an original Order, Signed *Parker*, C. dated 11. *July*, 1721. I have a Copy of that Order in my Hand, whereby it appears, that all the Stock and Annuities, in the Name of Mr. *Dormer*, were ordered to be transferred to Mr. *Edwards*, on the 12th of *July* 1721, *viz* the Day after the Date of the said Order. I found in the Transfer Book of that Company the Sum of 3393 *l.* 16 *s.* transferred by Mr. *Dormer* to Mr. *Edwards*, and Mr. *Edwards*'s Acceptance of the same. This is a Copy of the original Order. I afterwards went to the *South Sea* House; I searched the Books of that Company, and in the Book marked Letter *D.* N°. 6. Folio 430. where Mr. *Dormer*'s Accompt is stated by way of Debtor and Creditor, I found a *Memorandum* over Mr. *Dormer*'s Account, which is as follows; *Stock not to be transferred without Order from the Court of Directors (he being failed) or from the Court of* Chancery. I also searched the Transfer-Book of the said Company; and I found in Book No. 5. Page 86. that on the 12th Day of *July* 1721. 2251 *l.* 14 *s.* *South Sea* Stock was transferred by Mr. *Dormer* to Mr. *Edwards*, and under the Transfer I saw Mr. *Edwards*'s Acceptance; Mr. *Dormer* signed the Transfer, and Mr. *Edwards* signed the Acceptance. I enquired if there were any Orders for stopping Mr. *Dormer*'s Stock from being transferred.

ferred. I found no ſuch Order, nor any Order for transferring the Stock that was transferred; and the Reaſon which the Clerk of that Office gave, was, That upon the unhappy Turn of the Affairs of that Company, ſeveral of the Clerks being diſcharged, and many Books and Papers being deſtroyed, loſt, or miſlaid, and the reſt in the utmoſt Confuſion, rendered it impoſſible to find any ſuch Paper at this Diſtance of Time. I went likewiſe to the *Eaſt-India* Company; but I could not find upon thoſe Books any Stock belonging to Mr. *Dormer*, or that he had any Intereſt in that Company.

Mr. *Strange*. I beg Leave to take Notice of one Thing he ſays, relating to the Words expreſly entered in one Leidger Book; it ſtands that Mr. *Dormer* ſhould not transfer any Stock, he being failed.

Mr. *Elphinſtone*. Yes, the *Memorandum* entred in the *South Sea* Leidger Book, is, as follows: *Stock not to be transferred without Order from the Court of Directors (he being failed) or Court of Chancery*; the Words, *he being failed*, are in a Parentheſis, and then follow the Words, *or Court of Chancery*.

Earl of *Macclesfield*. Who was then Governor of the *Bank*?

Mr. *Elphinſtone*. I think Mr. *Hanger* was.

Mr. Serj. *Probyn*. Were the Entries dated?

Mr *Elphinſtone*. There was no Date to any of the *Memorandums*; they are wrote juſt over Mr. *Dormer*'s Account, and under a Line drawn to ſeparate Mr. *Dormer*'s Account from another Perſon's.

Mr. Serj. *Probyn*. Was that before the Transfer made to *Edwards*?

Mr. *Elphinſtone*. There is no Date to the *Memorandum* for ſtopping the Transfer of Mr. *Dormer*'s Stock; but it muſt be before the Tranſter.

Mr. Serj. *Probyn*. But the Entry in the Books, was it precedent or ſubſequent to the Transfer?

Mr. *Elphinſtone*. When I ſearched for the Account, I found the Account and the *Memorandum* for ſtopping the Transfer of the Stock, placed over it, in a Book called the Leidger, and when I ſearched for the Tranſfer of the Stock, I found that in the Transfer-Book, which is a different Book.

Mr. Serj. *Probyn*. What Transfer-Book was it?

Mr. *Elphinſtone*. It was the Transfer-Book No. 5. in Page 86. where I found Mr. *Dormer*'s Transfer, and Mr. *Edwards*'s Acceptance; but the Leidger is quite a different Book. It was in the Leidger marked D that I found the *Memorandum* for ſtopping the Transfer of Mr. *Dormer*'s Stock over his Account; but I could not tell what Day of the Month it was entred; there were promiſcuous Dates in the Year 1720, 21, 22, 23, and 24. to ſeveral Articles of that and other Accounts, but no Date to the *Memorandum* at the Head of his Account. I took this Copy of it, which I have in my Hand.

Mr. *Lutwyche*. I deſire to aſk one Queſtion, which, indeed, is to explain, what he mentioned concerning an Order, that I think, he takes to be ſigned by my Lord Chancellor. I deſire to know the Date of it?

Mr. *Elphinſtone*. It was a looſe Order brought to me, dated 11 *July* 1721.

Mr. *Lutwyche*. Who brought it?

Mr. *Elphinſtone*. It was brought to me by a Clerk that belongs to the Tranſter-Office at the *Bank*.

Mr. *Lutwyche*. Was that Original Order left in the Book?

M. *Elphinſtone*. No, my Lords, I ſaw no Book of Orders; it was a ſingle Order brought to me.

Mr. *Lutwyche*. You ſay there was an Order ſigned *Parker* C. was there any ſuch Order drawn up by the Regiſter of the Court?

Mr. *Elphinſtone*. I know nothing of its being drawn up by the Regiſter. I ſaw *Parker* C. Signed to an Order; and I believe it was the noble Earl's Hand.

Mr. Serj. *Pengelly*. He hath a Copy of it; I believe it is proper to put it in, or that it may be read.

Mr. *Lutwyche*. Mr. *Elphinſtone* may read it to your Lordſhips.

Mr. *Elphinſtone* reads. *Martis* 11 *July* 1721. "I do order, that all the *Bank* Stock and Annuities "therein ſubſcribed, belonging to *Fleetwood Dormer*, "Eſq; late one of the Maſters of this Court, be by "him forthwith transferred to *Henry Edwards* the "ſucceeding Maſter" *Parker* C.

To the Governor, Deputy Governor and Directors of the Bank of England.

Mr. Serj. *Pengelly*. We deſire he may be aſked Whether he heard any Thing of Mr. *Dormer*'s being gone to take the Air?

Mr. *Elphinſtone*. No, my Lords, I never did, upon my Oath.

Mr. Serj. *Pengelly*. Whether he did not hear the Earl of *Macclesfield* make a Declaration to that Purport?

Mr. *Elphinſtone*. I do not remember that the Noble Lord ever made any ſuch Declaration.

Mr. Serj. *Pengelly*. He mentioned ſeveral Orders he found in the Books of the *Bank*, as I apprehended him; whether was there any other Order under my Lord *Macclesfield*'s Hand?

Mr. *Elphinſtone*. No, I ſaw but one Original Order, ſigned by the Noble Earl, of which, this is a Copy in my Hand.

Mr. *Lutwyche*. This was an Order under my Lord's Hand, a conſiderable Time after: I deſire he may be asked, whether he hath heard of any Order directed to the Governor, Deputy Governor, *&c.* of the *Bank*, and ſign'd by the Chancellor, and that Original Order left there?

Mr. *Elphinſtone*. My Lords, I would be very cautious of ſaying any Thing that I do not remember; but I do remember ſomething of a Diſcourſe of an Order given for ſtopping of *Dormer*'s Stock and Effects about the Time of Mr. *Dormer*'s abſconding, but when it was I can't tell.

Mr. *Lutwyche*. He did not underſtand me: My Queſtion is, Whether or no he hath ever heard of any Order directed to the Governor, *&c.* of the *Bank*, and ſigned by the Chancellor, and that Original Order left there?

Mr. *Elphinſtone*. No, my Lords, I don't ſay I heard of any other Order, ſigned by my Lord Chancellor, and directed to the Governor, *&c.* of the *Bank*; but I heard an Order was given by my Lord, to ſtop *Dormer*'s Stock.

Mr. *Lutwyche*. I only aſk, Whether in this, or any other Inſtance, my Lord Chancellor made Orders to the *Bank*, to be left there?

Mr. *Elphinſton*.

Mr. *Elphinſtone.* I don't know what Orders are made; it was out of my Province; I had nothing to do with that; my Buſineſs was quite another Thing.

Mr. Serj. *Probyn.* I would beg Leave to take Notice of one Obſervation, that has been made on the Evidence given in Relation to the Order of the late Lord Chancellor, as tho' it was unuſual to direct any in that manner to the *Bank*; but to that I beg Leave to anſwer, that this was not an Order of Court; but only a particular Direction, which he, in his private Capacity, ſent to that Company, out of his great Care to ſecure the Effects of the Suitors; and this, I apprehend, fully clears him of the Objection made to him of Neglect to do it in his judicial Capacity.

Mr. *Com. Serj.* Your Lordſhips cannot chooſe but obſerve, that this very Thing implies ſome Caution taken, that theſe Effects of Mr. *Dormer*'s ſhould not be transferred without the Privity of the Great Seal: This Order, we apprehend, was for that Purpoſe; and to make this plain, we ſhall ſhew, that Mr. *Cottingham* went from my Lord Chancellor about this Matter.

Mr. *Cottingham.*

Mr. Serj. *Probyn.* We deſire Mr. *Cottingham* may be aſk'd, How he came to have Notice, and from whom, of Mr. *Dormer*'s withdrawing himſelf; and what Care was taken to ſecure his Effects?

Mr. *Cottingham.* Soon after *Chriſtmas*, 1720. to the beſt of my Remembrance, as to the Time, Mr. *Parkhurſt*, Mr. *Dormer*'s Nephew, came to me, and told me, his Uncle, Mr. *Dormer*, had withdrawn himſelf into *Holland*; and the Reaſon was, upon Account of his having left Money and Effects belonging to the Suitors, in Mr. *Wilſon*'s Hands, and Mr. *Wilſon* had been very unfortunate in the *South-Sea* Year, and was likewiſe gone off. I acquainted the Earl of what paſſed. The Earl directed me to attend the two Senior Maſters, Mr. *Hiccocks* and Mr. *Rogers*, and conſider what was proper to be done on that Occaſion: On Conſideration, we agreed, that it was neceſſary to get Mr. *Dormer* over.

We then conſidered, that it was not poſſible to have him over, unleſs he was ſecure of his Liberty. A Propoſal was made to the Earl, that in caſe he came over, he ſhould have his Liberty: The Earl agreed to it. In the mean Time, to the beſt of my Remembrance, Orders were given for ſearching of his Office, and ſecuring what Effects and Papers were there. The Maſters told me, that purſuant to theſe Directions, they had ſearched his Office, and lock'd up what they found there; but his Effects there were of very little Value.

The next Step the Earl took, was, he directed Perſons to go to the *Bank* and *South-Sea* Houſe, to ſtop the Transferring of any Stock or Effects in his Name.

In *April* following, when Mr. *Dormer* returned, he came late to me one Evening, and asked me, If the Letter writ by the Maſter, was writ by the Earl's Direction? I told him Yes. He then asked me, If the Earl had promiſed his Liberty? Otherwiſe he would be gone again.

I told him the Earl had promiſed him his Liberty, if he would make a full Diſcovery of all his Effects upon Oath; and make over all he had to the two Senior Maſters, for the Benefit of the Suitors of the Court; and aſſiſt them in getting in every Thing that belonged to him.

He ſaid, theſe Conditions he readily ſubmitted to, and would attend the Maſters accordingly. I ſpoke to Mr. *Rogers*, to know whether he would have an Order in Form to examine Mr. *Dormer* upon Interrogatories; and that, if he would, I would prepare one, and get it ſign'd. He told me, It was not neceſſary; and that they thought it was beſt to get the Eſtate and Effects in the firſt Place before that ſhould be done; fearing if Mr. *Dormer* was ſeverely dealt with, he ſhould run away, and an Order might be had afterwards, if neceſſary. I forgot to tell your Lordſhips one Circumſtance: Some time, in the Summer following, either in *July* or *Auguſt*, I happened to dine one Day at the *Blue-Poſts*, behind *Lincolns-Inn*. Mr. *Dormer* came to me with Tears in his Eyes; he cried bitterly, and ſaid, That the Maſters had ſtripp'd him of all he had in the World, and begg'd I would intercede with the Earl to allow him ſomething. I deſired him not to inſiſt upon it; for his Effects, as I was inform'd, were not ſufficient to pay his Debts, and he knew well, that the Earl could not give away the Effects of the Suitors; It was out of his Power.

Mr. *Plummer.* I think you ſay, Sir, That Mr. *Dormer* failed, by leaving his Money and Effects in Mr. *Wilſon*'s Hands; I deſire to ask him, What he means by his Effects?

Mr. *Cottingham.* The Money and Effects belonging to the Suitors of the Court.

Mr. *Plummer.* And you told my Lord of that?

Mr. *Cottingham.* Yes, I told my Lord what Mr. *Parkhurſt* had mention'd of the Money and Effects of the Suitors of the Court being left in *Wilſon*'s Hands.

Mr. *Com. Serj.* I deſire he would inform your Lordſhips, whether or no, upon this Occaſion and Tranſaction, he applied to the Maſters to make up this Deficiency of Mr. *Dormer*'s?

Mr. *Cottingham.* As to the Deficiency of Mr. *Dormer*, I always apprehended and underſtood, that the Maſters would make good that Deficiency, Mr. *Lightboun* excepted, who always declared, he would do nothing towards it, unleſs it were put on another Foot.

I

Mr. *Com. Serj.* I desire he may be asked whether he gave any such Information to the Earl of *Macclesfield?*

Mr. *Cottingham.* I did so, I told the Earl of it; and to the best of my Remembrance Mr. *Hiccocks* and Mr. *Rogers*, my Lords, I wont be positive, but I think Mr. *Hiccocks* and Mr. *Rogers* did order me to wait upon the Earl, and let his Lordship know that the Body of the Masters had undertaken to make up the Deficiency; I do think so, I will not be positive of that, I think it was so.

Mr. *Com. Serj.* I desire he may inform your Lordships, if he knows how it came to pass that Mr. *Dormer* had Money in Mr. *Wilson*'s Hands?

Mr. *Cottingham.* Mr. *Parkhurst* told me, and I think Mr. *Dormer* likewise, but of that I am not certain, that Mr. *Dormer* had left the Money in his Hands when he went into the Country in the long Vacation.

Mr. *Onslow.* I desire he may be asked what were the Words that Mr. *Rogers* and Mr. *Hiccocks* said to him when he apprehended the Masters would make good the Deficiency?

Mr. *Cottingham.* I think it was what I told your Lordships, that the Body of the Masters would make good the Deficiency, I do not, I cannot swear that positively.

Mr. *Onslow.* Did any other of the Masters tell you so?

Mr. *Cottingham.* Mr. *Godfrey* told me, I am positive of this, that Mr. *Godfrey* told me that the Body of the Masters would make good the Deficiency, I must except Mr. *Lightboun.*

I have heard Mr. *Edwards* say, that he would never have paid his 5000 *l.* if he had not apprehended that it would have been made good.

Mr. *Com. Serj.* This makes it necessary for us to ask another Question, and I desire he may be asked, tho' he doth not remember the particular Words, yet whether they induced him to believe that they intended so to do?

Mr. *Cottingham.* It did.

Mr. *Com. Serj.* Whether upon this Belief he did inform the noble Earl that they would make good Mr. *Dormer*'s Deficiency?

Mr. *Cottingham.* I did, I told the noble Earl so, and that his Lordship needed not to be uneasy, they would make it good, and I always apprehended, I always understood they would make it good.

Mr. *Lutwyche.* I desire he may be asked whether the Deficiency of Mr. *Dormer* was ever stated so as to know how much it was?

Mr. *Cottingham.* No.

Mr. *Lutwyche.* Did they agree to make up the Deficiency when they did not know how much it was?

Mr. *Cottingham.* I heard some of the Masters say at first, that it was 17000 *l.* or 18000 *l.* afterwards they said 20000 *l.* and then 22000 *l.* and of late it comes out to be 26000 *l.*

Mr. *Lutwyche.* If I understand Mr. *Cottingham* right, he speaks of several Masters, I desire to know whether he means all, except Mr. *Lightboun?* I desire to know whether they all singly promised?

Mr. *Cottingham.* Singly, as I remember; Mr. *Edwards* can tell I was at a Meeting with them at the Tavern, I think they said singly.

Mr. *Serj. Pengelly.* I desire he may be asked whether this Discourse with the Masters about paying this Deficiency was absolute or upon some particular Terms or Conditions of paying the Money?

Mr. *Cottingham.* Mr. *Edwards* told me that they would make good the Deficiency, provided they continued on the old Foot as usual.

Mr. *Serj. Pengelly.* That is, to have the Disposal of the Money, the Money to be in their Hands?

Mr. *Cottingham.* Yes.

Mr. *Lutwyche.* I desire to know whether you acquainted the Earl of *Macclesfield* with this?

Mr. *Cottingham.* No, this was but lately that Mr. *Edwards* told me that. It was, I believe, in *November* or *December* last.

Mr. *Lutwyche.* Did none of the other Masters acquaint you so?

Mr. *Cottingham.* No, I don't remember any other Master did.

Mr. *Lutwyche.* I desire to ask you whether you ever heard what Interest Mr. *Wilson* allowed to Mr. *Dormer?*

Mr. *Cottingham.* In *December* last, when the Accompts were before the Judges, the Earl told me that Mr. *Wilson*'s Composition was complained of; it was said, that Mr. *Wilson* had paid 20 *s.* in the Pound; and ordered me to talk with Mr. *Wilson*; and accordingly I did see him, and blamed him for imposing upon the Masters in the Composition he made with them, when he had paid other Creditors whole Demand; he denied it.

Mr. *Lutwyche.* That is not the Question; what Interest did Mr. *Wilson* allow Mr. *Dormer* for the Suitors Cash?

Mr. *Cottingham.* I am going on to that Part. Mr. *Wilson* said to me; why is all the Blame laid upon me? I allowed Mr. *Dormer* very large Interest for his Money: I could have set aside his Debt upon the Score of an usurious Contract; I was resolved I would not do it, I would shew my self to all the World to be an honest Man; I gave my Creditors all that I had, what would they have more?

Mr. *Lutwyche.* Whether he mention'd Ten *per Cent.* or no?

Mr. *Cottingham.* No, he did not, but he said he had given large high Interest, and the Court had had as much as his other Creditors.

Mr. *Com. Serj.* When was this Discourse?

Mr. *Cottingham.* It must have been in *December* last, when the Judges were inquiring into this Matter, because he told me Mr. *Edwards* had been with them about the Composition.

Mr. *Serj. Probyn.* Recollect what was said upon this Discourse, whether he said that the Court or the Masters had as much as any of his other Creditors?

Mr. *Cottingham.* He told me, I am an honest Man, the Masters had as much as my other Creditors, what would they have more?

Mr. *Serj. Probyn.* It is our Misfortune we can't produce Mr. *Wilson* here, we are deprived of his Evidence, which would have been very material, by his Death; we are told he has very lately shot himself.

Mr. *Cottingham.* He was very poor, I always looked upon him to be an honest Man; he told me at the same time, I forgot to tell your Lordships, if Mr. *Poulter* could be but delivered up, he should be very easy; he was sure he was in Circumstances

to pay him.

Mr. *Com. Serj.* My Lords, if the Gentlemen have done with this Witneſs, we deſire to call a Witneſs or two in relation to the fourteenth Article to ſhew the Credit of *Poulter* when his Debt was aſſigned. We apprehend that a little Evidence will ſerve to clear up the Innocence of this noble Earl on this Occaſion: The great Concern the noble Earl had to make up this Deficiency of Mr. *Dormer*, made him with the beſt of his Knowledge and Power apply thereto; a little Evidence will make it appear, that however unfortunate it was in the Conſequence he did it to make the moſt he could for the Suitors of the Court.

Mr. *Hunt* Sworn.

Mr. *Com. Serj.* My Lords, we call this Witneſs to prove the two Judgments, the one againſt *Poulter*, to ſhew that there was a real Debt due from *Poulter* to *Wilſon*; the other is a Copy of a Judgment by *Wilſon* againſt the Marſhal of the King's Bench, for the Eſcape of *Poulter*.

Mr. *Hunt*. My Lords, I examined theſe two Copies of Judgments with the Records in the Court of King's Bench. They are true Copies of the Judgments.

Mr. *Com. Serj* I deſire he may be asked whether he was the Attorney for Mr. *Wilſon?*

Mr. *Hunt*. I was the Attorney for Mr. *Wilſon* in that againſt *Machen*, and entred up the Judgment in the other.

Mr. *Com. Serj.* Is it your Lordſhips Pleaſure that the Judgment ſhould be read at large?

Mr. *Serj. Probyn*. Read only a Word or two of the Judgments, the Names of the Plaintiff and Defendant, the Money demanded, and the Sums recovered.

Clerk reads the Beginning and Ending.

Memorandum quod alias, ſcilicet Termino Sancti Hilarii ult' præterit' coram Domino Rege ven' Willielm' Wilſon verſus Edvardum Poulter—Ideo conſiderat' eſt quod prædict' Willielm' recuperet verſus præfat' Edvardum Poulter damna ſua, quæ quidem damna in toto ſe attingunt ad octodecim mille ſeptingent' & ſexagint' libras duodecim ſolid' & quinq' denar'.

Mr. *Serj. Probyn*. The firſt is againſt *Poulter*.

Mr. *Lutwyche*. Look when the Judgment was ſigned.

Mr. *Hunt*. It was ſigned 22 *Dec.* 1721.

The Judgment read againſt *Machen*.

Placita coram Domino Rege apud Weſtm' de Term' Sancti Michaelis, undecimo Georgii. Memorandum quod Willielm' Wilſon — protulit — billam — verſ' Richardum Machen — de placito debiti — quod reddat ei oct. de im mille ſ ptingent' oct gint' & un' lib. —— Ideo conſiderat' eſt quod præd' Willielm' Wilſon recupe et &c.

Judgment ſigned 27 *Nov.* 1724.

Mr. *Com. Serj.* If your Lordſhips pleaſe he may be asked if he knows of any Offer made by *Poulter* for a Compoſition, and what Sum of Money was offered, and how Mr. *Wilſon* behaved himſelf on that Occaſion.

Mr. *Hunt*. I don't know of any Compoſition offered of my own Knowledge, I have heard the preſent Marſhal of the King's Bench ſay there was 1000*l* offered; but I had Orders from my Client, if any Offer was made to me, not to accept it, but to refer the Perſon who made it to him.

Mr. *Com. Serj.* As Mr. *Wilſon* is dead, I deſire Mr. *Hunt* may be asked whether Mr. *Wilſon* gave any Reaſon for that Order not to compound with him?

Mr. *Hunt*. Mr. *Wilſon* hath often ſaid that it was his Opinion Mr. *Poulter* was able to pay him.

Mr. *Com. Serj.* We have done, my Lords, with this Witneſs.

Mr. *Serj. Probyn*. My Lords, we beg Leave to call a Witneſs to ſhew that at this time Mr. *Poulter* had the Reputation of being a Man of Subſtance, and an honeſt Man?

Mr. *Peter Gandy* Sworn.

Mr. *Serj. Probyn*. My Lords, I deſire Mr. *Gandy* may give your Lordſhips an Account whether Mr. *Poulter* had not the Reputation of being a ſubſtantial Man about the year 1722 or 1723.

Mr. *Gandy*. Mr. *Poulter* always lived in good Reputation, and was reputed to be an honeſt Man; he lived at *Hackney*, he told me he purchaſed 6000*l*. South-Sea Stock, which coſt him 3600*l*. and transferred it to Mr. *Knight*, and Mr. *Knight* gave him nothing for it.

Mr. *Serj. Probyn*. I deſire to ask you whether he was a ſubſtantial honeſt Man?

Mr. *Gandy*. I believe he was, he always bore an extraordinary Character, I believe I might ſummon all *Exchange-Alley*, and they would ſay the ſame; he was reputed to be worth a great deal of Money and a very honeſt Man.

Mr. *Lutwyche*. At what time was this that he was thought a Man of Subſtance?

Mr. *Gandy*. When he lived at *Hackney*.

Mr. *Lutwyche*. After he was arreſted?

Mr. *Gandy*. Yes.

Mr. *Lutwyche*. Will you ſay after he was arreſted he was a ſubſtantial Man?

Mr. *Gandy*. No, my Lords, I do not ſay he was, but he was generally reputed to be ſo.

Mr *Lutwyche*. Whether at the ſame time you mention that he told you the Circumſtance of transferring Stock to Mr. *Knight*, that was not given as a Reaſon for his Deficiency.

Mr. *Gandy*. He ſaid he had been able to pay Mr. *Wilſon* every Farthing, if Mr. *Knight* had not gone away.

Mr. *Lutwyche*. That is what Mr. *Poulter* told Mr. *Gandy*.

Mr. *Serj. Pengelly*. I deſire he may be asked when *Poulter* was firſt known to be in a failing Condition?

Mr. *Gandy*. I don't know

Mr. *Serj. Pengelly*. When was he arreſted?

Mr. *Gandy*. I don't know, he told me he ſhould have been able to have paid Mr. *Wilſon*, if Mr. *Knight* had not gone away.

Mr. *Serj. Pengelly*. Did he give you that as a Reaſon why he could not pay Mr. *Wilſon?*

Mr. *Gandy*. Mr. *Knight* not paying him, he ſaid he could not pay Mr. *Wilſon*.

Mr. *Serj. Pengelly*. Was that the Reaſon?

Mr. *Gandy*. Here is another Gentleman will tell you he was employed to make a Compoſition with Mr. *Wilſon*, and he can tell you more.

Mr. *Onſlow*. What was *Poulter*'s Profeſſion?

Mr. *Gandy*. He was a Servant to Mr. *Stroud*.

Mr. *Onſlow*. What is Mr. *Stroud?*

Mr. *Gandy*. Mr. *Stroud* is a Sworn Broker.

Mr.

Mr. *Onslow.* I desire to know what Profession this Person is of?

Mr. *Gandy.* I transact in *Exchange-Alley* as a Broker.

Mr. *Lutwyche.* Did not Mr. *Poulter* transact as a Broker too?

Mr. *Gandy.* Yes.

Dr. *Sayer.* We are not now upon the Point what he was really worth at that time, but what his Reputation and Character was, and therefore we desire to know what that was, whether he was not looked upon as a substantial Man?

Mr. *Gandy.* He bore a good Character.

Mr. *Strange.* What was his Character, as to his Circumstances at that time?

Mr. *Gandy.* His Character was then very good, and so continued till he was put in Prison.

Mr. *Strange.* Where is he now?

Mr. *Gandy.* He is at *Rotterdam.*

Mr. *Scott* Sworn.

Mr. *Com. Serj.* I desire that Mr. *Scott* may inform your Lordships whether he knew Mr. *Poulter*, and what his Character and Reputation was, as to Substance.

Mr. *Scott.* Mr. *Poulter* I had been acquainted with a great many Years, I looked upon him to be a very honest Man; and in the Year 1720 he transacted abundance of Business, and I did a great deal of Business for him, and some other Gentlemen at that time, as a Scrivener. In the Year 1720, upon the Fall of the Stocks, he came and told me he was ruined by it, and begged of me to assist him. He told me at first he had some Accompts depending with Mr *Wilson.*

Mr. *Serj. Pengelly,* I desire he may repeat it, where he told him, and when?

Mr. *Scott.* About *December* 1720, before Mr. *Knight* went away, he said he had large Accompts with Mr. *Wilson*, and that he was utterly ruined, because he said he had transferred 6000 *l.* South-Sea Stock to Mr. *Knight*, which cost him 40000 *l.* or better, and if he could not get it of Mr. *Knight*, he must be ruined. He told me I was acquainted with several Gentlemen of Mr. *Wilson*'s Acquaintance, and desired me to speak to him or them about this Matter.

Sometime after Mr. *Wilson*'s Agents, Mr. *Ashton*, I think, and one Mr. *Newton*, sent to Mr. *Poulter*, and desired a Meeting on the Behalf of Mr. *Wilson.* I went on the Behalf of Mr. *Poulter*, and carried a Friend with me; we met at the *Crown Tavern* overagainst St. *Clement*'s *Church*, and we told them how Mr. *Poulter* was served; that Mr. *Knight* had so much Stock of his without any manner of Consideration, as Mr. *Poulter* had told us; that Mr. *Poulter* was willing to do any thing they could expect. Some considerable time afterwards, I heard Mr. *Poulter* had been arrested, and he desired me, as being acquainted with Mr. *Wilson*, to go to Mr. *Wilson* and see if I could make up the Affair, he apprehended that his Bail would surrender him: Whereupon I went to Mr. *Wilson*, and told him, that Mr. *Poulter* protested to me he was worth but 3500 *l.* or thereabouts, and that he would endeavour to get Friends to make it up 4000 *l.* if Mr. *Wilson* would accept it. I was with Mr. *Wilson* several times about this Matter, but he would not accept it.

Mr. *Serj. Pengelly.* Did he give any Reason why he would not accept it?

Mr. *Scott.* He said he looked upon Mr. *Poulter* not to be an honest Man, and that he could pay more; I said, he had better take that than keep him in Prison.

Mr. *Com. Serj.* Notwithstanding these private Intimations of his Disability, I desire to know what was his general Character as to his Circumstances?

Mr. *Scott.* He was looked upon to be a very honest Man, and in good Circumstances; he hath been trusted with Thousands and Thousands of Pounds.

Mr. *Serj. Pengelly,* I desire he may be asked, Whether the Money, the 24000 *l.* *Wilson* lent to him, was not lent for Stock-jobbing, for him to traffick with in the Alley?

Mr. *Scott.* I know nothing at all of that.

Mr. *Serj. Pengelly.* Whether he hath not declared so?

Mr. *Scott.* No, I know nothing of that; whenever I was in Company with Mr. *Wilson* he was always very shy, and would not speak freely.

Mr. *Plummer.* I desire he may be asked, Whether in *June* or *May* 1720, he looked upon Mr. *Poulter* to be a good Man?

Mr. *Scott.* Mr. *Poulter*, in *April* or *May* 1721, told me his Circumstances, and desired me to go to Mr. *Wilson* to meet those Gentlemen, and to treat with them; but every body then, except four or five Persons to whom he had made known his Circumstances, reputed him an honest and a substantial Man.

Mr. *Com. Serj.* I desire he may inform your Lordships, in *May* 1721, what his general Character was, or what was generally thought by other People of him, without relation to his own particular Knowledge.

Mr. *Scott.* He was look'd upon as a Man of Substance, and a very honest Man.

Mr. *Sandys.* I desire he would explain himself; Whether he was looked upon at that time by himself to be a sufficient Man, and able to answer the Demand of Mr. *Wilson?*

Mr. *Scott.* He had told me a Reason to induce me to have but an ill Opinion of his Ability, that he had transferred 6000 *l.* Stock to Mr. *Knight*, which cost him 40000 *l.* and upwards.

Mr. *Serj. Pengelly.* Whether Mr. *Poulter* at that time went on dealing in the way of Business as he did before?

Mr. *Scott.* No, I believe he did not at that time: I believe in 1720 his Business was done, and he thought himself worth a great deal of Money.

Dr. *Sayer.* Whether in the Year 1720 he was not looked upon to have got a great deal of Money, and for that Reason to have quitted his Business?

Mr. *Scott.* It was then taken so; he was then looked upon as a Man of great Substance: There were not above five who knew his Circumstances to be otherwise; he was generally looked upon then to be a Man of Substance.

Mr. *Lutwyche.* It is a very surprising way to establish a Man's Reputation to say he was a Man of Substance when he offered a Composition, and at the same time he could not pay his Debts, he is understood to be a Man of Substance; I desire to know, Whether it was after or before you had that Meeting, and offered the Composition?

Mr. *Scott.* I believe it was after.

Mr *Lutwyche.* Did you take him to be a Man of Substance afterwards, after you had offered a Composition for him?

Earl of *Macclesfield.* This Gentleman hath answered two Things very consistent, that he and three or four more, who knew Mr. *Poulter*'s Circumstances, knew that he was not a Man of Substance then, but that all other People looked upon him to be a Man of Substance, and he tells you how he came to be so esteemed.

Mr. *Scott.* Yes, so it was.

Mr. *Lutwyche.* I desire to know again, whether after the Year 1720, he transacted Business as he used to do?

Mr. *Scott.* No.

Mr. *Lutwyche.* I desire to know again, where he lived after the Year 1720, and what Means he had to live upon, besides his Business?

Mr. *Scott.* He lived as a Gentleman at *Hackney*, had his House well furnished and full of Plate, I have been at his House several times.

Mr. *Lutwyche.* How long ago?

Mr. *Scott.* I believe a Year and a half, or two Years ago?

Dr. *Sayer.* I don't apprehend it is material what this Gentleman thought from the private Conversation he had with Mr. *Poulter.* The general Reputation is sufficient for us to justify what was done; I desire he may be asked, whether till that Conversation he himself did not look upon him to be a Man of Substance?

Mr. *Scott.* I looked upon him to be a Man of Substance, till he told me he was so unhappy that he could not get his Forty thousand Pounds and upwards of Mr. *Knight.*

Mr. *Lutwyche.* When was it he told you so?

Mr. *Scott.* I believe some time in *December* 1720 that he told me so first.

Mr. *Lutwyche.* The Composition was in 1722.

Mr. *Serj. Pengelly.* I desire he may be asked one general Question, Whether after the Year 1721 Mr. *Poulter* retained any Character of Sufficiency or Ability?

Mr. *Scott.* He was looked upon by every one that did not know this Affair of Mr. *Knight*'s, to be a Man of Sufficiency in 1721.

Mr. *Lutwyche.* After 1721, Whether it was not generally known that Mr. *Poulter* was an insufficient Man?

Mr. *Scott.* No, I believe not.

Earl of *Abingdon.* If they have done, I desire to ask this Witness a Question, Whether it was generally known that Mr. *Poulter* had transacted for Mr *Knight?*

Mr. *Scott.* Not as I know of, I believe not.

Mr. *Serj. Probyn.* My Lords, we shall trouble your Lordships with no further Evidence on this Article. So if your Lordships please, we shall now proceed to the other Articles.

Mr. *Strange.* With your Lordships Permission we will now go on to the next Set of Articles that were opened by the Managers for the Honourable House of Commons, which are the fifteenth, sixteenth and seventeenth Articles. And I shall now, as I did before, confine my self to these particular Articles.

The Charge, my Lords, in these three Articles consists of several Acts supposed to be done by, or by the Order of, the noble Earl within the Bar, and are laid to be all tending to the same Design of concealing the Deficiency of *Dormer's* Office.

For which Purpose, my Lords, it is said the Accompts of the Masters were called for, not with any Design of examining the Accompts, but with an Intent to terrify the Masters, and oblige them to contribute towards answering the Demands that should be made upon that Office: And as an Instance of this Design, the Commons charge, That after a Contribution by nine of the Masters, the Earl did not oblige them to bring in their Accompts.

That upon occasion of another Sum of Money wanted to pay off a Suitor who had an Order for Money in *Dormer's* Office, the noble Earl pressed the Masters to raise it amongst themselves; and, upon their Refusal, caused his Secretary to pay it: And that notwithstanding this Notice of *Dormer's* Deficiency, an Order was afterwards made for Mr. *Edwards* to enquire, whether there was likely to be a Loss of any Money deposited with Mr. *Dormer.*

And as a farther Instance of this Endeavour to conceal the Deficiency, it is insisted on, that several Orders were made for the paying some Suitors the whole of their Demand, without regard to that just Proportion to which the other Suitors were entitled.

This, my Lords, is the State of the Complaint contained in these three Articles.

And as to the first part of the Complaint in calling for the Accompt, and terrifying the Masters into a Contribution, I shall beg Leave to insist upon two Facts; either of which, in my humble Apprehension, will be a sufficient Defence against the Charge.

The first, my Lords, is, That the Contribution was voluntary: And the next is, That long after this Contribution the Accompts were continued to be called for, notwithstanding it is charged to have been dropp'd immediately upon the Contribution.

To prove the Contribution voluntary, I beg Leave, my Lords, in the first place to look back upon Mr. *Lightboun*'s Evidence, where he acacquainted your Lordships, that upon his asking the noble Earl, who the Proposal came from, the Earl's Answer was, That it came from some of the Masters: And he concluded his Accompt of that Conversation with informing your Lordships, that upon his declining to contribute, the Earl left him to his Liberty.

But, my Lords, not to rest it upon Mr. *Lightboun*'s Evidence only, we shall call Mr. *Cottingham*, who was acquainted with the whole Transaction, and will inform your Lordships, that the Contribution was altogether voluntary, and of their own Proposal.

My Lords, the other Branch of the Article, and which indeed is the Jet of the whole, relates to the dropping the Design of looking into the Accompts upon the making of this Contribution, which we shall be able to falsify; and the Account, my Lord, we shall give of the whole Transaction is this:

In *February* 1720, Mr. *Cottingham*, by the Earl's Directions, wrote a Letter to the Masters, requiring them to make up their Accompts, and present them to the Earl, according to a Plan which he imparted to them in that Letter.

Your Lordships are pleased to observe, that Mr. *Dormer*'s failure was at *Christmas*, and this Letter in *February* following, before Mr. *Dormer* had any leave to come over, or any Discovery had been made of the Condition of his Office.

My Lords, The use which the Honourable Managers say was to be made of this Letter, was so little understood, that some of the Masters did, pursuant thereto, make up and deliver in an Account, tho' not according to the Directions they had received; and the Affair of Mr. *Dormer* coming on, caused a Stop in making up these Accompts, till after the appointing a Successor, and the making the Contribution, which, I think, is already fixed to have been in or about *August* 1721.

My Lords, The Summer being then far advanced, and every Body going out of Town, the Accompts were not exacted at that time; but upon their return to *London* a new Order was sent by Mr. *Cottingham* in *November*, with fresh Directions for bringing in their Accompts.

My Lords, I must here beg leave to observe, That if the Contribution was all that was aimed at by calling for these Accompts, how comes it to pass that Mr. *Lightboun*, who never contributed, was not called upon, in a particular manner, to bring in his Accompt, which, I did not observe, was proved, or so much as opened by the Learned Managers.

My Lords, The true Reason why these Accompts were not brought in, was the insuperable Difficulties of such an Undertaking; of which, I am persuaded, no other Evidence need be given, than to reflect on the Proceedings that have been of late in taking these Accompts.

But, my Lords, a Learned Manager was pleased to say, Why did this Noble Earl keep the Office, if he was not able to do the Business of it? I hope your Lordships won't think the Noble Earl was idle all the while: Every body knows the great Variety of Business, and the continual hurry a Chancellor is in: The ordinary Business of the Court of Chancery is sufficient to engage a Man of uncommon Application: What a Fatigue then, my Lords, must it be, when the necessary Attendance upon your Lordships, and at the Council Table, are both taken into the Account? Sure I am, my Lords, it can never be said, that there was no want of Time or Leisure for taking these Accompts.

My Lords, The next Branch of the Charge is the Order for 1000 *l.* to Mrs. *Chitty*, which is said was paid by the Noble Earl's Direction, in order to conceal the Deficiency: But pray, my Lords, does not the Article and Evidence both destroy the Supposition? Could the Earl of *Macclesfield* intend to conceal the Deficiency, when he cautioned *Lockman* against marrying Mrs. *Chitty*, in prospect of any more Money to be coming out of *Dormer*'s Office. "*That this would be the last* "*Payment* (I give your Lordships the very Words) "*she was like to receive out of the Money paid into* "*the Hands of Mr.* Dormer, *for the Residue thereof* "*was in danger of being lost, by reason of the De-* "*ficiency in the Effects of Mr.* Dormer." Is this, my Lords, a Concealment of the Deficiency? A Payment of 1000 *l.* of the Noble Earl's own Money, in order that the Suitor should have no suspicion of a Deficiency!

But to go further, my Lords, we shall shew, that the payment of this Money did not proceed from any such low Motive, as, I may say, is uncharitably represented in this Article, but from a noble Mixture of Generosity and Compassion.

Mr. *Lockman*, my Lords, represented himself as an undone Man if he had not the Money: He first insinuated himself among the Noble Earl's Servants, as a Person under the utmost Distress; and the frequent Solicitations, which himself owns, are a strong Evidence of that Distress: When he had gained Access to the Earl, he told his Story in so moving a manner, not without Intimations of some desperate Resolution he might be forced to take if he had not the Money against the time, that, in pure Compassion to his Distress, the Noble Earl (whose Purse was always open to the Unfortunate) was prevailed with to order him the Money. And we shall prove to your Lordships, that how little sensible soever he now is of so great a Favour, yet at that time he express'd himself in Terms of one the most highly obliged; and I believe when our Witnesses to this Transaction come to be examined, they will leave Mr. *Lockman* very little Credit with your Lordships, and will wipe away the most remote suspicion of affecting any Concealment by this Transaction.

My Lords, The last Branch of this Article relates to a Declaration said to be made by the Earl in the Cause of *Harper* and *Case*, and an Order made therein for Mr. *Edwards* to enquire if there was likely to be a Loss of any Money deposited with Mr. *Dormer*.

My Lords, The particular Occasion and manner of that Declaration and Order have been fully stated by the Evidence we have already given of the several Judgments and Proceedings that have been against Mr. *Poulter* and the Marshal, which I shall not trouble your Lordships with a repetition of, it being sufficient for my Purpose in answering it as an Instance of Concealment to observe, that the whole Transaction was after the Accompts of the Masters had been laid before the Committee of Council, when it was too late, and to no purpose to affect any Concealment.

My Lords, The last Branch of the Charge I am now upon, relates to the making Orders for paying to several Suitors their whole Demand, out of the Effects of Mr. *Dormer*, without regard to that just Proportion to which the other Suitors were intitled: And the Case of *Edisbury* was mentioned for this purpose; tho' I did not observe the Gentlemen enter'd into any Proof of what was done in that Case.

My Lords, In Proof of this Article several Orders were read: But I appeal to the Evidence of Mr. *Edwards*, whether it did not appear, upon his cross Examination, that it was but in one Cause only where the whole Money was paid out; and whether that single Instance is a sufficient Proof of this Article, I must submit to your Lordships.

But, my Lords, the true Answer is this: Both the Noble Earl and Mr. *Edwards* doubted not but that the Deficiency would be made good, and proceeded upon that Expectation; nor can a stronger Evidence be given (and I desire it may be applied to some of the other Articles) that they were under this Persuasion, than Mr. *Edwards*'s making Payments without any Objection.

Especially, my Lords, when it is consider'd too, that Mr. *Lightboun*, who was so averse at first to any Contribution, has, in that Letter which

has been read to your Lordſhips, mentioned ſeveral of his own Schemes for making good the Deficiency.

And if there was a Proſpect of making good the Deficiency (as I humbly apprehend it is plain there was) it was very proper and natural to make the Orders in the manner they are now complain'd of. The nature of ordering Money out of Court makes it impoſſible the Suitors ſhould call for it all at once, but the ſame is order'd out by Degrees: And Mr. *Cottingham*'s taking an Aſſignment of *Chitty*'s Order, ſhews plainly, that it was expected Effects would in time come in to diſcharge that, and all other Demands.

I would not, my Lords, be underſtood by any thing I have offer'd, as if I intended to diſpute the Rule of Equity that has been laid down by the Managers, that where ſeveral Perſons have Demands out of one Common Fund that cannot anſwer the whole, there ought to be an Average in ſuch Caſe: But what I ſhall beg Leave to inſiſt upon is, That that Rule only holds place where the Quantum of what is left to anſwer is fix'd and certain. In this Caſe the Effects were daily coming in, and therefore a Declaration of an Average where there was likely to be no Deficiency, would not, in my humble Apprehenſion, have been adviſable or proper.

I beg leave, my Lords, to cloſe my Obſervations upon all the Articles relating to the Concealment of *Dormer*'s Deficiency, with ſubmitting it to your Lordſhips Judgment, if the whole Tranſaction does not ſpeak it ſelf to have been one continued Endeavour to ſecure to the Suitors their whole Demand, and to have been no more.

Mr. *Serj. Probyn.* My Lords, the Managers, when they entered upon theſe Articles, produced an Order made by the late Lord Chancellor, in the Year 1720, by which the Maſters were obliged to bring in their Accounts, which as they charge to have been concerted with other Views, and for very different Ends than at firſt appear, we think it will be extreamly proper for us to begin our Defence to that Part of the Charge with a Witneſs who is ready to ſhew your Lordſhips the real Deſigns the Impeached Earl had in calling for theſe Accompts; and his Evidence, we humbly conceive, will ſatisfy your Lordſhips that it could be for no other Purpoſe than that the Earl might the better know the true State and Condition of their reſpective Offices, in Order to find out a proper Method of redreſſing ſuch Grievances as were moſt apprehended at that Time. My Lords, it will appear by the Courſe of the ſame Witneſs's Evidence, that the other Order that was made upon them afterwards in *December* following, in as ſtrong Terms as the former, could be for no other Reaſon or Purpoſe than that his Lordſhip hath aſſigned in his Anſwer, that he might underſtand the State of the ſeveral Offices, ſo as to be able to apply proper Remedies to the Danger which was then dreaded. All this will appear yet more fully from the Evidence of another Witneſs, who is to inform your Lordſhips of the particular Directions the Noble Earl gave about the Manner of bringing in theſe Accompts, with the Names of the Cauſes of the reſpective Solicitors concerned in them, and alſo what the ſeveral Sums firſt paid in were, the Time when ſo paid in, and alſo when the ſame or any Part were paid out again, together with many other Particulars which his Lordſhip thought neceſſary for his more exact Information. It will be likewiſe made appear to your Lordſhips, how the Maſters were ſeverally conſulted with about this Matter, and that the Aſſiſtance of the Maſter of the Rolls was at length called in. But all the Maſters agreeing, and particularly Mr. *Holford* (who had been in the Office for twelve Years) that it was next to impoſſible to bring in their Accompts, as firſt directed, in any reaſonable Time; then it was, and not before, that the noble Earl condeſcended that they might bring them in a different Manner. Now, my Lords, as to the Suggeſtion that all this was only a Scheme, made uſe of to terrify the Maſters into a Contribution towards *Dormer*'s Sufficiency, give me leave to ſay it is impoſſible to collect the leaſt View of that Kind from the Evidence laid before your Lordſhips on that Head; for the Maſters who did contribute on this Occaſion, have all ſworn that they paid in their Money voluntarily, and without being any ways influenced by his Lordſhip's Threats or Perſuaſions; ſo far from that, that Mr. *Lightboun* (the only Maſter who refus'd concurring in this Contribution) made no other Objection at firſt to it, than that the Propoſal did not come from his Lordſhip, but from the other Maſters; for in that Caſe he declared, That, if it had come from the noble Earl himſelf, he might have had more Regard to it, and would have taken it into his Conſideration. So that we doubt not upon the whole, but it will plainly be made appear to your Lordſhips, that the conſtant Application which the noble Earl made from time to time to the Maſters for this Purpoſe, proceeded from no other View, than that as ſoon as he might be truly informed of the State of their Offices, he ſhould apply proper Remedies to whatever Abuſes he ſhould diſcover; and that as this was always his real Intention, ſo he would have put it effectually in Execution, had he not reſigned the Great Seal ſo ſoon.

Mr. *Com. Serj.* My Lords, we ſhall call a Witneſs to ſhew, that after the 500 *l.* apiece was paid, the Accompts were called for, it cannnot then be pretended, that this calling for; the Accompts was to terrify the Maſters to pay this 500 *l.* apiece.

The Time of the Payment of theſe five hundred Pounds was in *Auguſt*, theſe Accompts were called for in the Beginning of *November*.

Mr. *Cottingham* called.

Mr. *Serj. Probyn.* I deſire Mr. *Cottingham* would inform your Lordſhips whether any Directions were given to call in thoſe Accompts about *November*, 1721.

Mr. *Cottingham.* I did in *November*, by the Direction of the Earl, write a Letter dated the 7th *Nov.* 1721.

L. Ch. Juſt. *King.* Have you any Draught of that Letter?

Mr. *Cottingham.* I have a Draught, the Committee required me to leave the Letter with them.

Mr. *Lutwyche.* My Lords, we will do the noble Earl all the Juſtice we can; here are the Letters.

Mr. *Cottingham.* The firſt Letter is dated *Feb.* 14. 1720.

Mr. *Lutwyche.* Who is it directed to?

Mr. *Cottingham.* The Letter is directed to each Maſter, and this is the Letter.

SIR,

I Am commanded by my Lord Chancellor to ſignify to you, that you do with all convenient Speed lay before his Lordſhip an Accompt in ſeveral Columns.

1. Of the Name of the Cauſe.
2. The Solicitor or Agent.
3. The Date of the Order.
4. For what Purpoſe the Money was brought in.
5. How much was brought in.
6. When.
7. How much in Hand.
8. How much on Security.
9. How much paid out.

A diſtinct Account of the Securities.

1. Cauſe.
2. From whom the Security is taken.
3. What the Security is.
4. In whoſe Name taken.
5. For how much each Security.
6. The total of the ſeveral Securities in the ſame Cauſe.
7. In whoſe Hands lodged.

A diſtinct Accompt of Money paid out.

1. Cauſe.
2. By what Order, and of what Date.
3. When paid.
4. To whom.

Your very humble Servant,

14 *Feb.* 1720. *P. Cottingham.*

SIR,

BY my Letter of the fourteenth of *February* laſt, I ſignify'd to you my Lord Chancellor's Pleaſure; which was, that you ſhould with all convenient Speed lay your Accompt before his Lordſhip; (the Method whereof was to be in ſeveral Columns ſubſcribed at the Foot of that Letter.) I am now further to acquaint you, that his Lordſhip is very much ſurprized to find, that in all this Time no ſuch Accompt hath been laid before him: And therefore hath commanded me to tell you, that it is expected to be delivered in, on or before the laſt Day of this Term. And if this is not comply'd with, you will oblige his Lordſhip (though very unwillingly) to think of other Meaſures; which I doubt not but you will avoid, by a ready Complyance with what is a ſecond time required of you. And to the End there may be no Miſtake as to the Method of your accompting, I here ſubſcribe it again at the Foot of this Letter; and am,

Sir,

Your very humble Servant,

7 *Nov.* 1721. *P. Cottingham.*

To the beſt of my Remembrance, this Letter was delivered to ten of the Maſters.

Mr. *Lutwyche.* Did you read it to them?

Mr. *Cottingham.* No: I am going to give you an Account. My Lords, according to a *Memorandum* I kept at that Time of this Letter, it was delivered to ten of the Maſters; to Mr. *Rogers*, Mr. *Hiccocks*, Mr. *Fellowes*, Mr. *Lightboun*, Mr. *Bennet*, Mr. *Holford*, Mr. *Borrett*, Mr. *Godfrey*, Mr. *Conway*, and Mr. *Lovibond.*

Mr. *Serj. Probyn.* We deſire that the ſecond Letter in *Nov.* 1721. may be read.

Mr. *Cottingham.* The ſecond Letter is dated 7 *Nov.* 1721. Sir, by my Letter of the fourteenth of *February* laſt, I ſignify'd, *&c.* N. 47.

Mr. *Serj. Probyn.* By this it appears to be after the ſeveral 500 Pounds were paid in, the laſt 500 Pounds was paid in in *Auguſt* before, which ſhews that theſe Accompts were to be delivered in for no other Reaſon than that the Suitors ſhould have Satisfaction, as ſoon as a proper Remedy could be found.

Mr. *Common Serj.* I beg leave to make one Obſervation; here is ———

Mr. *Lutwyche.* If they have any more Queſtions to ask the Witneſſes, they may, the Obſerving is proper afterwards.

Dr. *Sayer.* I only beg leave to ask this one Queſtion, to be better informed. The Letter recites, it is written by the Command of my Lord Chancellor: I would ask whether my Lord Chancellor did give ſuch Directions?

Mr. *Cottingham.* Yes, my Lords, he did.

Mr. *Plummer.* If they have done with the Queſtion, I would ask Mr. *Cottingham* in the Words of his own Letter, whether the Earl of *Macclesfield* did oblige the Maſters to deliver in their Accompts in Purſuance of ſuch his ſaid Order?

Mr. *Cottingham.* Of the Letter of *November* 1721. I have kept no *Memorandum*; of the firſt ter I have.

Mr. *Plummer.* Whether that Letter of 1721. was delivered to the Maſters?

Mr. *Cottingham.* I believe it was.

Mr. *Plummer.* Then I deſire to know if, the Maſters did deliver in their Accompts?

Mr. *Cottingham.* I don't remember they did.

Mr. *Plummer.* I deſire he may be asked, if after this time that the 500 *l.* was paid in Obedience to the firſt Letter, there was afterwards any other Demand made upon the Maſters for more Money?

Mr. *Cottingham.* I know of no Demand made upon them, except the 500 *l.* apiece.

Mr. *Plummer.* I deſire he may be ask'd if he doth not remember Mrs. *Chitty*'s Affair, and if that was not after 1721?

Mr. *Cottingham.* The Buſineſs of Mrs. *Chitty* was but in *July* laſt.

Mr. *Serj. Pengelly.* I deſire he may be asked, whether ſince no Accompt was called for after this laſt Letter, whether he did not underſtand the Reaſon to be, becauſe he apprehended the Maſters would make good Mr. *Dormer*'s Deficiency?

Dr. *Sayer.* My Lords, I ſubmit it, whether that Queſtion is material as to what his Apprehenſion was; your Lordſhips are Judges only upon Evidence of Fact, and not upon his Thoughts or Apprehenſions.

Mr. *Serj. Pengelly.* Why were not the Accompts called for afterwards?

Mr. *Cottingham.* I really can't tell the Reaſon.

Mr. *Serj. Pengelly.* Whether he acquainted my Lord *Macclesfield* that the Maſters would make good the Deficiency?

Mr. *Cottingham.* I told your Lordſhips I did.

Mr. *Serj.*

Mr. *Serj. Pengelly.* Therefore I desire he may be asked, Whether after that Time he received any Orders to send to the Masters to give in their Accounts?

Mr. *Cottingham.* I can't speak particularly as to the Times.

Mr. *Serj. Pengelly.* Whether those other Measures, intimated in his Letter to be taken, were not signify'd to him by my Lord *Macclesfield* to be, that the Cash should be taken out of their Hands?

Mr. *Cottingham.* My Lord called me into his Study, and directed me to write this Letter; all he said was, he was sorry that the Masters had not brought in their Accompts as he required, and that if they did not bring them in by the last Day of the Term, he said he would take other Measures: My Lord did not say to me what those other Measures were, whether it was to make an Order in Form, and then he should expect they would yield Obedience to it; all the Earl told me was no more than to write to the Masters, that he would take other Measures, what those other Measures were I do not know, but I apprehended it to be an Order his Lordship would make for obliging them to it.

Mr. *Snell.* I desire he may be asked, whether he did not himself apprehend by those other Measures, the taking the Money out of the Masters Hands?

E. of *Macclesfield.* My Lords, I submit it whether a Question of this kind is proper; he hath been asked what those Measures were; he hath told your Lordships that he knows not, but he has said what he apprehended they were; if now any Fact occur to him that may give Reason for apprehending otherwise, let him acquaint your Lordships with it.

Mr. *Cottingham.* Your Lordship said you would take other Measures; what I apprehended was, your Lordship would make an Order in form if they did not comply with that Letter.

Dr. *Sayer.* My Lords, I beg Leave to ask one Question: Whether the Masters, after this Letter was brought to them by Mr. *Cottingham*, did not represent to him the Difficulty of making up their Accompts?

Mr. *Cottingham.* There were several Particulars mentioned in the former Letter, there was the Causes to be named, *&c.* Some of the Masters told me they had not kept their Accompts so as to answer all the Particulars in the Letter; others said it would take up a great deal of Time; others that the Manner required was very difficult and tedious, and that it was almost impracticable, so many *Items* were contained in the Letter, that they seemed to say it could not be done.

Dr. *Sayer.* I desire he may be asked, whether he hath any Paper of the Method of Accompting required by the Committee, that his Majesty was pleased to direct to look into this Matter?

Mr. *Cottingham.* I have not a Copy of it here. There is an original Order, if the Masters please to produce it, I left it with Mr. *Lightboun.*

Mr. *Com. Serj.* If the Gentlemen have it, I hope they will produce it.

Mr. *Cottingham.* The original Order is of the third of *November* last, which I left signed by the Earl.

E. of *Macclesfield.* This will come more properly under another Article: The Gentlemen, the Masters, will take Care to look it out that it may be ready by that Time.

Mr. *Cottingham.* My Lords, I have now found it; I can't say it is a true Copy, dated the third of *November*, 1724. signed *Macclesfield*, C. *Let the several Masters*------- Am I to read it, my Lords?

Mr. *Lutwyche.* What, the Order of the third of *November* last?

Mr. *Com. Serj.* This Order cannot relate to this Matter. We are now upon the second Letter in 1721. The Letter is framed in so strong Terms, that it can't be supposed but the Earl was very much in Earnest, and it can't be insinuated as if intended to make the Masters comply in the Affair of Mrs. *Chitty* and *Lockman*, because that Transaction was but in *July* last.

E. of *Macclesfield.* I desire, my Lords, to go a little back again, upon recollecting, that the Question the honourable Manager was pleased to ask, about his giving me an Account that the Masters would make good the Deficiency, carries an Insinuation, as if this Method were dropp'd upon it: I desire he would inform your Lordships, whether he can be sure of the exact Time, whether this was before or after *November*, 1721.

Mr. *Cottingham.* I really can't be sure of the exact Time.

E. of *Macclesfield.* How near was it to Mr. *Dormer's* going out, and Mr. *Edwards's* coming into his Office?

Mr. *Cottingham.* Mr. *Edwards* came in in *May* 1721. It was near his coming in.

E. of *Macclesfield.* I desire to know whether you can recollect the Time you did tell me of it? Whether it was after *November* 1721. or before?

Mr. *Cottingham.* I several Times mentioned it to your Lordship before *November* 1721. and I believe several Times after, but that I cannot certainly tell, nor can I be particular to a Day.

E. of *Macclesfield.* Did you ever hear of it before the 500 *l.* a-piece was paid?

Mr. *Cottingham.* No, my Lords, it was after they had paid the 500 *l.* a-piece; but, my Lords, I don't know that they agreed to make good the Deficiency, I only told my Lord I thought they intended it.

Lord *Trevor.* He hath proved two Letters sent by the Direction of the noble Earl. As to the first Letter he kept a *Memorandum* as to the Time, but no *Memorandum* of the second. I would ask him as to the Time, when the Masters made that Representation of the Difficulty of giving in the Accounts, whether it was before or after the second Letter, or between the first and the second Letter?

Mr. *Cottingham.* To both the Letters they still made a Representation of the Difficulty.

Lord *Trevor.* Then I desire to ask one Question more, that is, Whether after the Representation made after the second Letter they owned that they had received the second Letter?

Mr. *Cottingham.* I verily believe that the second Letter was deliver'd to the Masters as the other was, but I have kept no *Memorandum* of it; I verily believe the Masters had it; I can't tell; I took it for granted they had it; I trusted one of my Clerks with it to take a *Memorandum*; I enquir'd after him; he hath been gone from me, and I can't find him out: I verily believe it.

I have

I have no Reaſon to doubt but I gave it; the Maſters know that.

Mr. *Serj. Probyn.* If Mr. *Holford* is called, he will explain it; on his croſs Examination he admitted a ſecond Letter was ſent for him, and left in the publick Office: That appear'd in his croſs Examination.

Mr. *Strange.* It might not be improper, this Letter is before the honourable Managers, to enquire if they had it not from ſome of the Maſters.

Mr. *Cottingham.* No, they had it from me.

Mr. *Holford* called.

Mr. *Serj. Probyn.* I deſire he may be ask'd, whether he had not any Notice of the Letter in *November* 1721. whereby the Maſters were obliged to bring in their Accounts?

Mr. *Holford.* Indeed, my Lords, I do not remember that Letter.

Mr. *Serj. Probyn.* I deſire he may be asked, whether he remembers a ſecond Letter about Accompts?

Mr. *Holford.* Whether it was a Letter or a Meſſage I cannot tell; but between the firſt Accompt in *February* 1720. and the laſt in *November* laſt, I was called upon to Accompt, and had prepared it; but this ſecond Letter dated in *November* 1721. I do not remember any thing of it.

Mr. *Serj. Probyn.* How long was it after the Payment of the 500 *l.*

Mr. *Holford.* It was a good while after.

Mr. *Serj. Probyn.* That is all we contend for.

Mr. *Holford.* I believe not above a Year before the laſt.

Mr. *Serj. Pengelly.* I deſire he may be asked, whether after this Letter, ſuppoſed to be in *November* 1721. his Accompt was ever demanded of him?

Mr. *Holford.* I did deliver to my Lord an Accompt of *November* 1721. and I think a Year before *November* laſt, in purſuance of either a Letter or a Meſſage, I don't know which, my Lord required an Account; then I deliver'd an Account of Money, not of Securities in my Hands.

Mr. *Serj. Pengelly.* Whether that was an Account in purſuance to that Letter, demanding and requiring it of him?

Mr. *Holford.* Not as I know of, indeed.

Mr. *Lutwyche.* My Lords, as ſome mention hath been made of it, I think it may be proper to know what he can ſay to it, whether he ever promiſed to make good the Deficiency of Mr. *Dormer?*

Mr. *Holford.* I never did my Lords.

Mr. *Cottingham* called again.

Mr. *Serj. Probyn.* I deſire he may inform your Lordſhips what he knows in relation to the Payment of the 1000 *l.* to *Lockman*, and what Converſation he had with Mr. *Lockman?*

Mr. *Cottingham.* About the beginning of *July* laſt, to the beſt of my Remembrance, Mr. *Lockman* told me, that Mrs. *Chitty* had an Order upon Mr. *Edwards* the Maſter, to pay her 1000 *l.* That ſhe had been with the Maſter, but could not get the Money, and that he had ſpoke to my Lord *Macclesfield* about it, and the Earl had promiſed to ſpeak to the Maſter. —— And he deſired me to ſpeak to the Earl concerning it: I promiſed I would, and accordingly I did; he ſent me to the Maſter. When I came to him, I ſpoke to him of it; he ſaid he had no Money; I informed the Earl of it; the Earl ſaid he could not tell what to do. I informed Mr. *Lockman* of it; he ſeemed to be under the greateſt Concern, and ſaid, if he had not the 1000 *l.* he was undone; he was going to marry Mrs. *Chitty*, and Mrs. *Chitty* would not marry him, unleſs his Debts were paid, and ſhe had given him this 1000 *l.* to pay his Debts. He had compounded his Debts, and he repeated it over and over again, that if this 1000 *l.* was not paid, he was undone.

I have not ſeen a Gentleman in a greater Diſtreſs than he appeared to be; on which I told him, if he would pleaſe to have a little Patience I would conſider the Thing, and ſee what could be done. I did conſider it; and it came into my Mind that Mr. *Lightboun* had not paid his 500 *l.* I acquainted the Earl with it, and ſaid Mr. *Lightboun* had not paid his 500 *l.* and if he could prevail upon him to do it, I thought it would be eaſy to get 50 *l.* a-piece of the other Maſters, and that would do.

By the Earl's Order, I attended Mr. *Lightboun*, and told him that the Earl expected him to pay his 500 *l.* but I could not get a Penny from him; ſo he refuſing to pay the 500 *l.* that Propoſal of the 50 *l.* a-piece dropt: I acquainted the Earl of this, he ſaid he could not tell what to do. I acquainted Mr. *Lockman*, and told him I had done all that was in my Power to do; and that it was not to be done, unleſs he expected I ſhould pay it out of my own Pocket, which I was ſure he could not expect: When I told him that, he ſaid, I am undone, Mrs. *Chitty* will not marry me, his Royal Highneſs the Prince of *Wales* will not protect me, my Creditors will throw me into a Gaol, there I muſt rot and ſtarve. He made uſe of ſo many extravagant Expreſſions, and was under that Pain and Agony of Mind, that I apprehended he would do himſelf a Miſchief. I could ſay nothing to it, I had done all for an unfortunate Gentleman that poſſibly I could do. Two or three Hours after this, when I was at Dinner, he came to me again, and told me the Earl wanted to ſpeak with me immediately; he begged of me of all things in the World to go; on that I went to the Earl. The Earl was pleaſed to ſend for me into an inner Room, and ſaid, that he was teazed out of his Life by Mr. *Lockman*; I told him I was ſo too, I had no Reſt Night nor Day for him; I then repreſented to the Earl his own Story in Subſtance as he had told me. The Earl ſaid he was ſorry to find Mr. *Lockman* brought to that State and Paſs. I told the Earl I was afraid of the Conſequence, I did not know what a deſpairing Man might do, he ſeemed to be in the utmoſt Deſpair: Upon that the Earl ordered me to pay him the 1000 *l.* and ſaid, he would pay it me again. When I ſaw Mr. *Lockman*, I told him I had now received Orders to pay him; I had not the Money by me, but he ſhould have it in a little time, three or four Days would break no Squares; he ſaid, I am ſatisfy'd, provided it is paid. I ſaid I had it not by me, I muſt borrow it; I did ſo, and on the thirtieth of *July* I paid him the 1000 *l.* I think it was three or four Days after, he asked me what Reward he ſhould give me; I told him that his Diſtreſs was ſo great that he ſhould not give me

any Reward; I would not take a Penny of him, and I never had the Value of a Diſh of Coffee of him; I paid him the Money, I borrow'd it for that Purpoſe. Says I, Mr. *Lockman*, it appears to me that you are in great Diſtreſs, I will borrow the Money. I did borrow the Money, and paid Intereſt for it, meerly to ſupply the Gentleman.

Mr. *Serj. Probyn.* I deſire he may be asked if he knows of any other Sum of Money demanded by Mr. *Lockman* after this 1000 *l.* was thus agreed to be paid him?

Mr. *Cottingham.* After this Money was agreed to be paid, and, I think, the ſame Evening, I received this Letter from him, which any Gentleman that will may read. (*The Letter read.*) Sign'd *Lockman. Monday* Evening.

SIR, *Monday* Evening.

I Am very ſenſible of the Favour you have already done me, in promoting what my Lord in ſo affable a Manner was pleaſed to promiſe me, which Kindneſs I ſhall gratefully acknowledge all my Life: But as there is ſo great a Neceſſity, I hope you will pardon me the ſooner in being once more troubleſome, to beg of you to remind his Lordſhip of *letting Mrs.* Chitty *have the other* 574 *l. which my Lord was pleaſed to ſay we ſhould have*, and without which, Mrs. *Chitty*, who hath neither out of Chancery nor her Eſtate received any money this two Years, cannot ſpare me *the whole* 1000 *l.* As my whole Eaſe and Quiet depends on your kind Aſſiſtance, I muſt beg, Sir, once more to uſe your Intereſt to let us have it on *Thurſday* Afternoon, between Four and Five, when Mrs. *Chitty* intends to wait on you for the other. I ſhall be very proud on all Occaſions to ſhew with how much Gratitude and Eſteem I am,

SIR,
Your moſt oblig'd
humble Servant,
A. Lockman.

Dated *Monday* Evening, no other Date. My Lords, upon the Receipt of this Letter, the very ſame Evening I laid it before the Earl, I told him that it appeared by this he wanted 570 *l.* more. The Earl ſaid he was very much ſurpriſed at this Gentleman's ſending ſuch a Letter, he did not know what he meant by 570 *l.* more that he promiſed, and, in ſhort, told me he could advance no more.

Mr. *Strange.* I deſire he may be asked, whether he had any Diſcourſe with Mr. *Lockman*, relating to this 570 *l.* after this Letter?

Mr. *Cottingham.* I had a Diſcourſe with him ſome Time afterwards about the Letter.

Mr. *Serj. Probyn.* I deſire to ask him, whether after this Letter Mr. *Lockman* came to know what Anſwer he would give him?

Mr. *Cottingham.* Mr. *Lockman* came on the *Thurſday* following, being the thirtieth of *July*; Mrs. *Chitty* did not come: And then I told him that I had received his Letter, and had laid it before the Earl, and that the Earl underſtood not what he meant by it, that this was a growing upon him, and he would not pay a Penny more; I thought he had been very generous to him, and I told him I wonder'd what he meant.

Mr. *Serj. Probyn.* I beg Leave to take Notice, and your Lordſhips will pleaſe to recollect, that *Lockman* ſwore he never made any Demand of any Money beſides the 1000 *l.*

Mr. *Lutwyche.* That is to be obſerved when the Witneſs is examined throughout.

Mr. *Serj. Probyn.* I ask whether Mr. *Lockman* did petition my Lord Chancellour for this Sum of Money?

Mr. *Cottingham.* I don't remember Mr. *Lockman* petitioned. I believe not.

Mr. *Serj. Probyn.* Or Mrs. *Chitty?*

Mr. *Cottingham.* Yes, Mrs. *Chitty* did, before the Payment of this 1000 *l.* as I remember.

Mr. *Lutwyche.* Was there any Petition preferred before the Payment of the 1000 *l.* becauſe the Money was not paid according to the Order, which I think was dated *March* 17, 1723.

Mr. *Cottingham.* Yes: I told you ſo before.

Mr. *Lutwyche.* I deſire to know whether there was not a general Meeting of the Maſters before my Lord *Macclesfield* order'd him to pay the ſaid 1000 *l.* to Mr. *Lockman?*

Mr. *Cottingham.* Yes, there was.

Mr. *Lutwyche.* Whether it was not after the meeting of the Maſters, when it was propos'd to Mr. *Lightboun* to pay his 500 *l.* and the others 50 *l.* a-piece?

Mr. *Cottingham.* Yes, I believe it was.

Mr. *Plummer.* Mr. *Cottingham* hath given a long Evidence, he hath told you on the Application for this 1000 *l.* he recollected that Mr. *Lightboun* had not paid his 500 *l.* and if he could get him to pay his 500 *l.* and the other Maſters 50 *l.* a-piece, that would make up the 1000 *l.* The Queſtion I would ask is, if Mr. *Cottingham* had then any Orders from the Earl of *Macclesfield* to convene the Maſters?

Mr. *Cottingham*, No, I had then no Orders.

The firſt Order I had to convene the Maſters together, was on a *Monday*, before Payment of the 1000 *l.* as I remember: Mr. *Edwards* was then at my Lord's Houſe, and my Lord ordered me to ſpeak to him to convene the Maſters, and they were convened, and came to my Lord's Houſe that Evening, as I was told, but that was after the Money was ordered to be paid.

Mr. *Lutwyche.* I deſire Mr *Cottingham* may look upon that, and tell us whether it is his Hand.

Mr. *Cottingham.* This is my Hand (*reads.*) His Lordſhip can do nothing in it at preſent.

Mr. *Lutwyche.* Do you remember any thing of this Petition being offered?

Mr. *Cottingham.* Yes, I do remember it; it is a Petition of Mrs. *Chitty* preferred to the Earl to be paid 1000 *l.* This Petition came to my Hands, the Earl ſaid, he could do nothing in it at preſent, and this Order writ upon it is my Hand.

Mr. *Lutwyche.* Whoſe Petition is it?

Mr. *Cottingham.* The humble Petition of the Defendant *Elizabeth Chitty*, Mrs. *Chitty*'s Petition.

Mr. *Lutwyche.* What is the Anſwer writ upon the Back.

Mr. *Cottingham.* His Lordſhip can do nothing in it at preſent.

Dr. *Sayer.* We apprehend it is of Conſequence to have this Meeting cleared. I deſire he may be asked, whether he knows of any meeting of the Maſters, and when, and what was done there?

Mr. *Cottingham.* Yes, there was a meeting that Evening, but I was not preſent.

E. of *Macclesfield*. By the Questions they have asked, they have taken it for granted as if he knew what was done at that meeting of the Masters; I desire to know whether he was present or not at that meeting of the Masters?

Mr. *Cottingham*. I was not, I said so before.

E. of *Macclesfield*. Then I think he says the Day of Payment of this Money was on the thirtieth of *July*.

Mr. *Cottingham*. Yes.

E of *Macclesfield*. What Day was the Masters called upon to meet?

Mr. *Cottingham*. I can't be positive, but I think it was the *Monday* before Payment of the 1000 *l*. This meeting of the Masters was between the Order and the Payment of the Money.

Mr. *Plummer*. I believe there is a Mistake in this Matter; I desire to know of Mr. *Cottingham* whether Mr. *Edwards* was not by when he acquainted the Earl with this Demand, and proposed to him the Method of paying it by Mr. *Lightboun*'s 500 *l*. and the other Masters 50 *l*. a-piece.

Mr. *Cottingham*. No, no.

Mr. *Plummer*. I desire it may be cleared then, and to ask him if Mr. *Edwards* was not by when he acquainted my Lord *Macclesfield* of the Demand of the 1000 *l*.

Mr. *Cottingham*. No, Mr. *Edwards* was not by: When this 1000 *l*. was directed to be paid, Mr. *Edwards* was in the House, but the Earl did not see him; when I spoke to Mr. *Lightboun* for the 500 *l*. it was only between Mr. *Lightboun* and me, Mr. *Edwards* was in the House when my Lord spoke to me, and ordered me to Mr. *Edwards* to convene the Masters together.

Mr. *Serj. Pengelly*. I desire he may be asked whether the 1000 *l*. was paid before he made the Proposal to my Lord *Macclesfield*, that Mr. *Lightboun*'s 500 *l*. and the other Mastres 50 *l*. would pay it?

Mr. *Cottingham*. The Money was paid afterwards, I have told you so before.

Mr. *Serj. Pengelly*. Before the 1000 *l*. was paid, whether did not you hear that the Masters had refused to advance the further Sum of 50 *l*. a-piece?

Mr. *Cottingham*. Yes, I told you so before, that Mr. *Lightboun* would not pay his 500 *l*. so the other Masters did not pay their 50 *l*. a-piece; this was some time before the Payment of the 1000 *l*.

Mr. *Elphinstone* called.

Mr. *Strange*. My Lords, we desire Mr. *Elphinstone* to give your Lordships an Account of what he knows of the Application of Mr. *Lockman* for this 1000 *l*.

Mr. *Elphinstone*. My Lords, Mr. *Lockman* and I often had Conversation together before he received the 1000 *l*. upon the Account of Mrs. *Chitty*. He told me often that he had compounded his Debts with his Creditors, and if he could not receive the 1000 *l*. against a certain Day, on which he had engaged to pay it, he should be ruin'd and undone; and some time after he told me, that his Creditors had been with much Difficulty brought to give him some few Days longer for Payment of the Composition, and that if he had it not then, he should be ruin'd and undone for ever; swearing by the blessed Name of God, that that Disappointment would be a Means of breaking off the Match with the Lady.

Mr. *Serj. Probyn*. Go on.

Mr. *Elphinstone*. I can't be positive as to the Day, whether it was the same Day that he received the 1000 *l*. or a Day or two before; but I then heard the noble Earl declare to him, that in Pity and Compassion to his Circumstances, and the great Difficulty he then laboured under, he the said Earl had given Directions to Mr. *Cottingham* to pay him the 1000 *l*. and about two Hours after, or something more, Mr. *Lockman* came to me, and with abundance of Joy told me how much obliged he was to the noble Earl, for that he had relieved him in his Circumstances, by giving Mr. *Cottingham* orders to pay him the 1000 *l*. He seemed to express this with an uncommon Pleasure, and did not at all doubt it would be agreeable to Persons of the highest Distinction and Character to know it, and that he would make them acquainted with it. My Lords, I think it was on *Friday* last, in a Conversation with me and others here in the Painted Chamber, he declared he would rather have given two or three hundred Guineas or Pounds, than have been examined on this Occasion; and said, damn it, it hath happen'd, thro' a silly Word or two I dropt to the Solicitor on the other Side. I asked him what it was, he said it was his telling him he had received the 1000 *l*. for Mrs. *Chitty*, by the noble Earl's Direction.

Mr. *Serj. Probyn*. After this Money was paid, whether he hath had any Discourse with him, and whether it was owned by him that it was out of the Earl's own Poket?

Mr. *Elphinstone*. Yes, many and many a Time, and with great Respect.

Mr. *Plummer*. I desire the Council for the noble Lord may explain one thing: I think the Witness said, Mr. *Lockman* said he had rather give two or three hundred Pounds than have been examined. Whether the Witness doth apprehend by what Mr. *Lockman* said, that he comes an unwilling Witness?

Mr. *Elphinstone*. No, my Lords, I did not say that Mr. *Lockman* was an unwilling Witness, but that he told me and others, he had rather have given two or three hundred Guineas or Pounds, than have been examined on this Occasion.

Mr. *Serj. Probyn*. We shall give your Lordships no further Evidence on this Article; we shall now proceed to the seventeenth Article, which charges the Earl of *Macclesfield*, that in Order to conceal the Deficiency in *Dormer*'s Office, and to prevent any publick Enquiry, he did from time to time, in Violation of the Trust reposed in him, make Orders on Mr. *Edwards* for Payment of the Money belonging to several particular Suitors, which had been lodged in the Hands of Mr. *Dormer*; in Obedience to which Orders several Sums were paid, without Regard to, or Consideration of the Proportion which the rest of the Suitors were entitled to, out of the Effects of the said Mr. *Dormer*, whereby many of the said Suitors lost the Benefit of their proportionable Share, to which in Justice they were entitled.

The Crime supposed in this Charge is denied by the Earl in his Answer; he had no certain Knowledge what Mr. *Dormer*'s Estate would come out to be; but he was under a full Persuasion that Effects would come in in due Time, to make full Payment; and that the only Reason why they were not paid in an Average, was because no Application was made by any of the Suitors for that Purpose.

Mr. *Com.*

Mr. *Com. Serj.* As to the ſeventeenth Article, your Lordſhips obſerve there was a full Perſuaſion both in the noble Earl and Mr. *Edwards*, that there would be ſufficient to pay every one; beſides I think he himſelf made not above one Order, not more than this one in the Caſe of *Chitty*; your Lordſhips will pleaſe to obſerve, from the Evidence of Mr. *Edwards*, that the noble Lord who made theſe Orders was firmly of an Opinion, from the Accompts he had received, that the Deficiency would be made up, ſo likewiſe Mr. *Edwards* was then under the ſame Perſuaſion: We ſhall reſt it here, that it was no manner of Fault, under theſe Apprehenſions, to make ſuch an Order as that was.

Mr. *Robins.* If your Lordſhips pleaſe, there is in the Cloſe of the ſixteenth Article a Declaration, ſuppoſed to be made by the Earl of *Macclesfield*, then ſitting in Court, I had the Honour to be in Court when the Declaration was made: As I had the Honour to be in Court; at that Time, I apprehend that what he ſaid was——

Mr. *Plummer.* If the Gentleman ſpeaks as Council, he ſtands in a proper Place, but if he comes as an Evidence, I beg he may come to the Bar and be ſworn; I humbly appeal to your Lordſhips if it is not proper.

Lords. Ay, Ay.

Dr. *Sayer.* If the Gentlemen think it proper to inſiſt upon it, the Gentleman is ready to be ſworn.

Mr. *Com. Serj.* The Gentleman's Character is ſo unexceptionable, that we hope the Learned Gentlemen will not put this Difficulty upon him of taking an Oath in a Cauſe, wherein he is Council.

Mr. *Plummer.* My Lords, I inſiſt upon it, becauſe then I ſhall have the Liberty of asking ſome Queſtions which I apprehend I have not now.

Mr. *Serj. Probyn.* My Lords, we ſubmit it upon the Evidence that hath been already given, he himſelf did declare then, when it came before him regularly, he would examine into it; and the firſt Opportunity this came before him in Judgment, he then put it into a Method, and accordingly referred it to a Maſter, and all proper Meaſures were taken.

Mr. *Com. Serj.* My Lords, we ſhall, with your Lordſhips Permiſſion, now proceed to lay before you what we have humbly to offer in Defence of the noble Earl as to the 18th Article. The Charge therein contained is in Effect, that tho' the Earl knew, that the Maſters of the Court might and did diſpoſe of, and traffick with the Effects of the Suitors; and tho' Propoſals were made for remedying of it, yet the Earl neglected to enquire into the Accompts of the Maſters, permitted, and encouraged them to employ, and traffick with the Effects of the Suitors, and took no Care that thoſe Effects ſhould be placed out, ſo as to prevent ſuch Practices of the Maſters, or that they ſhould give ſuch Security as was propoſed; and this is charged to be done with a corrupt View, and Intention of making an unlawful Gain by the Sale of thoſe Places, and to keep up the Price of them.

The Proof of theſe Matters depends intirely upon the Teſtimony of Mr. *Lightboun*, Mr. *Holford*, and Mr. *Kynaſton*, with the particular Repetition of whoſe Evidence, I ſhall not preſume to trouble your Lordſhips, after ſo much Time has been already ſpent, but ſhall beg Leave to obſerve upon the whole, that there is not the leaſt Evidence to ſupport that Part of the Article, whereby the Earl is charged with permitting and encouraging the Trafficking with the Suitors Effects. So far from it, my Lords, that the quite contrary appears from the Evidence which Mr. *Lightboun* has given upon this Article. He has inform'd your Lordſhips, that when a Propoſal was made, in order to the making good the Deficiency in *Dormer*'s Office (which the Earl had confeſſedly ſo much at Heart) that each Maſter ſhould out of the Suitors Effects in his Hands, place out a Sum of Money, the Intereſt whereof ſhould be applied for that Purpoſe; the Earl would not give the leaſt Countenance to that Practice, by coming into the Propoſal; but in plain Terms declared he neither could, nor would, give any Encouragement or Direction for the Diſpoſal of the Suitors Effects, for any other Purpoſe than their own Benefit.

My Lords, the Gentlemen of the Houſe of Commons are ſo ſenſible of the Defect of their Evidence as to this Point, that they ſeem not to rely upon it, but are forced to fly to Implication for Aſſiſtance; and your Lordſhips are told that this Part of the Charge is a Conſequence of the Earl's not having taken Care that the Suitors Effects were ſo placed out, as to put it out of the Power of the Maſters to make ſuch an Uſe of them; and that this Neglect amounts to a Permiſſion and Encouragement to the Maſters, to diſpoſe of and traffick with them as they have done.

My Lords, if this Part of the Article is to be conſidered as a diſtinct ſeparate Charge, it is ſo obvious, of how dangerous a Conſequence it would be to admit ſuch argumentative Evidence only as a Proof of it, that I apprehend I need not trouble your Lordſhips with ſaying any thing more to it; if it is to be looked upon as a Conſequence only of ſome other Part of the Charge, as a Miſchief ariſing from the Neglect of putting thoſe Effects of the Suitors out of the Power of the Maſters to make ſuch Uſe of them, I am ſomething at a Loſs to know why it is made a diſtinct ſelf-ſubſiſting Charge; it may perhaps by that Means ſwell the Bulk of the Article, but we humbly ſubmit it to your Lordſhips Conſideration, whether it at all increaſes the Weight of it.

My Lords, the Charge in this Article is not founded upon a bare Neglect of the Earl, upon an Omiſſion only, of doing what it is conceived he ought to have done, for the Prevention of this Misbehaviour of the Maſters; that perhaps was thought too ſlight a Ground for an Article of an Impeachment, eſpecially when the Neglect here complained of does not conſiſt in the not redreſſing any particular Grievance, pointed out by the Complaint of any of the Suitors of the Court, but in the not making general Orders for the Reformation of the Maſters. Perhaps, my Lords, it might be thought, that ſuch a Charge would have been ſufficiently anſwered, by alledging, as the Truth is, that the Maſters have only been continued by the Earl in the ſame Degree of Truſt and Power in which he found them, and with which they were inveſted long before he preſided in that Court: It may be too, my Lords, it might be conſider'd, how wide and dangerous a Field for Impeachments and other Proſecutions would have been opened, by making

it criminal in every one who had the Superintendency of an Office, barely to neglect, or omit, the introducing ſuch new general Orders and Regulations, as ſeemed to carry a Probability of preventing the Abuſes of the under Miniſters of ſuch Office; and therefore it is, my Lords, as it may be preſumed, that the Earl's Behaviour in this Reſpect is alledged to be fraudulent, and unjuſt, and with an Intention of making unlawful Gain to himſelf, by the Diſpoſal of thoſe Offices, and with a corrupt View and Intention to keep up the Price of them: So that it is not Remiſsneſs, or Negligence that the Earl ſtands here accuſed of, but Fraud and Corruption, and if this is not made out, we muſt humbly ſubmit it to your Lordſhips Judgment, whether or no this Article does not fall to the Ground?

But what Proof, what Evidence has been offer'd for that purpoſe? None, my Lords, that I remember; but your Lordſhips are left to collect it, by way of Argument, from the Earl's not having made uſe of proper Expedients to prevent this ill Practice; the Maſters, by that means, were more at Liberty to make a Profit out of their Offices, which for that Reaſon ſold at higher Prices, and therefore the Earl muſt be guilty of this Neglect with that View; a ſevere (tho' not a ſtrict) Conſequence indeed! Is the Proſpect of Gain, from hence, ſo certain, as to tempt ſo ſtrongly? And are there no other Reaſons apparent why the Earl ſhould defer his Regulations in this Matter? I need not put your Lordſhips in mind of the great Uncertainty of a Continuance in that high (but ſlippery) Station: And as the Profit ſuppoſed to be in View, depends upon the Death or Alienation of the Maſters, which ſometimes do not happen in a long Interval of Time, when this Uncertainty is added to the other, I appeal to your Lordſhips, whether it can be eaſily imagined, that any, even the moſt greedy Perſon, allowing him only to be in his Senſes, could be prevailed upon to hazard his Reputation and Quiet, upon ſuch diſtant, ſuch uncertain Hopes; eſpecially, my Lords, if the Neceſſity of ſo harſh a Concluſion be excluded, by its appearing that there were other Matters, which might probably enough be the Reaſon, or Occaſion of the Earl's not immediately entering upon theſe Regulations.

It appears, by what Mr. *Lightboun* has ſaid, that the Earl was very willing and deſirous of having theſe Matters regulated; and that when he firſt informed the Earl that he had ſomething to offer to his Conſideration in relation thereto, the Earl ſeemed very glad, and mightily pleaſed with the Propoſals, and gave him all due Encouragement.

It appears, my Lords, that after ſome time taken by Mr. *Lightboun*, to diſcourſe the Maſters upon this Head, he wrote a Letter to the Earl, containing ſeveral Propoſals for the regulating the Affairs of the Maſters; and your Lordſhips will obſerve the times and manner of the Earl's ſending for and preſſing the Maſters to bring in their Accompts, which, notwithſtanding the different turn that has been endeavour'd to be given to it, we humbly inſiſt upon it, appears to have been done, in order the better to enable the Earl to judge of and regulate theſe Matters.

As there were Propoſals for regulating the Conduct of the Maſters, in reſpect of the Suitors, ſo ſeveral Grievances, which the Maſters were ſuppoſed to labour under, and in which the Suitors too were ſuppoſed to be concerned, were repreſented to the Earl; and, amongſt others, that of Money being order'd to be paid into the Hands of the Uſher of the Court, inſtead of the Maſters; which was repreſented as a thing of ill Conſequence, and dangerous to the Suitors of the Court, as well as injurious to the Maſters. It appears likewiſe, that it was thought proper, if not neceſſary, to take all theſe Matters into Conſideration together, that the intended Regulation might be entire, and not by peace-meal; and Mr. *Lightboun* himſelf was of that Opinion, as well as Mr. *Holford*. And tho' it is alledged, that the Earl was credibly inform'd that the ſufficiency of ſome of the Maſters was much ſuſpected, and conſequently, that a more immediate regard ſhould have been had to what concerned the Effects in their Hands; yet when your Lordſhips conſider how that ſtands upon Mr. *Lightboun*'s Evidence; that it was only a general Intimation, without naming any particular Perſon, and that Mr. *Lightboun* declared he had no certain Ground for ſuch ſuſpicion; it will not, we hope, be thought a Fault not to ſingle out that Part of the intended Regulation; eſpecially when the ſame Witneſs informs your Lordſhips that it was as impracticable for the Maſters to have given an adequate, that is, a proper Security, as for the great Officers of the *Exchequer*, or the Treaſurers of the *South-Sea*, or other great Companies to do ſo. And your Lordſhips will be pleaſed to think it well deſerves Conſideration, whether it was in the Earl's Power to compel the Maſters to give even ſuch Security as they could; and if it ſhould be ſaid, that if they would not have complied, he might have order'd the Money out of their Hands; it will require time to conſider where, in ſuch Caſe, he muſt have placed thoſe Effects. It would have been as extraordinary to have required Security from the Maſters which came in afterwards, and ſo to have put them upon a Foot different from the others, when it was under Conſideration how to ſettle the whole. But, my Lords, the Event has ſhewn that there was not ſo much occaſion for ſo ſpeedy a Precaution in this Matter, for the Purpoſe for which it was then principally intended, which was the preventing the Maſters from embezzling the Securities of the Suitors in their Hands, ſince there is no occaſion of Complaint in that reſpect, they having been all deliver'd up, and the Deficiencies which have happen'd have been in the Caſh in their Hands, of which there was then ſo little apprehenſion or likelihood, that the preventing it was one of the things the leaſt under Conſideration. So ſhort ſighted and uncertain is human Prudence! So different the Judgments made of things in Proſpect only, from what they are in Experience! I make no Queſtion but your Lordſhips will have a due regard thereto, and make all equitable Allowances on that Account.

Your Lordſhips have been further inform'd, that, in order to ſettle theſe Matters, ſeveral Meetings were had, and, amongſt the reſt, one very ſolemn one, at which were preſent both the Earl and the Maſter of the Rolls. I need not trouble your Lordſhips with a Repetition of what paſs'd there, it is ſufficient to obſerve, that nothing being ſettled, the Earl, whoſe Mind was intent upon this Affair, propoſed ſome Expedients to facilitate Matters; particularly, that if the Maſters would quit their Pretenſions to a co-ordi-

nate Power of Judicature with the Maſter of the Rolls, that Matters might be made eaſy, in reſpect of the ordering the Payments of the Money: But this would not be complied with. And when it was found, by Experience, impracticable to bring any thing about, with the Agreement of the Parties, the Earl declared that he would take the whole Matter into his Conſideration; and ſince he could not have the Concurrence of others, he himſelf would regulate theſe Matters as ſoon as he could. Upon the whole of the Evidence offer'd upon this Article, more eſpecially from what Mr. *Lightboun* and Mr. *Holford* have ſaid, it plainly appears, that for a conſiderable time paſt, even from the latter end of the Year 1721, here has been an Intention of regulating the Offices of the Maſters of the Court of Chancery; that ſuch Intention has been purſued, and ſeveral Steps taken, and Endeavours uſed, to bring it to effect; and your Lordſhips, I hope, perceive the many Difficulties that have interpoſed, and will not be at a Loſs to find Reaſons for the Earl's not having actually made theſe Regulations, very different from the diſtant view of an unjuſt Gain.

My Lords, the Buſineſs of Reformation, however deſirable it may be, is, in all Inſtances, attended with Difficulties, and in the preſent Caſe, thoſe Difficulties have been increaſed by the different and jarring Intereſt of the Parties concerned; which, at leaſt, prevented their Concurrence in ſuch Reformation, and in a great meaſure deprived the Earl of the Benefit of the Advice of thoſe, who were the moſt able to inform him what was fit to be done.

Your Lordſhips are ſenſible how great a Portion of the Earl's time muſt neceſſarily be taken up in the diſpatch of the ordinary Buſineſs of that Court, and in his Attendance upon the publick Functions of his Office; and if, under theſe Circumſtances, he has not been able to bring his good Intentions to effect, and compleat them, before it was put out of his Power ſo to do, your Lordſhips, we hope, will think it more his Misfortune than his Fault, and that he is not to be reputed guilty of any Neglect or Omiſſion in that reſpect, which can be adjudged to be Criminal. We ſhall not trouble your Lordſhips with any Evidence upon this Article, but ſubmit it upon what has been already offer'd.

Mr. *Robins*. May it pleaſe you Lordſhips, The laſt Article which the Managers for the Honourable Houſe of Commons have been pleaſed to cloſe this ſolemn Proſecution withal, is the Nineteenth; wherein they have endeavour'd to repreſent the Earl, as deſigning to abuſe and impoſe upon his Moſt Sacred Majeſty, for the ſake of skreening and protecting the Maſters from a Parliamentry Enquiry, and to keep up the Price and Credit of their Offices.

But, my Lords, we humbly hope no Evidence appears to have been given that does in the leaſt ſupport or prove any ſuch Deſigns in the Earl.

'Tis true, indeed, that when his Majeſty was graciouſly pleaſed to order the Maſters Accompts to be laid before a Committee of the Lords of the Council, in order to inſpect the ſame, that the Earl, in Obedience to his Majeſty's Commands, thought he could not be too zealous in giving Orders for their preparing and getting the ſame ready, and therefore order'd them immediately to ſet about it.

And when ſome of them objected, that 'twas impoſſible to have them ready by the time expected, the 10th of *November* laſt, eſpecially Mr. *Holford*'s, which was to be an Accompt of twelve Years, that the Earl however order'd them to be got ready in the beſt manner they could, and told them, if it ſhould appear they wanted more time to make them perfect, that on Application it would, without doubt, be granted.

After which your Lordſhips have heard, that at a meeting of moſt of the Maſters at Mr. *Edwards*'s, when Mr. *Cottingham* came in, he propoſed to them, ſome ſay, three things, others two; but all of them agree in Subſtance, that 'twas to have their Accompts and Securities inſpected, and to produce the Ballance of Caſh in their Hands, if it ſhould be required.

And as to the inſpecting of their Accompts and Securities, your Lordſhips have been pleaſed to obſerve, that not one of them appear'd to make any Difficulty or Objection to it, but, on the contrary, readily conſented and agreed to it.

But as to the producing their Ballance of Caſh, they were ſomething ſtartled at that, as not knowing what was intended by it; and therefore asked Mr. *Cottingham* if they were only to produce or ſhew it, or if 'twas going to be taken away from them.

And though Mr. *Cottingham*'s Anſwer was, that they were only to produce it, as he underſtood, yet ſeveral of them appear'd to be very jealous that 'twas going to be taken out of their Hands; and Mr. *Edwards*, one of the Maſters, expreſſly ſaid ſo, and therefore adviſed them to get it ready as ſoon as they could.

But your Lordſhips have been pleaſed to obſerve, that whatever they underſtood by it, yet not one of them ſaid, or ſo much as inſinuated, to Mr. *Cottingham* that they were not able to anſwer or make good their Ballance of Caſh, only that ſome of them had it not all ready immediately; and Mr. *John Bennett* ſaid it could not be expected they ſhould keep it all by them, for fear of having their Throats cut, and that therefore they muſt have ſome reaſonable Time given them to raiſe it in; and Mr. *Conway* expreſſly ſwears that he apprehended they all ſaid they were able and ſufficient to produce their Caſh and Effects.

And, my Lords, it ſeems very natural and reaſonable to believe that they did ſay ſo, or at leaſt that Mr. *Cottingham* underſtood it ſo, becauſe when ſome of them ask'd whether they were to produce it in *Specie*, or whether Bank Notes or Goldſmith's Notes would not do as well, he made Anſwer, it certainly would do as well, and therefore adviſed thoſe that had not ſuch Notes ready by them to provide them, and to ſtand by and aſſiſt one another.

Now, my Lords, with great Submiſſion, all this ſeems to be a very natural, plain and artleſs Repreſentation of this Meeting: And when Mr. *Cottingham* had thus acquainted the Maſters what was expected from them, and had Aſſurances from them all, that they were ready and willing to comply with what had been propoſed,

Can there be any room to doubt but that the Noble Earl was very well pleaſed with this Account from Mr. *Cottingham?* And therefore when they met after, at the Earl's Houſe on the 10th of *November*, no wonder he did not particularly ask them the Queſtion, whether they were able and ſufficient to pay or make good the Ballance of their Caſh, for this Mr. *Cottingham* had before aſſured him

him they were, and therefore no need for the Earl to ask the Queſtion over again.

And Mr. *Lovibond*, one of the Maſters, ſwears expreſſly, not only that he himſelf was ready and willing to pay and produce his own Ballance, but that, from what paſſed at the Earl's Houſe, he believed or thought all the reſt of the Maſters were ſo too.

Now, my Lords, if this be ſo, if the Noble Earl was fully ſatisfied that all the Maſters were able to make good their Accompts, and he was juſt then going to lay a State of them before the Lords of the Council; is it at all to be wonder'd at, that his Lordſhip ſhould give them his Advice or Opinion what Form of Words or Subſcription he thought would be moſt proper to expreſs their meaning by?

And as he approved of the Form made uſe of by Mr. *Holford* on that Occaſion, was it or could it poſſibly be any Crime in the Earl to adviſe the reſt to ſubſcribe or under-write the ſame Form to their Accompts likewiſe?

And your Lordſhips have been pleaſed to obſerve, from the Evidence of all the Maſters, that not one of them made any Scruple or Difficulty of it, but went into another Room, as if they were really going to under-write the very ſame Subſcription to their Accompts.

'Tis true indeed, my Lords, ſome of them, when they were got by themſelves, were conſcious they could not come up fully to it, and therefore varied the Form, as beſt ſuited their own Circumſtances.

But your Lordſhips have been pleaſed likewiſe to obſerve, that the Noble Earl was ſo far from being in any Plot with the Maſters, to deceive his Majeſty or the Lords of the Council, that he took their Accompts, with the Subſcriptions they had under-wrote, without ſo much as ever looking to ſee if they were conformable to Mr. *Holford*'s Subſcription, and apprehended they really had been all the ſame, till upon reading them before the Lords of the Council, the variance between them appear'd.

But your Lordſhips have not heard of one Word of Reproof given them by the Earl afterwards, for not obſerving his Directions in making the Subſcription he deſired.

If the Earl had had any Deſigns of impoſing on his Majeſty or the Council, by getting the Maſters to under-write ſuch a particular Form of Subſcription to their Accompts, would he not have been more careful before he carried in thoſe Accompts to the Council Board, to have ſeen that they had exactly purſued his Orders, for fear of a Diſcovery?

Nay, my Lords, can it poſſibly be imagined but that when he came afterwards to find they had deceived him, and had not under-written the Subſcription, they pretended, and went out of the Room ſeemingly on purpoſe to comply with; I ſay, my Lords, can it poſſibly be imagined, but that if the Earl had had any Views or Deſigns of his own in it, but that he would have ſeverely rebuked and reprimanded them afterwards for not obſerving his Directions.

But your Lordſhips have not heard one Word of Proof that the Earl complained, or ever ſaid any thing afterwards to the Maſters about it.

Now, my Lords, if this be ſo, can there poſſibly be a greater or ſtronger Concurrence of Circumſtances to ſhew that the Advice or Encouragement which the Earl afterwards gave the Maſters to aſſiſt and ſupply each other with Money and Effects, and repreſented to them that 'twould be for their Honour and Service to appear able and ſufficient; I ſay, my Lords, can any thing in the World be more unnatural, than to imagine, that by this the Earl meant to adviſe them to make a falſe ſhew and appearance?

They had before aſſured him, or given him the ſtrongeſt Reaſons poſſible to believe, that they could make a true ſhew and appearance. Why then ſhould he adviſe them to make a falſe ſhew and appearance? What End or Purpoſe in the World could this ſerve, either for themſelves or his Lordſhip?

This ſurely, my Lords, could never be the Earl's meaning; or if it was, whilſt he was under a Perſuaſion that they were all able and ſufficient to anſwer and make good the Ballance of their Accompts. If he meant to adviſe them to make a falſe ſhew and appearance, it muſt have been by adviſing them to conceal Part of their Caſh and Effects, for fear the World ſhould really take their Words, and be of Opinion that they were as able and ſufficient to make good their Accompts, as they had under their Hands acknowledged themſelves to be.

But, my Lords, as the Conſtruction the other way is not only moſt natural, but alſo conſiſtent and agreeable with all that had before paſs'd on that Occaſion, ſurely, my Lords, it muſt be a ſtrange wreſting and perverting of Words to underſtand them otherwiſe.

The Sum of this whole Article, my Lords, is this: The Maſters were on a ſudden call'd upon to bring in their Accompts of Caſh and Effects, and they did ſo, and declared, at the ſame time, that they were able and willing to make good the ſame on a reaſonable time given them for raiſing the Money; but being afterwards called upon for their Money ſooner than they expected, and applying to the Earl for his Advice and Directions what to do in it, he adviſes them to aſſiſt and ſupply one another with Money and Effects, till their own could be gotten in; tells them it would be for their Honour and Service to appear able and ſufficient, and that he would not have them let the World ſee, at a time when there had been ſo much Clamour and Noiſe about them, that they were not always ready, even at a Minute's Warning, to make good their Accompts.

This, my Lords, is the whole of this grievous Complaint againſt the Earl; and as it ſeems to be nothing but a Piece of good Advice in the Earl given to the Maſters for their own ſakes, in great Sincerity and Friendſhip, as the Earl expreſſes himſelf in his Anſwer, without any poſſibility of Advantage to the Earl himſelf, we humbly hope your Lordſhips will not think it worthy of a Place in this Impeachment.

Mr. *Com. Serj.* My Lords, we ſhall not give your Lordſhips much trouble on this Article, we ſhall only call Mr. *Holford*.

Mr. *Holford* not then appearing, Mr. *Cottingham* was called in again.

Mr. *Serj. Probyn.* My Lords, we deſire that Mr. *Cottingham* may inform your Lordſhips of the time the Maſters had the Letter which he refers to, and which he deliver'd, whereby the Accompts are directed to be brought in. We did

deſire Mr. *Holford* to bring it up with him: If Mr. *Holford* hath not the Letter, and it is not among the Maſters, we muſt examine Mr. *Cottingham* about it.

Lord *Ch. Juſt. King.* Mr. *Holford* is come.

Mr. *Serj. Probyn.* This is the Copy of a Letter, the Original of which Mr. *Holford* hath; if he hath it not here, I hope your Lordſhips will give leave to read the Copy.

My Lords, I deſire that Mr. *Holford* may give your Lordſhips an account of this Letter.

Mr. *Holford.* My Lords, I have it not; Mr. *Kynaſton* did inform me juſt now that he believed it might be in his Cuſtody, but he hath it not here.

Mr. *Serj. Probyn.* Your Lordſhips will give us leave to examine Mr. *Cottingham.*

Mr. *Cottingham.* My Lords, there was an Order made, dated the 3d of *November* laſt, of which my Clerk made a Copy. I can't ſay I examined it my ſelf: The Order is,

Let the ſeveral Maſters of the High Court of Chancery forthwith prepare and deliver to me a perfect Account of the MONEY in their Hands, therein diſtinguiſhing, in ſeveral Columns,

The Names of the Parties to the Cauſe.

The Dates of the Orders for bringing in —— —— } Money or Securities.

The Time of bringing in each Sum.

Particularly expreſſing the Sums transferred and paid to them at their coming into their Office in the firſt Place.

How the ſame hath been diſpoſed.

What Sums paid out, and to whom, —— —— } When and

What inveſted in Securities, } By what Order.

Specifying the Securities, by Dates, Numbers, *&c.*

Where the Securities are at preſent.

What Money remains in their Hands.

Where the ſame now is.

Nov. 3, 1724. MACCLESFIELD, C.

Mr. *Com. Serj.* My Lords, we beg leave to obſerve, that this Order is very much the ſame with the Directions given by the Noble Lord before to bring in their Accompts; but, upon the Nature of the thing, there ſeems to be a very good Reaſon why they did not comply punctually with it.

Mr. *Plummer.* Upon this Obſervation, my Lords, I beg leave to ask this Witneſs, Whether the Maſters have not given in ſome Account, notwithſtanding the Difficulty of the method?

Mr. *Cottingham.* Yes, my Lords, they have.

Earl of *Macclesfield.* Mr. *Holford* will inform your Lordſhips of this.

Mr. *Holford.* I believe this is a Copy of the Order given by my Lord *Macclesfield* for bringing in our Accompts in *November* laſt.

Mr. *Serj. Probyn.* I deſire he may be asked whether the Maſters were able to make up the Accompts purſuant to the Directions given in that Order.

Mr. *Holford.* I believe it was the next Day after this was ſent, that Mr. *Cottingham* did inform me of it; I had not ſeen it, I was then at *Weſtminſter*, ſitting in Court with my Lord *Macclesfield*; after the Court was up I went into the little Room behind the Court with my Lord, and I did ſay, I thought it would be very tedious to do exactly as this Order directed, becauſe it would require a tranſcribing of every Particular that each Maſter in the Court had ever paid and received for ſeveral Years, even where Cauſes were ended many Years ago, and that I thought it an impracticable thing. My Lord told me that muſt be no Objection to the bringing in of the Accompts; if we could not do as well as he wiſh'd, we ſhould do it as well as we could; and deſir'd them to be ready, that they might be brought in by the Time prefixed.

Mr. *Com. Serj.* I deſire he may be asked whether there were any Arguments uſed by my Lord to recommend Diſpatch in this Matter?

Mr. *Holford.* My Lord recommended it to me to be ſure to have the Accompt ready by the Time; I think he ſaid it was to be delivered in to the Council by ſuch a Day.

Mr. *Com. Serj.* I deſire he may inform your Lordſhips if nothing was ſaid about making an Excuſe a Pretence for delaying the Accompts.

Mr. *Holford.* My Lord did deſire that they might be prepared according to thoſe Directions, but ſaid this muſt be no Excuſe for not bringing in the Accompts as well as you can by the Time.

Mr. *Plummer.* When this Accompt was asked for, how long was it before it came in?

Mr. *Holford.* Three or four Days or a Week.

Mr. *Plummer.* And you gave them in compleat and right, fully and amply.

Mr. *Holford.* Yes, there were ſome little Miſtakes which were rectified afterwards, very ſmall ones.

Mr. *Common Serj.* By Reaſon of this Queſtion that hath been asked, give me Leave to trouble your Lordſhips with asking another, whether in the Accompt deliver'd in there was any thing more than the Ballance of the Accompt?

Mr. *Holford.* Yes, the Accompt I deliver'd in was an Accompt of every particular Cauſe, and of the Money and Securities in every Cauſe, and I did add the Solicitors Names in every Cauſe, as far as I knew; I believe all the others were not ſo.

Mr. *Com. Serj.* How were the others?

Mr. *Holford.* I believe the others were the ſame, only not the Solicitors Names.

M. *Com. Serj.* I don't mean that, but whether there was not the Ballance of each particular Accompt deliver'd in?

Mr. *Holford.* There was the Ballance of the particular Cauſes, and the whole ſummed up together.

Mr. *Serj. Probyn.* I deſire he may be asked, whether it was practicable to give in their Accompts in the Method directed within the Time preſcrib'd them?

Mr. *Holford.* It was not.

Mr. *Serj. Probyn.* I deſire he would inform your Lordſhips, whether they have not been call'd upon frequently to haſten their Accompts?

Mr. *Com. Serj.* I deſire he may be asked whether they have been ſince called upon by the honourable Committee of the Council, to bring in their Accompts according to the ſaid Method?

E. of Macclesfield. I deſire he may be asked, whether after this Accompt brought in, and the Ballance made upon every Cauſe, they have been ſince called upon to make up the Accompt according to the firſt Inſtructions or not?

Mr. *Holford.* We have not been required to purſue the former Inſtructions.

M. *Com. Serj.* If the Gentlemen of the Houſe of Commons have done as to this Article, we have done. My Lords, we ſhall now beg Leave to call ſome Witneſſes, to the eſtabliſhing the Reputation of Mr. *Cottingham*; when one ſide have endeavoured to leſſen his Credit, it will be neceſſary for the other Side to call Witneſſes to confirm his Credit. As to the Teſtimony he hath given, it is very material, as it ſtands in Oppoſition to the Evidence of others; tho' it be not directly contradicted, yet it is very different from ſome Accompts, which your Lordſhips have received from ſome of the Maſters, particularly from Mr. *Thomas Bennett*: And as for the Managers of the Houſe of Commons, notwithſtanding he was call'd a Witneſs by themſelves, tho' they have not ſaid in direct Terms that he is a Perſon not to be credited, yet calling him *a black Miniſter of Iniquity*, and uſing a great Number of ſuch like other Expreſſions, ſeem to carry ſome Inſinuation, as if Mr. *Cottingham* was not a Man of that Integrity as I believe all that know him will bear Teſtimony to. We beg Leave therefore to call a few of that Number as Witneſſes to his Character and Reputation, who have known him for ſeveral Years, and have had a full Opportunity of knowing his Character and Behaviour in the ſeveral Stations he has been in.

Mr. Goldesbrough called.

Mr. *Serj. Probyn.* My Lords, I deſire he may be asked how long he hath been acquainted with Mr. *Cottingham?*

Mr. *Goldesbrough.* I have been acquainted with Mr. *Cottingham* upwards of twenty Years.

Mr. *Serj. Probyn.* I deſire he would inform your Lordſhips, during his Acquaintance with him, what hath been his Character?

Mr. *Goldesbrough.* All the Time he wa sa Solicitor, I obſerved him to have a good Character; he behaved himſelf with all Integrity and Fidelity as ever I knew any body of his Profeſſion.

Mr. *Serj. Probyn.* You ſpeak as to his general Character.

Mr. *Goldesbrough.* I never heard he had any Blemiſh on his Reputation, he always maintain'd a very fair Character.

Mr. *Serj. Probyn.* During the Time he was Secretary to the Lord Chancellor, how did he behave himſelf?

Mr. *Goldesbrough.* He bore a very fair Character in the Place, as fair as ever any body did that went before him.

Mr. *Price* ſworn.

Mr. *Com. Serj.* We deſire he may give your Lordſhips an Account what he knows of the Character of Mr. *Cottingham*, and how long he hath known him?

Mr. *Price.* My Lords, I have known him upwards of twenty Years, I never knew any body ſay any thing amiſs of him, I always took him to be a very fair and honeſt Man, I know no Man in his Place behav'd himſelf better than he hath done.

Mr. *Com. Serj.* We deſire to ask not only to what Mr. *Price*'s Opinion is, but to what is the Opinion of others, as to his general Character?

Mr. *Price.* I believe, if you ask his Character of an hundred People, ninety of them will give him rather a greater Character.

Mr. *Com. Serj.* And as to the remaining ten, what Character doth he believe the remaining ten will give him?

Mr. *Price.* I believe that the remaining ten cannot juſtly charge him with any thing that is ill.

Mr. *Hickman* call'd and ſworn.

Mr. *Serj. Probyn.* I deſire Mr. *Hickman* may likewiſe give your Lordſhips an Accompt how long he hath known Mr. *Cottingham?*

John Hickman. I have known Mr. *Cottingham* thirty Years, I believe; he had always a very good Character, he was Clerk to me for two Years, he was a diligent faithful Clerk, and hath had a very good Character ever ſince, and I never heard any thing to the contrary.

Mr. *Blithman* ſworn.

Mr. *Serj. Probyn.* My Lords, We have a great Number to this Purpoſe; I deſire you would inform my Lords how long you have known Mr. *Cottingham*, and what his Character is?

Mr. *Blithman.* My Lords, I have known, and been intimately acquainted with Mr. *Cottingham*, for above twenty Years; while he was a Practiſer in the Court of *Chancery*, we were now and then concern'd one againſt another in Buſineſs, and I obſerv'd him to act with great Diligence for his Clients, and in a fair way of Practice in reſpect to his Adverſaries; he had the Character of the Practiſers of the Court of *Chancery* in general, for being a very honeſt and fair Man; after he was promoted to be Secretary to my Lord *Macclesfield*, every Practiſer of the Court that had any Buſineſs muſt have frequent Recourſe to him, and he was obſerv'd to diſcharge that Office with great Juſtice and Diſpatch to the Suitors, with great Civility to the Practiſers, and with a ſtrict Regard to the Honour of his Maſter and the Court; he was content with his juſt Fees, without ever demanding or expecting more on Pretence of Expedition, or upon any other Accompt: In general, I took him for a very honeſt Man, and he was always ſo reputed during the Time that I knew him.

Mr. *Serj. Probyn.* My Lords, we might apply to ſome of the learned Managers themſelves, were it proper upon this Occaſion, but we hope his Character is ſo clearly eſtabliſhed, by what Evidence has been already offer'd, that there is no Neceſſity for troubling your Lordſhips with any more on this Head: But we ſhall trouble your Lordſhips with one Piece of Evidence more, of a different Kind, which the noble Lord is with a great deal of Difficulty oblig'd to ſubmit to, and that relates to the private Conduct of himſelf, of which many enjoy the Benefits, and all were enjoyn'd and oblig'd to keep ſecret; but now it is become neceſſary to make known, ſince he hath been repreſented in Publick as a Perſon full of Corruption, that hath ſtudied nothing in the whole Conduct of his Life but the amaſſing great Riches to himſelf, in Oppreſſion of his Majeſty's Subjects; it is now become neceſſary, for the Vindication of his Lordſhip's Innocence, to ſhew that his Actions (which beſt ſpeak the Intention) have been of a different Nature; that as his Lordſhip hath received great Bounties from his Majeſty, ſo he hath been as liberal in ſharing them with thoſe

who have wanted his Relief. Multitudes of Inſtances might be given of this Kind, but we ſhall only lay ſome few before your Lordſhips, and then beg Leave to ſubmit to your Conſideration, whether it be poſſible to ſuppoſe, that a noble Lord, whoſe Heart was ſo charitably inclin'd to relieve the afflicted who apply'd to him, and to ſeek Opportunities of doing good to Strangers who were no ways known to him, could be guilty of Actions (ſuch as his have been repreſented by the Managers of the Houſe of Commons:) How can theſe things be reconcil'd, that a Man, truly religious, truly vertuous and charitable, ſhould be guilty of Oppreſſion, Injuſtice, Avarice and Corruption? We beg leave to lay ſome few Inſtances of this Nature before your Lordſhips, and then ſubmit their Weight to your Lordſhips great Judgment.

Mr. *Com. Serj.* I beg leave to obſerve that in a great many Articles, the Intention being what the Managers have much relied upon, we humbly apprehend we have clear'd the noble Lord from thoſe Intentions he is charg'd with, by what we have already offer'd to your Lordſhips; but if any Doubt ſhould ſtill remain, when it ſhall appear that he was a conſtant Benefactor to the Oppreſſed and Afflicted, that a conſtant Spirit of Benevolence hath reigned in the Breaſt of this noble Lord towards Mankind, you will think it impoſſible for a Man to be ſo contradictory to himſelf, that at the ſame Time as he was doing all the Good he could in Private, he ſhould be guilty of Avarice, Corruption and Oppreſſion in the moſt publick manner. Theſe Qualities are ſo inconſiſtent, that they could not reign in the ſame Breaſt at one and the ſame Time, for that Reaſon we ſhall beg leave to mention a few of the great many Inſtances we might produce on this Head, and firſt we deſire that Mr. *Oaker* may be called.

Mr. *Oaker* ſworn.

Mr. *Serj. Probyn.* My Lords, I deſire that Mr. *Oaker* may give your Lordſhips an Accompt how long he hath been employ'd under the noble Earl within the Bar?

Mr. *Oaker.* I ſerv'd his Lordſhip all the Time that his Lordſhip had the Great Seal.

Mr. *Serj. Probyn.* I deſire he may give a general Accompt during all the Time that he ſerv'd his Lordſhip, how far he hath been privy to any charitable Actions he hath done?

Mr. *Oaker.* My Lords, I have the Names of ſome few in my Hand, I can only tell the Names and Sums of ſuch as accidentally came in my Way, for his Lordſhip always did thoſe Actions privately, and with his own Hands if it could conveniently be. When I firſt came to ſerve his Lordſhip, having heard his Lordſhip's Character of being very bountiful to almoſt every body that came in his Way, I therefore endeavour'd to inform my ſelf more particularly from ſuch Perſons as I apprehended apply'd to him for any Aſſiſtance of that Nature. The firſt that I remember was one Mr. *Brown*, who had been Author of ſeveral Practical Books in the Law; his Lordſhip was pleaſed for ſome Years before I acted under him, to pay for him 24 *s.* a Month for his Board and Subſiſtance, beſides Cloaths and Pocket-money; the Perſon that uſed to pay it being abſent in my time, I paid it for near ſeven Years, till *Chriſtmas* laſt, when he died.

Mr. *Serj. Probyn.* At the time he died, how old was he?

Mr. *Oaker.* He ſaid he was on *Bartholomew* Day laſt aged 102. As I have been inform'd, my Lord ſent a Surgeon and an Apothecary to attend him, and paid them, and the Expence of his Funeral; and the whole that came within my Knowledge was about 120 *l.* Afterwards there were two Clergymen recommended to his Lordſhip for a Living that was in his Diſpoſal, my Lord could not ſoon determine which to give it to; one of them was a poor Curate in *Surrey* at *Thames Ditton:* This poor Man complain'd, that he could not attend longer in Town, nor had Money to carry him home; my Lord gave him a Guinea, and told him he might go home, he need not ſtay, but ſhould be ſent to when he had determin'd what to do for him. A little while after, he came to Town again, and ſaid that it being reported, that his Lordſhip would give him a Living, he was turn'd out of his Curacy, and being an Inmate, was order'd by the Officers of the Pariſh to quit the Pariſh, but that he had not Money to remove his Family; and my Lord being told of that, ſent for him, and gave him a Sum of Money in a Paper; I asked the Clergyman what it was he gave him, and he ſaid *twenty Guineas*: He had ſoon after a Living given him by my Lord in *Kent*, and then as he was removing his Family to his Living, they were here in Town by the Way taken ill of the Meaſles; upon which the poor Gentleman wanting Money to proceed on his Journey, came again to my Lord, and his Lordſhip gave him twenty Guineas more, as he told me; and I believe his Lordſhip hath given him ſeveral Times ſince, but I don't know the Particulars, neither had I known any of thoſe I have mention'd, had not the poor Clergyman himſelf told me of them.

Mr. *Com. Serj.* What is his Name, and where is his Living?

Mr. *Oaker.* His Name was *Vigurs*, and his Living is near *Sittingbourne* in *Kent*. There was one Man, a converted *Jew*, I believe he is here himſelf, he hath had of my Lord ſeventy or eighty Pounds. There is one *Thwaites*, a Quaker, who hath attended the Houſes of Parliament long, and is very well known, hath had a pretty large Sum of Money, beſides other Aſſiſtance; ſixty Pounds I paid him at once by my Lord's Order. There is one Mr. *Wickam*, a Gentleman in the Navy, a half-pay Officer; he had out-run that, and was in the *Marſhalſea* Priſon, and could not make up his matters; a Friend of his was perſonally acquainted with me, and ſaid my Lord had ſome Knowledge of this Officer, and deſir'd me to acquaint him with his Caſe, which I did, and his Lordſhip ſaid he had no Acquaintance with him, but had known his Father, and for his ſake would clear him; and it being ſaid he was in for about thirty Pounds, his Lordſhip ſaid if it came to forty Guineas he would pay it, ſo that it ſet him out of Diſtreſs, and cleared him of all Debts; the Gentleman did make up his Affairs, and my Lord paid the Money, and beſides gave him a whole Suit of Cloaths, double Shoes and Stockings, and Wigs, and new Sword and Belt, fit to appear in the World again, which came to ſomething above forty Pounds in the whole. Another poor Clergyman my Lord gave a Living to, and he was very lame, and came to Town to go into the cold Bath; he happened to be arreſt-

ed for an old Demand of 36 *l.* His Wife came to my Lord, who gave her Money for preſent Subſiſtance, and order'd me to take Care that the whole Affair ſhould be made up, and the whole Debt was clear'd and diſcharg'd, and all the Coſts and Charges paid out of his Lordſhip's Pocket. There are abundance of other ſmall Sums I might mention of the ſame Kind, but it would be endleſs to trouble your Lordſhips with them. Then there is another matter which I mention to your Lordſhips, not ſo much for the Value as for the manner of doing it; a poor Gentleman reſiding at the *Bath* had a Place given him, as he ſaid, in *Ireland*, but had not Money to carry him over, and therefore only begg'd 40 *s.* to carry him over to *Ireland*; my Lord order'd me to remit him five Guineas which he receiv'd, but afterwards he wrote Word that he and his Family was ill at the Time, and therefore had expended the Money, and wanted the ſame Supply again; my Lord then order'd me to remit him ten Guineas more, which I did. Here is at your Lordſhips Bar one Mr. *Saunders*, a Clergyman, who hath ſundry Times received of his Lordſhip's Favours whilſt a Youth, and upon the Foundation in the *Charter-Houſe*; and when he went from thence to the Univerſity, his Lordſhip gave him forty Guineas, and afterwards when he was near going into Orders remitted him ſixty Pounds to clear all matters in the Univerſity, which I ſent to Dr. *Bentley* by his Lordſhip's Order. I don't mention ſeveral other Prrticulars, but they are very numerous, both what paſſed through my Hands, as well as others of his Lordſhip's Servants, hardly a Week paſſed without ſome Inſtance of this Kind.

Mr. *Com. Serj.* As you was under the Great Seal, you can inform my Lords, when Clergymen were admitted to their Livings, whether his Lordſhip has not frequently order'd their Fees to be remitted them?

Mr. *Oaker.* My Lord frequently gave Orders to remit the Fees of his own Officers, and at other Times his Lordſhip paid the Fees of the Patent Officers and Stamps out of his own Pocket; and hath given the Clergymen Money beſides, to pay their Journey to their Livings, and otherwiſe to ſuſtain them, and to buy Books.

Mr. *Com. Serj.* Do you remember Mr. *Higgs?*

Mr. *Oaker.* Mr. *Higgs* was greatly indebted, and in Priſon; his Lordſhip diſcharg'd him, and paid ſuch Debts as were inſiſted upon, to the Value of about ninety Pounds: He is there to give your Lordſhips a particular Account.

Dr. *Sayer.* As a great deal depends upon the manner of doing theſe things, I would ask him as to the manner in which they were done, whether in an oſtentatious manner, or how?

Mr. *Oaker:* My Lord did theſe generous Actions meerly as they fell in his Way, and without mentioning them, or letting them be ſeen or known, as far as I could ever perceive; ſo that where I did not apply to his Lordſhip my ſelf for ſuch People as came to me, I never knew it but by Accident; and in Caſes where I was privy, my Lord generally gave me more than was asked, his method being, as far as might be, to ſet Perſons entirely free, and to do them a full Service.

Mr. *Hunt*, a Clergyman, ſworn.

Mr. *Serj. Probyn.* My Lords, we deſire that Mr. *Hunt* would recollect and give your Lordſhips an Account of what charitable Acts he hath known done by the Earl of *Macclesfield?*

Mr. *Hunt.* I have known my Lord to be a very generous and noble Patron: I can ſpeak from ſeveral Inſtances, relating not only to my ſelf, but to ſeveral other Gentlemen of the Univerſity of *Oxford*. The firſt time I had the Honour of being known to his Lordſhip, was about *Whitſontide* 1722, upon the recommendation of one Mr. *Thornbury*, Vicar of *Thame* in *Oxfordſhire*. The Noble Lord asked Mr. *Thornbury* what Perſons he knew in the Univerſity that were inclinable to be ſtudious: Mr. *Thornbury* was ſo kind as to mention me as one: Upon which, his Lordſhip ſent for me to dine with him the Day after; I carried him ſome of the private Exerciſes that I had done in the Univerſity, which his Lordſhip read over, and was ſo kind as to approve. His Lordſhip kept me with him ſeveral Days, and deſired to have more Converſation with me, and he diſmiſs'd me with a generous Preſent of twenty Guineas, telling me he ſhould be glad to ſee me when he came to *Shirburn*, and that he deſign'd to make me a Preſent now and then till he could do ſomething elſe for me. About *Chriſtmas* after was the next time I waited on my Lord: I carried him again ſome of my Univerſity Exerciſes, which his Lordſhip peruſed, and was ſo favourable as not to miſlike them. His Lordſhip diſmiſs'd me at that time, with another generous Preſent of twenty Guineas, and further Aſſurances of future Favours. About this time I had received a Letter from Mr. *Gagnier*, Deputy Profeſſor of *Arabick* in the Univerſity of *Oxford*; wherein he complained to me, that he had been ill uſed by ſome Perſons in the Univerſity, for having writ a Poem in Praiſe of her Royal Highneſs. This I related to his Lordſhip: His Lordſhip expreſs'd a great deal of Concern for his Misfortune, pity'd his Caſe, and ſent him by me a Preſent of twenty Guineas. The third time I had the Honour to wait upon his Lordſhip was about *Michaelmas* 1723, when I received likewiſe a Preſent of twenty Guineas: I ſhould have alſo mention'd that I received other ſmaller Preſents from his Lordſhip, five Guineas at one time, and one Guinea at another. The laſt time I had the Honour of waiting on his Lordſhip and receiving his Bounty, was about *Eaſter* 1724, when his Lordſhip made me the uſual generous Preſent of twenty Guineas, and was ſo kind as to ſend by me thirty Guineas more, *viz.* fifteen to Mr. *Hutchinſon*, and fifteen to Mr. *Greenway*; ſo that within the ſpace of two Years I receiv'd of his Lordſhip's Bounty, for the uſe of my ſelf and the Gentlemen of my Acquaintance, one hundred and thirty ſix Guineas, upon no other Account, and for no Conſideration whatever, but to encourage us in our Studies, and ſupport us in the Univerſity.

Dr. *Sayer.* I would know whether the thirty Guineas were look'd upon as a ſingle Bounty, or was it to be an an annual Charity?

Mr. *Hunt.* I believe ſo, they told me they had received it as ſuch before; we all looked upon our ſeveral Benefactions as to be continued.

Mr. *Smithys*, a Clergyman, ſworn.

Mr. *Serj. Probyn.* I deſire he may give an Account of what he knows of my Lord *Macclesfield*'s Charities.

Mr. *Smithys.* My Lords, in the Year 1721 there became vacant the Place of a Maſter of an Hoſpital

Hoſpital in the Town of *Colcheſter*, in the Diſpoſal of my Lord Chancellor, to which Maſterſhip, King *James* the Firſt had annex'd the Cure of Souls of a Pariſh adjoining, and which Pariſh had no other Proviſion for a Miniſter.

The former Maſter had taken no Notice of the Pariſh, nor had any Care been taken Time out of Mind (as I have been informed by the Inhabitants of the Pariſh) of either burying their dead, or baptizing their Infants. My Lord Chancellor being (as I have been told) informed of this, ſent to me to know if I would accept of the Maſter's Place. I would not miſtake, my Lord's Chaplin ſent me word, if I would accept of the Place, and let him know my Chriſtian Name, his Lordſhip would ſend me the Grant of it. I did ſo, and then my Lord was pleaſed to enquire into the Nature of the Thing. I informed his Lordſhip that no Care was taken of the Pariſh at all, tho' I apprehended the Maſter of the Hoſpital ought to take Care of it. My Lord then was pleaſed to give me the Grant of the Hoſpital, and obliged me to a particular Care of the Pariſh; and at the ſame time deſired me to let him know what Condition the Church was in. I informed him that it was utterly unfit for divine Service; none had been performed in it (as I had been informed) Time out of Mind; and the Pariſhioners were in ſuch a Condition of Poverty, that they were not capable of making it fit for divine Worſhip.

My Lord then was pleaſed to order me to acquaint him how much would put the Church in Repair. Upon this I thought proper to apply to Workmen for their Advice; and by their Advice I informed his Lordſhip thirty Pounds would do it. My Lord ordered me to ſet the Workmen at work, and he would pay their Bills. Before the Church was finiſhed, through my Unskilfulneſs, and the Cunning of Workmen (as I then thought) this thirty Pounds would not do. I acquainted his Lordſhip with it, and he deſired to know how much more would do. The Workmen told me ten Pounds. My Lord ordered the Workmen to proceed, and they ſhou'd be paid the other ten Pounds; but by the Falling of a Wall, and other Accidents, this Money was not ſtill enough. I was aſhamed to betray my own Ignorance, in ſuffering my ſelf to be ſo impoſed upon by the Workmen (as I imagined his Lordſhip would think;) I determined to pay the reſt of the Money my ſelf; but being encouraged by Dr. *Sayer*, I did inform his Lordſhip of the Condition we were in. I then received an unlimited Commiſſion, to let the Workmen finiſh the Work, and ſend up their Bills when they had done, which they did, and my Lord immediately paid the Money, which amounted to 52*l.* 6*s.* 11½.

Dr. *Sayer*. I deſire he may be asked what ſort of Pariſh this is, and what kind of People the Inhabitants of it are?

Mr. *Smithys*. It is a poor Pariſh, but not numerous; there is not one in the Pariſh that is called Maſter; nor one, I believe, able to contribute a Shilling towards a Work of this kind, without hurting himſelf or his Family.

Dr. *Sayer*. I deſire he may be asked whether the Earl has any Relation to it, or any Eſtate thereabouts?

Mr. *Smithys*. He hath no Relation to the Town, nor Seat near it, nor any particular Concern, that I know of, for any Man belonging to it.

Mr. *Plummer*. If my Lord *Macclesfield* thinks it decent to give this Evidence, we do not think fit to oppoſe it.

Dr. *Sayer*. The Charities laid out by my Lord *Macclesfield*, have been to fit out Clergymen for Pariſhes, and to provide Churches for Pariſhes.

Mr. *John Meyer* ſworn.

Mr. *Serj. Probyn*. I deſire this Witneſs to inform your Lordſhips whether he was not formerly a Jew.

Mr. *Meyer*. I was a Jew formerly.

Mr. *Serj. Probyn*. I deſire he would give your Lordſhips an Account of his Converſion, and what Circumſtances of Life he was then in, and how he was relieved?

Mr. *Meyer*. I was, by ſeveral Misfortunes, and by the Hardſhip of my Relations, reduced to great Extremities, after I was converted from Judaiſm.

Mr. *Serj. Probyn*. After you were converted, what Charities have you received? Have you received any Collection made for you by any Perſon?

Mr. *Meyer*. I did apply my ſelf to my Lord *Macclesfield* for Charity, by the Recommendation of ſeveral worthy Clergymen: Upon which Recommendation, his Lordſhip was pleaſed to beſtow upon me a Charity of fifty Guineas. I was ſet up in a Way of Living in the Pariſh of St. *Katherines* near the *Tower*; then the Fire happen'd there, and I was burnt out, after which I had a dangerous Fit of Sickneſs.

His Lordſhip got an Account of the ſame, and ſent me a ſecond Relief of twenty Guineas. The ſame Time that his Lordſhip gave me fifty Guineas, he ſent twenty Guineas to the Reverend Mr. *Shute*, who was Treaſurer to the Society for propagating the Goſpel in Foreign Parts.

Mr. *Edward Sanders* ſworn.

Mr. *Serj. Probyn*. I deſire he may give an Account of what he hath received of my Lord *Macclesfield*'s Bounty?

Mr. *Sanders*. My Lords, in the Year 1713. the Duke of *Somerſet*, through the Interceſſion of the Earl of *Macclesfield*, put me into the Charter-Houſe, where I was educated eight Years and an half; all which Time his Lordſhip furniſhed me with Books; and at my leaving of the School, he gave me forty Guineas for the better proſecuting my Studies at *Cambridge*: In a Year and an half after this, he gave me ſixty Pounds. My Lords, this was not all; for when I acquainted his Lordſhip at my going into Orders, that I owed ſome Money at *Cambridge*, his Lordſhip was pleaſed to give me forty Guineas more, towards the diſcharging of my Debts.

Mr. *Thornbury* Clergyman ſworn.

Mr. *Serj. Probyn*. My Lords, I deſire he may inform your Lordſhips what he knows of his Lordſhip's Charity?

Mr. *Thornbury*. My Lords, what I have to inform your Lordſhips of is this; that in the Year 1721. about the latter End of *July*, ſome Application having been before made to my Lord Chancellor by my Father, I had the Honour to be ſent for by his Lordſhip to *London*. When I came to Town, as it was my only Buſineſs, ſo I made it my earlieſt Care to wait upon his Lordſhip, who was pleaſed to receive me with the greateſt Kindneſs

and Condeſcenſion, telling me he had ſome Livings at that time in his Diſpoſal, one of which he intended for me; his Lordſhip likewiſe offered, if I had a Mind to ſee the Livings, he would be at the Expence of my Journey, and that I ſhould have my Choice when I was come back; but I anſwered, I would refer that to his Lordſhip's Pleaſure. In a few Days after, he ordered his Secretary of the Preſentations to prepare a Preſentation of me to a Vicarage in *Somerſetſhire*, called *Ninehead*. When the Preſentation was ſealed, and I had received Inſtructions to go and wait upon his Lordſhip for it, he was graciouſly pleaſed not only to give me the Preſentation, but alſo diſcharged the whole Fees, and likewiſe made me a Preſent of 100 Guineas to buy me Books withal.

Mr. *Tho. Withers*, Mr. *Henſhaw* called, who not immediately appearing,

Mr. *Serj. Probyn*. My Lords, I am told here is a Reverend Prelate, who will willingly ſtand up in his Place, and give your Lordſhips an Account of what he knows of ſome of my Lord *Macclesfield*'s Charity.

The Lord Biſhop of *Oxford* ſtands up.

Mr. *Serj. Probyn*. I deſire your Lordſhip would give an Account of what you know of this Matter?

Biſhop of *Oxford*. My Lords, the Queſtion put to me is concerning my Lord *Macclesfield*'s Benefactions and Encouragement to Learning in the Univerſity of *Oxford*. I am a good Witneſs of it; for my Lord ſome time ſince deſired me to recommend a Number of young Men to him, whom I thought proper Objects of his Favour, and like to make a conſiderable Progreſs in Law, Phyſick, Divinity, or any other Branch of Learning. He ſaid he was willing to beſtow a conſiderable annual Stipend on them, for no other end but to enable them to buy Books, and encourage them to follow their Studies; and this without any Regard to Party, but merely for the promoting of Learning in the Univerſity. I recommended ſeveral Perſons to him, and enquired into the Characters of ſome who were recommended by others, and have no Reaſon to doubt but that every one that was thought deſerving had a conſiderable Allowance. I can't charge my Memory with particular Sums, but believe his Lordſhip ſaid he was willing in the whole, to expend this Way four or five hundred Pounds every Year. This is the Sum of what I know; if your Lordſhips deſire to be informed of any thing more particularly, I am ready to give an Anſwer to the beſt of my Knowledge.

Mr. *Com. Serj.* My Lords, we have now gone through our Evidence, and I ſhall beg your Lordſhips Indulgence for the making ſome ſhort Obſervations upon what has been offered in Defence of the noble Earl, now at your Lordſhips Bar; and as this Proceeding has already been drawn out to a very great Length, I am ſenſible it will become me, to uſe as much Brevity as may be. I ſhall, however, before I proceed, beg leave to treſpaſs upon your Lordſhips Patience ſo far as to ſay, that if in the Courſe of this Proceeding, any thing ſhould have ſlipped from us who are of Council for the Earl, which might not be ſo exactly ſuitable to the very great Reſpect and Deference, which is due from every one to this auguſt Aſſembly, I hope your Lordſhips will, in your great Goodneſs, impute it only to the Inadvertency, which the Variety of Incidents and Hurry attending Proceedings of this Nature, may reaſonably be ſuppoſed to occaſion, and as ſuch excuſe it.

We hope, my Lords, that what has been humbly offered to your Conſideration, in behalf of this noble Earl, has made him appear a Perſon very different from what he has been repreſented to be, by the Gentlemen of the Houſe of Commons; and I am apt to perſuade my ſelf, that if they had been as well informed before hand, of what he had to ſay in his Vindication, as they were of what they had to object to his Conduct, your Lordſhips would have been ſpared the great Trouble occaſioned by this long Proſecution.

It is, my Lords, the peculiar Happineſs of our Conſtitution, to have in the different Parts of it, all the Requiſites neceſſary and proper for the Preſervation of the Peace and Welfare of thoſe who have the good Fortune to live under it. In thoſe, whoſe Part it is, like Centinels, to watch for and guard the Liberties and Safety of the People; who are the grand Inquiſitors, to ſearch into, and expoſe every Thing that has even the Appearance of being hurtful or dangerous to the Liberties or Properties of thoſe they repreſent; Vigour, Warmth, Zeal, I had almoſt ſaid ſome Degree of Paſſion, ſeem proper Qualifications; whilſt Calmneſs, Moderation, and Patience, not altogether without Tenderneſs and Mercy, are the proper Characteriſticks of thoſe, who by the Conſtitution are to determine and judge. And, my Lords, I may venture to ſay, that, to the Glory of our Nation, all theſe Qualities have been exerciſed, and every Part of our Conſtitution hath exerted itſelf, upon Occaſion of this Proceeding: His Majeſty's great Condeſcenſion, in readily laying this Matter before his Parliament; the Zeal and Vigour of the Houſe of Commons, in examining into it; the great Abilities and Induſtry which the learned Gentlemen, who have had the Honour of Managing this Proſecution, have ſhewn, (they'll pardon me, I hope, for ſaying, I could have wiſhed it had been attended with ſomething leſs Harſhneſs and Severity;) and your Lordſhips great Goodneſs and Patience, hitherto ſo conſpicuous, and of the Continuance of which there is not the leaſt Reaſon to doubt, are ſo many illuſtrious Proofs of it.

Give me Leave, my Lords, to proceed further, and mention the Part which the noble Earl at the Bar hath had in this Affair, his Readineſs, when after his Endeavours for that Purpoſe, he found the thorough Reformation of the Court of Chancery a Work too difficult for him ſingly to effect, in laying the Affair before his Majeſty in Council; the ſeaſonable and proper Orders he afterwards iſſued out upon that Occaſion; and his Zeal in preſſing to have them immediately comply'd with; leave him ſtill, we hope, ſome Share of the Reputation and Merit of what has been, or is likely to be done towards the Reformation of that Court. Nor will your Lordſhips be at a Loſs, to what Cauſe to aſcribe this Behaviour of the Earl, notwithſtanding the Repreſentations which have been made of him; when you ſhall conſider the ſteddy Affection and Zeal for our Conſtitution, which on all Occaſions

have ſo remarkably appeared in him. Your Lordſhips, no doubt, remember thoſe Times and Conjunctures, which it was thought required not only good Wiſhes and Affection, but Vigour likewiſe and Courage, to ſupport and preſerve to us the Continuance of our Conſtitution. Then it was, and for that End, that this noble Lord ſo eminently exerted all thoſe great Abilities he was Maſter of; and that with ſuch Succeſs, as gained him the Approbation of his Majeſty, who thought his Services ſo ſignal, as to juſtifie his Munificence towards him, and his Goodneſs in raiſing him to ſo great Honour. And can it eaſily be thought, my Lords, that one ſo qualify'd, ſo affectioned, ſo diſtinguiſhed, ſhould enter into a wild Deſign of Deceiving both King and Parliament? Or that he ſhould enter into it, and carry it on in ſo poor and indiſcreet a Manner, as is ſuggeſted in the Charge againſt him? in a Manner ſo void of Thought and Contrivance, that it reliſhes more of Madneſs than any thing elſe. Suppoſe he could be thought capable of attempting to conceal Matters that were ſo notorious to every body, and that by a Means, which from the very Nature of it, muſt in ſome ſhort Time have betrayed the Contrivance; yet ſurely, my Lords, his Fears and Apprehenſions would have reſtrained him from communicating himſelf in a Matter of ſo high Concern, without Diſtinction, to ſo many Perſons as were then ſuppoſed to be preſent; that he ſhould publickly give ſuch Orders as would certainly expoſe him to the Reſentment of his Majeſty, and both Houſes of Parliament, in Hopes that ſuch a Secret would be kept by ſo many People as are ſuppoſed to be concerned in it; ſurely, my Lords, is a Charge of ſo extraordinary a Nature, as will require better Proof than what ariſes from uncertain Expreſſions, in Diſcourſe with a Number of People at the ſame Time, and they in ſo great a Hurry and Confuſion, that there was very great Room for Miſapprehenſions, and where it was eaſy for one to miſtake what was ſaid to another, as if ſpoke to himſelf: And from hence it proceeded, as I preſume, that the Account given of that Tranſaction, by the Gentlemen concerned in it, is ſo various and uncertain, that we humbly hope your Lordſhips will not think it reaſonable to be rely'd on, as a Proof of ſuch a Charge.

My Lords, the Foundation of this whole Complaint againſt the Earl is his Acceptance of Preſents or Gratuities, upon the Diſpoſal of Places; or as the Gentlemen of the Houſe of Commons are pleaſed to ſtyle it, the Selling of Places, principally thoſe of the Maſters of the Court of Chancery. We have admitted the Facts, but without admitting thoſe Circumſtances which accompany it, as it ſtands charged in the ſeveral Articles for that Purpoſe; and we hope we have ſatisfy'd your Lordſhips, that it was no Ways illegal to act as the Earl hath done upon thoſe Occaſions. To ſupport our Reaſoning upon that Head, we propoſed to ſhew to your Lordſhips, what the Senſe and Opinion of diverſe great and learned Men had been in reſpect to the Law in that Point, from their own Practice and Behaviour: And we hope that the Evidence which hath been offered for that Purpoſe, hath plainly made it out, that the Earl hath the conſtant Uſage of his Predeceſſors in that Office, as well as of other great Perſons in other Stations, to countenance what he hath done upon ſuch Occaſions, and that without any Marks of Parliamentary Reſentment. If this noble Lord ſtood in need of an Excuſe for having taken Preſents, how effectual would this be for that Purpoſe? For ſure, my Lords, if it were allowed that he had erred in this Matter, yet after ſuch great Examples, your Lordſhips would think it an Error only, and not an Offence which deſerved a heavy Cenſure.

The reſt of the Articles have ſo near a Relation to the Charge of taking of Money, being only Aggravations of that Matter, under the ſeveral Circumſtances therein contained, that I humbly apprehend, they do in a great Meaſure depend upon, and will ſtand or fall together with it. And as the Evidence which has been given in relation to them, and the Obſervations made thereon, have been ſo full, and are yet ſo freſh in your Lordſhips Memories, I will avoid troubling your Lordſhips with a needleſs Repetition of any thing upon thoſe Heads.

My Lords, the Source of all the Evils here complained of in the Earl, is ſuppoſed to be Avarice: Every Thing is aſcribed to an immoderate Thirſt after Gain, an irregular Deſire of amaſſing Wealth. And great Endeavours have been uſed to perſuade your Lordſhips, that the Earl was ſo wholly tainted, ſo thoroughly poſſeſſed with this Vice, that he had nothing in View but to gratify it; and every ſingle Action of his had a Tendency that Way. But ſure, my Lords, the Evidence juſt now laid before your Lordſhips, ſhews a Spirit and Temper of Mind far different from that, and totally inconſiſtent with it. And none, I hope, will object againſt our having entred into a Proof of that Nature; there are ſome Occaſions, and ſurely this is one, that will juſtify the moſt modeſt Man in publiſhing his own good Deeds; and upon which even charitable Acts, as firſt intended, as they ought to be bury'd in Silence and known to none but the great Rewarder of them, may be withdrawn from their Privacy, and diſcloſed to publick View.

My Lords, the Inſtances which we have produced are not of pompous Charities; we ſhould then, no doubt, have been told that Vanity and Oſtentation had the greateſt Share in them: Had they been a few Inſtances only which were laid before your Lordſhips, though far exceeding in Value thoſe which have now appeared; it would perhaps have been ſaid, that thoſe were Starts and Fits of Charity: But your Lordſhips will obſerve that theſe have flowed in a continual Stream, and can be owing to nothing but a conſtant habitual Benevolence towards Mankind, a regular and continual Inclination to do Good. And can ſuch a Temper and Diſpoſition of Mind be conſiſtent with inſatiable Avarice, baſe Corruption, and mercileſs Cruelty, in ſpoiling and oppreſſing Widows, Orphans, and Lunaticks, and ſuch too, who were under his Guardianſhip and Protection?

My Lords, we hope it will be thought impoſſible for ſuch oppoſite Sentiments to reign in the ſame Breaſt, at the ſame Time; and that at leaſt, where any thing may appear doubtful in the Earl's Words or Actions, not only the received Notion of our Law, of preſuming always in Favour of Innocence, but this Benignity of Temper in the Earl will determine your Lordſhips to conſi-

der it in the moſt favourable Light, and never to intend any thing harſh, which will admit of a milder Conſtruction.

The Cries and Tears of Widows and Orphans have been artfully introduced, to raiſe your Lordſhips Compaſſion and Indignation upon this Occaſion. It is no Wonder, my Lords, that Women and Children ſhould be frighten'd at the firſt Appearance of the Deficiency in the Suitors Effects, which was repreſented in ſo terrrible a View; but we hope, my Lords, the Terror is ſunk with the Deficiencies, and that in a great Meaſure theſe Cries are huſhed, and Tears dry'd up, now it already appears (as we hope it evidently does) that no very conſiderable Loſs is likely to happen to the Suitors, and that the Proſpect of its being leſſened ſtill improves.

Under theſe Circumſtances ſhould your Lordſhips think (which we humbly hope there is no Ground to ſuppoſe) that the Earl has fallen into any Miſtakes; yet when his Majeſty, your Lordſhips, and the Commons, have extended their Clemency to thoſe Maſters, who have been the acknowledged, the immediate Inſtruments and Actors of the Evils complained of, and of whatever may be prejudicial to the Suitors; and the Legiſlature hath interpoſed, to preſerve them in the Enjoyment of their Offices; we hope the Earl would not be the only Object, on which your Lordſhips Goodneſs did not ſhine. We rather hope your Lordſhips will conſider his Misfortunes; and when you look upon the high Eminency from whence he is fallen, and view him at your Lordſhip's Bar, ſcourged with the ſevereſt Stripes the Tongue can inflict (and what can be more cutting?) a Puniſhment, from which he had ſome Reaſon to expect that his Relation to your illuſtrious Body might have protected him: That theſe Circumſtances will raiſe thoſe generous Sentiments of Tenderneſs, which always dwell in noble Breaſts: A Tenderneſs, no ways inconſiſtent with your Lordſhips Juſtice, to which the Earl chearfully ſubmits himſelf; and that in Imitation of the unerring Judge of all, whoſe Vicegerents you are on this Occaſion, your Lordſhips will in Judgment remember Mercy.

Mr. *Onſlow*. I would not interrupt the Gentleman that ſpoke laſt before he had ended; but I muſt now, before this Gentleman goes on, inform your Lordſhips that an Incident hath happen'd, that the Managers think they are obliged to take Notice of. The Right Reverend Prelate is not by the Managers in the leaſt ſuſpected as to his Veracity, and the Truth of what he ſays; but in judicial Proceedings, eſpecially in a criminal Caſe, as this is, the Managers think Witneſſes of all Sorts are to be examined upon Oath; not, as I have ſaid, that they have any Doubt of the Reverend Prelate's Veracity; but for the ſake of the Precedent, and to prevent ill Conſequences, the Managers think his Lordſhip muſt, as all other Perſons do, give his Teſtimony upon Oath: Your Lordſhips have Precedents in the Caſe of my Lord *Strafford* and others. The Witneſſes, if Members of your Lordſhips Houſe, are to be ſworn at the Table, and give their Evidence in their Place.

Mr. *Serj. Pengelly*. My Lords, if it is inſiſted upon, that what the Reverend Prelate ſays ſhould be taken as Evidence; we humbly apprehend, according to the Rule of Evidence, he is to give his Evidence upon Oath. And this being ſo material an Incident, and the Proſecution having proceeded ſo far, we humbly beg leave to put your Lordſhips in mind, that it is inſiſted upon in Point of Teſtimony, that the Reverend Prelate would be pleaſed to be ſworn.

Lord *Lechmere*. No doubt but the Reverend Prelate ought to be ſworn. It was not taken Notice of. If the Prelate be called upon as a Witneſs, his Evidence muſt be upon Oath.

Biſhop of *Oxford*. My Lords, I ſhould be very ſorry to give any Offence to your Lordſhips; if the honourable Managers inſiſt upon it that I take my Oath, and your Lordſhips direct me ſo to do, I am as willing to give my Evidence upon Oath, as without it. I ſubmit it to your Lordſhips, whether you will look upon the Journals, to ſee how the Precedents ſtand.

Lord *Lechmere*. If it be inſiſted upon to look into the Journals, the Parties muſt withdraw.

Thereupon it was waved, and the Biſhop ſworn.

Biſhop of *Oxford*. My Lords, for the Advancement and Encouragement of Learning in the Univerſity of *Oxford*, I remember my Lord *Macclesfield* ſome time ſince, told me he was willing to allow conſiderable Salaries to Perſons that were ſtudious and ſober; and that this ſhould be done for the Advancement of any Sort of Learning in general, without reſtraining it to any particular Science or Faculty, and without any Relation to Party, provided the Perſons were worthy: And I deſire Leave to own to your Lordſhips, that otherwiſe I would not have had any Concern in it. I did, my Lords, recommend ſeveral Perſons, whom I thought proper Objects of his Lordſhip's Bounty; and at his Lordſhip's Requeſt, enquired the Characters of others, who had been before recommended to him. I have Reaſon to believe that ſeveral of theſe ſucceeded in his Lordſhip's Favour, and received bountifully from him. I dare not, at this Diſtance of Time, charge my Memory with particular Sums, but believe that the noble Lord aſſured me, he was willing, in the whole, to lay out this way, four or five hundred Pounds a Year. This, as near as I can remember, is the Subſtance of what I ſaid before.

Mr. *Robins*. My Lords, I ſhall preſume to take up very little of your Lordſhips Time, in obſerving on what has paſs'd at this ſolemn Aſſembly of the two Houſes of Parliament.

The Occaſion of it has been to examine into the Conduct and Behaviour of a Member of your own auguſt Body, during the Time he had the Honour to ſerve his moſt ſacred Majeſty in the high Office of Lord Chancellor.

And the Commons have faithfully diſcharged their Part, by omitting no one Circumſtance or Ingredient, that could poſſibly ſerve to heighten and aggravate the Crimes they have thought fit to lay to his Charge.

But whether after all, the Miſtakes, the Inadvertencies, the Example of others, and the Frailties even of human Nature itſelf, are not the whole, the Sum total of all this ſolemn and pompous Tryal, will I believe with many remain for ever the Queſtion.

'Twould not perhaps be for the Service of this noble Earl to ſay, that every Step he took, every Advance he made, for the Benefit and Relief of the

the Suitors of the Court where he preſided, was the beſt that could poſſibly have been invented; 'twill, we hope, be ſufficient to ſay, that he ſincerely thought them the beſt: And if better have been ſince found out, which have prov'd more effectual to the ſame end, it only proves him not to have been infallible, which ſurely is no Crime.

And if the Actions of his private Life, his Juſtice, his Piety, his Charity, and his Compaſſion for others, may be allowed to caſt any Light or Reflection on his publick Conduct and Behaviour, I believe, my Lords, I may preſume to affirm that thoſe who are acquainted with his Innocence in the one, will never be brought to think him criminal in the other.

My Lords, I am afraid many are the Abuſes, the Corruptions and the Evils which have ſprung up in our Courts of Juſtice, even to the Diſparagement and Diſcredit of Juſtice itſelf. And Complaints of this kind have been made in almoſt all Ages, though at the ſame time they have been juſtly placed to the Account of ſome of the loweſt, and moſt inferior Officers and Miniſters, which are neceſſarily and unavoidably made uſe of in the Diſpenſation and Diſtribution of Juſtice.

And if an effectual Method of Cure could be found out for theſe; if thoſe who are to give the laſt Hand to the Completion of Juſtice were pure, the Streams would then run clear and undiſturbed to the end.

But, till that is done, till Means are applied for the purging and clearing theſe Channels, thro' which Juſtice muſt be conveyed, 'tis no wonder that the Fountains themſelves look as it were muddy, and polluted by Reflection.

But, my Lords, how deſirable ſoever theſe Ends may be, they are only the Work of the Legiſlature; a Chancellor, or a Judge, may ſit by and lament, but they cannot help them.

They are only to be effected by that Power, which has a ſort of Omnipotence; and when they are effected, I believe none will rejoice and congratulate themſelves more, than the many learned, great, and upright Men, which preſide in our ſeveral Courts of Juſtice.

In the mean time, my Lords, as the Sentence which is prayed againſt this noble Earl, will be of little Avail to ſtop the Miſchief; as 'twill in ſome ſort be a Puniſhment of the Innocent, and letting the Guilty eſcape: We are too well acquainted with your Lordſhips juſt and righteous Proceedings, to be in any Pain for this noble Earl.

Let ſelling of Places, taking of Preſents, or any other the known and uſual Profits attending great Preferment, be for ever aboliſh'd by a plain and explicit Law. And I believe I may preſume to ſay, that no Complaints of this kind will ever be made more; that *Weſtminſter-Hall* will never again be named in an Impeachment, and that your Lordſhips will have no Trouble of this kind for the future.

But this, my Lords, I am ſure I may venture to ſay, and I will ſay no more; that if it had been the Fortune of this noble Earl to have liv'd in ſuch happy Days, his Name would never have been tranſmitted to Poſterity in an Impeachment.

Mr. *Strange*. My Lords, we are now come to the Cloſe of the Defence, wherein to avoid Confuſion, I have hitherto confined my ſelf to the particular Part which it was my Duty to open; your Lordſhips will therefore permit me to take Leave of this auguſt Aſſembly with ſome few ſhort Obſervations both upon the Charge and the Defence.

Your Lordſhips did for four Days ſucceſſively ſit to hear this noble Earl arraign'd as the moſt corrupt, oppreſſive, and avaritious Perſon upon Earth: It was done too, my Lords, in a Manner, from which I ſhould have thought the Relation he bears to your Lordſhips would have been a ſufficient Protection; and without which the honourable Managers might very well have diſcharged their Duty to the Houſe of Commons, in laying the Caſe before your Lordſhips.

But, my Lords, whatever Reſentment this Treatment of one of your own Body might raiſe in your Lordſhips, I muſt for my own Part confeſs, that I heard it all with Pleaſure; as it was an open Acknowledgment, that all honeſt Art and legal Liberty were neceſſary in aggravating the Charge, and poſſeſſing your Lordſhips with that Opinion of the noble Earl, that the Gentlemen of the Houſe of Commons deſire you would entertain.

My Lords, the Charge in one general View conſiſts of an Accuſation againſt the noble Earl, either for doing what his Predeceſſors did before him, or for not doing what it is not pretended they ever did: A ſingular Misfortune to this noble Perſon, that the following ſuch great Examples ſhould in every Inſtance be imputed to him as a Crime.

As to the accepting Preſents for Offices, my Lords, we have fully proved to your Lordſhips, that the ſame was done by the Predeceſſors of the noble Earl within the Bar; and we muſt humbly inſiſt, that if the Statute of *Edward* VI. be taken as laying a Reſtraint upon that Practice, yet having put the Caſe, and ſaid what ſhould be the Conſequence, your Lordſhips cannot go out of that Statute to puniſh the noble Earl.

My Lords, it is the Miſery (I may ſay the Slavery) under which other Nations groan, that the Puniſhment for Crimes is arbitrary and variable, and that he who commits the ſmalleſt Offence may be put to undergo the moſt rigorous Puniſhment; but God be thanked, my Lords, *he hath not dealt ſo with this Nation*, but that *this People hath Knowledge of the Laws*; Crimes here are ſtated, and ſo, my Lords, are their Puniſhments; and give me Leave, my Lords, to ſay, that this is one of the main Channels through which our Anceſtors have deliver'd down to us that Liberty, which is the Glory of this, and the Envy of all other Nations.

My Lords, the Act under your preſent Conſideration puts the Caſe of accepting Money for an Office, and ſays, the Conſequence ſhall be the Loſs of Nomination: There are no Words that declare Offices were not ſaleable by Law, or that they ſhall not be ſaleable for the future, upon which to found a Proſecution by Indictment or Impeachment; though if ſuch Words were in this Act, I ſhould ſtill humbly inſiſt, that as well upon an Impeachment as upon an Indictment, the Statute, and that only, muſt be the Guide in aſcertaining the Puniſhment.

My Lords, the Articles have beſtowed many Epithets upon this Action; ſuch as illegally, corruptly, extorſively, *&c.* But your Lordſhips will not find them in this Act of Parliament.

And as to its being an Offence at Common Law, give me leave, my Lords, only to put you in Mind of three Proviſoes in this Act, which ſpeak the contrary in the ſtrongeſt Terms. The firſt is the Clauſe which confirms all Bargains then made, and which were to take Effect at a future Day. The next is a Declaration to what Offices the Act ſhall not extend, ſome whereof are of a publick Nature, as Keeper of a Foreſt, Manor, *&c.* And the third is that which takes Notice, that by Law the Judges might diſpoſe of Offices, and therefore leaves them to the full Liberty they had before the Act.

And if in this Impeachment we ſtand clear as to the Selling of Offices, then no Acts or Omiſſions towards raiſing the Price (if any ſuch had been proved) will make the Earl criminal, which is the whole of the Charge.

My Lords, your Lordſhips were told in a very moving Manner, that the noble Earl was purſued hither by the united Cries of Widows and Orphans——— But we have heard none: No Inſtance has been given of any one Preference in Judgment, of one Penny taken during the whole Courſe of his adminiſtring Juſtice to theſe Kingdoms, or of any one voluntary Complaint that has been made againſt the Earl; and yet, my Lords, he has been repreſented as if his Crimes were full blown, as if he had diveſted himſelf of Humanity, and taken Pleaſure in the Miſery and Diſtreſs of his Fellow Subjects; as one, whoſe only Motive of Action was inordinate Gain, and wicked Lucre; and as one overtaken by the Commons, triumphing in the Luxury of unpuniſh'd Crimes. You have been told too, my Lords, That *in him* Oppreſſion uſurped the Seat of Juſtice; that *by him* the Beauty of Juſtice was deformed, and *through his Means* Juſtice ſtood afar off, and Equity could not enter.—How little Ground, my Lords, there was for theſe Complaints, may, I think, be fairly inferred from the Defect of Evidence in this Particular, ſince after the ſtricteſt Scrutiny, both into his publick and private Life, your Lordſhips have not had one Witneſs appear at your Bar againſt him.

But, my Lords, ſince the Cries of Widows and Orphans were ſo much mentioned by the honourable Managers; we, who are Council for the noble Earl, thought it our Duty to ſhew your Lordſhips, that thoſe Cries were not *againſt* him as an Oppreſſor, but *to* him as a Reliever. And how little ſoever this noble Earl thought of having an Account of theſe Matters brought to your Lordſhips Bar, yet ſurely, my Lords, this is now a Circumſtance, under which it is lawful *for the left Hand to know what the right Hand doth.* And theſe Acts of Charity and Generoſity, which were not treaſured up for your Lordſhips Bar, but for a greater, are however proper to appear in this Place, in Vindication of the noble Earl againſt a Charge of Covetouſneſs and Corruption.

And now, my Lords, give me leave to add, That tho' the private manner in which theſe Charities were performed, has made it neceſſary for us to enter into a particular Account, and an Account that takes in ſome of them only; yet the noble Earl has a Merit to plead, of which I am ſure there is no Occaſion to call a Witneſs. Your Lordſhips all remember the Time when he preſided in the Queen's Bench, and ſaw (unmoved) the Tide of Preferment rolling towards a diſtant Shore. The true Intereſt of his Country in the preſent Royal Family was then his ſteddy Purſuit, and his Merit conſiſted in advancing it to the utmoſt. And his Majeſty, who was beſt able to judge of the Greatneſs of his Services, thought they deſerved a Reward proportion'd to the moſt exalted Merit, and therefore added him to your Lordſhips Body.

E. of *Macclesfield.* My Lords, I beg Leave that I may have the Liberty to lay before your Lordſhips ſome Obſervations on the ſeveral Parts of the Evidence given on both Sides.

Your Lordſhips will eaſily imagine, that a Charge of this Nature muſt have affected me very much, and the great Fatigue I have undergone hath not allow'd me the Liberty to conſider every Part ſo as to make the proper Reflections fit to lay before your Lordſhips.

I hope your Lordſhips will give me a little Time to recollect my Thoughts, that I may ſpeak in ſuch a Manner as is fitting to your Lordſhips. I deſire your Lordſhips will give me leave to make my Obſervations on *Monday* next.

Then the Managers and the Council withdrew; And the Houſe adjourned to Monday *Morning next, the ſeventeenth Day of* May.

Monday *the ſeventeenth of* May, 1725.

The Eighth Day.

THE Lords being ſeated in their Houſe, the Serjeant at Arms made Proclamation for Silence, as alſo the other Proclamation, that all Perſons concerned were to take Notice, that *Thomas* Earl of *Macclesfield* now ſtood upon his Tryal, and they might come forth in Order to make good the Charge.

Lord Ch. Juſt. King. Mr. *Serj. Probyn*, you may proceed.

Mr. *Ser. Probyn.* My Lords, I am humbly to ask your Lordſhips Pardon for ſome Omiſſions we have made in the Evidence we were inſtructed to lay before your Lordſhips in Behalf of the noble Lord impeached the laſt Day we had the Honour to attend your Lordſhips upon this Occaſion; we had ſome Witneſſes to offer more than were examined at that Time, and we hope your Lordſhips Indulgence will continue to hear them now; they are but very few, but yet ſuch as we apprehend are extremely material to the noble Lord's Defence. The laſt Evidence we laid before your Lordſhips related to ſeveral Charities given by the noble Earl, in order to ſhew that he was not of that avaritious Temper as hath been repreſented in Support of this Proſecution; and that the conſtant habitual Courſe of his Life and Actions hath been directly contrary to any Diſpoſition of this Kind; but we apprehend it would ſtill have greatly added to the Weight of this Evidence, had it at the ſame Time appeared to your Lordſhips what the Funds were out of which theſe Charities aroſe; that the real Eſtate which this

noble Lord hath purchaſed, does not amount to more than 3000 *l.* a Year, and that his perſonal Eſtate ſcarce exceeds 2000 *l.* When we have ſhewn this, it muſt ſatisfy your Lordſhips, that the noble Earl hath been much more charitable, than according to his Circumſtances he could afford. There is another Thing I beg leave to take Notice of, to obviate an Objection I am apprehenſive we ſhall hear of from the other Side; and that is, that theſe Charities were not given by the noble Lord out of his own Pocket, in regard there is a Sum of Money called Box-Money, which is laid out and diſtributed in private Charities by the Chancellor every Year. But to explain any Suggeſtion of this Kind, we ſhall ſhew that this Box-Money, though anciently us'd to be conſiderable, yet of late Years it hath not amounted to more than 172 *l.* a Year: And as there hath been always particular Objects of Charity recommended to this Bounty, ſo this Money hath been apply'd by his Lordſhip in the ſame manner it uſually was apply'd by his Predeceſſors; and that no Part of this Money ever went in any of thoſe ſeveral Charities, we have already given your Lordſhips an Account of.

Mr. *Serj. Pengelly.* My Lords, we beg Leave, on the Behalf of the Managers, to offer to your Lordſhips Conſideration, ſome Reaſons why they ought not to be permitted at this Time to go into the Evidence offered, after the Indulgence of many Days, and Defence made on the Articles, and the Evidence ſumm'd up by the Council for the Lord impeach'd; and a Day is only given to hear the Lord himſelf at his own Deſire, to ſum up or defend himſelf againſt the Charge againſt him; they ought not now to be allow'd to enter into a new Defence, or to give new Evidence. It is a new Method of Practice, after the Concluſion of the Council upon the whole Evidence, to ſay they have more Evidence to ſome of the Facts. My Lords, I don't know any thing of that Nature ever allow'd, eſpecially after the Examination cloſed, and an Adjournment for a Day or two. Beſides, as to that Part of the new Evidence which the Council have open'd, relating to the particular Eſtate and Circumſtances of this Earl, how can the Managers be provided to give an Anſwer to it? There is nothing in the Articles leading thereto; they do not charge him with having a great and large Eſtate, though that hath been formerly a proper Article in an Impeachment. But it is not made one in this Caſe; the Charge of the Commons is confined to particular Sums received. If the Managers had gone into the Enquiry of any other Sum, at leaſt without particular Notice to him, I believe it would have been objected againſt by the impeached Earl. Therefore to go into this ſort of Evidence, where there is no Charge by the Commons, is putting the Commons to anſwer what is not in Queſtion, which if they do, muſt lengthen out the Tryal unneceſſarily. If the Circumſtances of his Eſtate be material, there muſt then be a further Time given to contradict their Proof, which poſſibly may be done as to his real Eſtate: But as to his perſonal Eſtate, how is it poſſible for any Man to give an Account of that? Doth not this lye in his own Knowledge entirely? No Body can open his Cheſts or Cabinets at Home: So that it is impoſſible we ſhould know any more of it than what ſerves his Purpoſes. Therefore, my Lords, we ſubmit it, whether they ſhall be permitted to go into this Sort of Evidence, or whether your Lordſhips will enter into any farther Examination.

Mr. *Lutwyche.* My Lords, We think it is of great Conſequence to your Lordſhips, when an Evidence hath been ſo full, and with ſo great Patience heard to every particular Article; when that Evidence hath been ſumm'd up, and enforced by Council, and every Particular of the Articles animadverted upon; we think there is no Precedent in any Court of Juſtice, where new Witneſſes have, in ſuch a Caſe, been permitted to be examined. Witneſſes here have been produced; there hath been an Interruption of two or three Days for the noble Lord, at his own Deſire, to make his Obſervations on the Evidence; to offer now to produce Witneſſes that they had omitted to produce before, is perfectly new and unuſual. I ſuppoſe they had theſe Witneſſes in their Briefs, and if they had thought fit, they might have called them. I know of no Inſtance of the like in any Court of Juſtice; if the Gentlemen of the other Side will tell us the Precedent, they may. I think it is of dangerous Conſequence, not only in this Caſe, but in all other Proceedings in Courts of Juſtice. If your Lordſhips think fit to let them into one or two Witneſſes, I don't know why your Lordſhips, with equal Reaſon, may not let them go over another Courſe of Evidence.

My Lords, as to the other Matter about this noble Lord's Eſtate, that is not a Matter inſiſted upon by any Evidence that we have given; and I ſubmit it whether it is proper or any Way conducive in this Caſe, to any Thing that is material for your Lordſhips Judgment in this Matter, for this Reaſon, becauſe if it was material, it is impoſſible for us to know the Truth of it. We have no Right to examine this noble Lord upon Interrogatories as to his Eſtate, eſpecially as to his perſonal Eſtate; a Man may in theſe Days have the Opportunity of being worth 100,000 *l.* and People not know where it lies; as to his real Eſtate it might be known if it was material, but we ſubmit it whether it is incumbent upon us to inquire at this Time of Day into the noble Lord's Eſtate.

It is impoſſible in the Nature of the Thing that your Lordſhips ſhould have that ſatisfactory Account, or that we ſhould have ſuch Notice of it as is proper to make any Defence of it to us material; but we ſubmit it that it is not material at all, and therefore we hope your Lordſhips will keep to the Rule kept in all Caſes in all other Courts of Juſtice where People have made their full Defence, or elſe there would be no End of Things.

Mr. *Plummer.* My Lords, we did not lay to the Charge of this Earl that he was poſſeſſed of a great Eſtate, we have only laid to his Charge what he hath unjuſtly poſſeſſed, we have only charged him with Matters of Fact, which we think we have made out, and therefore hope your Lordſhips will oblige him to anſwer to that, and to that only, and not go to another Thing we have not charged.

Mr. *Serj. Probyn.* My Lords, we apprehend it

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is frequently practiſed, that where Council have omitted material Evidence, even after Summing up, the conſtant Indulgence of the Courts below lets them go into Evidence to ſupply that Omiſſion.

We take it to be our own Fault. We had in our Inſtructions, and it is in your Lordſhips Breaſt, whether we ſhall not ſupply that Omiſſion, we ſhall not run into a long Evidence, our Witneſſes are but two or three.

Dr. *Sayer.* My Lords, I beg leave to think, that as we point out a particular Fact, diſtinct from any we have examin'd to before, there can be no apprehenſion of any Danger at all; and if, as the Gentlemen have inform'd your Lordſhips, it is what is uſual in Courts below, that ſuch Omiſſions have been always permitted to be ſupply'd, your Lordſhips ſure will act with equal Equity in this Caſe. What we undertake to prove is the Circumſtance of his Eſtate; and though the Gentlemen of the Houſe of Commons did not make it a Matter of Charge in their Articles, yet in his Anſwer the Noble Earl takes Notice of it, and it will ſhew that the Earl had not his Heart ſo intent upon Gain, when it ſhall appear that his Fortune is ſo much leſs than the World might have imagin'd it to be, and when at the ſame time we ſhew his Generoſity, and that by means thereof his Eſtate was much leſſen'd and check'd.

I would take Notice of the other Matter, with regard to the Evidence of the Charity: It is only to explain and prevent a Miſtake, leſt it ſhould be imagin'd that theſe ſeveral Inſtances of Charity were out of the Box-Money, or Fund for Charity in the Court of Chancery. But, I believe, we need not trouble your Lordſhips with this, for that the Noble Earl is ſo well ſatisfy'd with the Integrity and Honour of the learned Managers of the Houſe of Commons, that he is under no apprehenſion to have that turn'd upon him. The principal Matter is relating to his Eſtate.

As we have in great Meaſure left it to the Earl himſelf to ſum up the ſeveral Evidences, and have done but little ourſelves, the Objection of the Evidence being clos'd and ſumm'd up is not ſo ſtrong as in other Caſes; we ſubmit it, whether your Lordſhips will not indulge us ſo far as to produce a Witneſs or two to this Matter.

Mr. *Com. Serj.* My Lords, we do not ask this as a Matter of Right, but as a Matter of Indulgence. I own the Rule that the Gentlemen of the Houſe of Commons have laid down is a general Rule for the Government of Evidence.

We can't controvert that, but I believe it will not be controverted on the other ſide, that ſuch a piece of Indulgence was hardly ever deny'd, and we hope your Lordſhips will not deny it upon this Occaſion.

Earl of *Macclesfield.* My Lords, I don't apprehend that this is a thing ſo very extraordinary, or ſo dangerous, as hath been repreſented. It would be extremely ſevere if, in a Cauſe of ſo great Length, and ſo much Fatigue, I ſhould have Witneſſes ready to give your Lordſhips an Account of ſome Facts material for my Defence; and my Council happening not to call them, although they were attending, and there ſhould be a certain Form that ſhould exclude me from having the Benefit of their Evidence; I don't know what this is founded upon, I never heard of ſuch a Form or Rule.

There is no Inſtance that where Council hath been ſumming up the Evidence, and, before the other Side have replied, an Omiſſion hath been diſcover'd, that that Omiſſion hath not been allow'd to be ſupply'd. And,

I appeal to my Lords the Judges, Whether they have ever known this piece of Indulgence denied upon any Tryal whatſoever in the Courts below. My Lords, with great ſubmiſſion, the Evidence is not yet finiſh'd; I am ſorry I muſt yet give your Lordſhips the Trouble of obſerving a good many things that have been hitherto omitted: This is a Matter the Council had Directions about, the Witneſſes were attending, but they were omitted to be call'd for; I hope your Lordſhips will not, for ſuch a Miſtake, exclude me the Benefit of their Teſtimony: Had it been calling freſh Evidence to any Matter that hath been examined to before, there might poſſibly be ſome Grounds for an Objection of this kind; but I mean only to call one or two Witneſſes to freſh Matter, that hath not been enquired into before. There hath yet been no Witneſs examined as to the Box-Money, or my real or perſonal Eſtate; and yet thoſe two Things are material, and it may greatly turn to my Prejudice if I have not the Liberty of producing this Evidence in relation to them.

It hath been repreſented that I have an Eſtate vaſtly more conſiderable than in Truth I have; and this Matter of the Box-Money, as I have been inform'd, gave Birth to a Report abroad, as if what I gave for Charity was out of that Fund.

As to this latter, I dare truſt the Candour of theſe Gentlemen, that they do not believe it; and if they do not inſiſt that what I gave was out of the Box-Money, it will be needleſs for me to prove that it was not. But as to the other Matter, I hope I ſhall not be precluded from having thoſe Witneſſes examin'd, becauſe it was before omitted; wherefore I humbly beg your Lordſhips Directions thereupon, whether I ſhall be at Liberty to lay their Evidence before your Lordſhips or not.

Mr. *Onſlow.* I would beg leave to ſet your Lordſhips right as to that of the Box-Money. The Noble Lord inſinuates as if ſomething of that had been mention'd by the Managers; nothing hath been mention'd of it, either by the Evidence or by the Managers.

Earl of *Macclesfield.* No, I beg leave to explain my ſelf; I did not ſay the Managers had inſiſted upon it, but only ſaid it is a Matter that I have heard without Doors; but I believe I may rely upon their Candour that they will not make it an Objection now, in caſe they oppoſe my giving Evidence to the contrary.

Mr. *Lutwyche.* My Lords, I am a little ſurprized, why the Noble Lord mentions this of the Box-Money, when not one ſingle Word hath been ſaid of it, either by the Evidence or by the Managers: Why then ſhould this Noble Lord himſelf mention it? And why ſhould he call Evidence to a thing that hath no manner of relation to any thing that hath been ſaid? If his Lordſhip will pleaſe to give us leave to reply; if we then ſay any thing of it, he may then give an Anſwer to it; but it is improper now to be giving an Anſwer to an Objection that was never made, and to which the Evidence hath not ſaid one Word.

Lord Steward. If the Noble Lord thinks this a Point to be inſiſted on, it is then neceſſary for all to withdraw.

Order'd to withdraw, which was done; and being afterwards called in again,

Lord *Chief Juſtice King.* Mr. *Serj. Probyn*, it is the Opinion of their Lordſhips, that the Evidence offer'd by the Earl of *Macclesfield*, with reſpect to the further Account of his Charity, be not now admitted; and they are likewiſe further of Opinion, that the Earl of *Macclesfield* be not now permitted to give Evidence of the Value of his Eſtate, either real or perſonal.

Earl of *Macclesfield.* My Lords, your Lordſhips were pleas'd to indulge me to this Day to lay before your Lordſhips what I had to ſay in my Defence, againſt the Charge brought againſt me by the Commons, and againſt the Proof ſupporting that Charge, which your Lordſhips with ſo much Patience heard. From the Time your Lordſhips were pleas'd to allow me this Liberty till now, I have apply'd my ſelf with the utmoſt Diligence to prepare my ſelf for my Defence.

To this End it hath been neceſſary to look over the Notes, taken of the Evidence given on both ſides, and likewiſe of what was ſaid by thoſe Gentlemen who are Managers for the Houſe of Commons. I find it very neceſſary to lay before your Lordſhips many Obſervations on the Evidence, which depend upon an exact comparing of them together. It being a matter that hath taken up ſo much Time, and there being ſuch a Diſtance between the Evidence given on the one ſide and the other, I have been employ'd wholly from the laſt Time till now in the Conſideration of it; and I can ſay with Truth, I have not ſlept five Hours theſe two Nights, and yet I have not been able to get through it, and I am not now prepared to lay before your Lordſhips what I have humbly to offer for my Defence; there are many Things exceeding material to be ſubmitted, and I beg therefore, that your Lordſhips will indulge me a farther Time, ſo that I may be able to do it in ſuch a manner, as may ſet the Evidence and Obſervations upon it in ſuch a light as your Lordſhips may paſs a proper Judgment. I don't do this out of Delay; I believe your Lordſhips will eaſily imagine I ſhould be glad to have this matter over, whatſoever the Event may be, for I am quite ſpent, and my Strength and Spirits waſted with the Fatigue I have already undergone. My Lords, I have been ſo far from any Delay in the Courſe of this Proſecution, that when I put in my Anſwer, as your Lordſhips were inform'd by one of the Gentlemen of my Council, that tho' it was not finiſh'd till between three and four a-Clock in the Morning, yet I choſe to get it ingroſs'd, and put in the ſame Day, rather than there ſhould be the leaſt Appearance of any Delay on my Part; and I do not know whether by endeavouring ſo very much to diſpatch this Work, I have not render'd my ſelf unfit and unable to go on with it: Human Nature can hardly bear what I have gone through.

At my Years, if I ſhould undertake to do it by to-morrow, I am afraid I ſhould ſink under the Weight of ſuch a Task, and not be able to come before your Lordſhips prepared as I ought to be; therefore I hope your Lordſhips will be pleas'd to allow me till the Day after; the Fatigue I have already undergone has been very great, and I hope your Lordſhips will allow me ſuch a Time as you will think competent; the Work I have to do will take up a great many Hours; there hath been Variety of Evidence, I hope your Lordſhips will indulge me till *Wedneſday*; it is of very great moment to me, and I am ſure I ſhould be unwilling to miſpend your Lordſhips Time, and delay this Matter unneceſſarily: It really gives me the greateſt Uneaſineſs to find my ſelf in that Condition, that I cannot think of being able to do it ſooner; I was before afraid that I ſhould not be able to do it by this Day, but yet reſolv'd to do all that was poſſible for me, and therefore declin'd asking then for any longer Time.

I hope your Lordſhips will indulge me; if your Lordſhips knew the Fatigue I have undergone, and the Effect it hath had upon my Health, I am ſure in Humanity you would make no Difficulty of granting me farther Time to prepare my ſelf in a proper manner, in a Caſe that is of ſo great moment to me; and I hope the Gentlemen of the Houſe of Commons will not be againſt it; if they ſhould overpreſs this matter, I don't know but the Fatigue of it may bear ſo hard upon my Life, as to ſave your Lorſhips the Trouble of paſſing any Judgment upon this Occaſion.

Mr. *Serj. Pengelly.* My Lords, we don't apprehend the Lord properly applies to us in this Inſtance.

All Parties were directed to withdraw, which being done

The Houſe adjourn'd till Wedneſday *Morning Ten a-Clock, the* 19th *of* May, 1725.

Wedneſday, May 19. 1725.

The Ninth Day.

THE Lords being ſeated in their Houſe, the Serjeant at Arms made the two uſual Proclamations, as on the former Days.

L. Ch. Juſt. King. Mr. *Serjeant Probyn*, if you pleaſe to proceed.

E. of *Macclesfield.* My Lords, I am firſt to return my moſt humble Thanks to your Lordſhips, for the Time you have been pleas'd to indulge me with, for recollecting my Thoughts, and looking over the Evidence that has been offer'd on either ſide, during the Courſe of this tedious Proceeding; that I might be able to put thoſe Obſervations I have made upon it in ſuch a light, as became one who was to ſpeak in a Caſe of ſo great Importance, at your Lordſhips Bar.

My Lords, I have been under ſome Misfortunes in this Proſecution; your Lordſhips muſt, no Doubt, have obſerv'd the Diſappointments I have met with, in Queſtions I asked of ſome Perſons, who appear'd as Witneſſes in the Courſe of this Tryal, which it was impoſſible I could have had any Inducement to propoſe, but from my own Knowledge of the Anſwers that ſhould have been return'd. My Council, thro' the great Hurry that uſually attends Proceedings of this Nature, happen'd

happen'd not to be inſtructed in ſome Particulars, that were exſtreamly proper to have been laid before your Lordſhips upon this Occaſion: Beſides that, the Variety of the Facts, continu'd to be given in Evidence from one Day to another, has in this particular Caſe been carried on to ſuch an unuſual length, that they have not been able in the End to make themſelves ſo perfect Maſters of the Evidence, as the Importance of the Caſe requir'd.

I ſhould trouble your Lordſhips with an Apology for my own Inability to ſupply this at preſent, both from the extream Fatigue I have undergone during the whole Courſe of this Proſecution, as becauſe that my laſt Illneſs has broke my Memory to a great Degree. But whatever Difficulties I have labour'd under, when I conſider your Lordſhips are my Judges, I cannot doubt but your Candour and Goodneſs will have a due Regard to them, and make Allowance for the Want of Order or Accuracy in any thing I have to lay before you; and therefore, rather than ask any more Time of your Lordſhips for preparing my ſelf, I will endeavour to go on now as well as I can.

My Lords, the Charge brought againſt me is very heavy, as laid in the Articles, and highly exaggerated by the Gentlemen that are appointed Managers by the Houſe of Commons.

That which I think is charg'd as the Foundation of the whole is,

My entertaining wicked and corrupt Purpoſes, to raiſe and procure to my ſelf exceſſive and exorbitant Gain and Profit.

This it is that hath made me extorſively and illegally take Money, upon the Admittance of Maſters, and Diſpoſal of other Offices.

And the being ſet upon the Gain ariſing from the Maſters Places, with the Deſire to advance it, or keep it up, is repreſented to be the Source of all the reſt of the Things complain'd of, which ſeem to me to be charg'd only as Contrivances for that Purpoſe.

This is ſuch Corruption of Heart, and carries with it ſuch a Malignity, that it makes every Action and every Omiſſion criminal: Every raſh Word, every Neglect or Imprudence, nay Things perfectly innocent in their own Nature, or perhaps commendable, are ſo infected by it, as to deſerve the ſevereſt Cenſure and Puniſhment.

Whether I wait in Expectation of the Application of the Suitors, with Reſpect to *Dormer*'s Deficiency, or of my ſelf endeavour to get it made good, or even pay my own Money towards it, it is all one, ſo wicked a Heart corrupts all.

And the Violation of my Oath as Lord Chancellor, and of the great Truſt in me repos'd, contrary to the Duty of my Office, is made the Aggravation of almoſt every Article.

I ſhall endeavour to ſhew your Lordſhips, that the ſeveral things charg'd upon me are either not true, or not criminal; or if your Lordſhips ſhall judge otherwiſe of them than I do, yet that they were the Effects, not of Wickedneſs but of Miſtake; and if I have ever done any thing for the Service of my Country, of the Conſtitution, of his Majeſty, and of the Royal Family, and the preſent Eſtabliſhment, and for the Adminiſtration of publick Juſtice, it might not be unſuitable to the unparallell'd Goodneſs of this Reign, for your Lordſhips to have Compaſſion upon the Errors, Miſtakes and Weakneſſes of the faithful ſteddy Servant of a Prince, whoſe Mercy has been ſo often extended, in ſo great a Degree, to the higheſt Crimes of his bitter Enemies.

Before I enter upon my particular Defence, I beg leave to take Notice of ſomething that has been ſaid with Relation to the Anſwer which I have put in to theſe Articles of Impeachment, as containing a Plea of a Pardon at the ſame Time that I inſiſt upon my Innocence; and it's not being a full Anſwer to all the particular Charges in the Articles. As to the firſt, my inſiſting on his Majeſty's moſt gracious, general and free Pardon for all things before the twenty fourth of *July* 1721.

My Lords, I hope, and am my ſelf of Opinion, that I have not done any thing that is criminal, or needs a Pardon.

But when ſo many Gentlemen of Learning and great Parts, undertake to make out, that That is a Crime which I thought and ſtill think not ſo; ſhould I opiniatre to that Degree, and be ſo confident that your Lordſhips will be of my Opinion, as to refuſe the Benefit of a Pardon, which his Majeſty has ſo graciouſly granted to all his Subjects?

When little Imprudences, and ſo many Omiſſions, and even idle Words, looſe Talk, and unguarded Expreſſions, are laid to my Charge as Crimes, and made the ſubject Matter of an Impeachment; and ſome of them charg'd without mention of any Time, or the Name of the Cauſe in which it is pretended they were ſpoke, or any other Circumſtances by which I might be enabled, either my ſelf to recollect or to make Enquiry of others, in order to prepare for my Defence; it had been Folly in me not to have taken Advantage of the Pardon.

And as for the Reflexion intended, to expoſe the Abſurdity of pleading Innocence and a Pardon to the ſame Offence; what is more conſiſtent than to ſay, I ought not to be puniſh'd, becauſe the Fact charg'd is no Offence, or if it be one it is pardon'd? But had the Gentleman who made it been pleas'd to have read the laſt Act of Grace carefully through, he would have found that it expreſſly provides, that the Pardon ſhall ſupport the Plea of Innocence, and upon *Not guilty* pleaded, the Act may be given in Evidence to prove the Perſon not guilty. And, in the Notion of our Law, it wipes away whatever Guilt there was, and leaves the Perſon innocent, that is, as a very great Lawyer and a very wiſe Man expreſſes it, *it takes away not only* pœnam *but* reatum, *the Guilt as well as the Puniſhment.*

As to the Reflexion made upon my Anſwer in another reſpect, as if it were not full and direct, and tha in Chancery, the Court where I had preſided, it would be held an inſufficient Anſwer. Probably it might be ſo; but that is, becauſe that a Plaintiff there has a right to require a Diſcovery of all ſuch Facts as are material for his Advantage, upon the Oath of the Defendant. And therefore the Anſwer is not only the Parties own Defence, but it is to ſupply the Plantiff with Evidence, who therefore may except to it as inſufficient, ſo far as it is ſhort of anſwering to, and giving

ving an Account of all, of every minute Circumſtance that he charges.

But do they imagine that to be the Caſe in a criminal Proſecution? or that the Defendant there is obliged to furniſh Evidence, or to confeſs any thing that may tend to affect or charge himſelf? No, my Lords; the Anſwer there is only for the Defence of the Perſon accuſed: And not guilty is a full Anſwer.

And, my Lords, I inſiſt upon it, I have given a full Anſwer to all the Articles at the end of my Anſwer, where I have pleaded the general Iſſue, and in expreſs Words ſaid, that *I am not guilty of all or any the Matters contained in the Articles, or any of them, in manner and form as they are therein charged againſt me*; which is of it ſelf a direct and full Anſwer, without more.

And tho' I have ſet forth other Facts, it is only where I have thought ſome things might be farther explain'd. But there is no need to make any Proof of a Word in my Anſwer, if the Charge in the Articles is not ſupported by the Evidence given againſt me.

And I ſtill hope your Lordſhips will be of Opinion, that tho' ſome of the Matters mention'd in the Articles are proved, and indeed ſome are expreſſly admitted by me, and others never diſputed; yet that none of them is admitted or proved in *ſuch manner as it is charged in the Articles.*

Having ſaid thus much, I proceed to conſider what has been offer'd in *Proof* againſt me.

My Lords, The Preamble of the Articles is intended for an Aggravation of my Crimes, by ſhewing what Oath I had taken, which I had violated; and what Favours I had receiv'd from his Majeſty, and was not ſatisfy'd with them.

As to the laſt, give me leave to ſay, that I can never expreſs the Senſe of my Heart for his Majeſty's Favours and Bounties, and that it ought to be a high Aggravation if I have abuſed them.

I pretend to no Merit, but that of a Heart full of Duty and Zeal for his Service; but his Royal Grace and Goodneſs has exceeded, not only my poor Services, but even my Deſires and Wiſhes.

And whatever becomes of me, in whatever State of Life I am, my Gratitude and Duty ſhall never abate.

As to the Violation of my Oath, no ſuch Crime is made out againſt me.

The Oath of Office taken by the Chancellor when he enters upon that Office, has no relation to what is laid to my Charge: I have ſet it forth *verbatim* in my Anſwer, and no Argument has been attempted to be drawn from it.

But it was ſaid the other Day, that I had taken an Oath upon the Statute of the twelfth of *Richard* II. which I had *forgot*, *both in my Anſwer and in my Conduct.*

As to my Anſwer, I beg leave to obſerve, that the Anſwer is ſuited to the Charge. I am not charged in the Articles to have ever taken any Oath upon that Statute, nor is the Oath ſuppos'd to be taken on the third of *November* at all mention'd.

The Words of the Preamble, which is the only Part of the Articles that mentions my taking any Oath, are theſe:

" And whereas *Thomas* Earl of *Macclesfield*, in " or about the Month of *May*, in the Year of " our Lord 1718, by the Grace and Favour of his " Moſt Excellent Majeſty, was conſtituted and " appointed Lord Chancellor of *Great Britain*, " and did *thereupon take the uſual Oath* for the due " Execution of that High Office, whereby he did " ſwear well and truly to ſerve our Sovereign " Lord the King and his People, poor and rich, " after the Laws and Uſages of the Realm, and " *ſuch other Oaths as have been accuſtomed*; and the " ſaid Earl continu'd in this great Office, *&c.*

Where the *other Oaths accuſtomed*, as well as that particularly *deſcribed*, are confined to what I did *thereupon* take, that is, *upon my being made Chancellor in May* 1718. At leaſt to my poor Underſtanding it appear'd ſo. Nor did I at all imagine, that it referred to what was done the third of *November* after, which was but the ſame as had been done the third of *November* before.

And accordingly my Anſwer is confined to the *ſame Time* that I was ſworn Lord Chancellor before his Majeſty in Council, the fourteenth of *May* 1718. when I took the Oath of Office ſet forth in the Anſwer; and at the ſame time took the Oath of Allegiance and Supremacy. And there is no Pretence that I took any Oath upon the Statute of *Richard* II. at *that Time.*

The Words of the Anſwer are.

" That in the beginning of *May*, in the Year " 1718. he the ſaid Earl was, by his Majeſty's " great Grace and Favour, appointed Lord Chan- " cellor of *Great Britain*, and was ſworn before " his Majeſty in Council the fourteenth Day of " that Month; when the following Oath, be- " ing the uſual Oath of Lord Chancellor, was " adminiſtred to him, *viz.* you ſhall ſwear, *&c.* " And the ſaid Earl, *at the ſame Time*, took the " Oath of Allegiance and Supremacy, but *no* " *Oath of Office beſides* that above ſet forth.

My Anſwer therefore plainly relates to what was charged, and my taking no Notice of any Oath upon this Statute, ought not to be imputed to Forgetfulneſs, but to its not being charged. It is not charged, and therefore not anſwer'd to.

But it is now inſiſted upon, and great Streſs laid upon it, that at the naming of Sheriffs, which is done in the Exchequer upon the third of *November* every Year, I took an Oath upon the Statute of 12 *Richard* II. which extends to the Diſpoſal of the Office of Maſters in Chancery.

To judge of the Truth of this new Charge, your Lordſhips will be pleaſed to conſider what it is that is yearly done the third of *November*, upon that Occaſion of naming of Sheriffs.

The Managers were not pleaſed to open what paſſes every Year upon the Nomination of Sheriffs, which had been proper before they called the Witneſs to prove it; if they had, it might have ſaved me the Trouble of asking any Queſtions.

But the Examination, and the Teſtimony of a Witneſs that ſpoke indiſtinctly and low, tended, as I thought, to have the Statute enter'd in the old Book of the Exchequer in obſolete French, and ſo ill read as hardly to be underſtood, to paſs for the Form of an Oath then adminiſter'd

adminiſter'd upon the Statute which had been juſt before read in Engliſh to your Lordſhips at the Table; and ſo it might be taken to be an Oath conceived in the Words of the Statute, extending to all Nominations of Officers, and to all Times, and not confined to that Occaſion.

I did therefore ask ſome Queſtions, not to quibble away an Oath, as one of the Managers was pleaſed to expreſs it, but to have the Matter laid before your Lordſhips in it's true Light, and which came out to be thus.

The Lords of the Privy-Council and the Judges, being aſſembled for naming Sheriffs for the following Year, at the Time and Place appointed for that Purpoſe, the Act of Parliament of 12 *Richard* II. is read, directing ſeveral Perſons to be ſworn, concerning their naming of Sheriffs, and of ſome other Officers ſpecify'd in the Act, and with general Words extending to more; then an Officer gives a Bible to every one of the Privy-Counſellors and Judges preſent, who all, one after another, kiſs it; but nothing is ſaid to them by the Officer or any one elſe, nor are any Words ſpoken by them.

I know it has been much doubted how this could be called Swearing, or taking an Oath.

But that is not at all what I inſiſt upon.

There being ſomething ſacred in the Ceremony, I agree the Action ſhould be conſider'd as a ſolemn Undertaking in Nature of an Oath, to obſerve that Statute in the Buſineſs we were then entring upon; and ſo it is an Engagement to proceed then to name Sheriffs according to the Direction in that Statute.

And accordingly this is repeated every Year upon the like Occaſion, though the Perſons are the ſame, and has been ſo by me for ſeven Years together before I was Chancellour, and for as many ſince.

But to extend this farther than that Occaſion, is, I humbly inſiſt upon it, going beyond what the Action then done imports.

The Statute plainly relates to Nominations or Elections, where Numbers of Perſons are called together to name Officers; the very reading the Statute ſhews it, and when I come to ſpeak of the Conſtruction of that Act of Parliament, it will be yet more plain.

And when it provides, "That the Chancellor, "Treaſurer, Keeper of the Privy Seal, Stew-"ard of the King's Houſe, Chamberlain of the "King, Clerk of the Rolls, Juſtices of the one "Bench and of the other, Barons of the Exche-"quer, and all others, *who ſhall be called* to ordain, "name, or make Juſtices of the Peace, Sheriffs, Eſ-"cheators, Cuſtomers, Comptrollers, or any other "Officer or Miniſter of the King ſhall be firmly "ſworn, *&c.*" I take it to mean that they ſhall be ſworn when they are ſo called together, and met. And the Practice is accordingly.

There are ſome old Statutes that ſay, that the Chancellor with the Council ſhall appoint Juſtices of the Peace, the Treaſurer with ſome others ſhall name Cuſtomers, *&c.* But the Uſage at this Time is, (and it has been ſo for ſome Hundreds of Years) that the Naming of Juſtices of the Peace, is in Fact in the Chancellour only; of Cuſtomers and Comptrollers, in the Treaſurer; and many of the Perſons named in the Statute meddle not with naming any of the Officers comprized within either the particular or general Words.

If therefore, my Lords, the Biſhops were deſired to draw up a Form of an Oath to be taken upon this Statute by all the Perſons attending on the third of *November* for the Naming of Sheriffs, I preſume they would confine the Oath to the particular Occaſion.

I ſubmit to their Conſideration, whether they would draw it up ſo, that every one preſent ſhould ſwear that he would obſerve this Statute, or not go contrary to this Statute, in the Nomination of Officers which he has not any Right or Power to name, nor is ever called to name. Whether they would frame ſuch an Oath, whereby the Judges ſhould ſwear that they would not name Juſtices of the Peace, Eſcheators, Cuſtomers, or Comptrollers, for Gift or Brocage, Favour or Affection, when they cannot name them at all, either by Proviſion of Law or by Uſage.

I apprehend this would be an improper, if not a vain Oath.

And a conſtructive taking of an Oath, which is all that can be inſiſted upon here, ought not to be carried farther than would be proper to expreſs in Words at length.

And therefore, as all the Perſons aſſiſting there certainly take the ſame Oath, and many of them have nothing to do with the Choice, or naming of any of the other Officers in the Act beſides Sheriffs; and as this Action yearly repeated on this particular Occaſion, ſhews it to be intended to relate only to Sheriffs; I have always thought that it went no farther than to oblige me, that in the Affair, which we were then entring upon, I ſhould act according to that Statute.

And I am perſuaded, that in this Caſe, I have the univerſal Concurrence of the Judgments of others. For I do not believe that ever any Perſon that aſſiſted on that Occaſion, had the leaſt Apprehenſion of his then taking an Oath, which related to any thing but that particular Occaſion.

But if they all did take an Oath, ſo extenſive as to reach to the Diſpoſal of all other Employments, (which is the Senſe wherein I believe the Managers would have the Words of the Act to be underſtood,) God knows in what Guilt many of them have involved themſelves.

It is a Part of the Statute, and Part of that to which the Perſons called to name Officers are directed to be ſworn, *That none who ſues by himſelf, or by any other, in private, or openly, to be in any manner of Office, ſhall be put into the ſame Office, or any other.*

Will theſe Gentlemen urge that every Lord Treaſurer, Lord Commiſſioner of the Treaſury, or other Lords in great Employments, that give Places, or name Perſons for Places to the King, and have once attended at the naming of Sheriffs, have been guilty of a Violation of this Oath, in every Inſtance, where they have named any Perſon to any Office, who, by himſelf, or his Friends, ever asked for the Place given, or for any other?

I can-

I cannot imagine that they will attempt to carry it ſo far. But if they do, I will yet preſume, that your Lordſhips will not, by ſuch a new Conſtruction, condemn ſo many Perſons that are innocent, or thought themſelves ſo.

Hence I think my ſelf not to have taken any Oath upon the Statute of 12 *Ric.* 2. which any way extends to Maſters in Chancery; and I hope your Lordſhips will think ſo too.

What is the particular Meaning of this Act, and what Arguments may be drawn from the Proviſion therein, I ſhall not trouble your Lordſhips with at preſent, but ſhall reſerve the Conſideration of it for another place. But as to the Charge of violating an Oath founded upon it, let the Obſervations I have made, from the Frame of the Act and the Nature of the Action at preſent ſuffice.

The ſubject matter of the firſt Articles, as they ſtand in order, and which I believe has given riſe to this Proſecution, is the taking Money for the Places of Maſters in Chancery; long practiſed without Blame, though made my great Crime.

What has been urged from the Nature of the Office, the Oath which the Maſters take, and the Commiſſions granted to them, together with the Maſter of the Rolls and the Judges to hear Cauſes in the Abſence of the Chancellor, will not have any Weight in the Queſtion, whether it be criminal to take Money on admitting them.

I beg leave to ſay, that the Office anciently was quite different from what it is now, ſo that it is in a manner forgot what it originally was. One Branch of thier Office anciently, and then reckoned of Importance, was the framing Writs, which are now made out by the Curſitors; and that which is their greateſt Buſineſs now, there appear no Footſteps of being done by them, or any others anciently.

Their Buſineſs now is chiefly preparatory to the Determination of the Court of Chancery upon References made to them by the Court, in order to their ſtating Things to the Satisfaction of the Parties; or reducing the Diſpute to ſome few Heads, in which they differ, for the eaſier Determination of the Court.

And that which they are moſt generally employed in thus, is matter of Accompts.

Very frequently the Parties, after having had the Items examined and proved, agree before the Maſter the whole Accompt, and almoſt always the greateſt part of it. And if the Parties are diſſatisfied, they are at Liberty, by Objections in Writing which are called Exceptions, to ſtate to the Court the diſtinct Items which they diſpute, by which means the Court is eaſed of the Conſideration of all the reſt of the Items of the Accompt. And the Maſter makes no judicial Determination; but when he makes his Report has only done the Drudgery of an Accomptant, compared Vouchers, heard Objections, convinced the Parties, as far as he could, and then ſtated the whole Accompt ſo as he thinks is right; which at laſt has its Force, not from him but from the Court, which confirms it if not diſputed, or examines the diſputed Points if deſired.

Upon References to them whether Anſwers are ſufficient, they are to compare the Words of the Anſwer with the Words of the Bill, and ſtate whether they find them full: And if the Parties do not acquieſce in the Maſter's Opinion, the Court takes the Trouble to make the Compariſon.

They are likewiſe Caſhiers, not of the Court but of the Suitors, and always at their Prayer.

And the Parties have this Advantage in having the Maſters for their Caſhiers, that they have a ready Method to compel Payment by Order of the Court, and a Commitment of the Perſon or Sequeſtration, (that is ſeiſing all their Eſtates and Effects.) or both, upon ſuch Order, in a ſhort and cheap way; whereas againſt other Caſhiers they muſt be put to the Charge and Delay of a tedious Suit, if the Money be not paid.

And other Officers, whoſe Places are allowed to be ſold, do the ſame Things, make Reports to State Facts on References, are Caſhiers of the Money brought in, and tax Coſts, which is another thing the Maſters do.

As to the Oath; it is the old Oath, before the Office was ſo greatly changed; what Advice to be given to the King it refers to, will be hard I believe to explain, and has not been attempted; but if the Writs requiring their Attendance here were looked into, poſſibly it may be thought, that anciently they attended your Lordſhips in a manner different from what they now do, and have done from before the time of our Memory.

And as to the Commiſſion to hear Cauſes in Abſence of the Chancellor, that makes no more Variation in the Nature of their Office, than it doth in the Office of Clerk of Aſſize, (expreſly allowed in the Statute of *Edw.* 6. to be diſpoſed for Money) that the Clerk of Aſſize is conſtantly joined with the Judges in the Commiſſions of *Oyer* and *Terminer* and Goal Delivery, for the Tryal of Criminals, even for capital Crimes.

To proceed therefore to the Points of the Charge.

It is founded ſingly, upon the *taking Money* for admitting the Maſters into the Office; and the *manner* of taking it extorſively, without reference to any want of Qualification in the Party admitted; and therefore cannot be maintained, unleſs the taking Money be in all ſuch Caſes criminal, or that the manner of taking or extorting it in theſe Caſes make it ſo.

Therefore I will firſt ſpeak to the general Queſtion, whether taking Money upon Occaſion of putting in a Maſter, is in all Caſes criminal in itſelf, or by the Common Law, or made ſo by any Statute which ſubjects it to any Judgment or Puniſhment,

ment, which can be prayed in this Profecution; as I have expreſſed it in my Anſwer.

And that which I humbly inſiſt upon as to the firſt, that is, whether it can be ſaid to be wicked or criminal in it ſelf or from the Reaſon and Nature of the Thing, is this:

An Office may be conſidered in two Reſpects; Firſt, with Reſpect to the Duty; that is, the Concern of the Publick; that the Perſon be duly qualified to diſcharge his Office well. Secondly, with reſpect to the Profit and Advantage; and that is meerly private, and concerns the Officer only. And whilſt he diſcharges his Duty well, without Extortion, or other Misbehaviour, the Publick is little concerned in it, whether the Profit be more or leſs. As in thoſe Offices, which are very numerous and of great Conſequence, that may be executed by Deputy; provided the Deputy behave himſelf well, the Publick has never concerned it ſelf what his Salary or Allowance from his Principal is, whether it be greater or leſs.

And as the Perſon who is put into a very beneficial Office, ſuch as one of theſe, for his Life, has not any antecedent Right to the Office, and therefore not to the Profits ariſing thereby; and he that prefers him is not bound to give it him; therefore when he puts him into it, he in effect grants him all the Profits of the Office for his Life: And if the Officer make him a Preſent for it, either unexpected, by way of Thanks after he is put in; or expected, which he had told him of before; or give it at the Time, or before that he is admitted; I ſee not any Immorality either in the Giver or Taker. It is Money given for Profits to be received during Life.

The Publick is concerned only in the Goodneſs of the Officer, not how advantageous to him the Grant of the Office is, nor in the Inducement which he that appointed him had to put him in; whether Friendſhip, Acquaintance, Relation, Importunity, great Recommendation, or a Preſent.

I agree, that a Perſon taking a Preſent and putting in an unfit Perſon, when he knew him to be ſo, or had juſt Ground to believe him ſo, is criminal: Not becauſe he has taken a Preſent, but becauſe he has prejudiced the Publick knowingly: It may be an Aggravation, that he had taken Money; but the Crime is, the Wrong done to the Publick in the Perſon advanced. It had been the ſame Crime, had he done it for the ſake of Kindred, or Friendſhip, or for Recommendation, or any other Reaſon.

But if a Perſon very well qualified be placed in an Office, and the Publick has all the Advantage from him that it can have from an Officer in that Poſt, and ſo I who placed him, have well diſcharged my Duty to the Publick; is it material how well I loved him, how nearly he is related, who it was that perſuaded me to prefer him, or what he gave me on that Account, whether before, or after he was put in? Will any of theſe Circumſtances make me criminal in an Action by which I ſerved the Publick well? If the Publick have all the Benefit it can have; where is the Immorality? where is the Crime, if I have an Advantage too? Eſpecially if Uſage has in ſome ſort annexed that Advantage to my Office, which is taken from his?

Obj. I know it may be objected with great Appearance of Reaſon, that this Practice is dangerous, it leads to Inconveniences, it is a Temptation to him that diſpoſes of Places to make ill Officers, and a Temptation to the Officers to extort Money and abuſe the Subjects, in order to get up their Money again.

Anſ. But is it therefore a Crime, where the Temptation is reſiſted, and a very good Officer is put in, and he behaves himſelf perfectly well?

The Point of the Charge now under Conſideration reſts ſingly on this, that I took Money for admitting Mr. *Francis Elde* (for inſtance); and tho' taking Money is a dangerous Practice, and may be a Temptation to let in an ill Man, is it therefore a Crime to put in *Francis Elde*, who is not alledged to be an ill Man or any way unfit, and is really an excellent Maſter?

This Argument concludes, only that the allowing it to be generally practiſed is inconvenient, and may in the Deliberations of the Legiſlature be properly uſed to prove it fit to be reſtrained by a Law: But is not of force, in a Court of Juſtice, to prove it to be a Crime in every inſtance, becauſe it may occaſion a Crime in ſome.

Farther as to the Matter of Temptation to put in one unfit:

The Liberty of preferring Relations to Offices is a Temptation to put in Perſons unfit; and without doubt has often prevailed. Suppoſing therefore it might be proper matter of Deliberation in the Legiſlature, how far a Reſtraint ſhould be put upon it; yet in the mean time, is advancing a Relation to an Office which he is fit for a Crime, becauſe in other Inſtances it has occaſioned a Crime, or may do ſo, or is a Temptation to it? And would it be a ſufficient Charge of a high Crime againſt me, to ſay that I *illegally* and *corruptly* put into ſuch an Office *A. B.* my Son or my Brother? I apprehend not.

Till a Reſtraint is laid, the Thing may be innocently done.

If a Reſtraint be laid, the Law will operate upon it, ſo far as the Reſtraint extends; but farther than that, and the Conſequences declared to enſue thereupon, it will remain as before.

Conſidering this therefore in it ſelf, and upon the Reaſon of the Thing, where is the force of the Argument? You took 5000 *l.* for putting in Mr. *Elde*, or Mr. *Thurſton*, a very fit Perſon and an excellent Maſter, and therefore you are criminal, becauſe ſome body elſe at another Time may put in another Maſter not fit, upon his giving a Preſent.

If this then be not criminal in it ſelf, how do they prove it to be ſo by the Common Law?

The only Caſe they have inſtanced as any Authority for that Purpoſe, is that of *Stockwith* and *North* in *Moor's* Reports.

But here give me leave to ſay, that it was proper and juſt for the learned Managers to produce, in making out their Charge, all their Arguments on this head of the Illegality of this Practice, that there might be a proper Opportunity of weighing them, and giving them a ſatisfactory Anſwer (if it could be done) at this Time of my Defence, and I preſume they have done ſo. But if they ſhould think fit to reſerve any freſh Argument for their Reply, which we ſhall apprehend may want an Anſwer, your Lordſhips will in that Caſe, give me leave to inſiſt upon a Right of taking proper Notice of it afterwards, and not let them reap any Bene-

Benefit by lying by in such an unprecidented manner, and expecting your Lordships Judgment, without hearing the other Side upon it.

The only Case, I say, which they have instanced in, is the Case of *Stockwith* and *North* in *Moor*'s Reports 781; I have looked upon the Case as it is in that Book, and it appears to be thus:

" *North* was fined in the Star-Chamber, for that " he being Sheriff of *Nottingham* in the 43*d* Year " of Queen *Elizabeth*, took Money for the Goaler-" ship and Bailiwick for that Year; he gave them " first to his Servants who sold them, but he him-" self received the Money. And this was adjudg-" ed to be letting to Farm of his County, contrary " to the Statute of 4 *Hen.* IV. *cap.* 5. Yet there " note, that the Statute itself gives a Penalty cer-" tain and pecuniary, and is *malum prohibitum, non* " *in se*. But the Court took it, that in as much as " Corruption follows upon the Covetousness of Of-" ficers, and they are forced thereto by the Prices " which they give for Things which ought not to " be sold; that this putting to Farm and selling of " Offices is *malum in se*, and finable".

It appears here, that this was a Prosecution upon the Statute of 4 *Hen.* IV. for the Point adjudged was, that this was contrary to that Statute, and therefore whether what was done, was against the Common Law, or *malum in se*, or not, was not at all in Judgment before the Court.

And the mention of that is introduced as spoke to remove a Doubt, how *North* came to be fined, when a particular Penalty is (as it is there said) given by the Act of Parliament.

But that is a gross Mistake in the Reporter, the Act of Parliament is very short, I desire it may be read.

It was read as follows.

" *Stat.* 4 *Hen.* 4. *cap.* 5. Every Sheriff shall abide " in proper Person in his Bailiwick for the Time " that he shall be such Officer, and that he shall " not let the Bailiwick to farm to any Man, for the " Time he occupieth such Office; and that the " said Sheriff be sworn from time to time to do " the same in especial, amongst other Articles " comprized in the Oath of Sheriff."

Your Lordships observe, that there is in this Act only a *prohibitory Clause* against the disposal of such Bailiwick, but no pecuniary or other particular Penalty of any kind, inflicted by that Statute: So that it could not be a question whether a Fine was proper, as that Reporter supposes.

The Exactness of the Report therefore is not to be rely'd upon, and what other Mistakes may be in it, I know not. Indeed it is a posthumous Work, uncorrect Notes taken for his own use, and not intended to be published.

But however, taking it for Truth, that some of the Judges did speak to the effect in that Report: It is a common Observation, that when Judges are proceeding in the Case of a plain and express Law, Words used by them that tend to discountenance and farther expose the Crime then censured, are of no great Authority.

The very same thing is done in Lord Chief Justice *Coke*'s 12*th* Report, with respect to turning arable Land into Pasture; against which there was then an Act of Parliament in being; and farther to discountenance it, it is there said to be *malum in se*.

And in many Places, Usury is said to be *malum in se*, and with greater Colour; and yet I believe a Prosecution for it, would scarce be thought maintainable, farther than the Act of Parliament will justify it.

But as to this particular Matter of a Sheriff letting his Bailiwick to farm, before it was specially restrained by Acts of Parliament for that Purpose, there are many Footsteps of its being an ancient and allowed Practice.

The Stat. *de attinctis Raft. Sheriffs* 5, containing several Provisions about Sheriffs, directs, that " that Statute shall extend as well to those which " were Sheriffs and other Ministers, that let to " lease their Bailiwicks as to Sheriffs and other " Ministers which hold their Bailiwicks, them-" selves."

Where the Sheriffs holding their Bailiwicks themselves, or letting them to Lease, which is letting them to Farm, is spoken of as perfectly indifferent.

Nor is the Expression supposed to be used in *Moor*, pretended to be built on any precedent Authority or Fact, but is barely the Reasoning of whoever he was that used it, from the Temptation to which Officers that pay Money are exposed; and how just it is, I submit upon what I have laid before your Lordships on that Subject. Tho' the Danger from that Temptation is much greater in the Case of Bailiffs and Sheriffs that have only ignorant People to deal with in remote Parts in the Country, where it is difficult and chargeable to obtain Redress, than in the Case of Masters in Chancery, that act under the View almost of a Court of Justice, and where Persons wronged have an easy Opportunity every Day to obtain Redress.

So that this loose Expression mentioned by *Moor*, (coupled too with a gross Mistake) not at all to the Point of Judgment, is of very little force to prove the Case to which it is applyed to be against the Common Law, and of less to prove the present Case to be so.

What then is there farther offered? Do they shew that by the Common Custom of *England*, which is properly the Common Law of *England*, the taking Money for Offices, has been from time to time punished, or condemned as criminal?

No, it is admitted on the one hand, that there is not one instance of its having been punished or condemned as criminal, at the Common Law:

And on the other hand, it is notorious, that in fact the greatest Offices have anciently been sold even by the Kings: And that not in a clandestine Manner, but so that the Price and what it was paid for, have been entred upon Record.

The Instances have some of them been mentioned.

Richard the Son of *Alured* in the 5*th* of King *Stephen*, was to pay fifteen Marks that he might sit with *Ralph Basset* for the Pleas of the King, which *Ralph Basset* was then Justicier.

And *Walter de Grey* in the seventh of King *John* gave the King 5000 Marks to have the King's Chancery for his Life, and the Bishop of *Norwich* ingages for the Payment.

I have the Copies of both the Records here in my Hand, if there be any doubt of them.

Nor

Nor are our Hiſtories quite ſilent. In *Holliſhead*, in the fifth Year of *Richard* the Firſt (who was one of the intermediate Kings between the two Kings I have named) it appears what was done, almoſt with the Sanction of Parliament, certainly with their Notice, and not with their Diſlike.

" The King (ſays the Hiſtorian) called a Par-
" liament at *Nottingham*, and the firſt day of their
" Seſſion *Gerard de Camville* was diſcharged of the
" Office of Sheriff of *Lincoln*, and diſpoſſeſſed
" both of the Caſtle and County. And ſo was
" likewiſe *Hugh Bardolf* of the County and Caſtle
" of *York*, and of the Caſtle of *Scarborough*, and
" of the Cuſtody and Keeping of the County of
" *Weſtmoreland* The which Offices (as he goes
" on) being now in the King's Hands, he ſet
" them on Sale to him which would give moſt.
" Hereof it came to paſs, that where the Lord
" Chancellor offered to give fifteen hundred
" Marks before hand for the Counties of *York*,
" *Lincoln* and *Northampton*, and one hundred
" Marks of increaſe of Rent for every of the
" ſame Counties; *Geffery* Archbiſhop of *York* of-
" fered to the King three thouſand Marks afore-
" hand only for the County of *York*, and one
" thouſand Marks yearly of Increaſe, and ſo had
" the ſame committed to his Regiment.

And in the Caſe of *Magdalen College*, in the fifteenth of King *James* I. reported in 1 *Rolle*'s Reports 157, Sir *Henry Hobart* then Attorney General, and ſoon after Lord Chief Juſtice of the Common Pleas, argues from it, as a Principle not to be conteſted, That if any one procure an Office to himſelf for 1000 *l.* of the Gift of the King, the Office is not loſt by the Statute of 5 *&* 6 *Ed.* 6. which ſhews the thing not wicked, not *malum in ſe*, or againſt the Common Law, for the Prerogative cannot extend to what is ſo.

My Lords,

Whoever makes the Grant, or receives the Money, the King or a Subject, the Temptation under which the Officer who paid it lyes to reimburſe himſelf, is the ſame. And if the Strength of that Temptation make the thing criminal, it will make it ſo in all Inſtances.

It has been taken notice of by thoſe Gentlemen who are of Council for me, that the Proviſoes in the very Statute of 5 *&* 6 *Ed.* 6. prove, that this is not againſt the common Law, or criminal in itſelf, at the ſame time that it puts a particular Reſtraint upon the Practice of buying and ſelling Offices, or Deputations to Offices.

Give me leave to add ſome Obſervations upon the Proviſoes in that Statute.

Sect. IV. contains a Proviſo, that this Act ſhall not extend to any Office whereof any Perſon is ſeized of any Eſtate of Inheritance.

Suppoſe a Man that has an Office of Inheritance takes Money from a Perſon whom he appoints as his Deputy;

Is not that Deputy as lyable to be tempted to reimburſe himſelf by Extortion or Corruption, as if his Principal had but an Eſtate for Life?

Can a Deputy's Behaviour turn upon the Title of his Principal? So that 1000 *l.* (for inſtance) paid by him, will certainly make him corrupt, if his Principal holds his Office for Life, but will not make him guilty of the leaſt Misbehaviour, if his Principal have the Inheritance of the Office?

This Proviſo is therefore plainly founded only upon the Regard the Law-makers had to the *Property* and *Intereſt* of ſuch Owner of an Office, which they would not prejudice, and therefore he is left at full Liberty to ſell the Office itſelf, or a Deputation to it.

But if to take Money from a Perſon who is to have or execute an Office, were unlawful by the Common Law, or wicked in itſelf; it is impoſſible that the Owner of the Office could have a a *Right to that wicked or unlawful Gain*; nor could the Law makers have any regard to it.

And ſince here they are *careful* not to take it from him, they allow it. They in effect make a formal *Declaration* that it is *lawful*, and that the Proviſion made by that Act is not ſo neceſſary, as that it ſhould in any degree interfere with his private Property in that Inſtance.

Farther,

Sect. III. makes void all Agreements, Bonds and Promiſes for Money, for any Office or Deputation. But Sect. VI. provides, that the Act ſhall not extend to Agreements, Bonds, *&c.* made or concluded before the firſt of *March* then next.

This ſuppoſes it the Practice at that Time, not only to give and take Money for Offices, but to make formal Contracts for that Purpoſe, which the Courts of Juſtice were to compel the Performance of.

Does it condemn them as criminal in themſelves, by reaſon of the Danger?

No: on the contrary it does not eſteem the Danger ſo great, as that to avoid it the Property ariſing upon theſe Contracts ſhould be taken away, or at all impeached: but leaves a Remedy in a Court of Juſtice to enforce the Performance of a Contract, which muſt neceſſarily cauſe a publick Miſchief, if that were true that it is unlawful in itſelf, and that its Unlawfulneſs ariſes from the Miſchiefs conſequent upon paying Money on that Occaſion.

Had the Makers of that Law been of the Opinion which theſe Gentlemen ſeem to be of, and thought ſuch Traffick a Wickedneſs, it had been impoſſible for them not to have put a Stop to it, and abſolutely diſannulled all Securities and Cautions for the Performance.

I do not ſuppoſe the Form of Expreſſion uſed in this Proviſo will be criticiſed upon, or that it will be urged that the Words of this Proviſo only import, that thoſe Bonds are left *in ſuch Force as they would have been, if the Act had not been made*, and does not make them good.

That would be a poor Subterfuge. The Proviſo makes them not good, 'tis true. Why? Becauſe it plainly ſuppoſes them to be good before; but that Sect. III. would make them void, if this Proviſo did not prevent it; and this Proviſo is on purpoſe to prevent it, and for nothing elſe.

And would the Makers of a Law, would theſe Gentlemen in making a Law, inſert a Proviſo that Agreements ſhould continue of ſuch Force as they were before, if they thought them of no Force before? Nay if they thought them not only void, but miſchievous?

The ſaving a Right of Action upon ſuch Bonds, and making a Proviſo in Favour of them gives them ſuch Countenance, that thoſe that had any ſuch would certainly inſiſt upon them, and the Perſons

Perſons that were bound would be diſcouraged from diſputing with them what the Legiſlature did not think fit to deprive them of, and would therefore pay without ſtanding a Suit.

There is yet one Proviſo more in this Act, material to the preſent Purpoſe.

Sect. VII. provides, that this Act ſhall not *extend or be prejudicial to the Lords Chief Juſtices* or *Judges of Aſſize* —— "but *that they may do in* "*every behalf touching any Office to be given or* "*granted by them, as they might have done before* "*the making of this Act; any thing above mention-*"*ed to the contrary thereof in any wiſe notwith-*"*ſtanding.*

This plainly implies, that at that time, and before, it was the Practice for the two Chief Juſtices and Judges of Aſſize to take Money for the Offices in their Courts, elſe nothing in this Act could extend to what they *uſually did*, or be of *any Prejudice to them.*

And it ſhews too, that the Law-makers did not diſlike the Practice.

I beg leave to ſubmit to your Lordſhips, whether this doth not amount to a Declaration of the Law, that the taking Money for Offices, whatever Danger there may be from it in ſome Caſes, does not neceſſarily in all Caſes, cauſe bad Officers to be made; nor the paying it make the Officer extort: For the Nature of Things changes not with the Titles of Perſons. An Officer that pays Money to a Lord Chief Juſtice, will be under the ſame Temptation to get it up again, as he that pays to a Lord Chancellor.

As to the Wording and Form of Expreſſion of this Proviſo, I take it to be very clear, that the Words [*as they might have done before the making of this Act*] are declaratory; that they might before the making of this Act take Money for Offices; and becauſe in the Caſe of thoſe Officers the Danger was not ſo great, it is ſtill ſaved and preſerved to them.

If it be ſaid that nothing is ſaved to them but *the doing what they might have done before*, and that they *could not before lawfully take Money for Offices*; I beg leave to anſwer, that if that be ſo, the Clauſe is perfectly frivolous. A ſtrong Prejudice againſt the Expoſition that makes it ſo in all Caſes, but much more ſo here.

For as the Judges are always Attendants in this Houſe, and this Clauſe greatly concerns them; it is highly probable that it was drawn up and propoſed by themſelves.

And if taking Money for Offices were then eſteemed criminal; if the Notion is right which is now contended for, that taking Money for Offices was againſt Law, was Corruption; and that this Law was then paſſing to lay farther particular Reſtraints upon it; Is it poſſible that the Judges could preſume to ask not to have a Difficulty or Diſcouragement laid upon their being guilty of Corruption, or their doing a thing unlawful?

Or is it poſſible that the Lords and Commons ſhould conſent to it?

Or if the Judges would ask it, would they not have made it effectual? Would they, by propoſing the Proviſo, in effect, own a corrupt Practice, and their Reſolution to continue it, ask Proviſion for it, and be indulged; and yet not ask what would effectually juſtify them in it?

I hope therefore that what is charged againſt me is not condemned by the Common Law or Uſage of this Kingdom. If it be, it properly lay on them to make it out; but they have ſhewn nothing to prove it; not one Inſtance of its being puniſhed at Common Law, or blamed; not one Citation out of the old Books of the Common Law, precedent to the Acts of Parliament made relating to Things of that Kind. On the contrary, I have ſhewn it practiſed in the higheſt Inſtances, without Blame or Cenſure: And that ſeveral Clauſes in the Statute of *E. 6.* were plainly founded upon a Suppoſition of this Practice being allowed by the Common Law, and continue the Allowance of it, in ſome Inſtances, to this Day.

This is what I had humbly to lay before your Lordſhips, with reſpect to the Common Law. And I ſhall now conſider it as it ſtands upon the Acts of Parliament.

And as to Acts of Parliament relating to this Matter, they have ſuggeſted only two, the Statute 12 *Ric.* 2. *cap.* 2. and the Statute 5 *&* 6 *Ed. 6. cap. 16.*

As to the Statute of 12 *Rich.* 2. The Proviſion of this Statute is to bind thoſe who make or name Officers in the Caſes to which it extends, under an Oath to obſerve the Directions of that Statute in their ſo doing. And I hope I have already fully anſwered the Pretence of my having taken an Oath upon this Statute, which extends to any of the Officers in the Court of Chancery, I ſhall now conſider that Statute, and what may be urged from it, a little more particularly. And,

1. As I have already mentioned, I take the Statute of 12 *Rich.* 2. to relate only to ſuch Nominations as are in nature of Elections; that is, ſuch where the Nomination is in ſeveral Perſons.

In thoſe Caſes it is common with us to have ſuch Oaths adminiſtred, but not in others. We find them in Colleges, and other Bodies of Men.

The great Uſe and main Intent of ſuch an Oath in thoſe Caſes is, to prevent Combinations, Strife, and Brigues, where the ſeveral Perſons concerned will naturally have ſeveral Views. And the Animoſities and Contentions ariſing thence among ſo great Officers as this Statute takes Care of, might greatly affect the publick Peace.

The Things which cauſe moſt Contentions on ſuch Occaſions, are *Money*, *Affection*, (by reaſon of Kindred or Friendſhip) and *great Solicitations.*

Accordingly this Act extends to all three, and takes Care to forbid the laſt *(Solicitation)* wholly; and the being influenced by either of the former.

The Perſons *called* to name, or make Juſtices of the Peace, Sheriffs, or any other Officer or Miniſter of the King, are *to be ſworn, that they neither name nor make them for any manner of Gift or Brocage, Favour or Affection; nor any that purſues by himſelf, or any other, privately or openly to be in any manner of Office, be put in that ſame Office, or any other; but that they make all ſuch Officers and Miniſters of the moſt good and lawful, and the moſt ſufficient to their Knowledge and their Conſcience.*

My Lords, in the next place,

2. The Words of the Statute plainly import as much; that the Nomination there meant, is what is made by ſeveral Perſons when they are called together.

"It

" It is accorded and aſſented, that the Chan-
" cellor, Treaſurer, Keeper of the Privy Seal,
" Steward of the King's Houſe, Chamberlain of
" the King, Clerk of the Rolls, Juſtices of the
" one Bench and of the other, Barons of the Ex-
" chequer, and all others who ſhall be called to
" name or make Juſtices of the Peace, Sheriffs,
" Eſcheators, Cuſtomers, Comptrollers, or any
" other Officer or Miniſter of the King, ſhall be
" firmly ſworn that they neither name nor make
" Juſtices of Peace, Sheriff, Eſcheator, Cuſto-
" mer, Comptroller, or any other Miniſter of the
" King, *&c.* for Gift or Brokage, Favour or Af-
" fection, *&c.*

I own, that there ſeems ſome Difficulty as to this, becauſe I do not know of any Law, at that time, that any of theſe Officers, except Sheriffs, were named by an Aſſembly of ſeveral Perſons.

But though there were no Law requiring it, there might be an Uſage to do it, by ſome Direction from the Crown for better Information.

And what is now done in relation to Sheriffs, turns in ſome part upon ſuch Uſage continued down to this Time, without any Law, that I could ever hear of, for to ſupport it, as to *all* the Perſons who now meet to name them.

For by a Statute of *9 Ed.* 2. called the Statute of Sheriffs, printed in *Raſt.* Tit. Sheriffs 2. " She-
" riffs are to be aſſigned by the Chancellor, Trea-
" ſurer, Barons of the Exchequer, and by the Ju-
" ſtices.

By 14 *Ed.* 3. *cap.* 7. *Raſt.* 12.

" *Sheriffs ſhall be ordained by the Chancellor, Trea-*
" *ſurer and Chief Baron of the Exchequer, taking to*
" *them the Chief Juſtices of the one Bench and of the*
" *other, if they be preſent: And in the Abſence of*
" *the Chancellor, by the Treaſurer, the Barons of the*
" *Exchequer and the Juſtices. And that ſhall be done*
" *yearly on the Morrow of* All Souls (that is the
" third of *November*) *in the Exchequer.*

This is the Statute that fixes the Time and Place now obſerved.

But as to the Perſons, though the Juſtices of both Benches are in the firſt Act, yet none of them, but the Chief Juſtices are in the laſt. And the Lord Privy Seal, Lord Steward, Lord Chamberlain, and the Clerk of the Rolls, and other Lords of the Council, are in neither. And yet by conſtant Uſage, all theſe attend at the naming of Sheriffs; and, as they ſee occaſion, give their Advice and Aſſiſtance, and all take the Oath.

And by like Uſage, which we cannot now account for, there was probably ſome ſuch Practice with reſpect to other Offices.

For it is to make the Statute abſurd, which provides that ſuch and ſuch, and all *others that ſhall be called to name Juſtices of the Peace, Sheriffs, Eſcheators, &c. ſhall be ſworn to name theſe Officers without Favour or Affection*, if neither they nor any others were called to name any of theſe Officers.

3. This is the ſtronger, becauſe conſtant Practice, the beſt Expoſitor, has thus expounded this Statute.

If the Intention of this Statute were, that all the Particulars firſt named, that is, Chancellor, Treaſurer, Keeper of the Privy Seal, Steward of the King's Houſe, Chamberlain of the King, *&c.* were to be ſeparately ſworn, as to the reſpective Officers under each of them ſeverally;

Then this muſt have been made part of their Oath of Office, or adminiſtred at the ſame time with it, though in a diſtinct Oath.

But that has never been done, nor has it ever been adminiſtred to a ſingle Perſon at that or any other Time. Which is the ſtrongeſt Argument poſſible that it is not what was then meant, or ever underſtood to be meant, by that Statute. But on the contrary, in the ſingle Inſtance where ſeveral are called together to name Officers, that is in the caſe of Sheriffs, the ſwearing of them, to obſerve this Statute on that Occaſion, is never omitted to this Day.

Give me leave to obſerve one thing more, that a Chancellor, a Treaſurer may poſſibly be ſeven Years in his Office; I believe Treaſurers have in fact been all or the greateſt part of their Time without ever taking this Oath, which is never taken, unleſs they happen to aſſiſt at the naming of Sheriffs, which there is no Law requiring the other great Officers to attend at, and which is now become little more than a matter of Form, the Liſt ſettled in that Aſſembly being every Year departed from in many Counties.

And if this that I have thus offered be the whole Meaning of the Statute; then at this Day, as the Uſage now is, it has nothing to operate upon but the Nomination of Sheriffs, and therefore extends to no other Caſes, and conſequently not to any of the Officers in the Court of Chancery.

But may it not be ſaid, that though the Oath required by this Statute extend not to the preſent Caſe, yet will not this Proviſion amount to a Declaration of the Senſe of the Law-makers, that the Things thus provided againſt are ſuch as ſhould not be done, and conſequently that the doing of them after ſuch Statute will be againſt Law?

To ſtate this diſtinctly, would take up more Time than is proper upon this Occaſion.

But this I beg leave to ſay, and it will be as well applicable to the Statute of *E.* 6. as to this, and perhaps more directly.

Acts of Parliament that contain political Proviſions for making Regulations, or for avoiding Things not wicked, but which may be inconvenient, have not always this Conſequence, that Actions done contrary to what they deſigned in the very Caſes then in view will be criminal, and much leſs in Caſes not in view.

Our Law is ſparing, in making the doing a thing a Crime, which may be rectified and redreſſed another way.

There are ſeveral Acts of Parliament to reſtrain Eccleſiaſtical Perſons from making long Leaſes, to prevent the Inconveniencies ſuch Leaſes may bring upon their Succeſſors; thoſe Acts declare ſuch Leaſes void, which therefore are againſt the Intent of thoſe Laws; but it was never thought that the making or accepting ſuch Leaſes was criminal.

The Senſe of the Law-makers is to have no Conſequence, but what neceſſary follows from the Proviſion by them made.

What they intended was, that the Succeſſor, if he pleaſed, might ſet them aſide; which would have this Effect, that none would take ſuch Leaſes, or they would do it on Terms advantagious to the Succeſſor, or with a Reſolution of being ſo good Tenants, as that the Succeſſor would not take Advantage of it: So that either the Leaſe would be vacated, or the Inconvenience would be prevented without, which fully anſwers

the End of the Act. And this is very applicable to the Statute of *Ed. 6.*

In this Act of *Ric.* 2. the Inconvenience provided againſt is only in Elections or Nominations by Numbers; the Proviſion is by taking an Oath.

If ſuch Oath be taken and broke, that is a Crime; for that is the neceſſary Conſequence of the Proviſion made, Violation of an Oath being undoubtedly criminal. But where no Oath is taken, much more where none is required, I do not ſee how doing the thing can be a Crime; merely becauſe in ſome Caſes it is in this manner provided againſt, and would be criminal if in doing it an Oath had been violated.

One thing intended to be entirely prevented in Caſes within this Statute is Solicitation, or deſiring a Place.

But has it ever been conſtrued, in conſequence of this Proviſion, that if I put a Perſon into an Office, who ever asked that or any other, I ſhould be a Criminal, though I never took this Oath?

Then the Conſequence will be, that the asking a Place, or the modeſt offering a Man's ſelf for it, (which would be ſuing or purſuing for it in the Words of the Act), will lay him under a perpetual Diſability of having that Place, or any other.

Nay, ſince asking a Place is what the Statute has made a Proviſion to prevent; whoever asks a Place, does a thing intended to be prohibited by the Statute, and is therefore criminal.

Was this ever the Conſtruction of this Act?

Nay, every one that aſſiſts in what was thus intended to be prevented will be criminal, and ſo will every one that asks for another at his Requeſt.

My Lords, at this rate the Statute will be very extenſive.

I would beg leave to mention one Caſe more, and hope the Gentlemen of the Houſe of Commons will not take it amiſs, or look upon it as any Diſreſpect to them.

By the Statute 1 *Hen.* 5. *cap.* 1. " *It is enacted,* " *That Knights of Shires be not* choſen *unleſs* they " *be reſident* within the Shire where they ſhall be " choſen, the Day of the Date of the Writ of " Summons. *And that the Citizens and Burgeſſes* " *of the Cities and Boroughs be choſen Men, Citizens* " *and Burgeſſes,* reſiant, *dwelling and free in the* " *ſame Cities and Boroughs, and* no other *in any* " *wiſe.*

The Statute 23 *H. 6. cap.* 15. recites this laſt part of that Statute, and enacts, that it be *duly kept in all Points.*

And this is the Statute upon which Actions uſed to be brought, in our time, for falſe Returns of Members to Parliament.

This is in direct Words a *Prohibition* of any Perſons being *choſen* that *is not reſiant:* But ſince the natural Effect of this Proviſion would be, that (the ſubject Matter thereof being the Caſe of a legal Authority conferred by the Choice) Perſons choſen, not being ſo qualified, might in conſequence of this Law be rejected.

If this political Proviſion be not complied with, is there another Conſequence to follow, inſtead of redreſſing it this way, and the Parties concerned to be therefore made criminal?

Is it criminal in thoſe who chuſe for their Repreſentatives in Parliament, Perſons not only not *reſiant*, but whom they never ſaw?

Is it criminal in thoſe unqualified Perſons, to preſume to take their Places in the Houſe?

Is it criminal in the other Members, knowing ſuch to be amongſt them, not to turn them out *ex officio*, even though no Complaint be made from without Doors?

I think not.

Yet I apprehend that will be the Conſequence, if Laws of that Nature are thus to be explained, and every Action is to be judged criminal, which any Act of Parliament has made any ſort of Proviſion to prevent.

As to the Statute of 5 & 6 *Ed. 6. cap.* 16.

Although it has made Proviſion againſt the Sale or Diſpoſal of Offices for Money, yet nothing can be inferred from thence in Support of this Proſecution.

But that your Lordſhips may take a better View of that Law, permit me to lay before you a few Obſervations.

The Preamble ſets forth the End for which this Reſtraint was laid.

" *For* the avoiding of *Corruption* which *may here-* " *after* happen to be *in the Officers and Miniſters* in " thoſe Courts, and Places, and Rooms, wherein " there is requiſite to be had the true Adminiſtra- " tion of Juſtice, or Services of Truſt:

" And to *the Intent* that *Perſons worthy* and meet " to be advanced to the Place where Juſtice is to " be adminiſtred, or any Service of Truſt execut- " ed, ſhould hereafter *be preferred* to the ſame, " and *no other.*

Here is Mention made of *Corruption*, but it is that which may happen *in the Officers appointed*, it *calls not* the *taking Money* upon the appointing them *Corruption.*

It in effect ſays, what I have before ſaid.

That giving and taking Money is a *Temptation* to thoſe who diſpoſe Offices, to put in ſometimes unfit Perſons, to thoſe who buy to extort and be corrupt: And conſequently that if this Practice continue, there will be Inſtances, in which this Temptation will ſo far be yielded to, that Perſons not worthy will *ſometimes* be preferred, and thoſe Perſons will *ſome of them* venture upon being guilty of Corruption.

But to avoid all the *Corruption which may happen* in thoſe Inſtances, and to the intent that this *Temptation* may in no *caſe prevent*, but that *worthy Perſons be advanced, and no other in any* Inſtance, the Statute is made.

The *main End* whereof is *anſwered*, if worthy Perſons be advanced, and they be not corrupt, but behave themſelves well.

What then is the particular Proviſion made by this Statute? *Not* making way for an arbitrary Puniſhment, by *declaring it to be Corruption*, or *criminal*, or *againſt* the Proviſion of *any former Law*, to give or take Money for an Office.

Not declaring that it *ſhall be criminal* for the future.

Not even enacting, that *no Perſon ſhall* take or give Money for an Office: which might make the Contravention of this Law, a Crime for the future.

For it is *remarkable*, that this Statute has not ſo much as any *prohibitory Words* in it.

But the whole Proviſion is barely *putting the Caſe* by way of *Suppoſition*, " *if a Perſon do take Money*," &c.

and declaring the *Conſequence*, which Conſequence is, that the *Perſon taking* the Money, if it were for an Office, *ſhall loſe the Nomination to that Office*; if for a Deputation, he ſhall loſe his Intereſt in the Office: And the *Perſon paying* ſhall be adjudged *a diſabled Perſon* to have, occupy, or *enjoy the Office* or Deputation. That is, as appears afterwards, he is *diſabled, ſo far as concerns himſelf*, his right to have it, and to *continue the taking of the Profits*: But not ſo far as the *Publick has benefit* by him: For by a Proviſo for that Purpoſe, all *Acts done by him are valid*.

The Effect of which is, that the Officer who comes in for Money holds that Office *precariouſly*, which would otherwiſe have been *for Life*, and is *wholly at Mercy*, if he gives the leaſt *Occaſion of Complaint* againſt him; and ſince he that put him in has loſt the Nomination, there accrues to the King a Right to fill the Place with a better Man in caſe he thinks fit.

And therefore I will not controvert, but that the Right or Power of Nomination to an Office may, by a Proſecution grounded upon this Statute, be taken from the Perſon who enjoyed it, and veſted in the Crown.

But as there is no *ſuch Power of Nomination* to theſe Offices *now in me*; but I *have loſt* it *with the Office of Chancellor*, and therein have ſuffered a *much greater* Loſs than that of theſe *Nominations* only; No *Judgment can be given againſt me upon this* Act, and therefore neither can there be founded upon it any Proſecution againſt me; for that is but a Method of praying and obtaining a proper Judgment.

And to adjudge, that upon the Caſe which has happen'd, (ſuppoſing it to be within the Words and Meaning of this Statute) any *Puniſhment* ſhall be inflicted, or any *Conſequence* follow, beyond the *Loſs of the Nomination*, is (with great Submiſſion) to go quite out of this Statute.

Thus I have endeavoured to make out what I firſt propoſed, that the receiving a Preſent upon theſe Occaſions is not criminal in it ſelf, or by the Common Law, and that there is not any Act of Parliament whatſoever by which the ſame is made Criminal, or ſubject to any Puniſhment or Judgment which can be pray'd in this Proſecution.

My Lords,

All this Reaſoning is greatly fortifyed by Uſage, by my Predeceſſors; which Uſage is expreſsly proved before your Lordſhips by all the Maſters, who could not refuſe giving Teſtimony; that is, all the preſent Maſters admitted by my Predeceſſors, who are indemnified by the Act of this Seſſion for that Purpoſe: And, I think, is proved too by the former Maſters now living, who declined giving an Anſwer to the Queſtion, when asked, what they gave or knew given; making this their Excuſe, that by our Law no Man is bound to accuſe himſelf, and that to own they had given Money would expoſe them to the Penalties of this Act. For whatever might be the Conſequence of owning they gave Money; there was no Danger in ſaying they gave none. And they might have given an Anſwer in the Negative ſafely, but that the Truth and their Oath would not allow them to do it.

And this Refuſal of theirs to anſwer, was not a Contrivance of mine, they were ſupported in their Objection by the Gentlemen that are Managers, who were pleaſed to give their Aſſiſtance to defend them from anſwering the Queſtion.

And might I have been allowed to have given Evidence of what has been from time to time declared, by Parties concerned, who are now dead, it would have been proved much farther.

But I apprehend the Thing is notorious; altho' ſome Proofs have been offered for Form-ſake, yet it was equally well known before, known to all the World.

Give me leave likewiſe to argue farther upon this whole Matter from what I ſaid once already, that it is admitted that there is not one Inſtance, that ſuch taking Money has been puniſhed either at Common Law or upon Act of Parliament; that this, according to the Rules of our Law, is one of the ſtrongeſt Arguments that it is not puniſhable. For it is not to be preſumed, but that it has been often done; the Statute of *Edw.* VI. takes notice of the Practice, not only of doing it, but of entering into formal Contracts and Bonds for that Purpoſe.

Littleton, our moſt celebrated Lawyer, upon a Queſtion, whether an Action would lye upon a certain Act of Parliament, reſts upon it as a deciſive Argument in favour of the Negative, that it was never ſeen or heard that any Action was brought upon that Statute; alledging, that if any Action might have been brought for this Matter, it muſt be taken, that at ſome time or other it would have been put in practice. And the Lord Chief Juſtice *Coke*, in his Commentary upon *Littleton*, obſerves, that as Uſage is a good Interpreter of Laws, ſo Non-Uſage, where there is no Example, is a great Intendment (as he calls it) that the Law will not bear it. Not that an Act of Parliament (as he goes on) can by non-uſer loſe its Force; but that it may thereby be expounded, or declared how the Act is to be underſtood.

This is what I have to ſubmit to your Lordſhips, that the taking Money for Offices is not criminal, which, I apprehend, is the whole Charge in the Articles, except the *Manner of taking it* varies the Conſideration, which I ſhall take Notice of afterwards.

There is not the leaſt Pretence, that Money was given for putting in Perſons unqualified, the ſuppoſed Crime is ſingly the taking Money.

And as to what has been ſaid by way of comparing it to the Caſe where any judicial Order or Determination is made for a Bribe; give me leave, with great Submiſſion, to inſiſt upon it, that there is not the leaſt Parity at all betwixt that and the preſent Caſe: For in Matters of Judgment, if the Party have a Right to what he ſues for, he ought not to be put to buy his own; and much leſs, if he has not a Right, ſhould he be at Liberty to purchaſe of the Judge, that which is the Right of another.

But this here is not matter of Juſtice, but matter of Favour and pure Bounty; whether I put in this Man or that Man into a Place in my Diſpoſal, depended wholly upon my own Choice and Pleaſure; ſo that the Caſes are not at all alike.

A Bribe ſtrikes at the Root of the equal Adminiſtration of Juſtice; it is a profeſſed Byaſs, and can mean nothing but to deſtroy Indifferency, and to render the Judgment partial.

It is therefore diſallowed in all Nations, and in all Ages; and is expreſsly forbid by the Law of God. And had the Gentleman who touched upon the Text which condemns Gifts, been pleaſed to

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cite it at large, it would have appeared to relate to Bribes given in Cases of Judgment, *Deut.* xv. 18. 19. " *Judges and Officers shalt thou make thee in all thy* " *gates* ——— *And they shall judge the People with* " *just Judgment. Thou shalt not wrest Judgment,* " *thou shalt not respect Persons, neither take a Gift.* " *For a Gift doth blind the Eyes of the wise.*

As to the manner of taking Money in the several Articles V, VI, VII, VIII, the Case stands thus.

V. There are in all, eight Articles relating to this Matter; but they have proceeded only upon four: The first of which is the fifth Article, and relates to the Money taken on Mr. *Kinaston*'s Admittance.

Upon their own Evidence it appears, that Mr. *Kinaston* was well recommended by Mr. *Bayly*, a Person of a very good Character; that the first and only Message brought to me, with relation to his Admittance and the Money to be paid, was this; that he desired to be admitted on the Surrender of Mr. *Rogers*, and would make a Complement of 1500 Guineas, or, if I did not think that enough, I should please my self; and my Answer was, I was pleased with the 1500 Guineas, and he was admitted.

It has been endeavoured to make what was then done odious; by representing, that Mr. *Kinaston* first offered 1000 *l.* but Mr. *Cottingham* would not propose it; that he was work'd up by Mr. *Cottingham*'s telling him that he had bought a good Office; that Mr. *Rogers* had told him he usually made 1700 *l.* and sometimes 2000 *l. per Annum* of it, and that he understood the Profits arose out of the ordinary Profits of the Office, and the Use of the Suitors Money together.

As to the Offer of 1000 *l.* Mr. *Cottingham*, a Witness produced by themselves, denies it. And Mr. *Bayly*, their other Witness, who first broke the Affair to Mr. *Cottingham*, and at his Return from him, told Mr. *Kinaston* that Mr. *Cottingham* said 1500 Guineas would be expected, swears, that Mr. *Kinaston* immediately submitted to what Mr. *Cottingham* had so mentioned, only he said he thought it had been but 1500 *l.* And this was before Mr. *Kinaston* saw Mr. *Cottingham*.

So that Mr. *Kinaston*'s Oath is directly contradicted by the Oath of Mr. *Cottingham*, one of their own Witnesses; and is highly improbable from what Mr. *Bayly* another of their own Witnesses swears.

And as to what Mr. *Cottingham* said about the goodness of the Office, he swears it was after the 1500 Guineas were agreed to be paid. And indeed upon that depended not so much what he was to present to me, as what he was to pay to Mr. *Rogers*, which had been agreed upon before Mr. *Cottingham* was spoken to.

So that here is nothing but my accepting a Sum of 1500 Guineas, which was proposed to me as a voluntary Offer, when I was at the same time told I might have more, if I would insist upon it; without one aggravating Circumstance, with relatnto the Person admitted, or what I did.

VI. The next of these Articles is the sixth, which concerns Mr. *Thomas Bennet*, and the Money given me by him, on account of his being admitted Master upon Mr. *Hiccocks*'s Surrender.

And the whole of the Fact, so far as I was concerned in it or knew of it, was but this. That Mr. *Cottingham* informed me of a voluntary Offer made by Mr. *Bennet* of 1500 Guineas, which I accepted. I believe he thought himself not ill used, and I being then extremely ill, he pressed to be admitted, for fear (as Mr. *Cottingham* swears he thought) of falling into worse Hands. On *Thursday*, and in the Nights before and after, I remember I lost near 50 Ounces of Blood, in about 24 Hours. And that Night Dr. *Mead* told Mr. *Cottingham*, that if the Distemper had not a Turn very soon, I could not live 24 Hours. On *Friday* Mr. *Cottingham* says, the Doctor told him the Distemper had a Turn: On *Saturday* Morning Mr. *Bennet*, after great importunity, was admitted while I was in Bed, but Company kept out of the Room as much as could be.

This is what they have proved by Mr. *Cottingham*.

Mr. *Bennet*, who mentions nothing at all of me of his own Knowledge, but of the Kindness with which I spoke to him, and told him that he was admitted by a dying Chancellor, is their other Witness, who is to shew invidious Circumstances. And very solicitous he seems to be to do it.

He takes care to say, that he was ordered to come alone, and bring no body with him; as if it were the better to keep secret the Payment of the Money, tho' he knew my great Weakness was the Reason.

He affects to say, the Bank-Notes were taken out in feigned Names, and that it was not thought proper to use my Name or his. Tho' upon another Article, when he is examined again, it comes out, that the feigned Name was that of his Clerk, whom he sent to take out the Notes, and it was merely *Bennet*'s own doing.

He says, he offered 1000 *l.* to *Cottingham* at first, and tells a long Dialogue they had about it, but *Cottingham* himself upon his Oath denies it all.

So that here, at last, nothing is proved that passed with me, but the 1500 Guineas being offered to me and accepted.

And give me leave to observe, that the two Sums in these two Articles, were certainly not paid out of the Suitors Money. For whatever other Objection may be made against taking the Present before Admission, it has this Effect, to shew that it came not out of the Money of the Suitors.

And yet there being a Pretence (without stating the Circumstance of Time, which I have just taken notice of) that they were paid out of that Money, and that the Suitors were in danger of being Sufferers; I brought the Money into Chancery, to be subject to the Orders of the Court.

The two other Articles, the seventh and eighth, were upon Admissions to Places vacant by Death.

VII. The seventh Article concerns the Case of Mr. *Elde*; and the Fact, as they have themselves proved, is thus:

Upon the Death of Mr. *Fellows*, the former Master, 5000 Guineas is offered and given to me by Mr. *Elde*; 6000 *l.* is offered by another.

It is admitted, that *Thomas Bennet* about three Quarters of a Year before, upon coming into his Place gave his Predecessor, who surrendred to him seven thousand five hundred Pounds, and to the

the Great Seal 1576*l.* in all 9075 *l*; and that Mr. *Kinaſton*, two years before him, gave his Predeceſſor 6000 *l.* and to the Great Seal 1575 *l.* in all 7575 *l.*

And Mr. *Elde*, a Man of unblemiſhed Character, of a good Eſtate, and not one Objection to his Fitneſs, is admitted, though he pays ſo very much ſhort of what others had paid, and leſs than was at the ſame time offered.

And of this that he paid, 3400 *l.* was returned to him, and only 1850 *l.* retained.

I will not trouble your Lordſhips in relation to what my private Intentions were in that Tranſaction, if they were capable of being proved, I believe your Lordſhips would not diſlike them.

Some little Reflection has been made upon the Mony being brought in a Basket, as if it were for Privacy, and even to conceal it from Mr. *Cottingham*.

Whereas it plainly appears, to have been without any Deſign, and only Mr. *Elde*'s making uſe of a Convenience he accidentally had in his Chambers.

But if there had been an Intention to conceal it from Mr. *Cottingham*, why was he the Hand to convey any thing? why was he the Perſon to bring up the Basket? Mr. *Cottingham* knew 6000 *l.* had been offered by another, and might rather gueſs this to be more than leſs.

And had Mr. *Elde* not been himſelf examined (which at that time it was not expected he would be) and Mr. *Cottingham* proved, that Mr. *Elde* had told him he would give 5000*l.* for the Place; that another offered 6000 *l*; that he had told me of it; that Mr. *Elde* after delivered him a Basket, which by its weight he believed to have Mony in it; that he brought it to me; and that Mr. *Elde* was that day, or very ſoon after, admitted: According to the Candour of conſtruing my Actions, this would have been ſaid to be a convincing Proof, that there was 6000 *l.* in the Basket, or more: it being impoſſible for the *avaricious temper of the Earl of* Macclesfield, for his *Impotency of Mind*, his *conſtitutional Weakneſs in matter of Mony* not to take the greater Sum.

VIII. The 8th Article concerns the Caſe of Mr. *Thurſton*.

There, upon Mr. *Borrett*'s death 6000 *l*, was offered me by another worthy Gentleman, but Mr. *Thurſton* was admitted.

He ſays he gave upon that Occaſion 5000 Guineas, but that all above 2000 *l.* was returned.

My Lords, Since what paſſed relating to that matter is not capable of proof, I will not trouble you with the particulars of it, which might be material.

Mr. *Thurſton* is likewiſe a Perſon unexceptionable, Mr. Baron *Gilbert*, now one of the Lords Commiſſioners for the Cuſtody of the Great Seal, gave me an extraordinary Character of him, and that determined me in his favour.

But there is no Objection to him neither, and therefore there needs no proof.

This is the State of the Fact upon theſe two Articles.

This is ſo far from *Extortion*; the Mony is voluntarily offered.

So far from *Avarice*; the greater Sum is refuſed, and a leſs taken. And even the greateſt part of that returned, 3400 *l.* in the one caſe, and 3250 *l.* in the other.

And the Perſons ſuch, that were I to go through *Weſtminſter-hall*, I cannot eaſily pick out two better Men.

Upon the whole, all that can be pretended to be in my hands now, upon theſe four Articles concerning Mr. *Kinaſton*, Mr. *Tho. Bennet*, Mr. *Elde*, and Mr. *Thurſton*, which are all the Managers have proceeded upon relating to Mony received from the Maſters, is but 3850 *l*; that is 1850 *l.* from Mr. *Elde*, and 2000 *l.* from Mr. *Thurſton*; the reſt having been all returned.

And as to that which was given back to Mr. *Thurſton*; he has ſworn, that he was ſent for ſeveral times, in order to have part of his Mony returned, and received it before the firſt Seal after *Michaelmas*, near a Month before any Order by the Lords of the Council to call for the Accounts, and while every thing was in the ſame State as when he paid it, and from his Evidence, it cannot be judged to be any thing but the effect of Generoſity.

Mr. *Elde*'s was not returned till after the Accounts were begun to be taken, he continuing a long time in the Country; but when he came to Town, he had it.

IX. The 9th Article relates to 100 Guineas given me by Mr. *Tho. Bennet*, upon his diſpoſing of his Office of Clerk of the Cuſtodies or Lunaticks to Mr. *Hamerſley*.

The Evidence is quite contrary to the Charge, as it is laid in the Articles, and amounts but to this, That *Bennet* having agreed to diſpoſe of his Office to another, ſent me a Preſent voluntarily of 100 Guineas upon that occaſion, and tho' I, at that time, knew that more had been given in the like caſe, I was contented with that, and accepted it.

This is within the ſame reaſon, as the Caſe of the Maſters; it has been practiſed by my Predeceſſors, as a Right of their Office, upon Diſpoſitions of this Office, and others of the like nature.

Beſides the proof of what had been paid to the Great Seal, upon another diſpoſition of this Office; it has been proved, that another of my Predeceſſors, the late Lord *Cowper*, declared his Opinion, that he thought it his right to have a Preſent: And he having then paſſed a Grant of this very Office, without having had a Preſent, upon the Party's having pretended and aſſured him that it had not been uſual to give any for that Office; he expreſſed great diſſatisfaction, and declared that he thought he had been impoſed on, that he ſaw no reaſon why that Office ſhould not pay as well as others of the like nature. Which implies both the Fact of receiving Gratuities, or Preſents upon Tranſfers of ſuch Offices, and his claiming a Right to receive them.

As to the diſcourſe Mr. *Bennet* pretends to have had with Mr. *Cottingham*, Mr. *Cottingham* denies it; and as they both are produced by the Managers to this point, this is a claſhing between their own Witneſſes; and that cannot be ſaid to be proved by them, which is affirmed by one of their Witneſſes, and poſitively denied by the other.

And if there had been any ſuch Diſcourſe, it is not brought home to affect me; for there is no pretence that I knew any thing of it.

But as to the whole Fact, wherein they differ, I think from the Character that has been given of Mr. *Cottingham*, and what has appeared of Mr. *Bennet*, it will be no queſtion at all, which of them two ſhould be believed.

X. As to the 10th Article, there is no Evidence given.

XI. The next Article is the 11th. And the Substance of it is, *That in order to advance and increase the illegal and corrupt Gain arising to myself from the Sale and Disposal of the Offices of the Masters of the Court of Chancery, in violation of the Trust reposed in me for the Care and Protection of the Suitors, I did admit several Persons to the said Offices of Masters, who at the time of their Admissions were of small Substance and Ability, very unfit to be trusted with the great Sums of Mony and other Effects of the Suitors lodged in their Hands.*

The Masters are not by this Article charged with the want of any other Qualification whatsoever, but that of Estate; nor is there the least Proof, or Pretence, that they were not in all other respects, Men of Abilities equal to the Duty to be discharged by them, honest, and unexceptionable in point of Reputation; but the single Objection to them is, that they were Persons of a small Substance.

The Proof offer'd upon this Article is this:

They have produced 3 Orders made in the Court of Chancery in the Months of *January* and *February* last, whereby it appear'd that Mr. *Conway*, Mr. *Kinaston*, and Mr. *Tho. Bennet* had not at that time brought in all the Mony that appeared to be then in their Hands belonging to the Suitors of the Court. This is their whole Proof.

But I am intirely at a loss to know, how this can be stretched to prove, what Ability they were of at the times of their respective Admissions, or indeed that they are not of ability now to pay their whole Ballances, merely because on such a particular Day they had not paid their respective Ballances into Court.

Nor is there the least Proof that I had any reason to suspect their Ability, when I admitted them.

Mr. *Conway* had an Estate of between 5 and 6 hundred Pounds *per Annum*.

Mr. *Kinaston* was represented to me as a Man of Substance: Now, that he comes under another Article, to swear it down, he owns that he has an Estate of 4 or 5 hundred Pounds a Year, with Timber upon it worth 2500 *l*; and had likewise, at that time, in Mony in the Funds, to the value of two or three thousand Pounds.

Tho. Bennet was esteemed a Man of a very good Estate and Substance. He is the Person to swear himself now worth nothing. And, to do it effectually, he sticks not at owning, that he has mortgaged part of his Estate for more than it is worth. Yet there is upon your Lordship's Table, the Particular given in by him to the Court of Chancery, wherein his Estate, besides that which he says he purchased since he was Master, appears to be about 500 *l. per ann.* and he owns he had, when he was admitted, a Place for Life of 250 *l. per ann.* which he after disposed of. He says he was worth 20000 *l.* and had been sufficient still, but for the Losses in 1720, which he owns were not known to me, nor generally suspected.

But, my Lords, these two Gentlemen are making their Circumstances mean, in order to get back the Mony they paid for their Offices; which they could not do by their own Oaths, directly for their own Uses: and therefore they have thought fit to keep back so much of the Mony of the Suitors, when called upon to bring it in, that so the Suitors may complain to the Court of Chancery, and then their Oaths may be made use for the Suitors to found a Demand upon, against their Predecessors.

And it is pretty remarkable, that their Deficiencies are neither more nor less than the Sums they at first paid to their Predecessors and to me, upon their being admitted to their respective Offices. In this therefore I apprehend your Lordships will think their Oaths are of very little value. It is hardly to be imagined, that they should have been so long in their Offices, and have just saved nothing, nor wasted; and that they are not a single Farthing either richer or poorer.

But whatever your Lordships Opinion, with respect to that, may be; I own, I cannot but think, that there is something very extraordinary in the Attempt; that these two Men have agreed with two Masters, that were in possession of two good Offices for Life, to give one of them 6000 *l.* the other 7500 *l.* for their Places; and now, that they are got into possession, would have the Mony back, and continue in the Places too: That is, in short, they are tricking those Masters out of their Places, under pretence of buying them.

But whatever their Behaviour or their Estates may now be, they appeared to me Persons of Reputation, and Fortune, when they were admitted. And I do not observe, that the Article hath so much as suggested, that I knew any thing to the contrary.

One of the Managers wondered that I should let in Persons of no Fortune; and he solves it only by this, that they would give better Prices.

That had been something, if the Price had been given to me; but leaves it incredible, that I should let in any, that I had the least Suspicion had no Fortune; for the old Masters to receive 6000 *l.* and 7500 *l.* at the same time that they represent me acting upon the view of burying the Masters, and having the whole Price myself.

Where I was to have the whole Price, and the Temptation was greater, there is no pretence I took in Men of no Fortune. And is it possible to think I would do it, where the Masters were to have the Price, and I so small a Proportion?

Great Stress has been laid on comparing the Sums in the Masters hands, with their Estates; in order to shew their Unfitness to be trusted with those Sums.

How that Proportion is to be adjusted, I own, I am a little at a loss. Here is a Master, that has an Office that brings in a considerable Profit, and is worth 5000 *l.* which cannot be run away with: He has a handsome visible Estate of 4 or 5 hundred Pounds a Year; and a good Reputation. How much Mony may he be properly trusted with? I do not mean as a Borrower, who may be presumed in some want, of one sort, or other, because he borrows; but as a Casheer for the Suitors? There are very few Bankers that have such a Fortune to set up with. And I do not see that any of those Bankers, that is a Man of good Reputation, and good Credit (tho' perhaps he has not a good Fortune of his own) is thought the worse of by those who deal with him, because he is trusted with very great Sums, far more than he is worth. The more he is intrusted with, the more are his Gains, and the safer all think themselves that have Mony in his hands.

There is in the Close of this Article another Charge, that I *did publickly in open Court falsely represent the Masters admitted by me, as Persons of great Fortunes, and in every respect qualify'd for the Trust reposed in them, to the manifest Deceit and Injury of the Suitors.*

My

My Lords, as to that, I think nothing can more plainly ſhew, than this Article, and what has been ſaid upon it, the forced Conſtructions put upon what I do.

Mr. *Waller* proves, that in *July* 1723, I declar'd in Court, that *the Maſters were Perſons of as good Fortunes and Abilities as any Set of Maſters had ever been before them.* Which is ſpoke of the whole Body of Maſters, and not of thoſe only who were admitted by me. He ſays he was *aſtoniſh'd at it.* But he has given no Reaſon why. If he knew any thing, that any of them were not ſuch as I deſcribed them; a little Candour would have made him believe, that I was not rightly apprized of their Characters; and a little Concern for the Honour of the Court, wherein he was a Practiſer, would have made him ſet me right.

But, my Lords, is there any Reaſon aſſigned, why I ſhould think otherwiſe than I ſpoke?

Mr. *Lightboun* is examin'd, to prove, that he told me, ſome of them were ſuſpicious. But he does not ſay any ſuch thing. All he ſays is, that he took notice to me of Mr. *Dormer*'s Misfortune, and told me, he knew not how ſoon the like Misfortune might happen to others. Which might be, though they were all ſufficient; if the Perſon, with whom they ſhould depoſit Effects, upon going into the Country, ſhould fail.

But his Expreſſion is a little remarkable; that he cannot ſay he told me any of the Maſters particularly were ſuſpicious, "*For he did not know how* "*far he might be liable to an Action.*" An Action! what! for one Maſter informing the Chancellor, of the Circumſtances of other Maſters, in order to have proper Care taken! could he fear it? Who was to be the Witneſs? What muſt be the ground of the Action, if he told nothing but what was true?

But I think, he ſaid he had not any particular Grounds for his Suſpicion; and he ſays, *I was unwilling to believe it* of any of them. Why? becauſe (as he ſays I told him) *I had had very good Characters of them, and therefore I hoped they were all good Men.*

It was not very kind, in that Gentleman, to call it an *Unwillingneſs* to believe, there was Ground to ſuſpect them: When I aſſigned ſome Reaſons, why I ſhould not ſuſpect them; and he gave me none, why I ſhould.

So that here appears not any Reaſon, why I ſhould believe otherwiſe than what Mr. *Waller* heard me ſay.

But to what end ſhould I ſay it, if I did not believe it? Or how were the Suitors injured, or deceived by my ſaying ſo? Mr. *Waller* was not deceived; was any body elſe deceived? Or could any one be injured? But they have diſcover'd a reaſon, why I ſaid it. They ſay that Mr. *Fellowes* was juſt dead, and there was a Maſter's Place then vacant: And that fact they have proved. But can any thing be more ſtrained, than their Inference from it? Did I deſign, by ſaying theſe Maſters were Men of Fortunes and Ability, to raiſe the Price of that Vacancy? or to tempt Beggars to come in, that cared not what Price they gave? Does not what was then done, clear me of all Suſpicion of that kind? Mr. *Elde* was the Perſon then admitted, a Gentleman of a very good Eſtate, of very good Character in *Weſtminſter-Hall*, and 750*l.* more offer'd by another, that was no Beggar neither, refuſed. And after that, Mr. *Thurſton* was admitted, preferably to one that offer'd 6000*l.* Is it poſſible, that I ſhould give better Proof that I had not that avaricious View in it, that is ſuggeſted?

It was obſerv'd by one of the Gentlemen, that open'd the Evidence, that this was upon a *remarkable occaſion*, when the Maſter of the Rolls had made an Order upon one of the Maſters, to make a Suitor ſome Compenſation out of his own Mony in the Maſter's hands, and I ſet it aſide. And Mr. *Waller* began to tell ſomething of the Merits of the Caſe. But a very learned and a very judicious Gentleman, one of the Managers, was pleaſed to ſay, They did not diſpute the Juſtice of my Order; nor is there any Charge of ſuch Injuſtice in the Articles.

XII. The next Article is the 12th, which ſets forth

"That whilſt the ſaid *Thomas* Earl of *Macleſfield* executed the Office of Lord Chancellor, an unjuſt and fraudulent Method was practiſed in the Court of Chancery upon the Sale of Offices of Maſters of the ſaid Court, and upon the Admiſſion of new Maſters, that the Prices or Sums of Mony agreed to be paid for the Purchaſe of the ſaid Offices, and for the Admiſſion thereinto, were ſatisfy'd and paid out of the Monies and Effects of the Suitors of the Court depoſited in the Hands of the reſpective Maſters, ſurrendring their Offices, or dying; either by way of reteiner of the Purchaſe in the hands of the Maſter reſigning, or of replacing the Mony diſburs'd for ſuch Purchaſe or Admiſſion by the ſucceeding Maſter, out of the Mony and Effects of the Suitors coming into his hands; by which Practice the Price and Value given upon the Sale of the ſaid Offices, and Admiſſions thereinto, during the Time aforeſaid, were greatly advanced, and ſeveral Perſons of ſmall Ability and Subſtance were encouraged to contract for the ſaid Offices, upon a Proſpect of the eaſy Method of paying for the Purchaſe of the ſame, by means whereof great Deficiencies have incurred in the Offices of ſeveral Maſters of the ſaid Court, admitted by the ſaid *Thomas* Earl of *Macclesfield*, which they have not been able to anſwer and make good; and although the ſaid Practice was notorious and publick, and the ſaid Earl was well inform'd thereof, and fully acquainted therewith, yet the ſaid *Thomas* Earl of *Macleſfield*, in order to increaſe his own unjuſt and corrupt Profit in the ſelling the ſaid Offices and the Admiſſions thereto (which in conſequence of this evil Practice was rais'd and receiv'd by him out of the Effects of the Suitors, for whom he was intruſted) did not at any time, whilſt he continu'd in his Office of Lord Chancellor, uſe or take any Meaſures to reform the ſaid Abuſe, or to prevent the ſame; either by cauſing proper Schedules to be taken of the Money and Effects of the Suitors deliver'd over and transferr'd, or by appointing any Perſon in his behalf, to inſpect or ſuperviſe the Transfers or Deliveries thereof, or in any other manner. But on the contrary, the ſaid *Thomas* Earl of *Macclesfield*, unjuſtly, corruptly, and contrary to the Duty of his ſaid Office of Lord Chancellor (to whom the Superintendency of the ſaid Maſters and of their Accounts did appertain) did ſuffer the ſaid fraudulent Practice to proceed and be exercifed without any Controul or Check, whereby great Embezlements have been made of the Suitors Money and Effects, to their great Loſs, in the Offices of ſeveral of the Maſters of the ſaid Court, who have not been able to anſwer and pay their reſpective

" ſpective Ballances owing upon their Accounts, in " breach of the Truſt repoſed in him for the pre- " ſervation of the Eſtates and Effects of the Sui- " tors, to the diſhonour and diſcredit of the ſaid " Court, and to the great injury and defrauding of " the ſaid Suitors in a Court of Equity, eſtabliſhed " for their Relief and Protection."

My Lords, In ſupport of this Article, two of the Maſters, Mr. *Kinaſton* and Mr. *Tho. Bennet*, have ſworn, that their Predeceſſors ſtopt the price of the Places out of the Suitors Mony, which was to be delivered over to them: and that they gave the greater Price for their Places, becauſe they found this an eaſier way of purchaſing them. Indeed I muſt confeſs, that according to the manner of proceeding of theſe two Gentlemen, it will come out to be an exceeding eaſy way, which they have diſcovered: ſince, if they can prevail in their preſent Attempt, they will have paid no price at all for them; they are to have their Mony back again, and not be in the leaſt impoveriſhed by the Tranſaction. But is there any proof, that I was (as the Article charges) well informed of it? Or that I knew any thing of it at all? Not in the leaſt, but only upon the Oath of Mr. *Tho. Bennet*, who ſwears that in a Converſation with me about a Treaty between him and Mr. *Hiccocks*, I took notice of an Article in his Account, delivered in to the Lords of the Council, wherein he mentioned 9075 *l.* of his Caſh to be in the hands of Perſons of Ability, meaning as he after explained it, in the hands of Mr. *Hiccocks* his Predeceſſor and my ſelf; and ſaid, I was ſorry for it, becauſe it was diſcovering the method of paying for their Places out of the Court Mony, which I had taken care conſtantly to deny.

This (ſuppoſing my meaning to be what he would have) is ſurprizing. He ſays that at the beginning of this diſcourſe I was ſo cautious, that I would not ſpeak to him about returning the Mony I had had, becauſe probably he might be examined about that Converſation in another place. And yet he pretends that in the ſame Converſation I told him this. But does even he pretend, that I ever knew this, which I had taken care to deny? And was this a time to tell him of it, when he ſays, I expected he might probably be examined about his Converſation with me?

But I believe your Lordſhips will not give him the leaſt credit, in this or any thing elſe that affects me. I beg leave to remind your Lordſhips that I asked him whether he did not then tell me, that, if Mr. *Hiccocks* would give him 2000 *l.* he would pay the reſt of the Mony (which was to ſhew that he was worth at the leaſt all but that 2000 *l.*) He denyed it. My Lords, I then told your Lordſhips I could not diſprove him in that, for I cannot be a Witneſs for my ſelf. Therefore I asked him to another thing, wherein, if he did not tell the Truth, I might be able to falſify him; I asked him, if he had not ſaid ſo to ſome body elſe? He poſitively ſaid, No. He ſaid there was ſuch a report, but he denyed the thing. At laſt he did own that he had ſaid, that if Mr. *Hiccocks* would repay 2000 *l.* he would ſtand it, or run the hazard, but never told any body he would pay the reſt; he was not able. But Mr. *Holford* ſwears, that *Tho. Bennet* ſent a Meſſage by him to Mr. *Hiccocks*, that if Mr. *Hiccocks* would repay 2000 *l.* he would diſcharge the Article in the Account, and take care to pay the reſt, and he believed that Mr. *Bennet* was able to pay it, or he would not have carried the Meſſage. And another Gentleman ſwears, that he ſaid he would make it up, and a third that he could or would pay it. So that he ſtands contradicted in this particular, which I apprehend is material, by three Witneſſes.

As to the Method of Payment mentioned in the Article, it is ſtated to be, that the *Price of the Office was ſatisfy'd out of the Effects of the* Suitors, *either by way of Reteiner of the Purchaſe Mony in the hands of the Maſter ſurrendring*, or of *replacing the Mony diſburſed for ſuch Purchaſe by the ſucceeding Maſter, out of the Mony and Effects of the Suitors coming to his hands*: and the Methods ſuggeſted for preventing this, are, *cauſing proper Schedules to be taken of the Mony and Effects deliver'd over*, or *appointing Perſons to inſpect or ſupervife the Deliveries*; but *I took not theſe Meaſures, nor any others.*

My Lords, the Method of *paying by Reteiner* could only be upon *Surrenders.* And why ſhould I there aſſiſt to raiſe the Price? why aſſiſt to get a higher Price for one, whom I was to have no more to do with, only to have a poorer Man come in, that might bring Diſgrace upon the Court and upon me?

As for the other Method, the *replacing the Mony* paid, that is, as I underſtand it, borrowing the Mony to make payment, and then when the Effects are transferred, diſcharging the Debt out of them: How was that to be hindered? not by *Schedules*, and ſeeing *the Effects deliver'd* over. The *Delivery of the Effects* is neceſſary to put that Method in practice, and is far from hindring it.

But is this delivery over of the Effects ſo very material? Mr. *Meller* did not deliver over the Effects to Mr. *Borret* of ſome time: had they been ſtill in his hands, had it been the worſe for the Suitors? Whatever a Maſter does not deliver over, he continues reſponſible for, and the Suitors have the ſame Security for them, as they had before. *Hiccocks* and *Rogers* did not deliver over the Effects, but ſtopt Part for Payment; the conſequence is, that they are compelled to bring them in. Had Schedules been made, and the Effects deliver'd over, and ſo *Kinaſton* and *Bennet* been forced to purſue the other Method, the Suitors had not had either *Hiccocks* or *Rogers* at Stake.

Indeed I never apprehended it neceſſary for me to ſee the Orders for Transfers obeyed, any more than any other Orders of the Court. It is the Intereſt of the new Maſter to call for the Effects, and of the old one to have a regular Diſcharge, which I do not ſee how he can have, without an Inventory of the Particulars, and a Receit upon it; which is what I underſtand to be a Schedule, tho' it be never filed; tho' I apprehend the word Schedule is taken in a different Senſe in the Report to the Council. And this I did believe the Intereſt of the Parties had made them do. Nor has it yet been ſhewn, that it was my *Duty* to look after theſe Transfers. By what Law, by what eſtabliſhed Practice, where does it appear, that a Chancellor is bound to ſee ſuch Schedules made, and the Effects transferred? If it be his Duty, without doubt there is ſome Method, by which it may appear he has diſcharged it, in caſes where he has done ſo. But is there ever any Entry made of it? Are the Schedules filed with any Atteſtations, that the Effects were actually delivered over in preſence of Perſons appointed by the Lord Chancellor? The Effects in Mr. *Holford*'s Caſe were deliver'd over, I think, the day of his admittance, in Mr. *Lovibond*'s in about a Week, in Mr. *Bennet*'s in a ſhort time; whether in preſence of Inſpectors, ap-

appointed for that purpose, or not, has not appeared. Yet, my Lords, the Question is not now, Whether it be wiser and better to have Schedules prepared and filed, and for a Lord Chancellor to give Orders to see it done: But whether it be his *Duty* so that it is a *Crime* not to see it done? If the Suitors desire to have Schedules filed, in order to be the better able to know how much the new Master is charged with: it is their part to search and make Application; and upon such Application, it is the Chancellor's part to make proper Orders; which they again are to take care to draw up, to enter, to prosecute, and see executed. And as to my Desire, and Intention, to increase my own unjust Gain; which is to give the Tincture of Guilt to this, and make it criminal: can it be conceived, that I, who take not advantage of a higher Price, when I may have it; should, in order to raise the Price, refuse to check a Practice which the Masters are supposed to make use of, to the prejudice of the Suitors, and only for their own Gain?

XIII, XIV, XV, XVI, XVII.

The 13, 14, 15, 16, and 17th Articles all relate to *Dormer's* Affair; and contain several supposed Stratagems to conceal his Deficiency: all founded upon the same View, and to prevent the Gain upon Sale of Offices from being lessen'd. Without that View to Gain, I do not see any thing in these Articles, that is criminal. And therefore, if in your Lordships Judgment, I shall stand acquitted of that, upon a full examination how my Heart stood affected in that Particular, I think all must fall to the ground.

XIII. As to the 13th Article particularly; It sets forth *That from an Apprehension that a publick Discovery of* Dormer's *Deficiency might lessen the unjust Gain I proposed to make to myself by selling and disposing the Offices of Masters, I neglected and declined either to secure his Person or Estate, or to make a proper Inquiry into the Deficiency; but endeavoured by many indirect Practices to conceal from the Suitors the true State and Condition of his Office, as well with respect to his Effects, as to his Debt to the Suitors.* And the latter part of the Article says, *That upon Motion made in the Court of* Chancery *(after I knew* Dormer *was absconded) to have the Effects of some of the Suitors transferred to another Master for better securing them, I, to delude the Suitors into a Belief that the Effects were safe, and thereby prevent a publick Inquiry, there said, That the Parties need not be in haste, that* Dormer *was only gone to take the Air in the Country, that he would return in a little time, and all would be well.*

As to this latter part, they have not so much as examined a Witness to prove it. So that what Evidence has been offer'd upon this Article, amounts in truth to no more, than a Proof of *Dormer's* being deficient. But as to any Endeavour of mine to conceal the State of that Affair; or any refusal, or neglect to do my Duty; there is no Proof.

It appears, that he went off in *November* 1720, that his Clerk and his Servants by his Order, gave out, that he was only gone into the Country for a while. But he was gone into *Holland* for fear of a Gaol. I knew nothing of it till after *Christmas*, and then all the Steps were taken that were thought most likely to get as much as possible for the Suitors. His Chambers were searched by some of the Masters, and Directions were given to stop the transferring his Effects in the publick Funds. And it was carried on so far, that he was stripp'd of all, and with Tears begged, that Application should be made to me, for some Allowance out of it for his Subsistance; which Mr. *Cottingham* refused, because the Estate fell short, and he knew I could not order him the Mony of other People. And it is not now pretended, that any thing was not discovered by him, but only a parcel of Hops; and that plainly was not concealed fraudulently; for he made no advantage of it; the Hops are unsold to this day.

But the Charge of concealing *Dormer's* Affair being the Foundation of so many Articles, give me leave here to say something of it, tho' they have made no Proofs of it, or of the other Facts in this Article.

My Lords, He going away in *November*, and never appearing more in Court, or in his Office, but another put into his place in *May*; it is impossible his failing was, or could be, kept a Secret. Must not all the Suitors, who had Mony in his hands, know that he was gone? For my own part, I never imagined, it was a Secret. And as they, and their Agents, could not but know what was doing; had they not been satisfied, that the Court was taking the best measures to make up the Deficiency; would they not have made Application for some Relief? I did believe the Masters would make it good, Mr. *Cottingham* swears he told me so from them: He indeed does not now rightly remember the time, and answered not at first very readily whether it were before, or after *November* 1721, when the second Letter about the Accounts was wrote. But, of necessity, it must be before; because Mr. *Edwards* says, Mr. *Cottingham* told him it would be made up, just about the time of his being made Master; which was in *May* 1721; and it is not pretended, there ever was any Thought, that it should be made up any other way, but by the Masters. Mr. *Edwards* says too, some of the Masters told him it would be made up; He does not remember by whom they said it should be made up; but I think he says, he thought; I believe the thing speaks, it could be by no body else but the Masters. And even Mr. *Lightboun's* Letter in 1722 takes notice of it as a thing always under deliberation, how the Masters should make it up; and that he differed from the rest only in the Manner, and in insisting that at the same time care should be taken, that the like Accident might not happen again, and they be exposed to another Contribution. If I was too credulous in believing this, sure it is no Crime. And I am apt to think, your Lordships will be of Opinion, that the Suitors believed the same, or those, whose Money lay so that it might probably continue some Years, would have applied to have an Account taken, and that their Proportion should be reserved. But nothing of that kind was done by them. Afterwards there breaks out a Dispute between the Masters and the Master of the Rolls, thereupon Mr. *Lightboun* informs your Lordships, that many Orders were made in prejudice of the Masters in other Branches of their Office; the Language of the Court varied (as he expresses it) in Orders; and the Mony put into another Channel; whereby they lost, not only any Advantage that might be made of the Mony, but many Fees and Perquisites, that arose thereupon, and in the other Branches of their Office. Had not this happen'd, or should it be cured, I am perswaded that *Dormer's* Deficiency would all be made good. Contrary Measures may prevent it.

There was ſome little Reflexion made upon that part of the Evidence, which related to the Meſſage I firſt ſent to the Bank; and alſo for that the Order, which was afterwards ſent, and a Copy of it read, was never enter'd with the Regiſter.

But your Lordſhips have had an Account that the Effect of my Meſſage to the Bank (tho' there was no formal Order made) was, that a Memorandum was entered in their Books, that no Transfer ſhould be made without Leave from the Court of Directors, or Court of Chancery; which had the deſired effect. But it is true I made no formal Order, becauſe I did not apprehend, that I had Authority to hinder them from permitting him to transfer, by an Order of Court to be entered in a Cauſe, wherein they were no Parties. And that which was ſent after, was only to deliver them from the Reſtraint, they, it ſeems, look'd upon themſelves to be under, by that Meſſage; and to anſwer the Entry in their Book.

And as to its not being enter'd; I muſt likewiſe obſerve, that even the Directions ſent in *November* laſt to the Maſters by Advice of the Committee of Council, for preparing and bringing in their Accounts were never entered: and yet the Gentlemen will not imagine, that that could be with a deſign to have it kept a Secret; but the true and only reaſon of it was, that thoſe Forms are not neceſſary, but in adverſary Suits, or unleſs there be occaſion to inforce the execution of ſuch Orders by the Proceſs of the Court.

But they charge and argue, altho' they have proved nothing, that I have neglected my Duty.

My Lords, It is proved that I did a great deal more than they have proved to be my Duty. And what did I omit?

Obj. I did not (ſay they) ſecure his Perſon.

Reſp. My Lords, was that a Crime? He was in *Holland* out of my reach. When he came into *England*, it was to deliver up all he had to the Suitors, and on promiſe of Liberty.

But if I had, would that have been of uſe to the Suitors?

Obj. I iſſued no Sequeſtration to ſeize his Eſtate.

Reſp. The Eſtate was got without one, which is much better. The moſt uſual Allowance upon a Sequeſtration is *6 s.* 8 *d.* a day to every one of the Sequeſtrators that are employed to put it in execution, which would ſoon have eat up great part of the Eſtate. And I do not know that the Sequeſtrators would have found out the poor parcel of Hops, which is all that was not got then; and it was not imbezled, but has been brought in now without the help of a Sequeſtration.

Obj. I did not examine him upon Interrogatories.

Reſp. I order'd *Cottingham* to propoſe to the Maſters, whether they would have one; and they thought he would make a fair Diſcovery without, and were afraid leſt that appearance of Diſtruſt and Hardſhip might drive him away again, but if they ſhould find it requiſite, they would apply. No Application was ever made to me to have it, nor does there any fraudulent Concealment appear, nor any thing diverted from the Satisfaction of the Suitors. And if he made a fair and honeſt Diſcovery of all, what imports it, whether he were ſworn, or not ſworn to it?

But I would beg leave to ask, Why ſhould I neglect what was proper?

The Reaſon they aſſign is, That if I had done theſe things, it *would have made a Noiſe* and *brought the Matter out.*

My Lords, what could make a *greater Noiſe*, than that a Maſter in Chancery abſconded, and no Mony was received or paid, nor Buſineſs done in his Office from *November* to *May*, and then another put in his Place?

One of the Gentlemen expreſſes his Aſtoniſhment, how it could enter into my Heart, that this *could always be concealed*, or that ſo ghaſtly a Wound could ever heal of itſelf, without the application of proper Remedies.

My Lords, it is yet more aſtoniſhing, that it ſhould enter into my Heart to *endeavour to conceal* it for thoſe Reaſons which he ſuppoſes I had in View. And I ſhould have thought, the Arguments that raiſed his Wonder at my having done ſo, ſtrong Arguments that I never did it; And indeed it is *impoſſible* I ſhould endeavour or hope to conceal that, which I knew was ſo *notorious* and *publickly* known. Nor was I without Endeavours towards healing the Wound: Some of thoſe Endeavours are attempted now to be made part of my Crime.

XIV. The 14th Article ſuggeſts, "That the "ſaid *Fleetwood Dormer* having towards Satisfac- "tion of the Suitors of the ſaid Court, aſſign- "ed to *Henry Edwards*, Eſq; (who ſucceeded "him in his Office of Maſter of the ſaid Court of "Chancery) a Debt of 24046 *l.* 4 *s.* or ſome other "great Sum due from *William Wilſon*, a Banker, "to the ſaid *Fleetwood Dormer*, to the intent that "the Mony received on the Account thereof, "ſhould be applyed and diſpoſed of, as the ſaid "Court of Chancery ſhould Order and Direct, the "ſaid *Thomas* Earl of *Macclesfield*, whilſt he continu'd "Lord-Chancellor of *Great-Britain*, for the un- "lawful Purpoſes aforeſaid, with Regard to the "Intereſt of the Suitors, by Colour of his Office, "did, in an Unwarrantable, Clandeſtine, and Un- "uſual Manner, Authorize, Direct, and Eſtabliſh, "a precarious and trifling Compoſition with the "ſaid *William Wilſon*, upon the Terms of the ſaid "*William Wilſon*'s paying the Sum of 1463 *l.* 2 *s.* "1 *d.* and aſſigning 10000 *l.* part of a Debt of "22060 *l.* 12 *s.* 5 *d.* pretended to be due to the "ſaid *William Wilſon* from *Edward Poulter*, or to "that Effect, in diſcharge of the ſaid Debt: and "to that End, upon the Report of *John Hiccocks*, "Eſq; then one of the Maſters of the ſaid Court, "without any Attendance ordered or had there- "upon, and without Notice to the ſaid Suitors, "did by a private Order not made in open Court, "order the ſaid *Henry Edwards* to accept of the "ſaid Compoſition, in full Diſcharge of the ſaid "Debt, which ſaid *Edward Poulter* was a Perſon "inſolvent, and has ſince abſconded for Debt, "and none, or a very ſmall part of the ſaid 10000 *l.* "has been, or is ever likely to be received."

This Article your Lordſhips obſerve relates ſingly to the Compoſition with *Wilſon*, which is charged to be authorized by me to the unlawful Purpoſes aforeſaid, that is, to *conceal* Dormer's *Deficiency, and keep up the Prices of the Offices.*

Suppoſe this Tranſaction had been publick, nay, ſuppoſe *Wilſon* had been openly ſued for this Debt; would that have fallen the Price of Offices, or diſcovered *Dormer*'s Deficiency? If his abſconding and aſſigning his Place to Mr. *Edwards*, did not diſcover it; would the Proof of his aſſigning this Debt to Mr. *Edwards* have diſcovered it? What End then could the Privacy of this Tranſaction ſerve?

But

But tho' it does not anſwer the Purpoſe, that is charged. Yet it is inſiſted upon to be *prejudicial to the Suitors*, and giving *up a great Part of the Mony due* to them from *Wilſon*, and *done in a Clandeſtine Manner*, and *without their Knowledge*.

What Proof then is there, that this Compoſition was prejudicial to the Suitors? A ſmall one it is indeed, but for a deſperate Debt; and what Proof is there that they could have had a better; or that it had been better to have had none?

It is ſaid, that *Wilſon* paid to ſome of his Creditors their whole Debts.

It is true, that was ſaid, but it has not been proved. If it had been proved, and the Circumſtances ſhewn, probably it would have appeared, that he had a particular View in paying thoſe their whole Debts, and it might be more beneficial to him to do ſo, and keep them his Friends; than if he had paid them only a part, as he did to his other Creditors.

And as ſmall as the Sum is, my Lords, give me leave to ſay, it had never been got in for the Benefit of the Suitors, if this Compoſition had not been made. So that 2463 *l.* has been got for the Creditors, tho' no more ſhould be recovered from *Poulter*, than the 1000 *l.* already got from him; where nothing had elſe been had, for what appears.

Obj. But *Poulter* was inſufficient, and the Debt aſſigned from him worth nothing.

Reſp. As to *Poulter*'s Circumſtances at that time: Some Perſons have been called, who have proved ('tis true) that he was inſufficient at that time, and could not pay more than three or four thouſand Pounds; but the ſame Witneſſes give an Account, that his ill Circumſtances were then known but to four or five Perſons of his Acquaintance, and that by all other People, who had any Knowledge of him at that time, he was looked upon to be very ſufficient; he had left off his Buſineſs upon having raiſed an Eſtate; he was of good Reputation; he lived at *Hackney* in a Houſe making a good Appearance, with good Furniture, and a great quantity of Plate, till the laſt, till the time of his being put in Priſon, which was not till laſt Year, that he ſurrendered himſelf in diſcharge of his Bail.

But ſuppoſe he was not ſufficient, how does that affect me? I was not obliged to concern my ſelf with it, and left the Compoſition to the Management of the Maſters; they made it: *Wilſon* had ſworn an Affidavit in Writing of his Circumſtances, and that this was as much as he could pay to the Suitors; Mr. *Hiccocks*, a Gentleman of very good Reputation, was the Maſter, he being then Senior Maſter, to whom I referred the Conſideration of it, according to the Courſe of the Court; he was upon his Oath in what he acted therein, and made his Report, that he was of Opinion this Compoſition would be for the Advantage of thoſe to whom the Mony was to be paid. And upon that I grounded the Order.

Obj. But the Suitors had no Notice to diſpute it.

Reſp. The Conſequence of that is only, that Mr. *Edwards* being their Truſtee, and *Wilſon* knowing it, whatever could be done between them would not bind the Suitors, if it were any way detrimental to them: Therefore they have the Benefit of all that has been got in upon it, and yet have ſtill a right to enquire into the true Circumſtances of Mr. *Wilſon*, and to recover, in proportion with his other Creditors, any Effects he ſhall appear to have unfairly concealed.

Upon the whole of this Matter, could the Maſter, or I, have any indirect End to ſerve, by allowing *Wilſon* to compound at an under rate? It is not pretended I knew him, or could intend him a Favour. Why then ſhould I deſignedly leſſen *Dormer*'s Fund, which was before deficient, and which I was endeavouring to make up?

Obj. But it is ſaid, that this was by my Direction.

Reſp. Suppoſe it were; they have not proved any thing to induce a Suſpicion that it was not perfectly innocent, nay beneficial to the Suitors, or probable to be ſo.

But the Proof is only, that Mr. *Edwards* ſpoke to me about it, and asked me, if he might compound it of himſelf; I thought not: But Mr. *Hiccocks* having afterwards informed him, that it was uſual to do things of that kind upon a Report grounded on the Party's Oath, and an Order founded thereon; he propoſed that Method, and I thought it might be ſo done. And he did it.

But whether this was prudent, or imprudent; where is the Crime? This tended nothing to conceal *Dormer*'s Affairs: He was known to be broke; and *Wilſon*'s Debt was eſteemed deſperate. There was no other View, nor could be, but to get ſomewhat towards *Dormer*'s Deficiency, and no body is at all hurt by it.

Obj. But this was unuſual.

Reſp. In what?

Obj. No day was appointed to hear Councel upon it.

Reſp. My Lords, There was no occaſion for Counſel; there was nothing for Councel to be heard to; there was nothing for them to argue. The Order is in direct purſuance of the Report.

Indeed, upon careleſly reading the Article, one would imagine the Charge to be, that this was an Order made upon Mr. *Edwards*, without giving him Notice, or hearing Councel for him. And that would be very unuſual and unjuſt; if it were not that it is ordered upon his own Petition, and at his own Requeſt.

Your Lordſhips will likewiſe obſerve, that this was the 3d of *Auguſt*, after the Seals were over; and if I muſt have appointed it to come on, upon a publick day (not to have it concealed) it muſt have waited till *October*; And by that time *Wilſon*, and his Effects, might probably have been gone, and the Opportunity of getting any thing loſt.

As to ſome few new Obſervations made upon reading theſe Proceedings, I ſee not how they tend to prove any Crime in me.

Obj. They are not filed.

Reſp. That is not my Affair. And if they are never filed, they will affect no body, and cannot poſſibly do harm.

Obj.

Obj. Some Lines or Words appeared razed out, which import that Mr. *Edwards* ſhould be indemnified.

Reſp. If he acted fairly in this matter, he would be indemnified, tho' thoſe Words were out; And if he did not, they ought not to be in.

In ſhort, here is not the leaſt Evidence, but that this Compoſition was made with a View to get as much as could be for the Suitors, out of a deſperate Debt; there is no body hurt by it; and if it be not of advantage to the Suitors, they may avoid it.

XV, XVI. The 15, 16, and 17th Articles were opened together; but one Gentleman ſpoke more particularly to the 17th, as being of a different nature from the others; and therefore I will ſpeak to it ſeparately.

The principal Subjects of the 15th and 16th Articles, are 4500 *l.* raiſed by the Maſters, and 1000 *l.* by myſelf, towards *Dormer*'s Deficiency.

In the laſt Article I ſpoke to, the Crime was, the leſſening *Dormer*'s Effects by a trifling Compoſition; in theſe, increaſing them 5500 *l.* is a Crime.

At firſt ſight, one would think this commendable, but by I know not what Fatality, every thing grows criminal by my having any concern in it. My Intention infects all. It is ſaid that I *intended* by it to *carry on my corrupt Purpoſes*, that is, as one of the Gentlemen explained it, to *conceal* Dormer's *Deficiency*.

But all that appears upon the Proofs offered relating to my Intentions is, that here was a ſtrong Deſire to make good *Dormer*'s Deficiency; And that way of concealing it is ſurely not blameable.

But then as to the 4500 *l*; it is ſaid, that I induced the Maſters to pay it by Colour of my Authority.

How is this proved?

Mr. *Conway* produces, and proves, the Receit he had given him by Mr. *Edwards*, *for* 500 *l. voluntarily contributed by him towards Mr.* Dormer's *Deficiency*: and ſays, that he had promiſed it in *February*, and paid it accordingly in *Auguſt*.

Mr. *Edwards* ſays, that in 1721 he received 500 *l.* apiece, from all the Maſters, but Mr. *Lightboun*.

Mr. *Lightboun* ſays, that when Mr. *Cottingham* ſpoke to him of it in *February* 1720, he told him, all the other Maſters had agreed to it; but Mr. *Lightboun* refuſed it: That I never ſpoke to him of it till *January* 1722, which was near two Years after; that then, I was ſo far from making uſe of my Authority, that when he asked me, whether it was my Propoſal, or the Maſters; upon its being ſaid, it came from the two Senior Maſters, he took occaſion to ſpeak more freely againſt it; and tho' I uſed ſome Arguments with him, yet he ſays I left him to his own Inclinations.

My Lords, theſe are their Proofs. But they are to be helpt out by ſome Conſtructions.

Obj. It is ſaid, that the Letter which I cauſed to be ſent in *February* 1720 to require them to give in their Accounts, was in order to terrify them to come into a Compoſition: for it is ſaid, when that had its Effect, and the Mony was paid, they were not obliged to bring in their Accounts.

Reſp. This then, I ſuppoſe, is that *Colour of Authority* by which (according to the Charge in this Article) I induced them to contribute.

But in the firſt place I beſeech your Lordſhips to conſider, whether it can be thought, that any of the Maſters would pay 500 *l.* rather than let me know what was in his hands? which was all the Conſequence of my having an Account. If it can not; why ſhould it be, without the leaſt Proof, imagined, that I ſhould expect it?

In the ſecond place I muſt beg leave to obſerve, that the Maſters beſt know, what effect that Letter had upon them, and what was the Motive of their advancing that Mony; but none of them have ſworn, that they were in the leaſt induced to pay the Mony by the fear of that Letter, or by the apprehenſion of being forced to give in their Accounts if they did not comply. Nor do the Circumſtances ſhew it. For Mr. *Conway* came in but in that *February*, and had but little Mony in his hands, and a very ſhort Account to make. Mr. *Kynaſton* and Mr. *Tho. Bennet*, who are now deficient, were not then Maſters. Mr. *Holford* had got an Account ready, yet he paid. Mr. *Lightboun* gave in no Account, and yet he did not pay.

So that upon a View of the Evidence, here is a good Action done, very beneficial to the Suitors; and no indirect Practice to bring it about.

And therefore the Charge not being proved, I am according to my general Plea, *not guilty of the Matters contained in this Article, or any of them, in manner and form as they are therein charged againſt me.* And there is no occaſion to make out, what I have ſtated in my Anſwer, to have made this matter more clear, in caſe they had given occaſion, by having produced Evidence to maintain their Charge.

However I have ſhewn a ſecond Letter, written by my Order, in *November* following, requiring thoſe Accounts with more earneſtneſs. Mr. *Cottingham* produces the Draught of it, and tho' he will not ſwear poſitively that he deliver'd or ſent it; becauſe he does not find any memorandum of it: he verily believes he did, and has not the leaſt ground to ſuſpect the contrary.

Your Lordſhips will obſerve, how very particular the Account was directed to be.

The firſt Letter was wrote the 14 of *February* 1720, Your Lordſhips will give me leave to read the Copy kept of it.

[*Reads.*] " 14 *February* 1720.

" I am commanded by my Lord to ſignify to " you, that you do, with all convenient ſpeed, " lay before his Lordſhip an Account in ſeveral " Columns.

" 1. Of the Cauſe.
" 2. Sollicitour, or Agent.
" 3. The Date of the Order.
" 4. For what Purpoſe the Mony was brought in.
" 5. How much was brought in.
" 6. When.

" 7

" 7. How much in hand.
" 8. How much on Securities.
" 9. How much paid out.

A diſtinct Account of Securities.

" 1. Cauſe.
" 2. From whom the Security is taken.
" 3. What the Security is.
" 4. In whoſe Name taken.
" 5. For how much each Security.
" 6. The total of the ſeveral Securities.
" 7. In whoſe hands lodged.

A diſtinct Account of Money paid out.

" 1. Cauſe.
" 2. By what Order, of what date.
" 3. When paid.
" 4. To whom.

The ſecond Letter is dated the 7 *November* 1721. And is in theſe words:

[*Reads.*]

" By my Letter of the 14 of *February* laſt, I " ſignified to you my Lord Chancellor's pleaſure, " which was that you ſhould with all convenient " ſpeed lay your Account before his Lordſhip, " the Method whereof was to be in ſeveral Co- " lumns ſubſcribed at the foot of that Letter. I " am now farther to acquaint you, that his Lord- " ſhip is very much ſurprized to find that in all " this time no ſuch Account hath been laid be- " fore him; and therefore hath commanded me " to tell you, that it is expected to be delivered " on or before the laſt Day of this Term; and if " this is not complied with, you will oblige his " Lordſhip (tho' very unwillingly) to think of " other Meaſures, which I doubt not but you " will avoid by a ready compliance with what " is a ſecond time required of you. And to the " end there may be no miſtake as to the Method " of your accounting, I have ſubſcribed it again " at the foot of this Letter.".

And Mr. *Cottingham* explains what he apprehends was meant by that Paſſage of *other Meaſures*, that I would make an Order in form, that is, an Order of Court to be entered with the Regiſter. He tells your Lordſhips what Repreſentations they made of the Difficulties of drawing up ſuch Accounts: And I did not afterwards inſiſt upon them. And your Lordſhips will be pleaſed to obſerve, that the Letter ſent by me, in Form of an Order, in *November* laſt, by Advice of the Lords of the Council, was for an Account much in the ſame manner. The words are theſe:

[*Reads.*]

" Dated 3 *November* 1724.

" Let the ſeveral Maſters of the High Court " of Chancery forthwith prepare and deliver to " me a perfect Account of the Mony in their " Hands, therein diſtinguiſhing in ſeveral Co- " lumns
" The Names of the Parties to the Cauſe.
" The Dates of the Orders for bringing in } Mony or Securities.
" The Time of bringing in each Sum.
" Particularly expreſſing the Sums tranſ- " ferred and paid to them at their " coming into their Office, in the firſt " Place.
" How the ſame hath been diſpoſed,
" What Sums paid out, and to whom, } when and by what Order.
" What inveſted in Securities, } Order.
" Specifying the Securities by Dates, Numbers, &c.
" Where the Securities are at preſent,
" What Mony remains in their Hands,
" Where the ſame now is.

Mr. *Holford* tells your Lordſhips, that another Account was carried in by my Order inſtead of one ſo particular; for that an Account drawn up in that manner, would have taken up ſeveral Months: And in *February* 1721 or 1722 it muſt have taken up many more; becauſe there were then Maſters, who had been much longer in their Offices, than Mr. *Holford* the now Senior Maſter had, in *November* laſt, been in his. And thoſe Accounts muſt have gone through their whole Time. And, if your Lordſhips will be pleas'd to look upon the Report on the Table, it will appear that the Judges and Directors reported, that no regular Accounts could be taken, unleſs they were brought down from the Beginning of the time, that each Maſter had been in his Office; and yet the Lords never inſiſted on any ſuch Accounts afterwards (tho' I had made an Order for them by their Advice) nor the Lords Commiſſioners ſince; which what is it, but falling into the ſame Sentiments that I had done before? The requiring the Dates of the Orders on which Mony was paid, and the Sollicitors Names (which I found not one of the Maſters was able to give me) was intended by me, that I might be able to make ſome Examination into the Truth of the Accounts, that ſhould be given in: And for want of that, your Lordſhips know, what Methods the Lords Commiſſioners have been forced to take; to have the Accounts of the ſeveral Maſters printed and publiſh'd, and diſperſed throughout *England* at a publick Expence; that People may come in voluntarily to make a Surcharge. And yet it is well known, that the preparing the preſent Accounts, ſhort as they are, containing only the Ballances of Securities and Caſh, which the Maſters owned to be then in their Hands in each Cauſe, ſo took up their Times, that the Buſineſs of the Court before them ſtood ſtill for ſome time, and their Attendance in Court was diſpenſed with. No Wonder then if I did not inſiſt on theſe Accounts, which were to be attended with ſo troubleſome, ſo tedious, and ſo fatiguing an Enquiry.

Theſe are ſome Facts, that I have not indeed examined to; but with Submiſſion I do not ſtand in need of them: If I did, they are notorious; and I believe the Managers, ſome of them at leaſt, know them, and will not deny them; and the Maſters, being your Lordſhips Attendants, may be aſked to them, by any of your Lordſhips, who ſhall

think there needs any farther Satisfaction to be given concerning them.

Obj. But why then did I not content myself with the shorter Accounts, and take them at least, such as were deliver'd into the Committee of Council?

Resp. As to those Accounts; I shall beg leave to say something upon them under the 18th Article, which, I flatter myself, will give your Lordships intire Satisfaction on that Head.

Upon the 16th Article I take the Liberty to say as to the 1000*l.* paid on Mrs. *Chitty*'s Account; I never expected that an Act of Humanity to Mr. *Lochman* should be made a Crime.

The supposed Crime, I think, consists in this, That it was in *farther Prosecution of my unjust and corrupt Purposes, that is, Keeping up my gain in selling Places, by concealing* Dormer's *Deficiency.*

How is this proved?

Mr. *Lochman* tells of his applying to me, and my saying to him at first, that it should be paid; but telling him after, that there were not sufficient of *Dormer*'s Effects left; that the Masters were in great Apprehensions of losing the Profits of their Places, and were not willing to advance any Mony; that he told me of a Composition he had made, that the Time was near; that then I said, I would order *Cottingham* to pay the Mony; but told him, that if Mrs. *Chitty* had nothing else, he might by marrying her make himself worse; for there would be no more Mony paid her thence. And he swears that he did not look upon that Sum to be paid out of Compassion, but only as it was due. He says, it was about a fortnight before the 1000*l* was paid, that I told him no more would be paid. Upon some Questions put to him by me, he said, he asked for another 1000*l* on account of Mrs. *Chitty*'s Children: But that after I had told him, no more than the first mention'd 1000*l* would be paid, which was a fortnight before it was paid, he asked it no more; and deny'd that he apply'd for the Payment of 500*l* or 574*l* after I had promis'd the 1000*l.*

My Lords, all this, supposing it true, does not prove that I paid this Mony to conceal *Dormer*'s Deficiency; for he says I told him before, that *Dormer*'s Effects were all gone; and at the Time when I made the Promise of that Mony, I told him no more of her Mony would be paid.

And is it rightly collected from this Action, without farther Proof, that my Intention in paying this Mony, was to *conceal* the very thing, which I at the same Time *expresly published?*

But, my Lords, it is fully proved on my Part by Mr. *Cottingham* and Mr. *Elphinstone*, that this 1000*l* was advanced out of a generous Compassion, and not out of any by-end: That his Application was founded on this, that he was to marry Mrs. *Chitty*, and was to have this 1000*l* to pay a Composition for his Debts; that I had sent him word of the Deficiency, and that he could not have the Mony; so the great Secret was out: But that he afterwards appear'd in the utmost Distress and Agony, in Danger of laying violent Hands on himself, and desperate: This Distress moved me; I told him, I would order the Mony to be paid out of Compassion to him; he afterwards spoke of it with the utmost Acknowledgment: I told him this, and gave the Order accordingly on *Monday*, and it was paid the *Thursday* following, which was the 30th of *July*; and as to Mr. *Lochman*'s Testimony, who denyed that he apply'd for a farther Sum; it has been proved, under his own Hand, that he apply'd for 574*l* for Mrs. *Chitty*, on Pretence she could not otherwise spare him the whole 1000*l*, and this after the time was appointed for Mrs. *Chitty* to receive the 1000*l.*

Here the Earl of *Macclesfield* informing the Lords, that he found himself so far spent, as not to be able to proceed at present, the House adjourned during Pleasure, and after some time the House being resumed, the Earl of *Macclesfield* went on.

My Lords, when your Lordships were pleased to allow me to retire, I was just upon Mrs. *Chitty*'s 1000*l*, and had spoke of that Part of the Transaction that related to Mr. *Lochman*. And as to the next, which is the Charge of endeavouring to persuade the Masters to advance that 1000*l*, and using the Arguments in the Article mention'd for that Purpose:

Upon the Evidence it does appear, that there was a Meeting of the Masters at my House in the latter end of *July* last; and some such Arguments used as in the Articles, but not (as is charged) to have a present Purpose of paying the 1000*l* answered, but to have *Dormer*'s Deficiency all made good, by small annual Payments out of each Office. A View, which I hope your Lordships will think very innocent and commendable, whether likely to be successful or not. And this was so much the Intent of my desiring the Masters to come together, that tho' that 1000*l* was the immediate Occasion, that discover'd the Effects to be then all gone, and so might naturally be mentioned, and I doubt not but it was, I do not yet remember that I persuaded the Masters to pay it; Nor does Mr. *Lovibond* remember it; and Mr. *Holford*'s Expression was (if I took him right) only, that he apprehended it was mentioned *as if* the Masters should contribute to make up that 1000*l*. However, my Lords that was not the End which I aimed at and mentioned; and upon the whole Evidence all agree, that the Discourse about the 1000*l* was soon over, and ended with my saying, That I would take, or had taken, Care of it. Mr. *Lightboun* says, he is not sure which of the two Expressions I made use of. And even Mr. *Tho. Bennet* says, that when I had said so, nothing was afterwards said of that, but of *Dormer*'s Deficiency; and then came in the Discourse of the Parliament. Mr. *Holford* represents it, that after some Discourse of the 1000*l*, I spoke of *Dormer*'s Deficiency; and particularly of the Mischief, which was what Mr. *Edwards* had a little before said, that some had had all, and others none (which would not at all be cured by Payment of this 1000*l*) and that then I mentioned, that that might make great Clamour, and possibly occasion a Parliamentary Enquiry: Where if it were resolved that buying those Places was against the Statute of *Ed. 6.* it might affect me in the Disposal of the Places, and the Masters in the Enjoyment of their Places: He says several things were proposed, but nothing agreed on. One Proposal was, whether if the Masters were continued on the same Foot they had been, it would not be worth their while to contribute?

The Masters have not had so good Memories in this Case as I hoped. But Mr. *Lovibond* does swear,

ſwear, that all or the greateſt Part did then agree, that if their Offices were eſtabliſh'd, as they had been for forty Years, they would make an annual Contribution towards *Dormer*'s Deficiency. And he heard no body ſay otherwiſe, only he himſelf (he ſays) did not agree to it.

So that it appears upon the whole, that what I ſaid was not with Intent to ſupply a preſent Purpoſe, as is charged; for I had declared to them, I had taken care of that, or would take care of it. And if I could, by ſetting ſuch an Example, or by any Arguments I could uſe, induce them to contribute by Payments, as they could be ſpared out of the Profits of their Offices, to make good the whole Deficiency, or if not all, yet to make good the Proportion of thoſe who had had no part of *Dormer*'s Effects, I ſee no harm; and I am ſure there was no Fraud in it. It is to conceal it and prevent Clamour or Inquiry about it, only by paying it; which would leave no Room or Occaſion for Clamour or Inquiry; or if they could not pay the Whole, by paying the Proportion which any one could be intitled to.

And this Propoſal, to have it paid by Annual Payments out of the ſeveral Offices, did not tend to raiſe the Price of them, but on the contrary by laying a Burden upon them, would greatly diminiſh their Value.

Whether the Deſign I had, or the Arguments I uſed, were prudent, or diſcreet, or proper, I ſubmit to your Lordſhips Judgment; but the Arguments were not uſed for the Purpoſes in the Article, but for the Benefit of the Suitors of the Court.

But to give this ſome appearance of a Crime, they are forced to attribute it to criminal Views and Deſigns, of which they have made no Proof, nor ſhewn any Probability, ſcarce Poſſibility, that they were the Principles of this Action.

I might farther obſerve, that the paying the 1000 *l.* and leaving the 500 *l.* (which in the very ſame Order is directed to be paid to the Plaintiff) unpaid, and the 574 *l.* demanded by Mr. *Lochman*, unpaid; would not at all hinder the Deficiency from breaking out.

As to the Expreſſion charged in the End of the Article, to be uſed by me, I agree, I uſed one very near it; but with other Expreſſions along with it (which the Witneſs in effect owns) that ſhew, I could not poſſibly have any ill Deſign in it; nor could any Inconvenience enſue upon it. No Queſtion had till that time been laid before the Court relating to *Dormer*'s Deficiency: *Chitty*'s was only an Application for Favour, for a Sum then particularly wanted, becauſe there were at that time no Effects, and was paid by me out of Compaſſion; there was no Queſtion of Right about it to be decided, as was here, when the Diſpute was, who was to bear the Loſs, if any, and could be determined only upon Circumſtances. I at the ſame time was ſo far from endeavouring to have it believed, that there was no Deficiency in *Dormer*'s Office, or that I knew not of it, that I declared a great deal, which I knew about that matter.

As to what they object, that the Order is drawn up in ſuch a manner as implies (as they ſay) my being wholly ignorant of the matter, by directing an Enquiry whether there was likely to be any Deficiency or not:

Give me leave to ſay, that if I had known more of it; if I had known to a Farthing what *Dormer*'s Deficiency would be; I could not as a Judge found an Order upon my own private Knowledge, but muſt make it in the ſame manner as if I had known nothing at all; and accordingly that Order is worded in the ſame manner, as it muſt have been, if I had never heard of *Dormer*'s Failure before.

Beſides, it had been then talked, that *Hilton* had not dealt fairly in his Compoſition; and if ſo, and if he were worth it, the Suitors might recover near 22,000 *l.* more againſt him. A matter extremely proper for the Maſter to enquire into.

XVII. As to the 17th Article, which relates to Orders for payment of Monies depoſited with *Dormer*; which Mr. *Edwards* (as is charged) was directed by me to pay, without *regard* to that *Proportion*, which ought to have been obſerved in a defective Fund.

They have read four Orders made by me, and no more, three of them in one Cauſe; and only one of them directs the whole Mony to be paid out. I ſaid in my Anſwer, that I did not know that I had made any other Order than that of *Chitty*; but believed the Court might have made others: which gave occaſion, it ſeems, to ſome of the Gentlemen to wonder at the Diſtinction between me and the Court. My meaning was, that ſuch Orders might have been made by the Court in my abſence, for ought appeared; that is, by the Maſter of the Rolls and Judges, with others in Commiſſion for hearing of Cauſes.

But as to what was done by me; the proper Anſwer to this Article, the true one, and I hope a ſatisfactory one, is, that I acted ſo as I thought would be moſt for the good and benefit of the Suitors. I fully believed all along, that the Whole would be made good, to which I contributed all I could; and I acted accordingly. If I was miſtaken, I hope it is no Crime.

XVIII. As to the 18th Article, three Neglects are charged upon me in this Article.

1. Not taking proper care of the Securities lodged with the Maſters.

2. Not taking Security for the Caſh.

3. Not taking the Maſters Accounts.

There is another thing expreſſed, which is permitting and incouraging the Maſters to traffick with the Suitors Mony and Effects. But that I apprehend means only, that the not taking due care to hinder them, is permitting and incouraging them. So that it does not make a diſtinct Branch of the Article; but is only a ſuppoſed Conſequence of the reſt.

As to the *Securities* and *Caſh*, what I am charged to have omitted doing, was never done before by my Predeceſſors, nor deſired then of me by the Suitors. And, therefore I ſuppoſe, there is a particular Reaſon aſſigned why it ſhould have been done by me, tho' not before; and that is Mr. *Dor-*

mer's Failure, which is charged to have been chiefly occasion'd by his taking upon himself *unduely to diſpoſe and employ* the Mony and Effects of the Suitors in his hands. And this the Article charges that I knew.

My Lords, as to this particular Reaſon: To add a new Duty to my Office from it, and to lay me under an Obligation to do that, which my Predeceſſors were not obliged to; it ought to be clearly made out that the Fact is true, that this was the Cauſe of *Dormer*'s Failure; that I knew it to be ſo; and that thereby it became my Duty, unasked by the Parties intereſted, to make the new Proviſion expected. But there is no Proof that *Dormer* did unduely diſpoſe of or employ the Mony and Effects of the Suitors in his hands; much leſs is it proved, that I ever knew it, or had the leaſt reaſon to ſuſpect it; but the contrary.

The Account Mr. *Parkhurſt* gave of what paſſed at the time of *Dormer*'s going off, was this (which was repreſented to me, and never ſhew'd to be falſe) That Mr *Dormer*, who was his Uncle, informed him, that having happened to receive a greater Sum than ordinary out of the Exchequer, and going into the Country in the Long Vacation 1720, he knew not where to leave it ſafer than with Mr. *Wilſon*, an eminent Banker; and he left it with him to the value of 24,000 *l*; that upon his return to Town, he found Mr. *Wilſon* ſtopt payment; and that therefore he would withdraw himſelf, for fear of a Gaol; that accordingly he went into *Holland*, and wrote a Letter from *Rotterdam* to Mr. *Parkhurſt*, with one incloſed, to be ſhewn to the Maſters, and ſent to me or Mr. *Cottingham*; he gave ſome account of the Letter, that it ſet forth the Caſe to the effect above; and the Draught thereof is in the hands of the Managers, which they might produce, if they thought proper. This I took to be the true State of the Caſe; and never heard any thing to the contrary (except Mr. *Lightboun*'s Gueſſes, founded on no Fact, but on the greatneſs of the Sum, which this accounts for another way) till *December* laſt, when I was told, that *Wilſon* pretended, he borrowed it of Mr. *Dormer* at an high Intereſt; but as this appears to be ſpoke in excuſe of himſelf, an After-thought at four Years diſtance is little to be regarded, and however, if it were true, ought not to affect me, to whom it was never diſcloſed. But according to this that I have ſtated above, which was certainly the truth of the Caſe, or however what appeared to me; *Dormer*'s Failure was not occaſioned by his undue diſpoſing of or employing the Mony and Effects; but it was a *Misfortune owing to the Year* 1720, and Circumſtances peculiar to that Time; ſo not likely to happen again. On Dr. *Eddisbury*'s Failure there appeared no Accident, but his own ill Conduct: Yet no Change was made by the Lord Chancellor, as to the Effects, or Caſh, or giving Security.

But it was urged, that tho' this had not been deſired of me by the Suitors, it had been propoſed to me by the Maſters themſelves:

And three of the Maſters were called to prove this. But only two of them pretend to have ſpoke to me about it, Mr. *Lightboun* and Mr. *Kinaſton*. Mr. *Holford* the 3d ſays, He never was once with me about it, only he liked ſome things which Mr. *Lightboun* told him he propoſed.

Mr. *Lightboun's* whole Evidence, taken all together, clearly proves what I ſet forth in my Anſwer; that I had in view three things. 1. The making good *Dormer*'s Deficiency. 2. Settling the Maſters in their juſt Rights. 3. Securing the Suitors from future Accidents. The 1ſt was the Principal, and always uppermoſt with me. The 2d was plainly neceſſary, in order to that. The 3d for ſecuring the Suitors from future Accidents of that kind, I was likewiſe very deſirous of; but, I own, at that time, while I thought the Maſters then in being Perſons of Ability and Subſtance, and he gave me no reaſon to think otherwiſe, I apprehended there was no need of any extraordinary Expedition in it.

As to making good the Deficiency; It appears, that at the time of Mr. *Lightboun*'s Propoſal, the Maſters were all willing to contribute; only Mr. *Lightboun* ſtood out; and his Reaſon, which in his Examination to the 16th Article he ſays, he upon one Occaſion mentioned to me as ſufficient, was, that it would be a Precedent for his paying other Debts of other Maſters. And upon his Examination to this Article, he ſays, that he told me in diſcourſe on that Subject, that as *Dormer*'s Accident had happened, the like might again; and ſo often, that it could not be ſupported; and afterwards, that if any thing could be done to make good *Dormer*'s Deficiency, and put things upon a ſecure Bottom, he would be as ready to contribute as any body. He then gives an account of the Propoſals he made, which he ſays, I deſired him to reduce into Writing for my Conſideration, which he did; the Copy of it was produced and read, and I have the Letter it ſelf here in my hand; and there only, I apprehend, is to be found the Propoſal which is to affect me, and not that which he now from his Memory mentions to be the Propoſal, but differs from the Writing in ſeveral things; which not being in the Letter, if he had mentioned them curſorily in that Diſcourſe, I muſt have looked upon them as what upon farther Conſideration he did not think proper.

My Lords, The occaſion of the Propoſal was my ſpeaking to him about contributing to *Dormer*'s Deficiency; and both that and the Propoſal it ſelf ſhew, that it was really no more, than laying before me the Terms upon which he would contribute.

In thoſe Terms, the principal thing inſiſted upon by him was, that the Mony ſhould be continued to be brought before the Maſters; which, I apprehend, had then been a little broken in upon: which is expreſſed in theſe Words, ſhewing the Improbability, that a Fact objected ſhould happen, "if (as his words are) the Mony be directed as "uſual to be brought before the Maſters, both "by your Lordſhip and the Maſter of the Rolls; "*without which the Maſters cannot think themſelves much intereſted in the Event of Mr.* Dormer's *Affair.*"

The

The other thing he inſiſted upon was, that he ſhould be ſecure from being expoſed to the like Inconvenience, by failure of another Maſter; and therefore what he propoſes in relation to ſecuring the Effects, is not a thing propoſed to be done of itſelf, ſeparately, but in company with the other Regulations.

That part that relates to the Rights of the Maſters, was afterwards preſſed farther, as it was apprehended they were more broken in upon; and produced the Repreſentation of the Maſters, which Mr. *Lightboun* the other day mentioned to your Lordſhips.

And this likewiſe explains ſeveral parts of his Evidence: It explains what he ſays, that he preſſed me ſo often to do ſome thing, and thought that to be *Irreſolution*, which was indeed my *Caution* to proceed upon ſure Grounds, in doing a thing, which, if not perfectly well founded, might have the Appearance of being contrived on purpoſe to advance, or keep up the Profits of the Offices of the Maſters. It explains his Apprehenſion, that if I did not do it, it would not be done by my Succeſſor, unleſs the Seal ſhould come into the Hands of a noble Lord, whom he named. It ſhews, that what he preſſed, was not ſo much for the Maſters to give Security, or to make up *Dormer's* Deficiency, and retrieve the Honour of the Court, as to have Orders made, for the Benefit of the Maſters; which I thought ought to go together.

For it wanted no Reſolution in me, or in any other Chancellor, to make Orders upon the Maſters, to ſecure the Effects of the Suitors in their Hands; had that been the thing preſſed, and eſpecially if, as is pretended, they themſelves deſired it. But it might require Reſolution to ſupport the Maſters againſt the Claims of an honourable Perſon, with whom they then had a Diſpute.

This View of this Matter will make your Lordſhips conſider it in a different light from what the Managers have endeavoured to ſet it in; and that my Slowneſs did not proceed from my concern for the keeping up of the Maſters Offices, but from my Caution not to be too precipitate in advancing them.

And had I taken the Meaſures deſired, and made Orders to prevent the Maſter of the Rolls from directing, in his Decrees, the Mony to be brought before the Uſher, and from referring Irregularities to the ſix Clerks; and to ſettle in their favour the other Matters in diſpute (tho' I will do them the Juſtice to declare, that I do ſo far, as I have ſeen of it, think the Maſters in the right therein) yet I am apprehenſive, that at firſt ſight it would have been matter of Complaint againſt me, as a contrivance to advance the Offices of the Maſters; and that the Schemes propoſed by Mr. *Lightboun* for giving the Security he repreſents as ſufficient, would not have been thought a Ballance to it.

Having ſaid this, give me leave to weigh the Propoſals.

And firſt, his Propoſals for providing for *Dormer's* Deficiency.

The way of doing it, which he propoſes, is this: Having ſtated, in the firſt page of the Letter, what he takes to have been the occaſion of "*this great Deficiency*, he goes on, "which I "hope may be provided for, and the Credit of "the Court retrieved and ſupported by every "Maſter advancing 2000 *l*, or ſuch other Sum, "as ſhall be agreed on, out of the Caſh of the "Court in his Hands; which being placed out "at Intereſt, the yearly Income thereof, toge-"ther with the Produce of Mr. *Dormer's* Eſtate, "will anſwer the Demands that may be ex-"pected on his Succeſſor, and will in due time "make good the Debt upon the Office."

But as to this, I thought it both impracticable and inſufficient; and I told him, and he very fairly owns it in his Evidence, that I could not make an Order of that kind; becauſe it would indeed be ordering one Man's Mony to be put out at Intereſt, to pay another's Debt.

His next Propoſal relates to the *Securities*, lodged in the Hands of the Maſters, which he thought of the greateſt Conſequence; becauſe, as he now ſays, he told me that *Dormer's* Accident came by trafficking with Securities; which he inferred from a Suppoſition that there was not then ſo much Caſh in his Hands. This Fact is contrary to the Repreſentation made as above to me, and the Suppoſition, with reſpect to the quantity of Caſh, is obviated by his having juſt received a great Sum out of the Exchequer. And your Lordſhips have heard from the Report to the Lords of the Committee of Council, that the Maſters have brought in all their Securities; ſo that what Mr. *Lightboun* thought the greateſt Danger, has proved to be none at all.

However, to prevent that, which he thought the greateſt danger, he propoſes the taking all Government Securities for the future, in the Names of two or more Maſters; his Words are in page the 2d. "Having before obſerved from "whence this great Deficiency aroſe, I ſubmit "it to your Lordſhip, "whether the taking all "Government Securities for the future, in the "Name of two or more Maſters, may not pre-"vent the like Misfortune hereafter." He ſays now, that he propoſed them to be taken in the Names of ſome Maſters, and of a third Perſon; but that is not mentioned in the Letter, nor does Mr. *Holford* mention it in his Evidence.

As to this Propoſal, he has now ſworn, as the Truth is, that I ſtarted a Difficulty upon that Head, by objecting that this would not anſwer all Caſes, particularly with reſpect to the *Eaſt-India* and *South-Sea* Bonds, by reaſon that they are payable to the Bearer. And his Anſwer was, That there was no neceſſity of taking theſe Securities; ſuch might be taken as are transferrable in the Books of the Companies.

On conſulting others upon this, I found, that as to *Eaſt-India* and *South-Sea* Bonds, wholly to diſallow the taking thoſe Securities would be hard. Many People chooſe them, becauſe there is little variation in the Price, only ſometimes a few Shillings higher or lower; whereas in Annuities, and much more in other Stock, the fall of the Price, by the time the Mony was to be paid out, might eat up the Intereſt and more. That there would be a difficulty to diſpoſe of thoſe at that time in the Hands of the Maſters; probably the Owners would not conſent; it had been their Choice, that had determined the laying out of the Mony upon thoſe Bonds; that to ſend them to the Market all together would occaſion a fall of the Price, and a great loſs, which would raiſe a Clamour, and give great Diſſatisfaction.

I thought theſe ſeveral things had great Weight, and deſerved moſt ſerious Conſideration. I then thought of locking up theſe Bonds in Cheſts, with two Locks, one to be kept by the Maſter, to whom they belonged, and the other by the next Maſter after him, and to take the other Securities in the Name of two Maſters.

But I was told by Perſons of great weight, that that was but two Maſters inſtead of one, and would not be ſatisfactory: And ſhould I join more of them, it would occaſion more trouble, and poſſibly more charge; but they were ſtill Maſters.

At laſt I reſolved to take the Securities (other than the Bonds) in the Names of two Maſters, and a third Perſon to be named by the Parties. But ſtill I ſtuck at the Bonds, and was never ſet right in that, till it was too late. But I have now learned, which neither I, nor Mr. *Lightboun*, as your Lordſhips may obſerve by his Evidence, had skill enough to know, that they might be indorſed to two Maſters and a third Perſon, and ſo the Property be fixed in them. Which, had I afterwards continued Chancellor, I was determined to have put in Practice.

As to the Caſh, how that might be made ſecure, his whole Propoſal is contained in theſe Words in the ſecond Page: "The Depoſit to "be put out at Intereſt, to raiſe a Fund for the "Payment of Mr. *Dormer*'s Debt, together with "our Office, would in a great Meaſure be a "Security for the Caſh, with which we ſhould "then only be intruſted." By the Depoſit he means that of 2000 *l*, or ſuch other Sum, as ſhould be agreed upon, as I before read to your Lordſhips.

This is the Nature of his Propoſal, with relation to the Security for the Caſh; which I apprehend muſt appear to be neither practicable, as I obſerved before, nor ſatisfactory. And had I built upon this, and made a Regulation accordingly, I was very apprehenſive thoſe that were before diſſatisfied, would call it *trifling*.

He then takes notice of the Mony being lodged with the Maſters very effectually, tho' it is by way of anſwer to an Objection, that every Maſter may not always have ſuch a Sum in his Hand; to which he anſwers: "*I will* "*venture to ſay, it's ſcarce poſſible that can happen,* "*if the Mony be directed as uſual by your Lordſhip* "*and the Maſter of the Rolls*;" and then he adds (to ſhew the Streſs laid upon this) "*without* "*which the Maſters cannot think themſelves much* "*intereſted in the Event of Mr.* Dormer's *Affair.*" And ſays in the 3d Page: "If I have the happineſs to have offered any thing thought practicable by your Lordſhip, when I have the "Honour to be admitted to wait upon you, I "hope to ſatisfy your Lordſhip, that I ſhall with "Pleaſure contribute, as becomes me, to facilitate any Undertaking of this kind."

I think this proves what I ſaid in the beginning; and I ſubmit it to your Lordſhips, whether I am criminal in not complying with theſe Propoſals.

My Lords, I have told your Lordſhips ſeveral thoughts I had about the Securities. Give me leave to mention ſomething of my thoughts, with relation to the Caſh.

I thought to take a ſmall Security would only ſhew that I was convinced that a Security was neceſſary, and yet trifled in it; and thoſe, that were willing to find fault, would ſay, it was done only to amuſe the Suitors and lull them into a falſe Security.

And till I could adjuſt the matter of the Securities lodged with them, particularly the *Eaſt-India* and *South-Sea* Bonds, no Security, that it would be practicable for the Maſters to give, would bear any Proportion to what was in their hands, when it ſhould be 50, 60, or 80 thouſand Pounds.

But if I could contrive to make all the Securities ſafe, and reduce the Caſh into a narrower Compaſs, by making Orders for putting out the Money of courſe, whenever, through neglect of the Parties, or otherwiſe, it ſhould happen to lie beyond ſuch a time; then a Security might be given by the Maſters to anſwer it.

But, as I told your Lordſhips, the *Eaſt-India* and *South-Sea* Bonds were too hard for me, till the matter was before the Committee of Council; and had the Maſters behaved themſelves, as I expected they would in the matter of their Accounts, I then intended to have laid my thoughts before the Council, and to have had their Authority and Sanction for putting them in Practice.

The other Propoſal ſuppoſed to be made to me, is ſpoke to by Mr. *Kinaſton*, and him only. And though he ſays all, or moſt of the Maſters, agreed to it, and thereupon he waited upon me about it; I do not find that any of the reſt know any thing of it. I obſerved, that neither Mr. *Lightboun*, nor Mr. *Holford*, both produced to this Article, are examined to this great matter, upon which the Maſters are ſaid to be agreed: Nor is any other Maſter called to it, tho' his Account of it is ſo very imperfect, and ſtands in need of being explained, as well as ſupported. As to the Securities, it reaches not all; the Bonds are left under the ſame difficulty as before: And as to the Caſh, he mentions no Sum or Value in which the Security was to be given.

But, my Lords, upon the whole, both from what Mr. *Kinaſton* and Mr. *Lightboun* ſay, it is plain they were conſulting their own Intereſt, to keep the Office free from Incumbrances: and their Intereſt and mine (if I could have any in view) was the ſame: So that if it was their Propoſal, what ſhould hinder me from agreeing to it, but that I thought it inſufficient?

The third thing charged in this Article, is, That I did not take the Maſters Accounts, that is, Accounts of what Effects of the Suitors they had in their hands.

My Lords, It is true, this was proved to be done by my Lord *Cowper* at his entrance into his Office, both the firſt and ſecond time; it was done by another noble Lord, as has been proved at your Lordſhips Bar, once, and I believe it was done by that Lord oftner.

My Lords, Had I taken their Accounts too, I doubt in me it would not have had the ſame approbation, as it had in thoſe noble Lords. In my caſe it would have been asked, What care I had taken to be ſure that the Accounts delivered me by the Maſters were true? whether I had ſeen the Securities and Caſh? and

what

what Satisfaction I had, that they were able to make them good? I ſhould, perhaps, have been told, that without that, the bare taking of an Account was of no uſe. And thoſe Enquiries were of ſuch a Nature, that if they were to be purſued effectually and with exactneſs, I own I had not ſtrength to go through them.

Nor did I think the taking Accounts from the Maſters neceſſary, becauſe I do ſtill take the Liberty to ſay, I was fully perſuaded, all the Maſters were good and honeſt Men; and if they were not, I do not ſee it would be of any uſe to take ſuch Accounts. For I would be glad to know, whether if I had taken an Account yearly from every Maſter, he would have been one half-penny richer or poorer, or at all more able to pay the Suitors?

Obj. It is ſaid indeed, that all theſe were wilful Omiſſions; and for fear the Price of Places ſhould be ſunk.

Reſp. But of that there is not the leaſt Proof. And the Circumſtances of the Caſe above ſet forth, I hope, give a much more natural account of it. And the Difficulty what to do in ſuch a caſe cannot be expreſſed by any words I can make uſe of ſo ſtrongly as by what has paſſed, ſince I order'd the Mony and Effects to be locked up, and lodged at the Bank, which were intended (and ſo the Order of the 17 *December* expreſſes it) to continue there only till the Affair could be more maturely conſidered, and a proper Proviſion made for the Security of the Suitors. Five Months are now elapſed, and nothing has been yet done: Tho' the Suitors ſuffer vaſt Inconvenience. For, in order to get any Mony from thence, there muſt be a Maſter and a Six-Clerk and two Directors, and a Certificate from the Regiſter, which occaſions ſo great an Expence, that, in the caſe of ſmall Sums, People do not think it worth their while to go for them to the Bank, but chooſe to be without their Intereſt rather than come at it through ſo many Difficulties. And if the Lords Commiſſioners, three of them, ſuch great Men, have found this Matter too difficult to ſettle to their Satisfaction; is it a Crime in me, that I was not able to diſcover a Method for making things eaſy and ſecure?

This Article is cloſed with the great Deficiencies that have happened with regard to the Effects of the Suitors.

But, my Lords, give me leave to ſay, if that Deficiency have not happened by any fault of mine; if thoſe Misfortunes, which have befallen ſome of the Maſters, be not owing to any Crime in me; no part of all that is charged in this Article, ought in Juſtice to lie at my door. As I have obſerved before, the great danger, which was at firſt apprehended and ſo often talked of by Mr. *Lightboun*, related only to the Securities, which the Maſters had in their hands; but that which hapned related to the Mony only. And tho' this Accident fell out, whilſt I had the Great Seal, yet it might as well have happened in my Predeceſſor's time, ſince nothing that I have done has given the leaſt occaſion to it.

But is there at laſt, any Deficiency made out to be in theſe Maſters, by which the Suitors are to be Sufferers?

Mr. *Thompſon* has been called as a Witneſs to prove theſe Deficiencies; but he has only ſhewn an Eſtimate of *Borret*'s Deficiency, and that ſome of the preſent Maſters had not paid in their Ballances at ſuch a time; and how much the further Sums they were to pay amounted to.

But have the Suitors therefore loſt the Mony? No, my Lords, that does not appear; but on the contrary,

Mr. *Conway*, one of them, and whom they have themſelves produced as a Witneſs, has ſworn, that he has aſſigned an Eſtate ſufficient to pay all his Deficiency.

One of the Managers was pleaſed to own that he meant by Deficiencies, the Mony not yet paid in, nay the Mony not paid in at the time of making the Orders read; and did admit, that ſince thoſe Orders, there had been Satisfaction or Security for the moſt part.

But, my Lords, it is the Loſs of the Suitors, that alone can give ground to complain.

The Order concerning Mr. *Tho. Bennet* mentions his Deficiency to be only 7500 *l* and 1575 *l* repreſented by him to be in the hands of his Predeceſſor and me.

The latter Sum of 1575 *l* is brought into Court. And we have ſhewn that Mr. *Hiccocks*, his Predeceſſor, has petitioned, that he may pay in the 7500 *l* which is the whole Deficiency. And here appears a conſiderable Eſtate, of I think 750 *l per ann.* of Mr. *Bennet*'s beſides.

Mr. *Kinaſton*'s Deficiency is repreſented to have been before *Chriſtmas* 26,908 *l* 11 *s* 3 *d* ½; ariſing all, but what he ſaid was in my hands, and the hands of Mr. *Rogers* his Predeceſſor, only hence, that his Caſheer was dead inteſtate, and Adminiſtration diſputed; and ſo he could not come at the Mony.

There is paid in by me - - -	1575 *l*		
There is offered to be paid by Mr. *Rogers*, and will be paid - - - - - - - - -	6000		
A Debt from Mr. *Delahay*, which he ſwears a juſt one, is aſſigned - - - -	20,850		
In all	28,425		
And the Deficiency being computed at - - - - - -	26,908	11	3½

This exceeds it in the Sum of 1516

And he has an Eſtate of between 4 and 5 hundred Pounds a Year, and Timber of the Value of 2500 *l* to make good any part that may not be got from *Delahay*'s Eſtate, tho' his Effects

fects are in one of the Reports mentioned to have been then found to be in *London* alone above 20,000 *l.* And I have heard that the Lords Commiſſioners have ordered them to be brought into Chancery, and that 16 or 18 thouſand Pounds are actually brought in.

What is ſaid to be Mr. *Borret*'s Deficiency, is the foot of an Account, which the Report that repreſents it, and Mr. *Thompſon* in his Evidence, ſay could not be properly taken.

And when fully examined into, there may come out to be no loſs there neither. Mr. *Godfrey* ſwears Mr. *Borret* to have been in good Circumſtances when admitted; to have an Eſtate; to have ſold an Office for, I think, 5000 *l* upon the occaſion of his coming in Maſter; to have lived with ſmall Expence, his Wife's Father maintaining his Family. And, as he enjoyed the Office four Years, there can be no great Deficiency, and probably will be none at all.

But, my Lords, it is extremely hard upon me, if by their producing an uncertain Eſtimate, I am to be obliged to ſtate the Accounts of one, who is dead, whoſe Adminiſtrator is Sollicitor againſt me, without their ſearching into his Papers and Affairs, and giving a perfect Account how they ſtand. It is exceeding hard, give me leave to ſay, that your Lordſhips ſhould be judging upon me as Criminal, from Facts of this kind, to which I am an intire Stranger, when there is nothing like proof, that there will be a farthing Deficiency at laſt, but only that the Mony is not yet come in.

I beg leave to obſerve one thing more, That the Maſters, that are now called the deficient Maſters, are not one of them in Cuſtody; though it is made an Article againſt me, that I did not commit Mr. *Dormer*, who was in *Holland*. Therefore, ſince they are at Liberty, it muſt be taken for granted, that the Lords Commiſſioners had good Reaſon not to commit them; and yet their Deficiency, which is not a Crime in them, ſufficient to juſtify the committing them; is to be made a Crime in me, ſufficient to ſupport a Charge of High Crimes and Miſdemeanors. Your Lordſhips ſee how far this ought to affect me; and I ſubmit, upon what I have ſaid, whether it can ſupport the Charge in this Article.

XIX. As to the 19th Article, which relates to what was done about taking the Accounts: It charges,

" That whereas his moſt ſacred Majeſty, out " of his Fatherly Goodneſs to his People, did in " or about the Month of *November* laſt, direct " an Enquiry to be made into the Accounts of " the Maſters of the ſaid Court of Chancery, " to the Intent that proper Methods might be " taken for the Security of the Suitors of the " ſaid Court; the ſaid *Thomas* Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, and one of his Majeſty's moſt Honourable Privy Council, in order to obſtruct the " ſame, and to prevent a Parliamentary Enquiry " into the State and Condition of the Offices " of the ſaid Maſters, in Breach of the ſeveral " great Truſts repoſed in him, did give Advice " and Encouragement to the ſaid Maſters to aſ- " ſiſt and ſupply each other with Mony and Ef- " fects, and did repreſent to the ſaid Maſters, " that it would be for their Honour and Service, " to appear able and ſufficient; and that if they " made a bold Stand now, it might prevent a " Parliamentary Enquiry, or to that Effect; and " did perſuade ſeveral of them to make falſe " Repreſentations of their Circumſtances to his " Majeſty, by adding a Subſcription to their re- " ſpective Accounts deliver'd to the ſaid Earl, to " be laid before his Majeſty, to the Effect follow- " ing (*viz.*) That they were able to anſwer the " Mony and Securities in their Hands, and were " willing to pay the ſame to ſuch Perſons as " were entitled thereunto, although the ſaid " Earl knew, or had good Reaſon to believe, that " ſeveral of the Maſters were not then able to " anſwer the Ballance of their Accounts, nor are " they yet able to ſatisfy or make good the " ſame; and when the ſaid Maſters were after- " wards required to produce the Caſh and Ef- " fects of the Suitors in their Hands, ſome of " the Maſters, according to ſuch Advice and " Encouragement given by the ſaid Earl, did " ſupply others of them with Caſh and Effects, " to make a falſe Shew and Appearance of their " Ability and Readineſs to anſwer the Ballance " of their Accounts.

My Lords, the two things, which are made the Heads of the Charge in this Article, relate to the Subſcriptions of ſome of the Maſters written under their Accounts; that they were able to make good the Ballances; and their afterwards producing Caſh, to make a falſe Shew and Appearance of their Ability. As to the firſt; I take it, that the material Part of the Charge is, that I *perſuaded* them to make *falſe, Repreſentations* of their *Circumſtances* by a *Subſcription*, which I *knew, or had good reaſon to believe, was falſe.*

As there is not the leaſt Proof offered that I knew or had reaſon to believe the Subſcription falſe, this Charge I think intirely falls to the Ground.

Upon the Proof attempted to be made, I think it appears, that when Mr. *Holford* brought in his Account purſuant to my Order, he (without my knowing any thing of it) had wrote a Subſcription at the End of it, to this Effect, " I " have all theſe Securities ſtanding in my Name, " as in this Account is ſpecify'd, and will pro- " cure Certificates from the proper Offices, " that I have and had them before this Account, " if your Lordſhip require it, and as to the " Mony, I am ready to give your Lordſhip Sa- " tisfaction to a Demonſtration, that I have it in " my Power to anſwer it to every Perſon, that " ſhall appear to be intitled to it, and who can " give me a legal Diſcharge."

They ſay, I read it, and ſpoke of it with Approbation.

There were only Part of the Maſters ready with their Accounts; and Mr. *Lovibond* was the next, that delivered me his, and he had wrote to the ſame Effect in Subſtance; only as to the Caſh, he wrote that he was ready to give Security.

My

My Lords, Every body knows that he was able to anſwer it; and he ſwears he had it ready, and was able to have paid it the next Day; and he appears to have lent 10,000 l. to a Brother Maſter on that Occaſion. I was therefore ſurprized to ſee him make uſe of an Expreſſion, which looked as if he were not able to pay the Money. And upon that it was, that he ſays, I recommended to him to make uſe of the ſame Expreſſion, as had already been uſed by Mr. *Holford*; and ſo accordingly he did.

Thomas Bennet had ſubſcribed, before he came, thus, " I have all the Securities ſtanding in my " Name as in the within Account are ſpecified, " as alſo the Tallies, Orders, and Bonds in my " Cuſtody;" but had ſaid nothing of the Money: He ſwears, that I ſaid, I wiſhed all would make uſe of the ſame Form as Mr. *Holford* had done: And that it would be for their Honour and Service to appear able and ſufficient. He ſays, that Mr. *Lightboun*, as I remember, asked what was the Meaning of bringing it before the Committee? and that I ſaid, it would be a Means to prevent a Parliamentary Enquiry; that I did not ask him whether he was able, but directed him to write; I ſuppoſe he means by the general Direction; for I do not apprehend he ſays, that I ſpoke it to him in particular: And it is not pretended, that he made the leaſt Scruple of ſigning it as true, or expreſſed any Backwardneſs in it; and he in Effect owns he did not. But he informs your Lordſhips how extremely tender he was, not to write any thing but what was ſtrictly true; and that therefore, in his Subſcription, he took Care to leave out the Words *to a Demonſtration*, which are in Mr. *Holford*'s. And Mr. *Holford*'s Subſcription running, " *And as to the* " *Money, I am ready to give your Lordſhip Satis-* " *faction TO A DEMONSTRATION that I have* " *it in my Power to anſwer it to every Perſon that* " *ſhall appear to be intitled to it*, &c." Mr. *Bennet* could not come quite up to this; but he ſubſcribes, " *And as to the Money, I am ready to* " *give your Lordſhip Satisfaction, that I am able to* " *anſwer it to every Perſon that is intitled thereto.*" This therefore, that he has ſubcribed, is, I ſuppoſe, if he is to be credited, *exactly true*: And if ſo, I have not perſuaded *him to make a falſe Subſcription.*

Mr. *Kinaſton* ſays, it was *recommended* to them by me to make ſuch a Subſcription as Mr. *Holford*'s; that I ſaid, it would look well to the Council, and prevent farther Enquiry or Parliamentary Enquiry, or ſome other Enquiry, he knows not which; ſo he comply'd. But, my Lords, his Subſcription is not what I recommended. Mr. *Holford* only undertakes to ſhew he had it in his *Power to anſwer* the Money, &c. that is, that he either had the Money, or Effects, which being diſpoſed of, would raiſe it. But Mr. *Kinaſton* goes farther, he ſays, I am ready *to pay it* to the *Perſons intitled.*

Mr. *Lightboun* heard nothing ſpoken of the Subſcription; he went away to finiſhh is Accounts, which were not compleat.

Mr. *John Bennet* was not there; but at his coming, being told what I had ſaid to the others, he, without Scruple, ſubſcribed, without my ſpeaking to him.

Mr. *Edwards* ſays he was able to pay it.

Mr. *Lovibond* was called laſt; but I before gave an Account what he ſaid.

So that of the ſix Maſters who made Subſcriptions, I ſpoke only to five.

Three of them have proved themſelves able; and I believe no body doubts it.

Mr. *Thomas Bennet* made no Objection, or Difficulty, and has been curious not to let his exceed the Truth.

Mr. *Kinaſton*, has voluntarily gone beyond what I deſired. And I make no Queſtion but he thought himſelf *able* to anſwer it, though I doubt his being *ready.*

But is there the leaſt Evidence offered, that I knew Mr. *Kinaſton* and Mr. *Thomas Bennet* were not able, or had Reaſon to believe or ſuſpect it? No, on the contray, Mr. *Lovibond*, their own Witneſs, who is one of the Maſters, and converſant among them, told your Lordſhips upon his Oath, that by their Converſation he believed they were able to make good their Accounts.

In the mean time, your Lordſhips obſerve, that theſe deficient Maſters had all their Securities ready, and voluntarily ſubſcribed ſo to their Accounts, without my ſpeaking to them. In which Point Mr. *Lightboun*, under the laſt Article, thought there was the moſt Danger.

As to the Words, *That it would be for their Honour or Service to appear able and ſufficient;*

I will not be poſitive as to the Words, whether it were *to appear able*, &c. or *to make appear that they were able*, &c. In a fair Conſtruction, the Senſe of the firſt is the ſame as the latter.

When Mr. *Holford* ſubſcribes, That he is able to pay to every Perſon, who ſhall *appear* to be intitled; or, if I ſhould ſay, Mr. *Thomas Bennet appears* not ſo fair or able a Man, as I formerly thought him; does it import only a falſe Shew?

As for what is ſaid of *preventing a Parliamentary Enquiry*,

Mr. *Thomas Bennet* repreſents it to be ſpoke in Anſwer to the Queſtion, What was the Meaning of bringing it before the Committee? And ſays, my Anſwer was, That it would prevent a Parliamentary Enquiry.

If I ſaid it, the Reaſon is obvious, and the Thing innocent.

It is notorious, that the laſt Summer there was a great Clamour againſt Maſters in Chancery, which was heightned by ſome Diſputes they cauſed in the Court of Chancery; that it was generally believed, that it would come into Parliament; and I am perſuaded it would have come into Parliament ſomething ſooner, if the Committee of Council had not taken this Matter into Conſideration.

I am likewiſe perſuaded, that had the Maſters all been able to make good the Money in their Hands, and proved that they were ſo, and that they had behaved themſelves well; and that the Lords of the Committee, after finding their Accounts Right, had proceeded to adviſe proper Regulations, the Matter would never have come into Parliament with Reſpect to them, whatever it might as to me.

And as to them, I believe, they were not deſirous to have the Matter in Parliament, becauſe of the vaſt Trouble it muſt give them, had there been nothing elſe in it. And it was natural for me to think, that nothing would more tend to

make them eaſy, in complying with what the Committee ſhould think fit, than by letting them know, that if it gave them Trouble in one reſpect, it would eaſe them more in another.

And ſo far I thought it for the King's Service, and my Duty, to haſten the Accounts before the Council, and to uſe all Means I could to have things carried on with Speed and Effect; that ſuch Members of Parliament, as had their Eyes on this Affair, might plainly ſee that proper Meaſures were effectually carrying on by the Lords; ſo that there would be no Occaſion to take up this Affair in Parliament, or for the Legiſlature to interpoſe.

But as to my own Share, I freely own I had not the leaſt Apprehenſion of what has ſince befallen me.

I was ſo far from obſtructing the taking theſe Accounts, that Mr. *Holford* has informed your Lordſhips, that when the firſt Order was ſuch, as would require a very long Time to be complied with, I preſſed them not to make uſe of that as an Excuſe for Delay, but to bring in an Account of their preſent Ballances, and to let the Lords know the Reaſon, and then to ask Time for more perfect Accounts, if ſuch ſhould be required; which were not.

As to their making a *falſe Shew* of Caſh *purſuant to my Advice and Encouragement*,

They have not offered a Word of Proof of any Thing ſaid or done by me, or by my Order, concerning any Part of that whole Affair; if they had, I am ſure, whatever had appeared to be done by me, would at the ſame Time have appeared not capable of the Conſtruction in the Article.

But inſtead of that they have given a confuſed uncertain Account of ſomething, that paſſed between Mr. *Cottingham* and the Maſters; but never called Mr. *Cottingham* to bring it Home to me, nor any way ſhewn that I knew any thing of it, either before or after. Nor do I really underſtand it at laſt. I do not apprehend that Mr. *Cottingham* adviſed them to furniſh one another with Money, but upon good Security; nor did they do it. Nor do I ſee, what harm it is, if a Maſter, having Occaſion for Money, borrows it of another Maſter, upon good Security.

The only Perſon that they ſeem to fix any Fraud upon, is Mr. *Conway*; and, which appears very odd, only by his own Evidence; and yet he ſeems to juſtify himſelf too.

But if not; there is no Proof, nor Ground of Suſpicion, that I was any way privy to it, or aſſiſting in it, or that I had any the leaſt Share whatſoever in it:

And therefore I am not Guilty.

XX, XXI. On the 20th and 21ſt nothing has been offered.

My Lords, I have now gone through all the ſeveral Articles, that have been *endeavoured to be ſupported* againſt me; and I think I may ſay as I did in the Beginning, that except thoſe relating to the Diſpoſal of Places, which are of another Kind and another Conſideration, all the reſt muſt, to be made criminal, turn upon that Aggravation in the Articles, from my *inordinate, wicked, and corrupt Deſigns of procuring to myſelf exceſſive and exorbitant Gains and Profits by divers unjuſt and oppreſſive Practices after mentioned.*

It is ſuch a *corrupt Heart* only can change Actions, that in themſelves are innocent, and ſome of them perhaps commendable, into ſo many Crimes.

And yet it is very extraordinary, and ſcarce poſſible to be conceived, but that if there had been ſuch a corrupt Heart, it muſt have broke out upon ſome other Occaſion of my Life. Not one inſtance of my whole Life has been yet produced to ſhew it.

Several of thoſe under me have been examined; ſeveral Officers immediately attendant on me, that received conſiderable Profits and Salaries, to the amount of Three or Four Thouſand Pounds *per Annum*, and more; If I had ſet my Heart upon Gain, a certain Profit might have been there yearly made, amongſt thoſe whom I had wholly at Mercy, and in private. But there has no Appearance been found of any thing of that Kind: And is it not more likely that I ſhould have laid hold of a certain Profit, than be laying Schemes for Advantages upon the uncertain Contingency of the Sales of Maſters Offices.?

The Value of ſuch an Expectation is a mere Trifle; and with Reſpect to the Probability of its happening, it was exceeding uncertain whether I ſhould have an Opportunity of putting in one ſingle Maſter.

Three Maſters have happened to dye in my Time; and two of thoſe in leſs than the Space of a Year: But I think not one in nine Years before.

My Lord *Cowper* admitted but one in the laſt Time of his being Chancellor, which was four Years; and that was upon a Surrender.

There are 24 Curſitors; only one has dyed in my Time: 30 Commiſſioners of Bankrupts; only one dyed in above ſix Years.

Surrenders of the Offices of Maſters are rarely till after 16 or 17 Years, ſometimes 30 or 40 Years Enjoyment.

My Life was very uncertain: The Office of Chancellor much more ſo.

Little therefore was to be hoped from the Profit to be made by Maſters Places.

My Lords, in the next Place, I apprehend, that it appears I did not take the Advantage I might have taken.

When the Time came for me to reap the Fruit of all my Contrivances, all thoſe Schemes and Stratagems, the Work of above three Years, (a great Space in the Time of a Chancellor) ſee, whether there be the leaſt Mark or Symptom of this impotent Deſire of Gain!

What I did, proves, beyond all Contradiction, that I never had any ſuch Views, as theſe they lay to my Charge.

I took not the Advantage I might have done; I took a leſs Sum, when a greater was offered; and Part of the Money was returned again to Mr. *Elde* and Mr. *Thurſton*. And when Mr. *Thurſton*'s Money was returned, only for being more than it was expected to be, every thing was in the ſame State as when it was paid.

And poſſibly your Lordſhips will think, from ſome other Evidence given, that amaſſing a great Eſtate was never my View; and that rapacious and baſe Ways of getting Money are not conſiſtent with my Way of laying it out.

As this is a full Anſwer to the Charge of my Deſire of Gain; and the whole *Malignity* of *all I* am charged with ariſes from that ſuppoſed Principle of my Actions; without this, though there ſhould have been Imprudence, Indolence, too great

great Confidence, perhaps Credulity, Irresolution, or any other Defect or Weakness, there has been nothing wicked.

And, if your Lordships are satisfied of this one Thing, I apprehend the Sting of this Impeachment is taken out.

My Lords, Having thus gone through all my Observations, it may possibly be expected I should close them with offering something in General. But I think it properer to forbear.

I am not conscious to my self, that it is necessary in this Case to apply to the Passions; which is a common Artifice to assist a weak Defence. If I have done any publick or private Good (of which last some Specimen has been laid before your Lordships) it will, I am confident, have its full Weight.

I submit my whole Life and Conduct to your Lordships Judgment; and rely entirely upon your Justice for my Acquittal.

Mr. *Plummer*. My Lords, I am not going to make any Observations upon this Speech; neither did I interrupt the Lord in making it. But one thing I am to say for Form Sake: We produced to your Lordships a Copy of a Letter writ from Mr. *Lightboun* to my Lord, he hath now read the Original Letter; I desire that the Original may be delivered into Court, that we may have the Perusal of it.

E. *of Macclesfield*. I believe the Gentleman is perfectly in the Right of it. It is here.

The House adjourned to *Friday* Morning next, at Ten a-Clock.

Friday May 21, 1725. The Tenth Day.

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence: As also the other Proclamation, That all Persons concerned were to take Notice, that *Thomas* Earl of *Macclesfield* now stood upon his Tryal, and they might come forth in order to make good the Charge.

Ld. Ch. Jus. *King*. Gentlemen of the House of Commons you may proceed.

Mr. Serj. *Pengelly*. My Lords, The Part assign'd to me in this Impeachment against the Earl of *Macclesfield*, is to reply to his Defence upon the *Fifth*, *Sixth*, *Seventh*, *Eighth*, *Ninth*, *Eleventh*, *and Twelfth* Articles.

Before I enter into the particular Examination of the Objections made against the Charge of the Commons contained in these Articles, and of the Matters alledged, either in Justification, or Excuse of the Lord Impeached; I shall take the Liberty of observing,

That your Lordships are now exercising a Power of Judicature, reserved in the original Frame of the *English* Constitution, for the Punishment of Offences of a publick Nature, which may affect the Nation; as well in Instances, where the Inferior Courts have no Power to punish the Crimes committed by the ordinary Rules of Justice; as in Cases within the Jurisdiction of the Courts of *Westminster-Hall*, where the Person offending is, by his Degree, raised above the Apprehension of Danger, from a Prosecution carried on in the more usual Course of Justice; and whose exalted Station requires the united Accusation of all the Commons of *Great-Britain*, by their Representatives in Parliament.

This High Jurisdiction may be exercised for the Preservation of the Rights of the Lords and Commons, against the Attempts of Powerful Evil Ministers, who depend upon the Favour of the Crown;

Or, it may be put in Execution for the Ease and Relief of a good Prince, whose Honour has been betray'd by a corrupt Servant; and yet, whose Clemency makes him unwilling to punish; so that it becomes necessary for his faithful Commons to take into their Care the prosecuting such an Offender.

Former Reigns have supply'd your Journals with many Examples of the first Kind.

The present Reign produces an Instance of the latter Sort, wherein the Commons bring before your Lordships in Judgment a Peer offending, with the greatest Ingratitude, against a most just, and most merciful Sovereign.

For, The King's Royal Munificence bestowed upon this Earl, in the most abundant Measure, could not exempt the Inferior Officers from his Exactions, nor protect the Suitors and their Properties in the King's own Court of Chancery.

The general Crime charged upon the Earl, in *Five* of these Articles, is *Extortion by Colour of his Authority as Lord Chancellor.*

The Offence alledged in the other *two* Articles, is *gross and wilful Negligence in his Office, to the great Damage and Loss of the Suitors of the Court, but to his own private Gain and Advantage.*

The particular Exactions are his taking *One Hundred and Five Pounds* from Mr. *Thomas* [illegible], for accepting the Resignation of the Office of *Clerk of the Custodies* in the Court of Chancery, in order to obtain a New Grant to Mr. *Hugh Hamersley*, and procuring the same to pass the Great Seal accordingly.

His exacting *Fifteen Hundred Guineas* from Mr. *Kinaston*, for the admitting him to be a Master of the Court of Chancery, upon the Resignation of Mr. *Rogers*.

His exacting the like Sum of *Fifteen Hundred Guineas* from Mr. *Thomas Bennet*, for the admitting him to be *a Master* of the same Court, upon the Surrender of Mr. *Hiccocks*.

His exacting the Sum of *Five Thousand Guineas* from Mr. *Elde*, for the admitting him to be *a Master* of the same Court, upon the Death of Mr. *Fellowes*.

His exacting the like Sum of *Five Thousand Guineas* from Mr. *Thurston*, for the admitting him to be *a Master* of the same Court, upon the Death of Mr. *Borret*.

The last Article relating to Mr. *Thurston* is charged with this Aggravation, *That the former Master was Dead Insolvent, greatly indebted to the Suitors of the Court; and that the Earl did not secure a just Satisfaction to the Suitors.*

And the Exaction of the *One Hundred and Five Pounds* from Mr. *Thomas Bennet*, is alledg'd to be done when the Earl was *one of the Lords Justices.*

These Misdemeanors, as well as all the other Offences, of which the Earl is now accused, were committed by him *whilst he executed the Office of Lord Chancellor.*

From whence the Earl and his Council take Occasion to make a Triumph upon the supposed Justice and Regularity of his Administration and Conduct, when he presided in the Court of King's Bench; because the Commons have not produced any Misbehaviour in the Execution of

of that Office wherewith to furniſh out an Article againſt him.

This may be an Inſtance of the Lenity of the Commons, but it is no Proof of the Earl's Innocence; who beſt knowing his own Behaviour, declines to abide the Examination of his Actions during the ſix Years of his Continuance in the Office of Lord Chancellor;

But flies to a Sanctuary for Indemnity and Diſcharge; which ſhews, that the Earl eſteem'd himſelf more ſecure under Shelter, than upon a Juſtification of his Conduct.

And the Succeſs of the Commons, in the very ſtrong and full Evidence, which they have laid before your Lordſhips in Maintenance of thoſe Articles, upon which they have proceeded, leaves very little Reaſon to imagine that they would have fail'd in their Proof, if they had extended their Inquiry into his former Life, or had enter'd into the reſt of the Articles.

And after the ſtrict and long Examination of Witneſſes, which has entertain'd your Lordſhips for ſo many Days, I may venture to ſay, that the Conſiſtency and Uniformity of the Proof given in Support of the Accuſation of the Commons, upon ſo many different Heads, are ſufficient to convince all the World of the Neceſſity, which there was, for the Honour of the King, and the Welfare and Satisfaction of the Nation, to carry on the preſent Proſecution;

And I hope, have already fully ſatisfied your Lordſhips of the Truth and Juſtice of the Commons Impeachment.

But as there have been ſeveral Objections made on the Behalf of the Earl impeach'd, as well to the Foundation of the Charge it ſelf, and to the Event and Conſequence of it, as to the Sufficiency of the Evidence of the Facts alledged; it will be neceſſary for me to give an Anſwer to theſe Objections, and to maintain the Charge in theſe Reſpects; which I ſhall proceed to do by ſhewing, that *the Impeachment is well founded*, and that *the Facts in the Articles* before ſtated *have been plainly and fully prov'd.*

The Earl himſelf began with inſiſting, That his General Oath of Office has no Relation to the Offences charg'd; and that no Inference can be made to his Prejudice from the Tenor of that Oath.

But the Earl's Remembrance, or Explanation of his Oath, is very defective; he has ſet it out at large in his Anſwer, and thereby he ſwears, that *He will well and truly ſerve the King and his People in the Office of Chancellor, and do Right after the Laws and Uſages of this Realm*; which comprehends the Obſervation of every thing, which is Part of the Duty of, or incident to his Office,

And the avoiding of every illegal and unjuſt Action in the Execution of it.

And the Omiſſion of any Part of his Duty, or the Commiſſion of any Offence againſt the Duty of his Office, is a Breach of this Oath of Office, altho' the Particulars are not enumerated in the Oath; and the contrary Opinion will open a Door to the Commiſſion of all Manner of Injuſtice and Rapine by Civil Officers.

The Earl likewiſe relies upon it, That the whole Charge turns upon his wicked and corrupt Intent and Views alledg'd in the Introduction, which (as he ſays) have not been made appear;

But theſe will be apparent from the Proof of the ſeveral Facts charg'd; which, if they are unlawful and unwarrantable, and do tend to the raiſing Money by corrupt and extorſive Meaſures, will manifeſt that Intent, and prove it as ſtrongly as if he had declared his Deſigns in open Court; for ſuch Acts cannot be done with a good and honeſt Intention.

The main Objection againſt the Articles is, That there is no Matter of a Criminal Nature contained in the Money Articles; or if there is a Crime, yet that there is no Puniſhment annexed or incident to it, which your Lordſhips can now inflict upon the Earl, after he is removed from his Office.

In anſwer to which I ſhall inſiſt, That,

The Earl's ſelling theſe Offices, or diſpoſing of them for Money taken by him before the Admiſſion of the ſucceeding Officers in the Manner alledged and prov'd, is an Offence at the Common Law, and puniſhable by Fine and Impriſonment, upon Indictment or Information; as well, where the Money was taken for an Admiſſion upon a Reſignation, as upon a Death.

To make out this, it muſt be conſider'd, That

The King having the executive Power, or the Adminiſtration of Ordinary Juſtice, lodged in Him, is in Conſequence obliged to provide and appoint capable and ſufficient Officers, neceſſary for the due Execution of Juſtice, in his ſeveral Courts, for the Benefit of His Subjects; His Coronation Oath proves this.

And accordingly the Crown has always paid the Salaries or Fees of the Lord Chancellor, and other principal Officers of Juſtice, and alſo of many inferior Miniſters, out of the Royal Revenue; and other ſubordinate Miniſters were maintain'd by the chief Officer, to the End that the Subject ſhould not be expoſed to Exaction or Oppreſſion, under Pretence of any Demand of Fees or Reward by the Miniſters of publick Juſtice for the Execution of their Offices; which is the Source of all that Corruption, which at any Time ſprings up in the Courts of Juſtice.

The Antient Law of *England* was, that none having any Office concerning the Adminiſtration of Juſtice, ſhould take any Fee or Reward of any Subject for the doing of his Office, to the End he might be free and at Liberty to do Juſtice. *Stat. Weſtm.* 1. cap. 10. *A.* 3 *Ed.* 1. *Co.* 2. *Inſt.* 176, 209, 210. *Co.* 3. *Inſt.* 145, 147, 148.

And ſeveral Charters of former Kings, and Statutes declaratory of the Common Law in that Reſpect, have been made to inforce the due Obſervation thereof, as,

Stat. Weſtm. 1. 3 *Ed.* I. c. 26. 20 *Ed.* III. c. 1.

My Lord *Coke*, 3 *Inſt.* 146. ſays, the 20 *Ed.* III. c. 1. is only a Commandment of the King; and that there is no Record of any ſuch Act in any Parliament Roll, and yet neceſſary to be printed, becauſe the *4th* Chapter of this Parliament refers to the Pains contained in it. *Co.* 2. *Inſt.* 74, 176, 209, 210.

Yet, if it be only the King's Charter, it is a Declaration of the Common Law at that Time; but it is printed in Old *Raſtal's* Edition of *Statutes*, Fol. (89) and in all the reſt of the printed Statutes.

20 *Ed.* III.

Co. 3. *Inſt.* 224, 225.
Co. 3. *Inſt.* 146, cap. 68. *of Bribery, Extortion,* &c.

Item, *Que null Chancellor, Treſorer, Gardein de Prive Seal, Counſeller du Roy,* * *ſerementez a Counſeil du Roy, ne null autre Officer, Judge, ne Miniſtre du Roy, pernant Fees ou Gages de Roy, pur lour ditz Offices ou Services preigne en null Menere en Temps avenir aſcun Manere de Done ou Brocage de nully pour lour ditz Offices et Services, a faire ſur Peyn de reſpondre a Roy de la Treble de ceo qe iſſi preignont, et de ſatisfier la Partie et punys al Voluntes de Roy, et ſoit diſchargez de ſon Office, Service, et Counſeil pur toutz jours,* &c.

20 *Ed.* III. cap. 6. and more particularly the Act of 11 *H.* IV. *Rot. Parl. Num.* 28. by which it is enacted,

Item, *That no Chancellor* (this High Officer is mention'd in the firſt Place by Name) *Treaſurer, Keeper of the Privy Seal, Counceller of the King,* * *ſworn of the King's Council, nor no other Officer, Judge, nor Miniſter of the King, receiving Fees or Wages of the King for their ſaid Offices or Services, take in no Manner in Time to come, any Manner of Gift or Brocage of any Perſon for doing their ſaid Offices and Services, upon Pain to anſwer to the King the Treble of what they ſo take, and to ſatisfy the Party, and to be puniſh'd at the King's Pleaſure, and ſhall be diſcharg'd from his Office, Service, and Council for ever,* &c.

* *N. B.* The Printed Books have miſtaken this Word

This Statute is enter'd on the Parliament Roll of that Year, amongſt the Records in the Tower; it is not indeed enter'd on the Statute Roll: But the Parliament Roll is the Original, and is the Warrant for the Statute Roll, and is therefore of greater Authority.

In the Margin of the Roll is enter'd thus, *viz.*

Reſpectuatur per Dominum Prineipem & Conſilium.

For which Reaſon my Lord *Coke* ſays it was never printed in the Book of Statutes, of which he highly complains; and therefore has recited it at large, and cauſed it to be printed in his 3*d. Inſt.* Fol. 146. c. 68. *of Bribery, Extortion,* &c. and c. 101. *of Judgements and Executions,* Fol. 224, 225. which is one of the firſt Books, relating to the Crown Law, read by the Students of the Law, and was thus publiſhed by that great Man to impreſs an early Abhorrence of every thing which may tend to Exaction and Extortion; and muſt have often come under the Conſideration of the impeach'd Lord.

Theſe Statutes have indeed been opened, and alter'd by ſubſequent Statutes, as to ſeveral inferior Officers; and ſome ſmall Fees have been antiently allow'd, and permitted in particular Caſes; but it has been obſerv'd, that from ſuch indulgences many Oppreſſions of the People have enſued.

Co. 2. *Inſt.* 74, 209, 210.

But the Common Law, and the ſeveral Acts of Parliament before mention'd, do not only ſtill remain in Force, with reſpect to the Lord Chancellor, but have been confirm'd and inforced by other Statutes.

And the Great Charter of our Liberties, *Magna Charta,* c. 29. *Co.* 2. *Inſt.* 55, 56. does imply this,

Nulli vendemus Juſtitiam aut Rectum;

which according to my Lord *Coke's* Comment, *Is ſpoken in the Perſon of the King, who in Law is preſent in his own Courts of Juſtice, and repeating theſe Words, which* (ſays He) *extend to the End, which is Juſtice, and to the Mean, whereby Juſtice may be attained, which is the Law;* or, as it muſt be underſtood, the Adminiſtration of the Law by the Officers of Juſtice; unleſs it can be ſuppoſed, that the Statute provides againſt the leſſer Evil, but allows the greater Miſchief; that it prohibits the Sale of a particular Decree or Order, which may be right and juſt in it ſelf;

But leaves the King's ſuperior Officer at Liberty to ſell the whole Body of the Suitors of the Court in the Groſs, to the Exaction and Oppreſſion of the under Officers, in the Fees which they ſhall demand againſt Law and Right.

So that if the Earl impeach'd had exemplified this Rule of my Lord *Coke* in the Court of Chancery, where he immediately repreſented the King's Royal Perſon; and once in a Term ſitting in Court between his Maſters, who paid for their Places out of the Suitor's Effects, had repeated to the Suitors this glorious Declaration,

Nulli Vendemus Juſtitiam;

He muſt have made a very inconſiſtent Figure, in the Opinion of the meaneſt Capacity.

It will then be plain, That as to ſuch Offices, which are in the immediate Gift and Diſpoſal of the Crown, they cannot in their own Nature be ſaleable, or diſpoſed of for Money; becauſe the King himſelf cannot be ſuppoſed to ſuffer them to be put to Sale.

And the Miniſters of the Crown, who have no immediate Right in the Office; and are only to execute and confirm the King's Pleaſure in the Diſpoſal of the Office, cannot ſell that which is not their own;

Nor ought, or can they lawfully take any Fee, or Reward, for accepting Reſignations, or making new Grants, or Admiſſions into Places, or for conferring inferior Offices, with which they are intruſted by Virtue of their own Office; which would be the taking Money, for the doing of their Office, contrary to the Law, and the before mentioned Statute.

But there is another very good Act of Parliament, which has been read at your Lordſhip's Table, and proves this Practice of ſelling ſuch Offices, to be an Offence at the Common Law, *viz.* the

12 *Rich.* II. c. 2. Intituled, *None shall obtain Offices by Suit or for Reward.*

Co. 1. *Inſt.* 134. *a*
Co. 3. *Inſt.* 145. 147, 148.

Item, *It is accorded, that the Chancellor* (by expreſs Name) *Treaſurer, Keeper of the Privy Seal, Steward of the King's Houſe, the King's Chamberlain, Clerk of the Rolls; the Juſtices of the one Bench, and of the other; Barons of the Exchequer, and all other that ſhall be called to ordain, name, or make Juſtices of the Peace, Sheriffs, Eſcheators, Cuſtomers, Comptrollers, or any other Officer or Miniſter of the King, ſhall be firmly ſworn, That they ſhall not ordain, name, or make any ſuch Officers, nor other Officer or Miniſter of the King for any Gift or Brocage, Favour or Affection.*

The Act proceeds farther in a different Form of Expreſſion, and to another Matter;

Nor, that none which purſueth by him, or any other, privily or openly, to be in any manner of Office, ſhall be put in the ſame Office, or any other; But that they make all ſuch Officers and Miniſters of the beſt and moſt lawful Men.

The Earl apprehended the Streſs of this Statute, and how much it preſſed upon him; and therefore has endeavour'd to diſtinguiſh himſelf, not only out of the Oath, but out of the intire Act, by objecting, that this Statute, and the Oath therein directed, only extend to ſuch Nominations as are made in the Nature of Elections, by an Aſſembly of all theſe great Officers and Miniſters, when they are called *together* for that End; which Word (*together*) is of his own inſerting, to ſerve his Purpoſe; as in the Caſe *of Sheriffs*, and not to their ſingle and ſeparate Nomination of Officers, in Right of their reſpective Offices, by themſelves.

This is the Earl's own Objection, and not of his Councel, and will (if allow'd) expound away the whole Act, in all the expreſs Inſtances mentioned in the Statute, ſave one;

For there is but one Officer named in the Act, who is nominated thus in an Aſſembly or publick Meeting, which is *Sheriff*; and all the reſt are ordain'd, and made by the great Officers ſeparately, in their own Right; as *Juſtices of Peace* by the Chancellor; and *Eſcheators, Cuſtomers, and Comptrollers* by the Lord Treaſurer.

And the reſt of the Words of the Act, *viz. Or any other Officer or Miniſter of the King*, will be totally expunged by this nice Interpretation.

But the Words plainly mean, that every one of theſe Officers, who by virtue of his Office ſhall be call'd (not call'd *together*) by Command of the Crown, or in Execution of his Office, to name or make any inferior Officer, ſhall be ſworn; for they never are all call'd together, unleſs on the Nomination of Sheriffs.

The Earl, for more Security, and for the ſake of better Company, objects farther; That the Argument from this Act and the Oath will go too far; for then they are ſworn not to preſer any *who make Suit or Application for any Office.*

But that is no Part of the Oath; and they are only ſworn ſo far as the Statute extends it, which is to the former Part; and this Clauſe in the Concluſion of the Act is only directory, and introduces a new Inſtruction to the great Officers, but does not carry on the Purport of the Oath; for the Words are, *It is Accorded, that the Chancellor* &c. (in the Affirmative) *ſhall be ſworn, that they ſhall not name*, &c. and the Sentence which follows is a new Clauſe, beginning with a Negative, *viz. Nor, that none which purſueth, &c. ſhall be put into any Office, &c.* and refers to the Perſon applying, and not to the Officer appointing.

So that this latter Part of the Statute ought to be obſerv'd; but the Officer is not required to be ſworn to the Obſervation of it.

This Statute takes it for granted, that the contrary Practice of naming ſubordinate Officers for Gift or Brokage was unlawful before at the Common Law; ſince it does not create or enact it to be an Offence, but provides an additional Conſtraint or Obligation upon the ſuperior Officer by an Oath, not to commit the Offence; and it ſtill remains an Offence at the Common Law, and don't depend on that Statute, but is a great Offence, altho' the Oath be not taken.

This Statute contains the moſt extenſive and general Words, and mentions Officers of many Sorts, and different Degrees, as well high, as low, relating to the Peace, publick Juſtice, and the Revenue; and that no Officer, of any Kind whatſoever, in the King's Service, nam'd or ordain'd by the great Officers of State, might eſcape or be omitted, the Act concludes the Deſcription with theſe Words; *Or any other Officer or Miniſter of the King*;

And therein manifeſtly comprehends both theſe Offices of *Clerk of the Cuſtodies*, and of *Maſters in Chancery.*

For this Statute refers to Officers who are only nam'd or recommended to the King by the Chancellor, &c. and yet are conſtituted by the King's Letters Patents, as *Juſtices of the Peace, and Sheriffs*, whereby the uſurped Fee for Recommendation is declared illegal; and alſo to other Officers, who are immediately conſtituted and appointed by the chief Officers, by Authority deriv'd from the King, and by virtue of the Truſt in them repoſed for the King's Honour and Service, and for the Benefit of his People, as *Eſcheators and others*; and thereby the other pretended Fee for Nomination is condemned.

Sheriffs and *Eſcheators* named in the Act, are Officers relating to the Adminiſtration and Execution of Juſtice; and *Eſcheators* more eſpecially, to Inquiſitions touching Idiots and Lunaticks, and the Commiſſions and Proceedings thereon; which is the chief Part of the Truſt and Office granted by the Letters Patents to Mr. *Hamerſley*, as *Clerk of the Cuſtodies*, and which was reſigned by Mr. *Thomas Bennet*; and it will appear by the Patent it ſelf, that this Office in the Court of Chancery, has a very near Relation to the Office of Eſcheator; and the Grant very fully deſcribes the Nature and Antiquity of this Office.

And as to the Nature and Antiquity of the Offices of *Maſters in Chanſery*, they appear fully from the Oath taken by every *Maſter* upon his Admiſſion, which is of the ſame Import and Effect, in many things, with the Oath taken by the Lord Chancellor himſelf, *viz.*

To ſerve the King and his People, and to counſel the things that toucheth the King; to prevent the Diſheritance of the King, or Fraud to his People; and not to diſcloſe the Counſel which he ſhall give

give touching the King; and to redreſs Damage or Fraud in the keeping the Great Seal, and to adviſe the Chancellor thereof, &c.

And alſo from the ancient Commiſſions produced and read, giving the Maſters Authority, by the Name and Deſcription of *Maſters of the Court*, to hear Cauſes, and make Decrees (in like Manner as the Judges Aſſiſtants) in the Abſence of the Chancellor; and to puniſh Contempts, and to do other like Acts of Juriſdiction; and likewiſe from the actual Exerciſe of their Offices in making Reports, and Taxation of Coſts, and the Manner thereof prov'd by ſome of the Maſters (and not contradicted) as that a *Subpœna* iſſues immediately upon the Maſter's Taxation of Coſts, without any Order or Confirmation of the Lord Chancellor; that their Reports in other Inſtances are turn'd into Decrees of Court, if not alter'd upon Exceptions, and from many Authorities in the Law Books.

By all which it is evident, that the Offices of *Maſters in Chancery* are judicial Offices, or Offices which partake of a judicial Authority and Nature; and do touch and concern the Adminiſtration and Execution of Juſtice in that Court; and that the *Maſters* are aſſociated for that Purpoſe to the Lord Chancellor, as alledged in the Articles.

But upon this Occaſion it will be proper to recite more particularly the Authority of the Statute of

A. 13. *Edri.* 1. call'd *Weſtm.* 2. cap. 24. *Et quotieſcunque de cætero evenerit in Cancellaria, quod in uno caſu reperitur breve, & in conſimili caſu cadente ſub eodem jure, & ſimili indigente Remedio non reperitur; concordent Clerici de Cancellaria in brevi faciendo, vel atterminent querentes in proximum Parliamentum,* &c. *& de conſenſu juriſperitorum fiat breve, ne contingat de cætero quod curia Domini Regis deficiat conquerentibus in Juſtitia perquirenda.*

Co. 2. *Inſt.* 405, 407. Thoſe here called *Clerici*, were at this Time, and before, called *Magiſtri Cancellariæ*, and were aſſociated to the Lord Chancellor; of whom *Fleta* ſaith,

Cui aſſocientur Clerici honeſti & circumſpecti, Domino Regi Jurati, qui in legibus & conſuetudinibus Anglicanis notitiam habeant pleniorem, quorum Officium ſit ſupplicationes & querelas conquerentium Audire & Examinare, & eis ſuper qualitatibus Injuriarum oſtenſarum debitum Remedium exhibere per brevia Regis.

The granting and iſſuing the Writ, or firſt Proceſs, upon the Prayer of the Plaintiff, or Party proſecuting, is the firſt judicial Act of the Court, upon the Commencement of a Suit.

And this proves ſtrongly, that the King by his Royal Office, confirm'd by this Act of Parliament, did at his own Expence, and not at the Charge of the Suitor, provide theſe *Clerks or Maſters*, to the End, that no Subject who had a Right, ſhould be without a Remedy in the King's Courts;

Ne curia Domini Regis deficiat conquerentibus in Juſtitia perquirenda.

And the Nomination of theſe *Maſters* is only intruſted with the Lord Chancellor, as repreſenting the King, and for the Relief of the Subject.

13. *Edri.* 1. *Stat. Weſtm.* 2. *cap.* 24, 50. *Co.* 2. *Inſt.* 407, 486. *Co.* 1. *Inſt.* 54. *b. John Webb's Caſe* 8 *Co.* 48, 49. *Co.* 3. *Inſt.* 82.

So that it is a Breach of his Truſt in the Lord Chancellor, to confer any of theſe Offices *for Gift or Brocage*, or to name and appoint unfit and inſufficient Perſons; ſince it is the Duty of his High Office to provide a Supply of proper Officers to carry on the due Execution of Juſtice in that Court.

But it is ſaid, hat it Thas not been conſtantly uſed to put all the *Maſters* into Commiſſion, and that in the Commiſſion 9. *Oct.* 4. *Ed.* VI. *four* of the *Maſters* only were in Commiſſion; and when they are in Commiſſion, that they have no Authority to act without the Preſence of the *Maſter of the Rolls*, or *one* of the *Judges*; and therefore theſe Commiſſions did not give them a judicial Authority.

Theſe Commiſſions, as well as the Office of a *Maſter*, ſubſiſting ſo anciently, ſhew, that *They* were to be taken Notice of, and comprehended within the Statutes made to prevent the Sale of *Offices of Juſtice*; and of late Times they have all been put into the Commiſſion, as appears by the late Commiſſions granted to the preſent *Maſters*, ſince the Earl had the Cuſtody of the Great Seal, and produced at the Table; and (without entring into the Diſpute between the *Maſter of the Rolls*, and the *Maſters in Chancery*, touching Juriſdiction, wherein the Earl, in his Defence, has declared, he thought the *Maſters* were in the Right) the *Judges* themſelves in theſe Commiſſions are only authoriſed to hear Cauſes, and make Decrees, with the Preſence and Concurrence of *two Maſters*; ſo that the Authority under this Commiſſion is not leſs of a judicial Nature, from the Number of Perſons neceſſary to make a Court; no more than it can be argued from the ſame Reaſon, that the *Judges* in that Commiſſion are not *judicial Officers*, becauſe they cannot make a Decree without *two Maſters*.

And altho' the Commiſſion is not properly incident to the Office of *Maſter*, as annexed thereto; yet as it has always attended upon, and accompanied the *Office*, it proves, that the *Maſters* from the firſt iſſuing theſe Commiſſions, have been always inveſted with a general judicial Power, if they had not enjoy'd ſuch Authority before.

But it is not neceſſary to rely intirely upon that Point; for if theſe *Offices* were only *Miniſterial*, yet they concern *the Adminiſtration and Execution of Juſtice* in the Court of Chancery, and, as ſuch, are under the Regulation of the like Offices at the Common Law, and are fully within the Deſcription of the Statutes of 12 *Ric.* II. and 5 and 6 *Ed.* VI. And this,

According to the Earl's Opinion, when he endeavour'd to terrify the Maſters to contribute to *Maſter Dormer*'s Deficiency.

And as the Earl impeach'd, in Right of his Office of Lord Chancellor, was only intruſted with the Nomination of the *Maſters*, for the Service of the King, and for the common Benefit of all the King's Subjects; theſe Offices are no more ſaleable, or to be diſpoſed of for Money, than if they had remain'd in the immediate Gift of the Crown, by Grant under the Great Seal.

It was objected, that *Maſters in Chancery* are not expreſly mentioned in the Act of 12 *Ric.* II. and that the Statute is a Penal Law, and ought to be conſtrued ſtrictly, and ought not to be extended by Equity to theſe *Officers*.

But the conſtant Rule of Expoſition of Statutes of this Nature contradicts that Aſſertion; for,

Statutes made for the Furtherance and Advancement of Juſtice, for the Suppreſſion of Extortion and Oppreſſion, which (*ſays the Book*) *are horrible and odious Crimes*, ſhall have a benign and favourable Interpretation.

Beawſage's Caſe, 10 *Co.* 101, 102. *Twine's Caſe*, 3 *Co.* 82. *Gooch's Caſe*, 5 *Co.* 60. *Booth's Caſe*, 5 *Co.* 77. *Powlter's Caſe*, 11 *Co.* 34.

And upon this Occaſion permit me to repeat the Words of that Great Man, the *Lord Coke*:

Beawſage's Caſe, 10 *Co.* 101, 102. *Extortion is no other than Robbery, but is more odious; for Robbery is open, and has always the Appearance of Vice; but Extortion puts on the Viſage of Truth, and is more difficult to be try'd and diſcern'd, and is for the moſt Part accompanied with the damnable Vice of Perjury in the breaking that Oath which the Officer took when he was admitted to his Office;*

Co. 3. Inſt. 149.

Which proves the Import and Effect of the general and uſual Words in an *Oath of Office*.

And here I can't help taking Notice of the Attempt of the Earl Impeach'd, by his own croſs Examination of Mr. *Eyres*, *the Officer of the Exchequer*, and the Queſtions propoſed by himſelf relating to the Manner of his being ſworn purſuant to the Statute of 12 *Ric.* II. *viz.* The Earl ask'd him,

What was it that you did read? Did I ſay any thing? Or what did I do? Or to that Effect;

The Officer anſwers, *I read over the Statute out of the Exchequer Book in Old French; and after I had read it, I carried the Bible to the Lord Chancellor*, &c. *who, at the Concluſion, kiſs'd the Book, but he ſaid or repeated nothing. But this has been the antient Form, which I have obſerv'd for forty Years, and I believe has been always uſed.*

In this Inſtance, your Lordſhips ſaw an Endeavour of the late *Supreme Officer of Juſtice* to explain away, or turn to Ridicule, the ſtricteſt and moſt ſolemn Tie and Obligation upon his Conſcience and Honour, impoſed by Authority of Parliament for the preventing Corruption; whereby the Earl did then (tho' ſince upon the Obſervation made by the World of ſuch his Behaviour, he has a little recollected) ſhew, that his calling God to Witneſs to his Promiſe for the Obſervation of an Act of Parliament made againſt that Vice, deſerv'd to be as little conſider'd by him, and to have as little Influence upon his Mind,

As *Oaths* taken by Traders at a certain Place, for their better Accommodation in carrying on a prohibited or fraudulent Traffick.

This is a full Explanation of his Reſerve in an equivocal Anſwer, where he ſays, *That when he took the uſual Oath of Office, he at the ſame Time took the Oaths of Allegiance and Supremacy, but no Oath of Office beſides that above ſet forth.*

Altho' he could not but underſtand the Meaning of the Introduction to the Articles, alledging, *That he did take ſuch other Oaths as have been accuſtomed;* and could not but remember his repeated Obſervations of the Ceremony, at leaſt, which he had annually practiſed under this Statute.

But the Earl's Councel have made it neceſſary to enter farther into this Tranſaction, by their inſiſting, that here was no *Formal Oath* preſcrib'd or taken, no Entry or Regiſtry kept of it; and that the reading over the Statute is meerly an Admonition or Exhortation by the Officer to the whole Aſſembly.

And the Earl has inſiſted, That it is not an *Oath of Office*, becauſe an *Oath of Office* (as he expreſs'd it) is taken once for all, but this is repeated Annually; and if it is an *Oath of Office*, yet it is not particularly charged in the Articles, nor referr'd to in any Manner, becauſe the Articles ſuppoſe it to be taken *at the Time of his coming into the Office*, which was in *May* 1718. and this Oath, at the ſooneſt, could not be taken by him till the *November* following.

To this I anſwer, That the Manner of adminiſtring this *Oath* is in the moſt ſolemn and ſignificant Form poſſible; for the repeating an *Oath* briefly to obſerve the Statute in all things, or containing a ſhort Abſtract of the Subſtance of it, would not be near ſo explicite and directory, as the reading over aloud, by a proper Officer of the Court of Exchequer, the *Act of Parliament* it ſelf, the *Chancellor* at the End *Kiſſing the Bible*; an Exhortation, which ought to make the deepeſt Impreſſion upon the Conſcience of a righteous Magiſtrate, when confirm'd by the Sanction of a Promiſſory Oath.

And to ſay, that it is no *Oath of Office*, becauſe he repeated it Annually, is to contradict the Act it ſelf, which enjoins him to take it *as Chancellor*, and in the actual Execution of his Office; and the Repetition of it Annually, upon this great Occaſion of nominating Sheriffs, demonſtrates the Opinion of our Anceſtors of the Importance and Conſequence of the Obſervation of it, for the Service of the King, and the Benefit of His Subjects; becauſe there can be no other Time more memorable, or more likely to engage Attention to it, than in ſo publick an Aſſembly proceeding to appoint the *Sheriffs* of the ſeveral Counties of the Kingdom, upon whoſe Power, Fidelity, and Juſtice in the Execution of their Offices, not only the Properties, Liberties and Lives of the Subjects of this Kingdom ſo much depend, but even the Security of His Majeſty's Perſon in any Time of Danger; and the very Being of *the Houſe of Commons*, upon the juſt and fair Returns which ought to be made by *Sheriffs*, upon the Election of *Members* to ſerve in *Parliament*.

Can this Statute then be treated and called obſolete, which is thus publickly proclaim'd every Year, to enforce the more exact Obſervation of it?

And to ſay, That the Articles are confin'd to ſuch *Oaths of Office*, as were taken by him on his firſt Appointment, is an equivocal Interpretation peculiar to the *Anſwer*; for the Articles refer generally to *all ſuch Oaths* which have been accuſtomed to be taken by the Lord Chancellor by reaſon of his *Office*. And this *Oath* ought to have been taken by him upon his firſt Appointment, if the Uſage of adminiſtring it at this Annual Seaſon had not been an Excuſe for his poſtponing it to that Time; and from that Uſage it has follow'd, that this *Oath* is not taken by any of the Officers at any other Time; but it was the Earl's Duty to obſerve this good and wholſome Law, as well before his taking this *Oath*, as afterwards.

And

And the Earl could not have forgotten this his ſolemn Engagement without Deſign; it was for his Intereſt not to mention it; and he might flatter himſelf, that the Managers would not have taken notice of it.

And as to the Difference in the Form of adminiſtring *this Oath* from the common Method, it is not material; for the uſual Form is not eſſential to the Oath itſelf, it being ſufficient that there is a calling *Almighty God* to be a Witneſs of the Truth of the Earl's Promiſe, by his touching the *Holy Scripture*.

Co. 3 *Inſt.* 164, 165.

But whether the Oath be conſtantly or uſually taken in Practice, or not, it will not alter the Law; and the Crime of ſelling theſe Offices for *Gift* and *Brokage* ſtill remains, notwithſtanding the Neglect of this additional Obligation to refrain from the Commiſſion of it.

The Objections made by the Earl and his Council upon this Head, have occaſioned this Digreſſion.

The next Part of the Earl's Defence is a direct Juſtification of the Fact of which he is accuſed; and, not contented to leave it to his *Council* (for whoſe Excuſe it might have been ſaid, that they were willing to try every thing) the *Earl* himſelf has inſiſted upon it, that his taking theſe Sums of Money *is lawful*; becauſe, as *Lord Chancellor*, he had a *Right of Recommendation* of Mr. *Hamerſly*, as an Officer appointed by Patent under the Great Seal, and alſo the *Right of Nomination and Admiſſion* of the *Maſters*, ſolely in himſelf; and a Man may diſpoſe of and diſpenſe his own Favour upon what Terms he pleaſes; and Officers may give Money for their Places, and yet be good Officers, as it is ſuggeſted.

But ſome Inſtances of a very extraordinary Nature were cited out of the *Hiſtory of the Exchequer*, to prove that *Chancellors*, Judges, and other Officers of Truſt, had purchaſed their Places of King *Stephen* and King *John*; viz. *That* Richard Fitz Alured *gave King* Stephen *fifteen Marks to hear Pleas*; *and* Walter de Gray *gave King* John *five thouſand Pounds to have the King's Chancery for Life*; and other Officers there named.

Madox's *Hiſt. of the Exchequ.* 43. 743. *He ſays it may ſeem ſtrange, and excuſes it.*

Mr. *Madox*, the Collector and Publiſher of this *Hiſtory of the Exchequer*, 43, 44, mentioning theſe Inſtances, ſays, *That in the Time of King* Stephen, Geoffrey *the Chancellor fined in three thouſand and ſix Pounds and a Mark for the King's Seal. This I underſtand to be a Fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal.* But at the ſame time Mr. *Madox* the Publiſher makes this honeſt Reflection upon his Precedents:

Which Precedent, ſays he, *may juſtly ſeem ſtrange to us at this Day; but it ſeemeth that in thoſe times things of the like kind with this were ſometimes done.* Which Obſervation the Council, or the *Earl* himſelf, were not pleaſed to repeat.

And ſome Inſtances were cited out of the *Roman* Law, where Part of the Revenue of the Emperors did ariſe out of Perquiſites of this Kind; from whence it was inferr'd, that the taking theſe Sums for Sale of Offices, was not againſt Natural Juſtice.

But theſe are of no Authority in this Kingdom, when they are repugnant to the Law of the Land, and have never been receiv'd; and the *Common Law* of *England* muſt be the Rule of Juſtice in this Caſe.

And Mr. *Dupper*, the Earl's late *Under Secretary* of the *Bankrupts*, was produced, to prove by his Opinion and Obſervation, that no Office whatſoever paſſing by Grant under the Great Seal ought to be ſurrender'd or granted without an Acknowledgment (as he call'd it) to the Chancellor or Keeper; and that he had formerly communicated theſe his Thoughts to the *Earl* and his Secretary Mr. *Cottingham*.

And your Lordſhips, upon Recollection of the Evidence, will find the Uſe and Improvement they were pleaſed to make of this Advice, in the Caſe of Mr. *Thomas Bennet*'s Surrender.

But in Anſwer thereto, it appeared upon the Evidence in regard to Mr. *Hamerſly*'s Office of *Clerk of the Cuſtodies*, that there being no Salary annexed to the Place, it did belong to the *Secretary of State* to recommend or to obtain the Sign Manual; ſo that the Earl's Deſire of Gain in this Inſtance carry'd him beyond the Limits of his own Office, where he had no Right of Recommendation, to raiſe the poor low Sum of *One hundred and five Pounds*, at the Time when he was *One of the Regents*; and thus he join'd his Share of the *Royal Authority* to his Power of *Lord Chancellor*, in order to get and ſecure to his own private Uſe ſo conſiderable a Sum as *One hundred and five Pounds* from an exhauſted Maſter! a ſtrong Evidence of his corrupt Intent and Views.

This ſingle Exaction overturns the whole Fabrick of Merit, ſuppoſed to be raiſed by the few ſcatter'd Inſtances of Charity, which he has been pleaſed to divulge in Evidence.

But if the Authorities cited for the Earl to this Purpoſe prove any thing, they prove too much; that the Offices of the *Judges* in the *Supream Courts of Juſtice* were lawfully to be bought and ſold at the Common Law, before the Act 5 *Ed.* 6. which is an Opinion that the *Earl* himſelf, in his *Anſwer*, did not think convenient to diſcloſe or inſiſt upon; and it is going a long way back for an Example to prove the Lawfulneſs of an Action, which he could not find without the Aſſiſtance of an Antiquary.

He might have brought more recent Inſtances from Countries, where unlimited Power does prevail, and where Juſtice itſelf, and the Places in which it is to be diſpenſed, are not to be attained without a Bribe.

But it ſeems as if the Lord impeached had an early Inclination to look out for a Precedent, to give him a Countenance in ſuch like Practices; yet he found none publiſh'd to the World, except in the Reigns of *two Princes*, whoſe arbitrary Behaviour produced that memorable Law, *the Great Charter of our Liberties*, firſt paſs'd in the Form of a Charter *ann'* 17 *Johan'*, and confirm'd *ann'* 9 *Hen'* 3. wherein it was at that time found neceſſary to declare by a Law, *Nulli vendemus Juſtitiam aut Rectum.* Magna Charta, *cap.* 29. Co. 2. *Inſt.* 55.

From which Declaration of the Crown it neceſſarily follows, that the Adminiſtration and Execution of Diſtributive Juſtice to a free People, are not to be eſteem'd the Property or Eſtate of a Great Officer, to be raiſed or encreaſed by his Sale of the ſubordinate Offices of Juſtice; but are the great Prerogatives of an *Engliſh* Prince, to be exerciſed freely for the Safety and Eaſe of the Subject, without introducing Expence and Charge upon the People in their Application for Juſtice and Right.

And when a Doctrine of this dangerous and deſtructive Nature to the Rights and Liberties of

the whole Nation, as it expoſes their only Security to Sale for Money, is thus avowedly and openly juſtified and inſiſted upon at your Lordſhips Bar, by a *Peer* of your Houſe, who has born the high Office of *Lord Chancellor of Great Britain* in the firſt Reign under the Act of Settlement of the Crown: Your Lordſhips will take the beſt Meaſures to render the Subjects ſecure in their Expectation of Juſtice, by a ſuitable and publick Mark of your Deteſtation of ſo licentious an Opinion; and thereby convince the Nation, that even the meer Suggeſtion of ſuch a corrupt Principle is an undeſerv'd Reproach, and highly injurious to his Majeſty's Adminiſtration.

Yet if it ſhould be ſuppoſed by way of Argument (which has not been proved, and therefore cannot be admitted) that the Sale of theſe Offices has been of late tolerated, for the greater Increaſe of the Perquiſites of the firſt Officer of the Crown in the principal Court of Juſtice; yet the Earl's raiſing and receiving theſe exorbitant Sums above double to any Inſtance before his own Time, which he has made appear, upon a Pretence that the Buſineſs of the Court of Chancery was very much advanc'd during his Reſidence there, will be as criminal, as if he had put the Offices to Auction, when no Sum or Fee had ever been taken or heard of.

And in his Method of Practice there can be no Diſtinction between a Preſent and a Price; for he made the *moſt* always of his Share or Claim in the Office. When he was only to admit upon a Surrender, he took *fifteen Hundred Guineas* for his Good Will and Approbation meerly; and when he admitted upon a Death, he took *five thouſand Guineas* at the leaſt, altho' the Office was greatly in Debt; as in *Borret's* Caſe, where the Suitors will loſe upwards of *twelve thouſand Pounds* of their Effects, by the loweſt Computation.

As for the ſmall antient Fees which have been paid to the Great Seal for Time immemorial, upon the ſealing every Patent, theſe are out of the preſent Queſtion; and where Uſage beyond Time of Memory has allow'd the Receipt of theſe little Sums, it will be preſum'd (if there was Occaſion for it) that ſome Act of Parliament had paſs'd to make it lawful.

And when it is ſaid, that a good Officer may give Money for his Place, and may reſiſt the Temptation of Extortion; it is what the Law of *England* would not truſt to human Frailty; and if all the Actions and Behaviour of the beſt of the *Maſters*, with reſpect to their Fees, their Manner of Proceeding upon References, and their diſpoſing and trafficking with the Money of the Suitors, were to be enquired into more particularly, there can be no doubt, from what has appeared in Evidence upon this Tryal, but that the Temptation and Inclination to Profit, towards reimburſing themſelves the Money advanced to the *Earl*, and the preceding *Maſter*, have overcome their moſt ſteady Reſolutions to Virtue and Self-denial.

As to the citing particular Caſes, wherein the Sale of Offices Judicial, or of the like ſort with thoſe in Queſtion, have been determin'd to be illegal at Common Law, I apprehend it is not neceſſary; for that the Reaſon of the Common Law, and the Purport of the ſeveral Statutes mention'd, do fully and ſufficiently maintain the Validity of the Articles in that reſpect.

And the Managers might more properly call upon the Earl and his Council for Authorities or Judgments to the contrary.

But Matters of a corrupt Nature are always privately tranſacted, and no Witneſſes, or at moſt very rarely, are to be produced beſides the Parties concern'd.

And if the Earl will produce any Inſtance in the Books, where ſuch a Tranſaction has been mention'd, I may engage to ſhew him at the ſame time, that it has been holden illegal.

The Authority already cited by a Learned Manager is expreſs:

Stockwith *cont'* North, *Moore* 781. North *was fined in the* Star-Chamber, *for that he being Sheriff of the County of* Nottingham *did take Money for the Goalerſhip and the Bailiwick for his Year; and at firſt he gave them to his Servants, who ſold them, but himſelf received the Money; and this was adjudged to be a letting to Farm of his County, contrary to the Statute of* 4 Hen. 4. cap. 5. *Yet there note,* ſays the Reporter, *that the Statute itſelf gives a Penalty certain and pecuniary, and it is* malum prohibitum, non in ſe. *But the Court held, that in as much as great Corruption enſues from the Greedineſs of the Officers, and they are inforced thereto by the Prices which they give for Things which ought not to be ſold, that this ſetting of Offices to Farm and Sale, is* malum in ſe, *and finable.* Noy 102.

But the Earl objected, that this Opinion is extrajudicial; and the Court were miſtaken in one part, when they ſay, *that the Statute* 4 Hen' 4. *did inflict a Penalty*; whereas it did not, but only *prohibited the letting to Farm the Bailiwick*, which was lawful before, and therefore properly finable, as a Breach of the Act.

In Anſwer to which, it is plain upon Peruſal of the Book, that that Part relating to the Act 4 *H.* 4. impoſing a Penalty, is only the Note of the Council, or Reporter, who took that particular Offence to be only *malum prohibitum*; and whether the Court did impoſe that Fine by Force of the Statute, or as warranted by the Common Law, it will not weaken the Authority; becauſe the Court expreſly declare it to be their Opinion, *that the ſelling of the Office of Goaler was* malum in ſe, *and finable*; which ſhew'd the Judgment of the Court on that part of the Queſtion; ſo that there is no Miſtake to be imputed to the Court.

And my Lord *Coke*, in his 3 *Inſt. fol.* 146. *cap.* 68. *of Bribery and Extortion*, and *fol.* 224 & 225. *cap.* 101. *of Judgments and Execution*, deſcribes theſe Crimes as *Offences at the Common Law*, and puts his Examples accordingly, which may be there conſulted.

So in the Caſe of *Smith* and *Mall*, 2 *Rolls*, Rep. 263. and *Linley's* Caſe, *Hutton.* 70. where it is holden, *That if any Judge or Officer takes more than the uſual Fees, he is puniſhable by Indictment at the Common Law.* Which neceſſarily implies, that they are puniſhable at the Common Law, for taking Money where no Fee at all is due.

The ſtrict Definition of Extortion is, *When any Perſon Colore Officij extorquet Feodum non debitum, pluſquam debitum, aut antequam debitum.* *Hutton.* 52, 53. *Co.* 3. Inſt. 149, 150. *Beawfage's* Caſe, 10 *Co.* 101, 102. *Dive* and *Maningham*, *Plowden*, 68. a. *Co.* 1. Inſt. 368. b. Sir *John Bingley's* Caſe, *Poph.* 149. *Rex & Gover*, 1 *Sid.* 91.

But largely, *Extortion is taken for any Oppreſſion by extort Power, or by Colour or Pretence of Right. Co.* 1. Inſt. 368. b.

But it is urged by the Earl and his Council, that it appears from the Statute 5 & 6 *E.* 6. that the

the buying or selling of these Offices was lawful at the Common Law, and is not prohibited by the Statute 12 *Rich.* II. and that the Statute of *E.* VI. neither declares nor creates any Crime, but only imposes a special and particular Penalty, by Loss of the Office or Disability, and therefore the Earl having been dismiss'd the Great Seal, there can be no Punishment inflicted upon him.

It is agreed by them, that the Statute 5 and 6 *E.* VI. includes both these Offices, of *Clerk of the Custodies*, as an Office of Clerkship in a Court of Record; and of the *Masters in Chancery*, as Offices touching the Administration and Execution of Justice, in point of Description.

And upon reading the Act it is evident, that this Statute in the *Preamble*, and throughout the whole Act, treats this way of dealing, as *a Corruption*, and illegal in its Nature, and expresly calls it so.

The Preamble says, *For the avoiding of Corruption, which may happen hereafter to be in the Officers and Ministers in those Courts and Places, wherein there is Requisite to be had the true Administration of Justice or Services of Trust.*

And this Statute carries the Punishment farther, but does not take away the Punishment of it as a Misdemeanor at the Common Law, by Fine or Imprisonment upon Indictment.

And there is not any *Proviso* in the Act which mentions or exempts the *Court of Chancery*, or any of the Officers of that Court; but in consequence, when it mentions other Courts in a *Proviso*, must more strongly be intended to include them in the Act.

The *first Proviso* extends to Offices of a private Nature, and to Offices of Inheritance, and can't relate to any *judicial Office*, nor to either of these Officers, who hold only for Life; altho' where the Nature of the Office has allow'd it to become inheritable, it makes it alienable; but no such Instance is to be met with in the Case of *judicial Offices*.

The *second Proviso* is to prevent any Person's being surpriz'd into the Penalty unwittingly, before Notice of the Act, or by a Retrospect. And altho' the Statute takes Notice that divers Persons did make such corrupt Bargains, it is only by Way and with an Intent of preventing, and not of legitimating them; and it leaves them all as they stood at Common Law, until that Day appointed by the Act was past.

And the *last Proviso* does nothing more, and leaves the Justices to act upon their own Knowledge and Discretion in the Law, according to the Nature of the Office, without casting any Imputation upon them unnecessarily.

But so exceeding cautious was the Legislature, that there is not any Expression in any Part of the Act to declare or enact such Bargains in the Cases excepted to be good.

But the Statute leaves them entirely to the Regulation and Direction of the Common Law and former Acts of Parliament.

So that altho' the *Earl* of *Macclesfield*, by his being dismiss'd from the Office of *Lord Chancellor*, is not liable to suffer the additional Punishment contain'd in this Act of Loss of his Office: Yet he will still be liable to the Punishment at Common Law, and upon the several other Statutes, and accordingly remains open and subject to your Lordship's just Sentence.

For where a Statute does give or impose a new Penalty, for a Matter which was an Offence at the Common Law, the Prosecutor may pursue either of the Remedies; altho' where a Statute makes or creates the Offence, that Remedy must be taken which the Statute gives.

Regin' cont. Wigg' Pas' 4. *Anne Banco, Regin' Salk.* 460. *Com' Leicest. & Mandy* 2. *Sid.* 32. Dr. *Hussey's* Case, 9. *Co.* 74. *Cranbank's* Case, 2. *Rolls Rep.* 49. *Burgen's* Case, 1. *Ven.* 13. 1. *Sid.* 409.

Thus I have gone into this long Debate, to shew that the *Commons* have founded their *Articles* upon the general Rules of the Common Law, supported and inforced by divers Acts of Parliament.

As to the Proofs.

I shall now take notice of the *Evidence* upon the particular *Articles* assign'd to me, and shall observe not only upon the Proofs given by the *Commons* in Maintenance of those *Articles*, but likewise upon the Examination made on behalf of the *Earl* impeach'd, and in his Defence.

As to the *Money Articles*, I shall make this general Observation upon the Evidence, that it has been agreed by all the Witnesses examin'd thereto, as well by Mr. *Cottingham*, the Earl's *Secretary*, and on these Contracts his Lordship's Broker, as by the *Masters* themselves, and their Agents, that the whole Transaction was done and finish'd, and the Money actually paid and deliver'd into the *Lord Chancellor's* own Hands (except Mr. *Thurston's Five Thousand Guineas*, which were deliver'd to another for his Lordship's Service) before the Resignation of the former Officer was accepted, and before the Admission and Swearing of the Successor.

So that the principal Point and main Stress of the *Articles* are thus in fact agreed upon by both Parties.

But as to these *Articles*, and more particularly with respect to the *One Hundred and Five Pounds* receiv'd from Mr. *Thomas Bennet*, and the *Fifteen Hundred Guineas* each receiv'd from Mr. *Kinaston* and Mr. *Bennet*, the *Earl* and his Council have suggested a Deficiency in the Proof, arising from a Contrariety in the Evidence given by Mr. *Cottingham* the Earl's *Secretary*, to what has been sworn by Mr. *Bennet*, Mr. *Kinaston*, and Mr. *Charles Baily*; and, upon the Credit of the *Secretary's* Testimony, would suppose that each of these Sums proceeded first from the free and voluntary Offer of the *Masters*, and was not insisted upon by the *Earl* or his *Secretary* before hand, as charged in the *Articles*, and prov'd by the *Masters*, but only accepted and receiv'd by *Cottingham* and the *Lord Chancellor*.

But the Nature of the Transaction, and the Circumstances of the Persons, do very strongly support the Credit of the *Witnesses* produced by the *Commons*, and the Probability of their Testimony, who have prov'd every Part of those *Articles*, in the very Words of them; and Mr. *Cottingham* himself has confess'd enough to maintain the *Articles* in Substance, altho' he should be credited in any Circumstance wherein he varies from the other *Witnesses*.

As to the *ninth Article*, it will be very difficult to believe that Mr. *Bennet*, who had lately paid the *Lord Chancellor* so large a Sum for his Admission to the Office of a *Master*, which he had borrowed of his *Brother*, and who had paid no Admittance Money for this Place of *Clerk of the Custodies* to the *former Chancellor*, the Earl *Cowper*; and who had likewise been informed by his Brother Mr. *John Bennet*, that nothing was paid by him to *Earl Cowper* upon his being admitted to the same *Office*, and that *Lord Cowper* himself had declared

declared to Mr. *John Bennet* that there was nothing due upon his Admiſſion; that Mr. *Thomas Bennet* under theſe Circumſtances ſhould of his own Accord firſt propoſe a *Preſent* (as it is called) when he could not well imagine that there was any Pretence to it; that is hardly credible.

And *Cottingham* himſelf has own'd, that he told Mr. *Thomas Bennet* that ſomething was expected, and that he carried the *Propoſal* of *One hundred and five Pounds* to the *Earl*, who accepted it, and thereupon he receiv'd the Money from Mr. *Bennet*, and paid it over to the *Earl*; after which the *Earl* then took the whole Care upon himſelf of expediting the *Sign Manual* and the *Patent*.

Now, *Cottingham* being the Factor employ'd by the *Earl* in all theſe Bargains, who has been avow'd by the *Earl* to be his Agent, and has been produc'd as his *Witneſs*, and ſupported by him; every thing that *Cottingham* declares and acts in compleating theſe Contracts, will be conſider'd as the Act of the *Earl* himſelf, and his own bartering; eſpecially, when *Cottingham* (as he depoſed before your Lordſhips) did not conclude the Bargain, until he had receiv'd the *Earl*'s Approbation thereof; and when the *Earl* at the End confirms the whole by his Receipt of the Money.

And a *Lord Chancellor*'s expecting ſomething, or a Sum of Money, be it more or leſs, and this his Expectation declared and notified by his *Secretary* to the Perſon applying to be admitted into the Office, is a peremptory Demand, and an inſiſting, when the *Lord Chancellor* alone, and no other, has the Power of taking the Reſignation, or making it effectual by paſſing the new Patent, and of admitting the new Officer.

But this Matter has been explain'd and confirmed by the Evidence of *Dupper* the *Under Secretary*, the *Earl*'s own *Witneſs*, upon whoſe Authority the *Earl* relied, who acquainted your Lordſhips, that upon *Cottingham*'s telling him of the intended Surrender of Mr. *Thomas Bennet*, *Dupper* ſaid, there ought to be an Acknowledgment to the *Great Seal*, and he had heard that Money had been given, which *Cottingham* himſelf at firſt doubted of; but *Dupper* ſoon ſatisfied both the *Earl* and his *Secretary* that Money might be ask'd.

This confirms the Evidence of Mr. *Thomas Bennet*, that nothing was ſaid about Money to be given, or an Expectation of ſomething at his firſt meeting with *Cottingham*, but it was introduced by *Cottingham* at their ſecond Meeting; which muſt be after this Advice and Information of *Dupper*, and that then the Reſolution was taken of expecting a Sum of Money.

This argues the Diffidence of the *Earl* impeached in ſetting up this Pretence, and his Suſpicion of the Illegality of it; yet the Opinion of the Perſon adviſing, and the *Earl*'s own Inclination to Gain, were too powerful to be reſiſted.

But to remove the Foundation of this *Objection*: The Point or *Charge* of theſe *Articles* lies in the taking theſe Sums by the Earl, *colore officii ſui*, as *Lord Chancellor*, and without Right, which is *Extortion* and *Corruption*.

And if he did receive theſe Payments by Colour of his Authority, and without Right, (and he has made out no Pretence of Right) he will be guilty of the Crimes charg'd upon him, in how artificial a manner ſoever he tranſacted theſe Matters.

It will amount to the ſame, whether they propoſed the Sum to him, or he made the Demand upon them; yet if ſomething was expected by him, and he declin'd doing the Duty of his *Office*, until that ſomething was offered and paid to him, it is an *Exaction* and an *Impoſition*, which is *criminal*, and maintains the *Articles*.

Co. 3. Inſt. 148. 149. *E. Mallin's Caſe.*

And it is remarkable, that the *Earl* would never give Credit for his *Preſent*, but always had it ſafe in his own Hand, before he admitted the *Officer*.

It has been attempted, on behalf of the *Earl* of *Macclesfield*, to prove that former *Chancellors* have uſed to claim and receive Money upon the taking Surrenders, and making new Grants of this *Office*; but herein the *Earl* has fail'd, and has not been able to give legal Proof of any one Inſtance of that kind, upon the change of this Office of *Clerk of the Cuſtodies*.

For *Dupper* did not ſee any Money paid on that Occaſion, nor knows any thing of it of his own Knowledge, but only copied an *Account* which he came by very odly, wherein (as he ſays) there was an *Item* to that effect; and his Evidence depended meerly upon Hear-ſay, and ought to have no Regard.

The Evidence of Mr. *Oker* turns againſt the *Earl*; for altho' there were Surrenders in both the Times, when *Earl Cowper* held the *Great Seal*, yet nothing was paid or taken by him; and upon the Surrender of *Thompſon* to *Edwards* in the late *Queen*'s Time, it was ſaid that nothing was given; and upon the Surrender of Mr. *John Bennet* to Mr. *Thomas Bennet*, whilſt *Earl Cowper* enjoyed the Seal under his *Majeſty*, nothing was paid or claimed.

And the ſuppoſed Intimation or Opinion of *Lord Cowper*, which *Oker* mentions, was between theſe two Surrenders, which makes it very unlikely that *Earl Cowper* ſhould make ſuch a Declaration; yet if ſuch Diſcourſe there was, it is plain, that upon better Conſideration, the *Lord Cowper* departed from ſuch Pretenſion, and diſcover'd no Expectation of any thing, upon the laſt Surrender and Grant of this *Office*.

And as nothing was taken by *Lord Cowper*, upon the Surrender of Mr. *John Bennet* to Mr. *Thomas Bennet*, it will be prov'd, that on the Surrender of Mr. *Edwards* to Mr. *John Bennet*, *Lord Cowper* refuſed to hear of a Preſent, when it was hinted at, and declared that nothing was due to the *Great Seal*.

But this *Defence*, which is founded upon a ſuppoſed Uſage to receive a *Fee* for permitting ſuch Surrenders, and from thence would infer a Right, or an Excuſe to the *Earl* impeach'd, in doing the like, is a Proof and Confirmation of the *Article*, as charg'd by the *Commons*; That the *Earl* did inſiſt upon the Money, as his *Right* and *Due*.

ART. V. As to the Bargain with Mr. *Kinaſton*, it appears from his Teſtimony, and the Evidence of Mr. *Charles Baily*, who paid the Money, that Mr. *Kinaſton* endeavour'd to obtain the Admiſſion at a lower Rate. At firſt he offer'd but *one thouſand Guineas*; and at the End Mr. *Baily* underſtood it to have been agreed for at *fifteen hundred Pounds*; and when Mr. *Cottingham* ſaid *fifteen hundred Guineas* were expected, *Baily* did not proceed till he had informed Mr. *Kinaſton* therewith, who anſwer'd, that ſince Mr. *Cottingham* had mentioned that Sum, he muſt ſubmit, and do accordingly.

And this Diſpute, upon the Difference between *Pounds* and *Guineas* only, explains the manner of theſe Dealings; That they were formal Contracts and Bargains between the *Secretary* and the *Maſters*, at the beſt Price that could be got; and tho' there was no hagling with the *Earl* himſelf

(as

(as *Cottingham* expreſs'd it at one of theſe Dealings) yet he had a faithful *Steward*, who could and did haggle very well for him; and when the *Secretary* had done his utmoſt, the *Earl* accepted the Price which had been agreed upon.

ART. VI. As to the *fifteen hundred Guineas*, paid by Mr. *Thomas Bennet* for his Admiſſion, and the manner of making that Bargain, Mr. *Bennet*'s Evidence of his firſt offering *one thouſand Guineas*, and *Cottingham*'s Refuſal of it, ſaying, He hoped Mr. *Bennet* would not lower the Price, and the Hazard of his being refus'd, and that there was no haggling with my Lord, and at laſt agreeing for *fifteen hundred Guineas*, is ſupported from the uſual Behaviour of *Cottingham*, as well as from the Probability of the thing it ſelf; that a Man may reaſonably be preſumed to endeavour to ſave what he can, and when he is purchaſing, to get it at the cheapeſt; altho' (as it has appear'd upon the Examination) Mr. *Bennet* had little Reaſon to expect that a ſucceeding *Chancellor* would be ſatisfied with his Circumſtances, and admit him.

Upon the *Earl*'s Defence againſt the Charge contained in theſe two *Articles*, it was prov'd by Mr. *Goldesbrough* the *Regiſter*, that the *Earl* about the 23d of *February* laſt had paid thoſe *two Sums* into the *Court* of *Chancery*, to be apply'd for the Benefit of the *Suitors*; and this is offer'd either in his Diſcharge, or as a Merit. But this was done ſeveral Days after the *Impeachment*, and after *publick* Complaint had been made againſt the *Earl* upon theſe *two Inſtances*, and is a very proper example of the *Earl*'s own Conſtruction of a *voluntary Preſent*; for after the *Houſe of Commons* had taken this Affair into their Conſideration, and had demanded Juſtice and Satisfaction from the *Earl* by a *Parliamentary Proſecution*, the *Earl* then did *freely and voluntarily*, and *of his own Accord*, make a *Preſent* to the *Suitors* of the *Court* of theſe *two Sums*, which he had, in the like free and voluntary Manner, receiv'd as a *Preſent* from Mr. *Kinaſton* and Mr. *Bennet*.

But this Action contradicts his whole *Defence*; and ſhews that he was convinc'd that he had no Right to receive or detain the *Money*, and was afraid to keep it any longer.

ART. VII. and VIII. As to the *two five thouſand Guineas* receiv'd by the *Earl* of Mr. *Elde* and Mr. *Thurſton*, it is prov'd that the Price was ſettled between *them* and Mr. *Cottingham*; and when Mr. *Elde* (of whom the Earl expreſs'd ſo good an Opinion) offered *five thouſand Pounds*, *Cottingham* ſaid *Guineas were handſomer*; and the particular Method of Payment ſhews the inward Rebukes of his Conſcience, and his Fear of a Diſcovery.

And theſe *two Facts* ſhew the Prevalency of his Avarice, above any other Paſſion. For in Mr. *Elde*'s Caſe, he broke thro' the Obligation of Gratitude and Friendſhip to him, to receive his Money in a cover'd Manner, in *a Basket*. And in Mr. *Thurſton*'s, he tried to beguile his Fear of a Diſcovery, by ſuffering the Money to come to him thro' a private and unſuſpected Hand.

And theſe *two Inſtances* were of ſo nice a Nature, that his faithful *Secretary* own'd, that he was not admitted into the Secret. For it appears that the *Earl* either knew or ſuſpected there would be a *Loſs* in *Borret's Office* by his Inſolvency, tho' it was not reduc'd to any Certainty; and it now appears, at the leaſt, to amount unto *twelve thouſand Pounds*.

But the *Earl* left the *Suitors* of the *Court* to bear that Loſs, and never took Care to procure a *juſt Satisfaction* to *them*. Which the *Commons* urge both as an Evidence and an Aggravation of his Guilt; ſince he therein preferr'd his own private Gain, to that Security, which his *high Truſt* required him to have provided for the *Creditors* of the *Court*.

And the returning great Part of theſe *two Sums* after the Confuſion and Diſorders of the *Court* became publick, and Part of Mr. *Elde*'s Money, after the *Maſters* had been call'd upon to bring in their *Caſh*, and which upon Mr. *Elde*'s Evidence may be reaſonably preſum'd to have been made uſe of by him to make a falſe Shew before the *Commiſſioners*, are rather Decrees againſt himſelf, than any Extenuation of his Guilt.

And as to the *Earl*'s great Merit, which he ſo largely dwelt upon, and ſo often repeated, that he might have had *ſix thouſand Pounds* from Mr. *Lucas*, which he relinquiſh'd to accept of *five thouſand Guineas* from Mr. *Elde*. The *Managers* will call Mr. *Lucas*, who (in anſwer to Mr. *Eld*'s Teſtimony) will prove, that when he offer'd the *ſix thouſand Pounds*, it was upon this *expreſs Condition*, that if the *Money* of the *Suitors*, or the *Caſh*, was taken out of the *Maſters* Hands on a *Parliamentary Inquiry*, he ſhould have a Return of ſome Part; and that the *Earl* ſhould indemnify him againſt all Deficiencies.

So that the *Earl* did not refuſe Mr. *Lucas*'s *ſix thouſand Pounds*, from a Diſinclination to the Sum, if he could have kept the whole ſecurely; but becauſe *five thouſand Guineas* paid abſolutely, was better than *ſix thouſand Pounds* ſubject to a Condition of refunding, and incumber'd with an Engagement of Indemnification.

But the *Earl*'s chief *Defence* is rais'd from the Practice of his *Predeceſſors*, who (as he pretends) led him into theſe Miſtakes; and he has prov'd *ſeven hundred Pounds* to have been paid by Mr. *Lovibond*, about *twelve Years* ſince, and *eight hundred Pounds* by Mr. *Holford*, and *five hundred Pounds* by Mr. *John Bennet* in the *Year* 1716. upon their reſpective Admiſſions into the *Offices* of *Maſters*; and from thence inſiſts, that altho' he can't claim the exact Sum of *fifteen hundred Pounds* receiv'd by himſelf upon Admiſſions, as a certain and eſtabliſh'd *Fee* or Perquiſite, becauſe he has taken *twice* as much as his *Predeceſſor* did: Yet this *Practice* gives him a Right to a *Preſent*, and it was in his *own Diſcretion* to declare the *Sum*, as he ſhould think reaſonable, according to the late Increaſe of the Buſineſs of the *Court*.

But, *a Preſent* altogether uncertain in the *Quantum*, and depending in this Manner upon the Pleaſure of the Perſon who is to receive it, ſeems to differ very little, if at all, from a *Price*.

The *Earl* inſiſts likewiſe, that the Denial or Refuſal of ſome other of the *Witneſſes* to anſwer his *Queſtions*, is a farther Proof that they paid Money. This ſhews that the *Earl* thinks he wants the Proof very much, when he makes uſe of ſuch an Argument to raiſe Evidence.

The *Witneſs* refuſes to anſwer ſuch *Queſtions*, which he is not oblig'd by the Rules of *Law* to reſolve, concerning the Manner of his Admiſſion, and the *Commons* cannot call *Witneſſes* to contradict or explain that which has never been deliver'd in *Evidence*.

Yet the *Earl* deſires your Lordſhips to believe this as *Evidence*, tho' you never did hear it, and to act and vote, upon *your Honour*, as if you had heard and admitted it.

But howſoever the *Earl* may have directed himſelf, he can never think that ſuch an unjuſt Inſinuation will ever prevail upon *your Judgment*; or that he can thereby move *your Lordſhips* to give up *your Honour*, in the higheſt Exerciſe of your *judicial Power*.

And theſe *two* or *three* late Inſtances, which he has produced, cannot change the *Common Law*, or repeal the ſeveral *Acts of Parliament*, whereby they

are declar'd illegal; and if he makes uſe of them as *Precedents*, he ought to take them with all their Circumſtances, which upon the whole Matter rather turn againſt him. For Mr. *Holford* and Mr. *Lovibond* were at that time, and ſtill continue Men of Subſtance; and Mr. *John Bennet* was of Ability at the Time of his Admiſſion, altho' in the Year 1720. he ſuſtain'd ſeveral Loſſes, which impair'd his Eſtate. And *they* all paid the *Sums* of *Money* mention'd out of their *own Eſtates*, and no Part of it out of the *Suitor's Caſh* or *Effects*. And the whole of the *Suitor's Effects* was deliver'd over to *them* by an *Account* with which *they* ſtood charg'd.

So that altho' theſe few Inſtances were not animadverted upon, either becauſe they were not publickly known, or that no Inconvenience did enſue therefrom: Yet they will afford no Excuſe to the *Earl* impeach'd for taking *double* and *treble* the Value of thoſe *Sums* upon his Admiſſion of *Maſters*, who were Perſons of *ſmall* or *incumber'd Eſtates*, and who were neceſſitated to employ the *Caſh* and *Effects* of the *Suitors* in the Payment for their *Offices*, and for their *Admiſſions*; and thro' whoſe Inſolvency ſo great a *Loſs* and Damage has come upon the *Suitors*.

But an *Officer* of *publick Truſt* and *Service* ought to look well to his *Precedents* before he follows them; and if he will purſue an illegal or unjuſtifiable *Precedent*, he does it at his Peril, and muſt anſwer for the Conſequences; eſpecially in the Situation of the *higheſt Officer* in the *Kingdom*, who was intruſted with the Adminiſtration of *publick Juſtice*, in the *ſupreme Court of Law and Equity*; and whoſe *Duty* it was as well to declare and expound the Law to others, and to regulate and reform the Exactions and Abuſes, which at any Time may have crept into the *inferior Courts* of *Juſtice*, to the Injury and Oppreſſion of the *Suitors* of other *Courts*, as to prevent or ſuppreſs Corruption and Extortion in the *Court*, where he more immediately preſided.

ART. XI. As to this *Article*, the particular Circumſtances of Mr. *Kinaſton* and Mr. *Thomas Bennet* have been prov'd, and the Deficiencies in their *Offices*, and how unequal they were to the *Truſt* of the *great Sums* and *Effects* depoſited in their Hands.

By the *Orders* of the *Court*, which have been read, it appears that Mr. *Kinaſton*'s Deficiency amounts to 26,908 *l.* 11 *s.* 3 *d.* 1 *q.* and Mr. *Bennet*'s to 16,075 *l.* Mr. *Kinaſton* had about 50,000 *l.* in Money and Effects of the *Suitors* in his Cuſtody, and Mr. *Thomas Bennet* near 100,000.

This is likewiſe a high *Breach of Truſt* in the *Earl*, and is an Offence againſt the Statute of 12 *Rich.* II. *cap.* 2.

12 *Rich.* II. *cap.* 2.—*But that they make all ſuch Officers and Miniſters of the beſt and moſt lawful Men.*

Which Words in the Law import Sufficiency of Subſtance, as well as Capacity.

And the Statute 2 *Hen.* VI. *cap.* 10. takes it for granted, that the ſuperior Officers were before that Time under the Obligation of the Common Law, or ſome former Statute to that Effect; when by the ſaid Act, 2 *Hen.* VI. *cap.* 10. *Co.* 4. *Inſt.* 114. intituled, *What manner of inferior Officers ſhall be appointed in the King's Courts*, it is enacted, *To the Intent that better and more ſure Government be had within the Courts of our Lord the King, for his Profit, and Eaſe of his People, which have to purſue and to do in the ſame*; it is ordained and eſtabliſhed, *That all the Officers made by the King's Letters Patents Royal within the ſaid Courts, which have Power and Authority by virtue of their Offices of old Times accuſtomed, to appoint Clerks and Miniſters within the ſame Courts, ſhall be charged and ſworn to appoint ſuch Clerks and Miniſters for whom they will anſwer at their Peril, which be ſufficient, faithful, and attending to that which pertaineth to them in Performance of the Buſineſs, as well of the King as of his People.*

This Act would have been extended farther, if it had been eſteemed neceſſary.

The Frame of both theſe *Statutes* does ſhew the Bent of the *Engliſh Conſtitution*, to provide for the Eaſe and Benefit of the *Subject*.

But the old Rule, *reſpondeat ſuperior*, will hold againſt the *Earl* in this Caſe, eſpecially when it appears by the Evidence of Mr. *Goldesbrough* the *Regiſter*, a Witneſs produc'd by the *Earl*, that this Practice of paying Money generally into the Hands of the Maſters, was not in uſe at his firſt coming into the *Regiſter's Office*, about the Time of the Revolution. So that the *Earl* impeach'd took upon himſelf the Diſpoſition of the *Suitors* Money, without a proper Ground and Juſtification.

And the Offence contained in this *Article* does not depend upon his Knowledge, that the Perſons admitted were inſufficient and unable; but that the *Earl* did not require and take full Satisfaction and Evidence in a proper Manner, to make it manifeſt that *they* were able and ſufficient, as had been done by his *Predeceſſors*; particularly when Mr. *Holford* was admitted a *Maſter*, his Father was obliged to ſettle a *real Eſtate* upon him of good Value.

The *Earl* ought either to have advanc'd Perſons equal to the great *Truſt* and *Charge*, or to have reduced the *Truſt* and *Depoſit* to the Condition and Circumſtances of the Perſon, as his *Predeceſſors* had done.

So that it is evident the *Earl* had only in view the Price and Profit of the Sale of the *Office*, which would riſe higheſt, upon the Inability and Unfitneſs of the *Officer*.

And it was therefore very properly ſaid by one of the *Earl*'s Council, that he weigh'd the *Maſters* before he admitted them.

But he weigh'd them only for the Sake of the Price they were to pay to himſelf; and when he had done with them, he left them of very little Weight for the Security of the *Suitors*.

His falſe, tho' memorable *Declaration* in open *Court*, upon the 21ſt of *Jan.* 1723. explains his whole *Scheme*, when he publiſh'd from the Bench, *That the preſent Maſters were Men of as great Fortunes as any Set of Maſters had ever been.*

The Words were prov'd by Mr. *Waller*, and have not been contradicted by any *Witneſs*.

At that time Maſter *Dormer's Deficiency* had taken Air; and Mr. *Waller* upon his Examination ſaid, The Suſpicion of ſeveral of the Maſters was then ſo ſtrong, that this Publication rais'd Aſtoniſhment in the Hearers. But there was then a *Vacancy*, and an *Office* to be ſold. *Maſter Fellowes* died 19 *Jan.* 1723. and it became neceſſary to give the *Office* a Reputation.

And altho' the Inſufficiency of ſome of the *Maſters* had been decently intimated to the *Earl* by Mr. *Lightboun*, upon his ſeveral Propoſals, and the *Earl* may be preſum'd to know the general Apprehenſion of the World. Yet in this ſolemn Manner the *Earl* became an Officer to himſelf, to proclaim his own Market.

ART. XII. The Practice and Injury to the *Suitors* can hardly be more aggravated than is expreſs'd in the *Article* it ſelf.

And it has been prov'd in every Particular neceſſary to ſupport the *Article*; and no Proof has been offer'd

offer'd on the Part of the *Earl* to contradict or extenuate the *Charge*, by making appear his Vigilance, or any Care or Regard to prevent the fatal Conſequences of the *Practice*.

The particular *Methods* of preventing this Fraud ſpecified in the *Article*, are only to ſhew the Practicability of ſome ſort of Meaſures proper to have been put in Execution, in order at leaſt to render the corrupt *Practice* and Abuſe difficult, altho' they had not prov'd compleat in all reſpects to redreſs and prevent them.

And by the *Witneſſes* call'd on the Part of the *Earl* himſelf, it was expreſsly prov'd, that ſome of theſe *Methods* had been practiſed with Effect in the time of his *Predeceſſors*, and that no *Loſs* had happen'd to the *Suitors* during that Regulation.

An *Account of the Suitors Caſh and Effects* was brought to the then *Lord Chancellor Harcourt* by Mr. *Holford*, as the *Account* of his *Predeceſſor*, before he was admitted; and he was thereupon ask'd if he would be bound by that *Account*, and ſtand charged accordingly? to which he agreed, and his Subſtance was ſufficient to anſwer it.

The *Caſh Money* was for ſome Years lock'd up in the Hands of the *two junior Maſters* in *Lord Chancellor Cowper's* time.

And it has been prov'd, that the *total Accounts* of *all the Maſters* have been taken *three* ſeveral times within a few Years; that is, *twice* by *Lord Cowper*, and *once* by *Lord Harcourt*.

And altho' the *Earl* ſeems either to doubt of his Authority, or of the Poſſibility of doing this in his own time; it can be prov'd, that he requeſted to ſee the *Accounts*, and to be inform'd of this Method, and accordingly had a Sight of the *Books*, and made an Appearance of putting it in Execution.

Beſides, the late *Accounts* deliver'd in by the ſeveral *Maſters* before the *Commiſſioners* named for that Purpoſe, ſhew, that ſuch an Attempt was practicable, and might have been compleated in a reaſonable Time.

But the *Earl* of *Macclesfield*, by his own Confeſſion, is guilty of a total Neglect of all Meaſures; and never proſecuted one honeſt and real Step towards the ſuppreſſing this Abuſe.

He might have given Directions, and made *Orders* for the ſecuring the *Suitors Effects*, in the ſame manner before the late *Inquiry*, as he has done ſince.

His *Secretaries* and *Agents* might have ſuperviſed the Obſervation of theſe *Orders*; and have attended to inſpect the compleat *Transfer* of the *Suitors Effects*, as well as to receive his *Lordſhip's* extorted *Præmium*.

And if after the *Earl* had taken theſe, or any other probable Meaſures, and the *Maſters* had broken their *Truſt*, the Fault would have lain upon the Diſhoneſty of the *Maſters*, and not upon the Connivance or Negligence of the *Lord Chancellor*.

But upon this *Article* the *Anſwer* of the *Earl impeach'd* is directly falſified. For he declares upon his *Honour*, upon that *Honour* which is communicated to him from the Privilege of the whole *Order of Peers* (but of which he himſelf has only made a Shew or Appearance) that he was totally ignorant of this *Practice*; although it appears in *Proof* to have been a matter publickly known during his *Adminiſtration*. It was one Inducement to Mr. *Kinaſton*, and the ſingle Temptation to Mr. *Thomas Bennet*.

This *Notoriety* is a reaſonable *Evidence* to charge the *Earl* with the Knowledge of a fraudulent Tranſaction propagated under himſelf; eſpecially when the Pretence of his Ignorance muſt ariſe from the wilful Neglect of his *Duty*.

But expreſs *Notice* is prov'd out of his *own Mouth* by Mr. *Thomas Bennet*; and farther, that the *Earl* had been uſed to proſtitute his *Honour* by a Courſe of Denial of this Fact upon former Occaſions.

For Mr. *Bennet* in his *Account*, which he had deliver'd in to the *Judges*, had inſerted this remarkable *Item*, viz. *Item* 9075 *l. in the Hands of Perſons of Ability*; which included the 7500 *l.* paid to Mr. *Hiccocks*, and the 1575 *l.* paid the *Chancellor* for his *Admiſſion*.

Mr. *Kinaſton* alſo in his *Account* had inſerted an *Item* to the ſame Effect for a *like Sum*.

Mr. *Thomas Bennet* went ſoon afterwards to the *Chancellor*, who enter'd into Diſcourſe with him thereupon, and ſaid: *I am ſorry you have given in your Account in this manner; it was the worſt way in the World: For all the World will now judge, that you paid for your Office out of the Suitors Money; and what hath been ſo much ſuſpected will now be diſcover'd, which I have always taken ſo much Pains to deny, whenever I was ask'd the Queſtion.* And wiſh'd *he had been acquainted with Mr.* Bennet's *Neceſſities before Mr.* Bennet *had given in that* Item; or to this very Effect.

The Probability of the Truth of this *Evidence* ſtands confirm'd from the Nature of the Thing, and the State of the *Account* itſelf, which has not been contradicted by the *Earl*; and ſeems farther ſtrengthened by an Opinion which the *Earl* had entertain'd, and which he drop't in his *Defence* on *Wedneſday*, viz. *That the Suitor was not the worſe by this Method; for by this Detention the former Maſter remain'd ſtill reſponſible, and* (as he obſerv'd) *by Mr.* Meller's *retaining ſome Part of the Suitors Effects, the Deficiency in Mr.* Borret's *Office was not ſo large.*

This ſeems a ſtrong Symptom of the *Earl's* Knowledge of the *Practice*, when it had obtained his *Approbation*.

But the *Money* retain'd by Mr. *Meller* was no part of the *Price* of the *Office*, but were other *Sums and Effects* which he retained in his Hands, and never paid over to Mr. *Borret*, upon the repeated Application and Requeſt of the *Suitors*, who doubted Mr. *Borret's* Sufficiency.

But ſuppoſe the former *Maſter* had died, or fail'd with theſe *Effects* in his Hands; how ſhould the *Suitor* have come to a full and legal *Proof* of this Tranſaction? and how many Perſons was he to proſecute, to diſcover and receive his own *Money?*

The Importance of this Part of Mr. *Thomas Bennet's* Teſtimony has given Occaſion to the *Earl* and his Council to object to his *Credit*; and an Endeavour has been uſed to make out, that Mr. *Bennet* has contradicted himſelf, and has deny'd here at *your Lordſhips Bar* upon his *Oath*, what he had formerly declared to other Perſons.

For that Mr. *Bennet* being ask'd (with an Intent to prove his Ability to pay the reſt of his Deficiency) *Whether he had not ſaid, that if Mr.* Hiccocks *would pay him back two thouſand Pounds, he would pay the reſt himſelf, Mr.* Bennet *denied he had ſo declared*; and yet, as they urge, the contrary is ſworn by Mr. *Holford*, Mr. *Thurſton*, and Mr. *Elde*.

In Anſwer to this Mr. *Holford* gave in Evidence, that Mr. *Bennet* ſaid, that *if Mr.* Hiccocks *would pay him back two thouſand Pounds, he would take Care that the reſt of the Money ſhould be raiſed.* But Mr. *Bennet* did not ſay, *he had the Money*, tho' Mr. *Holford* believed he had by his Manner of ſpeaking.

Mr. *Thurſton* depoſed, that Mr. *Bennet* declared *he would make up the reſt himſelf*: but afterwards told him, that *all he had in the World would not pay it.*

And Mr. *Elde* ſwears to the *ſame Effect*.

And

And this Teſtimony does not contradict, but rather confirms Mr. *Bennet*'s *Evidence*. For he made no direct *Declaration* of his *Ability* to pay the reſt, but, being liable to the *Suitors*, he ſeem'd to be willing to get what he could from Mr. *Hiccocks*.

Beſides, his Diſcourſe at theſe times cannot ſtand in Competition with his *Oath*, according to the common Rules of *Evidence*; and a *Witneſs's Credit* is not to be taken away upon an *uncertain Expreſſion*, proved by each of the *Earl*'s own *Witneſſes* in *different Words*, when from the Ambiguity of it there cannot poſſibly be any *voluntary Contradiction*.

But the *Commons* will confirm the Truth and Fairneſs of this Teſtimony of Mr. *Bennet*, by proving that the *Earl* had expreſs'd the ſame Concern and Diſlike of the Manner of theſe *Accounts* in reſpect of theſe *Items* to others, before any *Parliamentary Inquiry*.

There is likewiſe another Matter of Fact, which aſſiſts the Proof of this Article, which is, That the *Price* of the *Office*, and of the *Admiſſion*, are comprehended in the *Accounts* of the *Maſters Deficiencies*, and make the greateſt Part of Mr. *Bennet*'s *Deficiency*, and near a *Moiety* of Mr. *Kinaſton*'s.

Which manifeſts the Danger and Injury of this unjuſt Practice to the *Suitor*, whoſe Eſtate is thereby put upon the Hazard of the *Maſter*'s good or bad Succeſs, and his Property loſt with a *deficient Maſter*.

And here the *Corruption* and *Misbehaviour* of the *Earl* appear with the higheſt Aggravations.

The extorted Profit made by the *Earl* is raiſed out of thoſe *Effects*, which are depoſited in the *Court* upon the *Faith* and *Honour* of the *King's Adminiſtration* under the Care of the *Chancellor*, as *chief Truſtee*, by whoſe Connivance (if not Conſent) they are thus imbezzled; and the miſerable *Suitor* muſt either ſit down with the *Loſs*, or be forced to expend his little remaining Subſtance in a tedious *Proceſs* to recover back his *own Eſtate* thus waſted and converted by the *Maſters*.

Unneceſſary Delays and Protractions of *Cauſes* are the unavoidable Conſequences of this *Practice*; and in this manner the Buſineſs of the *Court*, and the Profits of the *Maſters Offices* have been encreaſed by the Purſuit of the Parties after their own Effects, which in the Concluſion terminates in ſo heavy a *Loſs*.

The late *Orders* made upon the *Petitions* of Mr. *Hiccocks* and Mr. *Rogers* ſince the *Impeachment*, and ſome ſince the *Tryal* commenced, tho' not proved to have been as yet comply'd with, and at beſt are but Depoſits to attend the Event of the Conteſt between the former and the preſent *Maſters*, have been made uſe of by the *Earl* in his *Defence*; which is a new Attempt in him to make a falſe Shew and Appearance of Reſtitution and Satisfaction.

Altho' if it was a real and a compleat Return of the *Principal Money*, it would be a very ſmall Excuſe and Extenuation for the vaſt Prejudice done to all the *Suitors* of the *Court*, by the locking up their *Money*, *Effects* and *Securities*, and ſtopping the *Payments* thereon for ſo many Months, beſides the Loſs of *Intereſt* on the *Caſh*, and their being hinder'd from the *Employment* of their *Money*.

The *Earl* has not adventured to enter into a particular Diſcharge of the *total Deficiency* aſſigned by the *Commons*, upon the *Evidence* of Mr. *Thompſon*, and collected from the *Accounts* ſtated upon the late *Inquiry*, amounting to more than *one hundred thouſand Pounds*. Nor has he given any *Anſwer* to the great *Loſs* which the innocent *Suitors* ſuſtain by the Inſolvency of the two deceaſed Maſters, *Dormer* and *Borret*.

This *great Confuſion* and *Damage* brought upon a *Court*, where the Eſtates of the moſt wealthy Subjects, as well as of leſſer People, do ſooner or later come, became a *National Concern*, not merely from the Extenſiveneſs of the *Loſs* to the particular *Suitors*, but likewiſe from the apparent *Danger* thereby ariſing to the *Publick*.

This *general Ruin* awaken'd the Care and Zeal of the *Commons in Parliament* for *Juſtice* to their *Fellow-Subjects*.

This introduced the *Charge* againſt the *Earl* in the *Twelfth Article*, which has been proved as it is alledged, *viz.* That *by this unjuſt and fraudulent Practice, the corrupt Profit made by the Earl upon the Sale of the Offices of Maſters in Chancery, has in Conſequence been raiſed and received by him out of the Effects of the Suitors of the Court, for whom he was intruſted; in Breach of the Truſt repoſed in him for the Preſervation of the Eſtates and Effects of the Suitors, to the Diſhonour and Diſcredit of the Court, and to the great Injury and Defrauding of the Suitors, in a Court of Equity eſtabliſh'd for their Relief and Protection.*

My LORDS,

If the *Miſdemeanours* of which the *Earl impeach'd* ſtands *accuſed* were not *Crimes* by the *ordinary Rules* of *Law* in *Inferior Courts*, as they have been made out to be; yet they would be *Offences* of a *publick Nature*, againſt the *Welfare* of the *Subject*, and the *Common Good* of the *Kingdom*, committed by the *Higheſt Officer* of *Juſtice*, and attended with ſo *great* and immediate *Loſs* to a Multitude of *Sufferers*; and as ſuch, they would demand the Exerciſe of the *Extraordinary Juriſdiction* veſted in *your Judicature* for the *Publick Safety*, by virtue whereof *your Lordſhips* can inflict that *Degree and Kind of Puniſhment* which no other *Court* can *impoſe*.

When theſe *Offences* have been proved upon the *Earl impeach'd*, of what Conſideration in Judgment can the *Earl*'s miſtaken and miſplaced *Charities* be? Can they alter the *Facts* charged upon him? or turn *Extortion* and *Fraud* into Liberality and Piety? Can the Merit of a few private Good Works attone for the Plunder of the *whole Body of the Suitors of the Court of Chancery*, upon whom this *Earl*, by his *Miſbehaviour*, has brought a *Deficiency* of *one hundred and eight thouſand Pounds*?

He depends upon the Prayers and Wiſhes of thoſe few, who have been the Partakers of his *Bounty*, without being Sufferers by his *Crimes*. But the *Voice* of the *Commons* for *Juſtice* againſt this *Great Offender*, not only includes the Complaints of the *particular Sufferers*, but the *Accuſation* of an *injured Nation*, whom the *Earl* had endeavour'd to cut off from the *Protection*, which ought to be deriv'd to them from the *Father of his People*.

The *Commons* having now maintain'd the *Truth* and *Juſtice* of their *Charge* againſt the *Earl impeach'd* upon theſe *Articles*, leave him to *your Lordſhips* juſt Determination.

Mr. Lutwyche.

My LORDS,

I am commanded to aſſiſt in the Reply; and ſince I was obliged to bear my Share in this Proſecution, I was willing it ſhould be ſuch as would give me an Opportunity of hearing what would be ſaid and proved in the *impeach'd Lord*'s *Defence*, before I ſpoke freely upon the Matters in Judgment before your Lordſhips.

And

And I may now venture to ſay, as he was unfortunate to bring ſo heavy a Charge upon himſelf, he has ſtill been more unfortunate in his Defence; I ſubmit it to Your Lordſhips Obſervation, whether any Part of the Evidence offered by the Managers has not been confirmed, nay enforced upon him, by his own Evidence; and ſome of the Charges upon him he has endeavoured to evade by ſuch Excuſes and Arguments, as have made even his Defence criminal.

My Lords, Upon the Examination of the firſt Witneſs produced on the Part of the Commons, his Lordſhip was pleaſed to make it a Queſtion whether he took the Oath directed by the Statute of 12 *Richard* II. The Objection ſeemed to be, that tho' the Statute was read, and his Lordſhip kiſſed the Bible, yet he was ſworn to nothing. This was ſo ſurprizing to all that heard it, and the Report of it raiſed ſuch Indignation, that it might have been expected his Lordſhip would have drawn a Veil over this Part of the Caſe, and have taken Care that it ſhould not be mentioned again; but inſtead of that, his Counſel, nay he himſelf, have thought fit to bring this Point into Diſpute in his Defence, and his Lordſhip does not even yet fully own that he took the Oath.

The Statute has been repreſented as obſolete, read in Old *French*, and not regarded, and the Oath not duly adminiſtred; that the Officer ſaid nothing to his Lordſhip, nor he to the Officer.

The Witneſs told Your Lordſhips, that at a Meeting of the Great Officers every Year in the Exchequer, this Statute was read, and they immediately kiſſed the Book; and that this was the uſual Method of taking the Oath preſcribed by that Statute.

My Lords, I would obſerve, that if there had been any thing in the taking of the Oath that his Lordſhip thought not regular, it was his Duty, who was the Chief of that Aſſembly, to put them in a right Method agreeable to the Statute: And therefore this Objection is very extraordinary to come from him.

It is a dangerous Practice for any one to make a Shew of taking an Oath, and yet by ſome nice Diſtinctions endeavour to perſuade himſelf or others that he is not ſworn.

I do not know but moſt of the Old Oaths that are taken, may by the like Arguments be evaded, as well as this; the very Oath of Office ſet forth in this Lord's Anſwer is, *You ſhall ſwear*, &c. and in that Caſe a nice Diſtinguiſher may as well ſay, that he repeated nothing, and that there are not Words *de præſenti*, whereby he is ſworn. But where is the Defect in adminiſtring this Oath? The Officer reads out of the Statute, That the Chancellor, Treaſurer, *&c.* ſhall be ſworn, and then they kiſs the Book.

I do not ſee there is much Difference between ſaying, The Chancellor, Treaſurer, *&c.* ſhall be ſworn (they being at the ſame Time preſent) and ſaying, *You* the Chancellor, Treaſurer, *&c. ſhall ſwear*.

I ſhall therefore have the Charity for the Noble Lord to think and take it for granted, that he was ſworn as the Statute required, and that he underſtood the Statute, tho' it was read in Old *French*, and that he did not prevaricate, when he did this ſolemn Act.

Suppoſing therefore that the Statute 12 *R.* II. is in Force, and that the Oath was really taken; the next Conſideration is, what the Law is upon the ſeveral Facts and Circumſtances proved againſt the impeached Lord in Relation to his ſelling the Offices of Maſters in Chancery.

The Anſwer put in to the Charge of the Commons ſays, The Maſters freely and voluntarily ſent a Preſent without admitting any particular Sum; we ſay that particular Sums (and thoſe very exorbitant) were inſiſted on, and a Bargain driven for the Offices, as much as could be in any Caſe by way of Brokage; nay the very Benefit of having the Suitors Money comes into the Conſideration of the Price.

The Words of the Statute of *R.* II. are general, and in Point of Reaſon it ſhould extend to this Caſe above others; becauſe the Offices of Maſters in Chancery do not only concern the Adminiſtration of Juſtice, but are in ſome Meaſure judicial; they tranſact a great Part of the Buſineſs of the Court, and have uſually been in Commiſſion together with the Maſter of the Rolls, and the Judges, for hearing of Cauſes.

Lord Chief Juſtice *Coke* in his *Third Inſtitutes*, p. 145. places this Offence of ſelling Offices under his Chapter of Bribery, where he ſtates the Definition of Bribery to be, *When any Man in a judicial Place takes any Fee or Penſion, Robe or Livery, Gift, Reward, or Brokage of any Perſon that hath to do before him any way, for doing his Office*, &c. He comments upon the Words of this Definition and more particularly upon thoſe Words, *of any Perſon that hath to do before him any way*, and he takes Notice that it is not confined to taking Money, where a Suit is depending; but alſo where any in a judicial Place doth any thing for Gift or Reward by Virtue or Colour of his Office, tho' there be no Suit at all depending.

For Example, (ſays he) *If the Lord Treaſurer for any Gift or Brokage ſhall make any Cuſtomer, Controller, or any Officer or Miniſter of the King; this is Bribery: For he ought to take nothing in that Caſe by the Statute of* 12 R. II. This Example alſo proves, that the Statute is not confined to the Conſtruction that has been endeavoured to be put upon it, that it relates only to Caſes, where the Chancellor, Treaſurer, *&c.* meet together, as they do, when they nominate Perſons for Sheriffs; for the Example is of the Lord Treaſurer alone.

But, My Lords, we inſiſt upon it that this as well as other Statutes (that have been mentioned) are but Declarations, and further Remedies for what was the Common Law. The Caſe that was cited out of *Moor*'s Reports, 781. takes it to be ſo, of a Sheriff ſelling the Office of Gaoler, and his Bailiwick; but there was an Objection made to the Report of that Caſe, that it ſays the Statute, 4 *H.* IV. *c.* 5. gives a Penalty certain and pecuniary; whereas that Statute gives no certain Penalty, and therefore it might be a right Reſolution upon that Statute. But the Declaration of the Court, upon which the Party was fined, was becauſe the Offence was *malum in ſe*; and tho' that Statute of 4 *H.* IV. gives no Penalty, yet I think the Statute 23 *H.* VI. *c.* 10. does give a Penalty of 40 *l.* in the ſame Caſe of a Sheriff, and yet the Party was fined at the Diſcretion of the Court. That ſame Caſe is alſo reported in *Noy*, 102. where he takes no Notice of any Penalty, and the Report is in theſe Words: "*N.* was Sheriff of *Nottingham*,

" 43 *Eliz.* and took Money for the Offices of " Gaoler and Bailiwick, and he first gave them " to his Servants, who sold them, but he himself " had the Money." And he was fined for that, for it is contrary to 4 *H.* IV. *cap.* 5. And also by the Court, That that is a Corruption, and a great Cause of Oppression in the Officers, and such Sale of Offices is *malum in se*, and fineable.

My Lords, I think the impeached Lord has advanced a very dangerous Position upon this Point. He is pleased to say, The Publick has nothing to do to enquire about any thing, but whether the Officer be a good Officer; that if he be so, the Publick is not hurt, though he gives the Chancellor Money for his Place. Here I presume he was sensible that it might be objected, that the same Argument would hold for taking Money in a Cause before him, provided it was a good Judgment: And therefore was pleased to say, that the Difference between this Case and taking a Bribe for Judgment in a Cause is, That in the one Case the Party has a Right to have Judgment, but in the other Case no Man has a Right to his Favour or Recommendation, unless upon Terms. This is very extraordinary, and the same Argument would prove, that it is lawful for him to take Money from every Judge that comes into *Westminster-Hall*. It is well known, that the Chancellor generally recommends in that Case, and yet it might there be said, What is the Publick the worse, provided he is a good Judge? Surely this is such a Doctrine, as is not fit to be proclaimed to the World, and would tend to Universal Corruption.

My Lords, There was a very extraordinary Precedent cited out of *Madox*'s History of the *Exchequer*, p. 43. where he says, in the Reign of King *Stephen*, *Geoffery* the Chancellor fined in 3006 *l.* 13 *s.* 4 *d.* for the King's Seal. This the Author understands to be a Fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal. The Author himself observes, that this Precedent may justly seem strange to us at this Day. And truly so it may, for in the Instance before Your Lordships, instead of paying Money to the Crown for the Office, here are very great Sums of Money paid by the Crown for an Acceptance of it.

But what does this Precedent tend to? Is it to prove the Office of Chancellor likewise saleable? This is so entirely new, that it wants a better Authority than this Precedent. It is a great while ago, if it were as the Author takes it to be. But the same Author, *p.* 42. says, That the Ancient Historians say little concerning the Duty of Chancellor, or the Nature of his Office; and it does not appear what the Business of his Office was at that Time, and nothing pertinent to the Matter before Your Lordships is to be collected from it. It is very strange to suppose the Common Law, that is founded upon Reason, should admit the highest Place of Judicature to be filled by those that come in by such corrupt Methods. And therefore we must beg leave to insist, that it was an Offence at Common Law, as well as by the Statutes.

But suppose this Matter rested only upon the Statute of *Edward* VI. I do not see but it is an Offence and Misdemeanour in his Office of Chancellor to sell these Places of Masters in Chancery, and that he is answerable for it before Your Lordships as a Crime.

This Statute is made against buying and selling of Offices (for that is the Title of the Statute) And shall it not be an Offence cognizable before Your Lordships, for a Chancellor to put in Officers in a Manner that is condemned by Act of Parliament? When he by Virtue of the Office is to appoint, it is a Breach of his Oath of Office to appoint contrary to the Laws and Statutes of the Kingdom; but more especially when he does it for corrupt Gain.

As to this Point, there is a great deal of Difference between one Officer selling to another, and a Judge that presides in the Court, whose Duty it is to see that proper Persons be appointed according to Law; instead of that, by this Method he shews them a bad Example on their very Admission into the Office, and introduces them by Corruption in the first Instance, even by the very Act of Administring the Oath to them.

If this Great Officer should be liable to no other Punishment, than an Incapacity of Nominating again to the same Office, the Act would have little Effect, and that Penalty would signify very little; since his own Office is during Pleasure.

My Lords, I shall now proceed to reply to the Defence that has been made on the Thirteenth and all the subsequent Articles, which is the Province more particularly assigned to me.

The Charge in the Thirteenth Article is, That upon the Failure of *Dormer*, instead of taking proper Steps for obtaining a Satisfaction by regular and justifiable Methods, the Earl of *Macclesfield* neglected and declined those Methods, and by many indirect Practices endeavoured to conceal the true State and Condition of the Office; lest a publick Discovery of the Deficiency should lessen the unjust Gains he proposed to make by the Sale of the Offices of Masters in Chancery.

Upon this Article the impeached Lord has said, he thinks it hard that these Miscarriages should be charged upon him, that this Affair about *Dormer* was a Misfortune that might have happened in any other Chancellor's Time, and not his Fault.

My Lords, If this Unfortunate Lord had done what became him in his high Station upon the Failure of this Master, God forbid that the Misfortune upon the Office should any ways have been laid to his Charge; if he had been desirous to have proceeded in a regular Method, he might very easily have done it; the Paths of Virtue and Justice would have been easy, he need not have found himself at the End of Four Years surrounded with such insuperable Difficulties.

If a fair, plain, and open Method had been taken for enquiring into and stating the Debt due to the Suitors, and the Account of *Dormer*'s Effects to satisfy it, there could have been no Danger to the Chancellor, whatever the Deficiency had been; but the Truth was, he could not part with those vast and exorbitant Prices, to which he had at that Time raised the Places of Masters; he found the sweet of that Gain, and was willing to run some Hazard for it.

Tho' it was known that *Dormer* was gone, yet the *quantum* of the Deficiency was not known; and if it had been publick, the Money might

might probably have been taken out of the Master's Hands; a Parliamentary Enquiry might have ensued, and he might have lost those exorbitant Profits, which he afterwards actually made of those Places; and these were the true Reasons of the Concealment, and of the clandestine Proceedings that followed; nothing else hindered him from proceeding with Safety to himself by regular Orders of the Court. When Orders of Court are regularly made, there is a quick Way of putting them in Execution: It has been observed by the Councel in this Case, that it is more expeditious against an Officer of the Court, than another; and it is certainly so. There might have been a Sequestration against *Dormer* in a very little Time, and that would have intituled the Court to the Possession of his Effects for the Benefit of the Suitors; which in a great Measure answers what was objected of the Necessity of *Dormer*'s coming over, and having his Liberty in Order to transfer his Stock. It was likewise said, that it was necessary for the Discovery of his Effects; and yet when he did come over, he was never examined on Interrogatories. Surely if a Chancellor will take upon him to grant a Man his Liberty, when he is to make Satisfaction to the Suitors, he ought to take care that the Consideration for the granting him his Liberty should be performed.

But it is said, What Harm has happened by not taking those Methods?

My Lords, Here are two remarkable Instances of the Consequences of this Neglect, by which it appears neither the Debt to the Suitors was known, nor the *quantum* of the Effects that there were to pay it.

Mr. *Edwards* told your Lordships, That the Deficiency of *Dormer* was at first about 25000 *l.* but that about a Month ago he discovered a farther Debt of about 1500 *l.* here there is a very great Deficiency concealed: On the other side the Effects of Mr. *Dormer*, that should have gone towards paying this Debt, have been concealed and lessened by the want of such an Examination. Your Lordships heard the Evidence about the Parcels of Hops belonging to *Dormer*, that were worth Seven or Eight Hundred Pounds, that lay concealed Four Years, and were not discovered till lately. The Councel, indeed, said, They were only a Parcel of musty Hops that have been found. But if he had been examined on Interrogatories, in all Probability, he would have discovered them at first, and they had been worth 5 or 600 *l.* more than now, and the Suitors would have had the Benefit of them; 5, or 600 *l.* is a considerable Sum in Mr. *Dormer*'s Effects; and no one can tell but there might be other Instances of the like Kind.

What is the Answer his Lordship gives to this gross and wilful Neglect? He tells Your Lordships, That he gave Directions to the two Senior Masters to make Enquiry into *Dormer*'s Affairs and Accounts; *He left it to them*, and that they did not think it requisite to examine him upon Interrogatories, or to use him with Hardship.

It is very extraordinary, that in a Matter of that great Concern, he should content himself with a parol Direction; Orders from a Lord Chancellor, that are in Earnest, are always in Writing; nor can they be enforced unless they are so; and therefore there must be some private Reasons for these extraordinary Proceedings.

Another Thing that was insisted on, was, That the Earl (as he expresses it in his Answer) was made to believe that the Masters would make good the Deficiency. What Reason had he to believe it? They never told him so; in a Matter of that Moment he had no reason to depend on an hear-say Evidence. He knew this was to be an Undertaking for the Debt of another; which could not by Law be Obligatory, unless reduced into Writing.

My Lords, I cannot account for these Things either in the Chancellor, or those Masters that had the Management of this Affair, unless it be (as the Article charges) to conceal the Deficiency of the Office, I mean, the *quantum* of that Deficiency; and that both the Chancellor and the two Senior Masters thought it their Interest to do so, that all of them might share in the Sale of the Places; the Two Senior Masters were desirous (as was mentioned by the Evidence) to sell out, and the Chancellor was ready to receive his Share of the Money.

The Fourteenth Article is the Article about the Composition with *Wilson*; and I must beg Leave to say, notwithstanding what has been insisted upon, That it is a clandestine, unusual, and unwarrantable Proceeding. We did take the Liberty on our Evidence to this Article to observe to Your Lordships, That the Petition of Mr. *Edwards* (on which this Composition is founded) takes notice that *Dormer* was indebted to the Suitors of the Court in several considerable Sums of Money; which should have been a Caution to the Chancellor to have taken a more than ordinary Care in this Matter; but instead of that, there is not any one Order, Affidavit, Report, or any one Proceeding, that appears upon Record throughout this whole Affair.

The Report produced appeared to be the Original under Mr. *Hiccocks*'s Hand, which was a Demonstration that it was not filed at the Time when the Order was made for establishing this Composition, nor has been since.

My Lords, If there be but an Affidavit annexed to a Petition, care is usually taken to order that it shall be filed; but it was not thought convenient in this Case to have any thing publick.

My Lords, The Earl of *Macclesfield* in his Defence to this Article begun with a Copy of a Judgment obtained by *Wilson* against *Poulter*, that was signed 22 *December* 1721, and is for 18,774 *l.* whereas the Debt pretended to be assigned by *Wilson*, is 22,060 *l.* So that tho' the Judgment was for all that *Wilson* could pretend to (for ought appears) yet the Debt pretended to be assigned, is mentioned to be above 3000 *l.* more than what the Judgment is for; which is a farther Objection to this Composition, that did not appear before.

The next Point the Earl examined to, was the Sufficiency of *Poulter*, in order to prove the Assignment of *Poulter*'s Debt to be valuable; and there were two or three Brokers produced on this Account.

They were very unlucky Witnesses to prove the Man's Ability, for they happened to be the very Persons to whom he had declared his Insolvency; one of them *(Scott)* was employed to go to Mr. *Wilson* to Compound with him.

But then a very notable Distinction was taken by the Earl himself, That tho' *Poulter* discloſed

to

to theſe Witneſſes that he was Inſolvent, and that they were let into the Secret; yet all other People took him to be a good Man. The Evidence produced to prove this, were only thoſe that knew he was Inſolvent, and not One of all thoſe others that it is ſaid took him to be Solvent.

But we hope we have made it plain (and if it were neceſſary, we could make it clear beyond Diſpute) that *Poulter* was a broken Man at that time.

Another Objection was, How does it appear that a better Compoſition could have been made?

My Lords, Thoſe that preſume to take upon them, without a lawful Authority, to make a Compoſition to bind the Parties concerned, ought to make it appear to be a very good one; but on the contrary it appeared in this Caſe on the Examination of Mr. *Edwards*, that *Wilſon* (when he was afterwards charged with it) owned he had paid ſeveral others their full Debts; and 'tis notorious that he kept his Shop open till lately.

My Lords, The Anſwer to our Objection, That no notice was given to the Suitors, of this Reference about the Compoſition, carried in it (I thought) ſomething extraordinary. It was ſaid both by the Earl of *Macclesfield* and his Councel, That whatever the Lord Chancellor did, could not bind the Suitors, they not having notice, and therefore the Suitors might recover the whole from *Wilſon*, and no body was hurt.

My Lords, There is ſomething very ſhocking in this Excuſe, it ſtrikes ſome Horror to think, that this poor ignorant Man (*Wilſon*) ſhould be made to believe upon the Faith of a Court of Juſtice, that his Compoſition was in full Diſcharge of his Debt, if there was at the ſame time a Reſerve, that it might be ſet aſide for want of notice to the Suitors; the Excuſe ſeems to carry in it a greater Guilt than the Crime charged. This unfortunate Man (*Wilſon*) was living at the Beginning of this Tryal, but has ſince laid violent Hands on himſelf, and he is dead: I make no Reflection what might be the Occaſion of it.

My Lords, I did mention that upon the Abſolute Order made for Mr. *Edwards* accepting this Compoſition, it was ordered to be accepted with this Addition to the Order, *viz. Of which give Notice forthwith.* I mentioned it, that the Earl might have explained what he meant by directing Notice after the Compoſition was ordered to be accepted, or to whom Notice was intended to be given; I have heard no Anſwer to that, but what the Earl was pleaſed to ſay about the Articles, that on reading them he thought he had been charged with compelling Mr. *Edwards* to accept of a Compoſition without Notice to him; whereas it was done on the Petition of *Edwards*. My Lords, the Notice ſhould have been given to the Suitors, and that before the Compoſition was ordered to be accepted; that is what the Article charges, and what the Managers inſiſt on, and no Anſwer is given to that Objection.

It was ſaid, That if it had been ſet down to be heard in the ordinary Courſe (it being the Third of *Auguſt*) in Vacation-Time, it could not have come on till the next Term.

I believe that Lord knows it has very often happened, that particular Petitions have been heard in Vacation-Time, if Neceſſity required it; and I don't underſtand why there needed to be ſuch a Fondneſs for having this done ſo much in haſt, unleſs it were for the Purpoſes charged in the Articles. There was likewiſe ſomething ſaid by the Earl of the ſtriking out of the Prayer of Indemnification, that if it were juſtifiable, it needed no Order to indemnify, and if it were not juſtifiable, it ought not to be in; but what we ſay is, that it looks like a Diffidence whether it was juſtifiable or not, and ſince it was put into the Prayer of the Petition that Mr. *Edwards* might be indemnified, if the Chancellor thought it not juſtifiable, he ought to have let Mr. *Edwards* know it, as much as he ought to have let Mr. *Wilſon* have known that the Compoſition would not be good without the Suitors being Parties. As there is no tolerable Account given for ſuch an extraordinary Proceeding, we ſubmit to Your Lordſhips, whether it is not rightly charged to be for the unlawful Purpoſes mentioned in the Articles. If a Commiſſion of Bankrupcy had been taken out againſt *Wilſon*, the *quantum* of the Debt to *Dormer*, and conſequently of the Loſs of the Suitors muſt have been known, and other Suitors might have been alarmed, and a thorough Reformation might have happened; which might have ended in the taking away the Money from the Maſters, and the Price of the Places would have been lowered, which was always moſt carefully avoided.

My Lords, I now proceed to reply to the Defence made on the Fifteenth, Sixteenth, and Seventeenth Articles.

The Fifteenth Article is, That after the Failure of *Dormer*, the Earl of *Macclesfield*, in order to carry on his corrupt and unjuſt Purpoſes, and to conceal the Deficiency, did call for the Accounts of the Maſters, not with any Intent of Examining them, or to ſecure their Effects, but to terrify the Maſters and oblige them to contribute 500 *l.* apiece; and after that Purpoſe was ſerved, did not oblige them to bring in their Accounts.

The Sixteenth is, That he perſuaded the Maſters to pay the 1000 *l.* ordered to Mrs. *Chitty* for the like Purpoſes.

And the Sevententh is, For letting all the Money belonging to *Dormer* be paid away to ſome of the Suitors, without obſerving a Proportion, to which all were equally intitled.

To the Fifteenth the Earl of *Macclesfield* ſays in his Anſwer, That he did really call for the Accompts with an Intent to examine them, and that he might regulate Matters, and that after the 500 *l.* was paid, ſtill he called for the Accompts; for that there was a Letter ſent in *November* 1721, to the Maſters inſiſting upon having them; but as to this ſecond Letter, as Mr. *Cottingham* did not ſpeak at all poſitively to it, but that *he believed, but could not be poſitive, that it was ſent, and that he had taken no Memorandum of it*, &c. we muſt beg leave to acquaint Your Lordſhips, that this ſecond Letter was never ſent; and every One of the Maſters will give Your Lordſhips that Account: But ſuppoſing it had been ſent, can any one imagine that the Chancellor would not have purſued that Direction, and have had thoſe Accompts, if he had really intended it? What is the Excuſe at laſt? He had required ſo many Particulars in the Accompts, that it was almoſt impracticable to do it. My Lords, if the Charge in the Articles be true, it anſwered the Deſign the better, that it ſhould be difficult; we ſay it was done to get from the Maſters 500 *l.* apiece to quiet Matters for the preſent,

ſent, and when that was done, there was no more Uſe made of that Order. But what is moſt wonderful of all is, that tho' in Four Years Time it was ſo difficult a Work that it could not be done; yet when the Committee of Council had called for the Accompts, the Earl of *Macclesfield* uſed ſuch Diligence, that he procured them to be ready in a Week's Time; and tho' all the Directions and Particulars which he had required, were not obſerved, yet it ſeems they were all that were neceſſary and ſufficient, and it was hoped ſuch as would prevent a Parliamentary Enquiry.

The Earl in his Anſwer values himſelf much upon this Expedition, not conſidering how inconſiſtent it was with the Difficulties which were made an Excuſe for not having it done Four Years before.

It was inſiſted on upon this Head, that Mr. *Lightboun* did not pay, and yet he brought in no Account; but however Nine of the Maſters did pay, and the Chancellor well knew it would have looked very partial to have proceeded againſt one ſingle Maſter, and not the reſt; that would have been too barefaced, and ſo Mr. *Lightboun* eſcaped too; beſides there was not a Total Deſpair even of him, for he was ſeveral Times afterwards ſpoke to about making good his 500 *l.*

It was ſaid likewiſe, the Buſineſs of the Court muſt have been at a Stand, if theſe Accompts had been purſued.

My Lords, If it had been ſo, it had been more for the Reputation of the Court, and for the Benefit of the Suitors in general, to have had ſome Time employed about this neceſſary Work; and if there had been a willing Mind, one long Vacation would have been ſufficient without any Interruption to the Buſineſs of the Court.

After all theſe Excuſes the Earl is pleaſed to ſay, if he had taken the Accompts, it would have ſignified nothing unleſs he went farther.

My Lords, If he never begun, he could never bring any Thing to Perfection; and in his Anſwer he confeſſes, it was neceſſary to have the Accompts in Order to make Regulations. But after all he is forced to come to this Concluſion (as he ſays in his Anſwer) *to go on in the ſame Road his Predeceſſors had done*; tho', by the way, it has appeared to Your Lordſhips that it is not the ſame Road; for his two immediate Predeceſſors did call for the Accompts, and had them.

The Sixteenth Article is grounded on the Perſuaſions to pay 1000 *l.* (ordered to Mrs. *Chitty*) to prevent a Parliamentary or publick Enquiry, and that the Earl afterwards paid the ſame himſelf to Mr. *Lockman*, &c.

My Lords, We called Six or Seven Witneſſes to this Article, and did obſerve at that Time the Earl in his Anſwer ſaid, He believed he did not perſuade the Maſters to pay this 1000 *l.* And his Lordſhip was pleaſed to ſay, when he ſpoke in his Defence, That he ſtill believed, that he did not perſuade them to pay it.

My Lords, It is very ſtrange that there ſhould be any Doubt made of it; the Occaſion of the Meeting, and the Nature of the Thing plainly ſhews it. Firſt Mr. *Cottingham* went to Mr. *Lightboun*, and told him, that there was a preſent Occaſion for this 1000 *l.* that it was propoſed he ſhould pay the 500 *l.* (which he ſhould have paid before) and the other Maſters 50 *l.* apiece, which would make up the 1000 *l.* When the Maſters were going to the Lord Chancellor's, they diſcourſed among themſelves, that their going was upon Occaſion of another Call for Money.

When the Chancellor came to them, he mentioned the preſſing Neceſſity there was for paying this 1000 *l.*

Mr. *Edwards* particularly ſays, that he repreſented to them this Matter of 1000 *l.* as *a Thing of Conſequence, a very preſſing Occaſion of a Sum of Money immediately to be paid; he ſaid, I do not know what the Conſequence may be; Clamours begin to grow ſtrong. I do not know but it may come to a Parliamentary Enquiry.* Mr. *Lovibond* ſays, that my Lord told them, *This was a Matter that required great Expedition, for one that belonged to the Prince's Court*, and all of them underſtood there was a Propoſal to pay the 1000 *l.* and that was the Occaſion of the Meeting. All the Maſters that have been examined on this Head confirm it.

What is it that is to evade all this Evidence? It is only this poor Shift, I did not (ſays the Noble Lord) perſuade them to pay the 1000 *l.* but I perſuaded them to pay all *Dormer*'s Deficiency.

My Lords, There is no Evidence to ſupport this Diſtinction, but on the contrary, there were Arguments uſed for the advancing of this Money. And if he was not able to perſuade them to pay this 1000 *l.* there was no Likelyhood of prevailing on them to pay the whole.

My Lords, Another Matter inſiſted on in Relation to this Article was, that the Money, which was paid to *Lockman*, was paid out of Compaſſion; *Lockman* ſays he took it as his Due, and I think he was in the right; he gave an Aſſignment of the Order, when it was paid; and certainly this can in no Sort be added to the Liſt of this Noble Lord's Charities that he has been pleaſed to publiſh; but the Diſcourſe with the Maſters before ſhews plainly what were his Inducements for paying it; he feared the Conſequence if it were not paid, and choſe rather to do it, than venture thoſe Enquiries that the not paying it might occaſion.

I think the Earl ſeems to agree in Subſtance to the Declaration at the End of the Articles, That was made the Fifth of *December* laſt, *viz.* that he *had heard of* Dormer's *Deficiency, but knew nothing of it but as Publick News*, &c. A ſtrange Declaration to come from the Bench at the End of Four Years, during which Time were all theſe Tranſactions about *Dormer*'s Deficiency! Then it was that he was pleaſed to refer it to Mr. *Edwards*, to enquire whether there was likely to be a Loſs of any Money, when at that Time he knew very well that all *Dormer*'s Money was gone, and Mr. *Edwards* had none in his Hands.

The Seventeenth Article is for ordering and permitting *Dormer*'s Money to be paid out without Regard to Proportion; this was a manifeſt Injuſtice, and ſo diſcourſed of between this Lord himſelf and Mr. *Edwards*; and the Anſwer that is given to it is, That we have produced but Four Orders made by the impeached Lord for ſuch Payments.

My Lords, I think it not material whether the Orders were made by himſelf, or the Court; he was warned ſeveral Times of the Conſequence; he took the Management of theſe Matters to himſelf, and let Things run on, hoping the Money would laſt his Time; and now all

is gone, and paid away, and many diſtreſſed People are left without any thing. In the Cauſe of *Jett* and *Jones*, the Orders that were read, appeared to be made by this Lord himſelf; and the Parties have been ſo lucky as to have got their whole Money, whilſt others are in the utmoſt Neceſſity without any Subſiſtance.

The Conſequence is, that the reſt of the Suitors, who were intitled to an equal Proportion, have no Remedy for it. What may be done for them in Charity and Compaſſion is of another Conſideration; but their legal Right is taken away by him that ſhould have protected them.

An Objection was made by the Councel, That there was no fixed Fund of *Dormer*'s Effects, from which to have ſettled a Rule of Proportion. This is excuſing one Fault by another: Firſt, Care is taken not to have an Accompt ſettled; and then that is made an Excuſe for not ſettling a Proportion.

The Eighteenth Article relates to the Maſters trafficking with the Money; which was as notorious, as that there was ſuch a Place as *Exchange-alley*.

The Year 1720 has been mentioned both by the Earl and his Councel, and it was ſo fatal a Year, that ſurely, if a Reformation were ever to be made, it ſhould have been upon that Occaſion. I think there is but little Difference, whether they traded with the Money themſelves, or put it into another's Hands at high Intereſt, and permitted them to trade with it. Could any one imagine that *Dormer* let 24,000 *l.* lie in *Wilſon*'s Hands for nothing? Mr. *Cottingham* upon the Examination of my Lord's own Councel gave Evidence, that *Wilſon* inſiſted he allowed high Intereſt for it. And it was well known it was in the Power of all the Maſters to traffick with the Money, and this after expreſs Warning by one of the Maſters to the Chancellor not only by Word of Mouth, but by Letter written (as I take it) in 1722. But every Thing of a Regulation of that Kind was liable to Objection; one Thing that was propoſed was ſo eaſy to be done, that there is no Excuſe it was not complied with, which is in Relation to the Securities, by placing them in two or three Names, which would have prevented the Maſters from diſpoſing of the Securities.

This might very eaſily have been done. The only Anſwer that was given, was, that it would not anſwer all the Securities.

This was made a Reaſon for doing of nothing, and there was ſuch a Backwardneſs to do any Thing of this Kind, that the meaneſt and moſt trifling Excuſe was ſufficient to ſatisfy his Lordſhip, not to take any Step towards it.

My Lords, Upon this Article the impeached Lord was pleaſed to mention ſome of his Predeceſſors, and alſo his Succeſſors; as to his two immediate Predeceſſors, he doubts the taking the Accompts by him in the manner they did, would have been thought of no Uſe.

My Lords, I am apt to believe a good Uſe might have been made of it; it would have put a Check and Reſtraint upon the Maſters, they would have acted with more Caution, when they knew the Ballance was a Charge upon them, and that it might be called for at any Time; and if his Lordſhip had thoſe Accompts, I dare ſay he would have ſeen that there was ten Times as much Caſh in the Maſters Diſpoſal, as there was in one of thoſe Predeceſſor's Time. And it might have been of Uſe to him to have ſeen what prodigious Sums of Money were in their Hands, and how great the Danger was.

As to the preſent Commiſſioners, the Noble Lord was pleaſed to ſay, the Difficulties of making the Maſters Accompt have appeared by their Proceedings.

My Lords, They have been ſufficiently taken up with endeavouring to compel the Maſters to give Security for the Deficiencies incurred in this Lord's Time. The Difficulty was not ſo much in taking an Accompt, as in making good the Deficiency.

They have been forced to take what Security they could get from the Maſters from Time to Time, and I wiſh the Deficiency do not ſtill come out worſe than is expected; no one can yet ſay what it will be.

My Lords, The Nineteenth Article was founded on the Endeavours of the Lord impeached, to deceive His Majeſty in Council, by perſuading the Maſters to make falſe Repreſentations of their Circumſtances to His Majeſty, by a Subſcription to their Accompts, and by aſſiſting one another to make an Appearance of Ability.

This, My Lords, was the ſad Concluſion of this long Scene of Iniquity; when it was become neceſſary, and it was no longer to be avoided; that there ſhould be Accompts delivered in. There is an Attendance on the Chancellor; and one of the Maſters having concluded his Accompt with a Repreſentation of his Ability and Readineſs to pay the Money, the reſt are perſuaded to do it in the like manner, without ſo much as asking them concerning the Truth of it; and there is one Inſtance that was very remarkable, which was in the Caſe of Mr. *Lovibond*, that where he of his own Accord could go no farther, than to ſay he was able to pay or give Security to pay; that was not thought ſufficient by this Lord, becauſe it would imply a Diffidence that the Money was not then forth coming; and therefore thoſe Words about Security were not to be mentioned. Others of them that were no ways capable of producing the Money, were induced to make the like Subſcription.

When it was expected the Money ſhould be produced, then Mr. *Dixon* and Mr. *Cottingham* have a Meeting with the Maſters to conſult what was to be done; then it was that Propoſals were made for the Maſters to aſſiſt each other, and to get Goldſmiths Notes and other Effects to ſhew to the Judges.

It has been objected, that the Managers did not think fit to call Mr. *Cottingham* and Mr. *Dixon*.

My Lords, We called the Maſters that were preſent at that Meeting, who gave Your Lordſhips an Account of that Tranſaction, and it turns the Objection upon the impeached Lord, that he did not think fit to call Mr. *Cottingham* and Mr. *Dixon* (that were his Servants and Agents) to contradict that Evidence; if this Lord had no Concern in that Matter, he would certainly have called them to that Purpoſe, and his

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not examining them to it greatly confirms our Evidence.

Your Lordships may remember the many Inconsistencies, Evasions, Equivocations, and Insufficiencies in his Lordship's Answer to the Articles of Impeachment, which have been observed and plainly made out by the Managers for the Commons.

My Lords, He was pleased to make a Distinction between an Answer to Articles of Impeachment, and an Answer to a Bill in Chancery; that the Plaintiff in a Cause had a Right to a full and plain Discovery, but that the Case before Your Lordships differs. My Lords, I would beg leave to mention, that there was an Instance of an Impeachment before Your Lordships, in which the Lord now impeached had a great Share in the Reply, wherein he laid very great Stress upon the Insufficiency and Evasions in the Answer. The Person then impeached had very hard Names given to him on that Account, and *even his Silence was* insisted on as *a Confession of his Crimes.*

As to the Noble Lord's Charities I beg leave to say, that as it is a great Addition to the Merit of Charity, to have it kept private, it was the more extraordinary these Charities should be now published; because I do not see they are any ways material to the Matters before Your Lordships. Here are plain Facts charged and proved, and if in a Case of this Kind these Charities are to wipe off the Charge, it is a Kind of Commutation that has not been before heard of. My Lords, he that would be the most meritoriously charitable, should first be just. The Lord should have first considered those Suitors that he had injured, he should first have made Satisfaction to them, and then have offered his Gifts.

Thus we have endeavoured to lay before Your Lordships the whole Circumstances of this Case; there needs no Eloquence to aggravate the Crimes; I pretend to none; but the Cries of Widows and Orphans will have the most persuasive Eloquence, and when they have Justice on their Side, they will have Weight with Your Lordships.

My Lords, The Case before Your Lordships is founded on Corruption, and a Series of Fraud to support that Corruption. The People had long murmured at it, but the Grievance increased at last to such an intolerable Degree, that it became a National Concern, and there was an unavoidable Necessity of a Parliamentary Prosecution.

My Lords, The Commons hope they have done their Duty in bringing it here, and we hope Your Lordships will give such Judgment, as will be consistent with Your Lordships Honour and Justice.

Mr. *Serj. Pengelly.* My Lords, We shall beg Leave to call a Witness or two, the first to the Imputation endeavoured to be thrown upon Mr. *Thomas Bennet's* Character, in Relation to the Discourse that passed between him and the Earl. We shall shew that he declared it at that very Time, or soon after, the Lord had spoke it to him. We desire also to examine Mr. *Lucas*, who applied for the Master's Place. It was insisted, That the Earl was offered 6000 *l.* and actually refused to take it; but took 5000 *l.* from Mr. *Elde* and Mr. *Thurston* for the Master's Office: We shall shew how that happen'd.

Mr. *Richard Lucas* Sworn.

Mr. *Serj. Pengelly.* We desire that you would inform my Lords, whether you made any Application to the Earl of *Macclesfield*, or to Mr. *Cottingham*, about coming into the Master's Office at the Time when Mr. *Elde* or Mr. *Thurston* were admitted, and what passed.

Mr. *Richard Lucas.* My Lords, Upon the Death of Mr. *Fellowes*, being persuaded by some Friends to make an Application for the Office vacant by his Death, I did go immediately to Mr. *Cottingham*; my Lord *Macclesfield* being then out of Town, I thought it proper to go to his Secretary.

Lord *Ch. Justice King.* Please to speak up.

Mr. *Richard Lucas.* I say, upon the Death of Mr. *Fellowes*, I was persuaded by some Friends to make Application for the Master's Place; and upon that, I went to Mr. *Cottingham*, and told him the Affair I came about. He told me, Mr. *Lucas*, you know you have formerly had some talk with me about an Affair of this Nature; it is to no Purpose for me to recommend you to my Lord, unless you bid more than formerly you have done. Upon that I immediately told him, I was ready to give 6000 *l.* There was some Talk passed between us besides, but it being so long ago, and not expecting to be called to give an account of it, I cannot now recollect it. One Thing I can recollect, that he intimated to me, That my Lord *Macclesfield* had some Intentions of making some Orders, or doing somewhat that should be for the Ease or Advantage of the Masters; but his Lordship would not do it at that Time, because it would look as if he had an Intention of making Advantage of that Vacancy. A Day or two afterwards I met Mr. *Cottingham* in the Hall, and asked him, If he had spoke to my Lord about me? He told me, he had; but that my Lord was pleased to enquire into my Circumstances, and did think it proper that some Security should be given by the Masters; and I being immediately to be put in by his Lordship, it was the more incumbent upon him, to see what Security I was able to give. Upon that I waited upon him to know what Security was expected: He mentioned to me 10,000 *l.* Security. I told him, That after such time as I had parted with 6000 *l.* I could not take upon me to say, I could myself make up a Security to the Value of 10,000 *l.* but what with the Assistance of Friends, and mine own Estate, I might possibly do it. Upon talking of the Matter with my Mother, she was very willing to joyn in the Security. Upon that I wrote a Letter, I cannot remember whether it was directed to my Lord *Macclesfield*, or to his Secretary; but to one or the other it was. I sent it by my Servant, and I was informed by Mr. *Cottingham*, That his Lordship had a Sight of it. But afterwards being uneasy at giving so large a Sum of Money, and considering, from the Talk that then was, that these Masters might come into Parliament, I was advised, and I thought it proper, to have some better Hold upon his Lordship, to make some Return, in Case any thing should happen to lessen the Value of the Place: Upon that, I

did

did write a Letter, I cannot remember the whole Contents; but I pretty well remember the Subſtance, which was, That I would undertake to give the Security required to the amount of 10,000 *l.* I believe, I did alſo mention my real Eſtate, which was near 300 *l.* a Year, to be a Part of the Security, and I did add, That notwithſtanding the preſent Diſputes between the Maſter of the *Rolls* and the other Maſters, and the Talk there was of bringing it into Parliament, I was not at all uneaſy; becauſe I could ſecurely depend upon his Lordſhip's Generoſity, that he would take it into his Conſideration, in Caſe any thing happened amiſs in the next Seſſion of Parliament; I can't remember exactly the Words, but my Lord *Macclesfield* has the Letter, if I am miſtaken, his Lordſhip will ſet me right.

Mr. *Serj. Pengelly.* Upon this Letter of your Expectation of being repaired, if any thing happened, had you any Anſwer?

Mr. *R. Lucas.* The next thing I heard, was, That Mr. *Elde* was in the Place, and Mr. *Cottingham* was pleaſed to ſay, he was a particular Acquaintance of my Lords, and therefore had it.

Mr. *Serj. Pengelly.* When Mr. *Cottingham* told you this, what Anſwer did he return as to my Lord's Approbation of the Propoſal?

Mr. *R. Lucas.* He ſaid, to the beſt of my Remembrance, That my Lord was pleaſed that I offered 6000 *l.* at once, provided I would give Security, if that ſhould be thought proper.

Mr. *Serj. Pengelly.* Since you was diſappointed when Mr. *Elde* came in, what paſſed when Mr. *Thurſton* came in? whether did you renew your Application then?

Mr. *R. Lucas.* I was, with abundance of Regret and Fear, prevailed upon to renew my Application.

Mr. *Serj. Pengelly.* What were your Fears?

Mr. *R. Lucas.* My Fear was about the bringing this Matter into Parliament, and that I did not know what Effect that might have upon the Profits of the Place. Upon that, my Brother told me, he was acquainted with Mr. *Ellis*, his Lordſhip's Chaplain, and if I pleaſed, he would go to him, and get him to ſpeak to my Lord about it.

Mr. *Serj. Pengelly.* What Directions did you give to your Brother as to offering any thing, and upon what Terms?

Mr. *Ric. Lucas.* I cannot ſay whether my Brother had a direct Commiſſion from me to mention that I was then ready to give 6000 *l.* but it was my Apprehenſion, and the Apprehenſion of all thoſe that knew this Affair, that I ſhould not come in under ſo much; I am not very poſitive that ſuch a Direction was given. I did mention another thing to my Brother, to acquaint Mr. *Ellis*, that I had heard more of the Deficiencies in the ſeveral Offices of the Maſters, and that I was not without Apprehenſion, that if I ſhould give 6000 *l.* to come into this Place, I might from time to time be called upon for ſeveral Sums of Money in order to make good paſt Deficiencies; and I thought that it would be unreaſonable for me to be brought into any Contribution for making good thoſe Deficiencies, when I had no Concern in them. I then deſired it might be mentioned. As for the Anſwer, I never ſaw Mr. *Ellis*.

Mr. *Serj. Pengelly.* What Orders did you give to your Brother? Did you give him any Order to pay the Money without Conſideration of being liable to the Deficiencies?

Mr. *R. Lucas.* I gave him no Order at all, I thought it was not come to bear yet.

Mr. *Serj. Pengelly.* Was there any Thing paſſed after that?

Mr. *R. Lucas.* I conceive, my Lords, you won't think it proper for me to give an Account of what paſſed between Mr. *Ellis* and my Brother.

Mr. *Serj. Pengelly.* I deſire to know, whether your Brother had any Orders or Directions from you to go on?

Mr. *R. Lucas.* I have told you every Thing I can recollect; I only told him, I deſired him to ſpeak to Mr. *Ellis* to recommend me to his Lordſhip upon the Foot, I have mentioned, *viz.* on the Foot of the former Propoſals.

Mr. *Serj. Pengelly.* Had your Brother any Authority from you to give 6000 *l.* without being ſecured from the Deficiencies?

Mr. *R. Lucas.* Six thouſand Pounds was the Sum to be given, and I deſired my Brother to mention the Deficiencies, and that I ſhould not be underſtood to be ſubject to any of them.

Mr. *Serj. Pengelly.* Was it to be given abſolutely without Reſerve, or with Regard to be ſecured from the Deficiencies?

Mr. *R. Lucas.* I did deſire that the Buſineſs of the Deficiency might be explained, and that it might be underſtood that I would not be anſwerable for any of them.

Mr. *Edward Lucas* ſworn.

Mr. *Serj. Pengelly.* I deſire you would inform my Lords, whether you received any, and what Directions from your Brother, upon the laſt Vacancy, when Mr. *Thurſton* came in, of the making Propoſals for your Brother's coming into that Office?

Mr. *E. Lucas.* Soon after Mr. *Borret*'s Death, my Brother expreſſed an Inclination to me of ſucceeding in that Office: I told him, I had an Acquaintance with Mr. *Ellis*, my Lord *Macclesfield* Chaplain. And if he would give me any Commiſſion I would communicate it to Mr. *Ellis*, I believing that a proper Way of Communicating it to my Lord. My Brother did deſire me to go to Mr. *Ellis*, and to inform him myſelf, that he had ſo juſt a Senſe of my Lord's Honour and Generoſity, that he believed he might leave the Terms to be fixed by my Lord himſelf. I went to Mr. *Ellis*, and did tell him as my Brother had deſired me. Mr. *Ellis* ſaid, He did not much care to concern himſelf in the Affair; if it had been to recommend to a Living, it might be proper for him; but this was out of his Province. I acquainted him with what Steps my Brother had formerly taken, in order to obtain one of theſe Offices, and explained to him the Nature of the Thing, and perſuaded him to lay this Matter before his Lordſhip. Upon which he was then pleaſed to ſay, He would go to my Lord (who was at *Kenſington*) the next Day, and bring me an Anſwer.

Mr. *Serj. Pengelly.* Had he any Directions either as to the Price, or the Terms?

Mr. *E. Lucas.* I don't know of any Directions the had, either as to the Price, or the Terms.

Mr.

Mr. *Serj. Pengelly.* What did you ſay about the Security, and the Deficiencies in the ſeveral Offices?

Mr. *E. Lucas.* This was another Converſation, about a Week, or Ten Days after; after Mr. *Ellis* had brought me an Anſwer, then I remember my Brother gave me Directions to conſult with Mr. *Ellis*, whether it was not proper to make my Lord a direct Offer of 6000 *l.* but then it would be reaſonable, that he ſhould be indemnified or ſecured from any Damage, or Deficiency by any of the Precedent Maſters; and that he ſhould not be called upon to make good any ſuch Deficiency. I told Mr. *Ellis* this, and he ſaid, there was no Room for this, there might be Deficiencies in ſome other of the Offices, but he had heard, there was no Deficiency in Mr. *Borret's* Office. I had likewiſe heard ſo, but whether there was a Deficiency or not, I could not tell; my Brother was willing to enter into a Treaty with my Lord upon theſe Terms.

Mr. *Serj. Pengelly.* Did you hear any Thing more about it?

Mr. *E. Lucas.* About a Week after Mr. *Ellis* writ to me, That my Lord *Macclesfield* had approved of Mr. *Thurſton.*

Mr. *Serj. Pengelly.* Pleaſe to recollect, whether your Direction was about *Borret's* Deficiency only, or about all the Deficiencies in general?

Mr. *E. Lucas.* My Directions from my Brother were about all the Deficiencies; *Dormer's* Deficiency ran in his Head, and he thought it unreaſonable, that he ſhould be obliged to contribute to any Deficiency precedent to his coming in Maſter.

Mr. *Serj. Pengelly.* Did you communicate this to Mr. *Ellis?*

Mr. *E. Lucas.* I did communicate it to Mr. *Ellis*; if not in ſuch expreſs Terms, yet to that Effect, that it was unreaſonable, that my Brother ſhould be obliged to contribute to make up thoſe Deficiencies that were preceding to his being Maſter; I am ſure, I added thoſe Words, That he ſhould not be obliged to contribute to make up thoſe Deficiencies that were precedent to his being Maſter.

Earl of *Macclesfield.* My Lords, I ſubmit, whether it be not proper, that Mr. *Ellis* be called before this Mr. *Lucas* goes away.

Mr. *Ellis* called, but not examined again immediately.

Earl of *Macclesfield.* Mr. *Lucas*, I deſire that you would declare to my Lords over again, what you have given in Evidence.

Mr. *E. Lucas.* The firſt Time I ſaw Mr. *Ellis* was at my Mother's Houſe, immediately after Mr. *Borret's* Death, I then told him of my Brother's Intention to purchaſe a Maſter's Place, and that my Brother had ſo thorough a Senſe of my Lord's Honour and Generoſity, that he would leave the Terms to my Lord himſelf. Mr. *Ellis* was not at firſt inclinable to concern himſelf in it, but upon telling him what Steps my Brother had taken in Regard to it; he ſaid out of Friendſhip to me he would engage in it, and go to my Lord, and bring me an Anſwer. This was the firſt Converſation. Mr. *Ellis* did the next Day bring me an Anſwer from my Lord.

Mr. *Serj. Pengelly.* What was the Anſwer my Lord ſent?

Mr. *E. Lucas.* The Anſwer that Mr. *Ellis* brought was, That my Lord had no Objection to my Brother, he did remember that he had been formerly recommended to him, but that there was ſome other Perſon propoſed by ſome of the Maſters, of whom he expected a farther Recommendation, and could not now give any other Anſwer to it: He alſo told me, That he apprehended, if that Perſon did not ſucceed, my Brother might have the Refuſal. I ſaid it was indifferent whether my Brother then ſucceeded, or not; becauſe my Lord told him, That one or two Maſters were inclinable to ſell, and if they did, he might have an Opportunity of buying of thoſe Maſters. This paſſed on the Second Converſation.

Mr. *Serj. Pengelly.* Go on.

Mr. *E. Lucas.* The Third Converſation was ſometime afterwards at my Lord *Macclesfield's* own Houſe in *Lincoln's-Inn-Fields.* I went by my Brother's Directions meaning to conſult with Mr. *Ellis* in a friendly Manner, whether he did think it adviſeable to make his Lordſhip a direct Offer of 6000 *l.* I ſaid if he gave it, it was reaſonable, that he ſhould be indemnified from any Damage that ſhould happen by Reaſon of the Deficiency in any of the Offices, and not be obliged to contribute towards making them up; he ſaid my Lord had not ſpoken to him about that, that he could not have every Opportunity he deſired to ſpeak with him; that as to the Deficiencies, he had heard there was none. I ſaid, I had likewiſe heard ſo; but whether there was or no, my Brother was willing to enter into a Treaty with my Lord upon thoſe Terms. This to the beſt of my Remembrance is the whole I know of the Matter.

Mr. *Serj. Probyn.* I only would beg leave to ask this Queſtion, When the firſt Propoſal was made to Mr. *Ellis*, whether he did propoſe a certain Sum?

Mr. *E. Lucas.* I don't remember I did; but I think I told Mr. *Ellis* my Brother had formerly offered 6000 *l.* and I told Mr. *Ellis* this, and did lay before him all the Circumſtances of that Affair, to make him the more inclinable to engage in it.

Mr. *Com. Serjeant.* I deſire he may be asked, whether any Terms beſides were mentioned than what Mr. *Lucas* has mentioned before?

Mr. *E. Lucas.* I don't remember there were any other Directions then given, I can't be poſitive, but that he was willing to leave it to my Lord's Honour and Generoſity. And my Lords I can ſwear poſitively, that till the firſt Day of theſe Proceedings, when I met Mr. *Ellis* in the Court of Requeſts, I never knew that he had offered my Lord *Macclesfield* 6000 *l.*

Earl of *Macclesfield.* My Lords, we beg leave that Mr. *Ellis* may give an Account of what Propoſal he made to me from Mr. *Lucas.*

Mr. *Ellis.* My Lords, the Account Mr. *Lucas* has given Your Lordſhips is true in all the Particulars, as far as I can remember at this Diſtance of Time, though there are a good many that I could not have recollected of myſelf, only as to this one, his not impower-

ing me to offer this 6000 *l.* I ſhould not have gone to my Lord, unleſs I had had ſome particular Offer to mention. I particularly remember I made him that Offer, and I am as certain, that Mr. *Lucas* did ſpeak to me to make the Offer of 6000 *l.* for this Reaſon, that I never knew that Mr. *Lucas* had offered 6000 *l.* before by Mr. *Cottingham*, till this Impeachment begun, when Mr. *Lucas* being here, acquainted me that he had made that Offer to my Lord.

Mr. *E. Lucas.* I deſire Mr. *Ellis* may be asked, whether ever he told me, that he offered Lord *Macclesfield* 6000 *l.*?

Mr. *Ellis.* I believe I only did tell him in general, that I had made his Lordſhip the Offer which he had deſired me to make, and in general likewiſe, that my Lord was well ſatisfied with it.

Mr. *Com. Serjeant.* I deſire he may inform Your Lordſhips, whether, when he told Mr. *Lucas*, that he had made that Offer which he had deſired him, he did enquire what that Offer was?

Mr. *Ellis.* No, my Lords, he did not.

Mr. *Serj. Pengelly.* My Lords, they have called Mr. *Ellis* to confront Mr. *Lucas*; but they agree together in all the material Circumſtances. Mr. *Ellis* ſays, what Mr. *Lucas* ſwears is true in every Particular, unleſs in Relation to the Offer of 6000 *l.* In all the reſt Mr. *Ellis* confirms Mr. *Lucas*'s Evidence.

Mr. *E. Lucas.* I don't poſitively ſwear that I did not give him that Commiſſion, but to the beſt of my Remembrance, I did not give him that Commiſſion.

Earl of *Macclesfield.* I deſire Mr. *Ellis* may be asked, when he made the Propoſal to me, whether he mentioned any Condition whatſoever?

Mr. *Ellis.* No, my Lords, I did not mention any Condition.

Mr. *E. Lucas.* Till after the firſt Converſation with Mr. *Ellis*, I had no Direction from my Brother to mention any Price or Condition; I gave an Account to Your Lordſhips of two different Converſations.

Earl of *Macclesfield.* When the Anſwer was brought, that I was ſatisfied with the Propoſal, what did he do farther upon it?

Mr. *E. Lucas.* My Lords, Mr. *Ellis* did not tell me, that my Lord *Macclesfield* was ſatisfied with the Propoſal, but that my Lord *Macclesfield* had no Objection to my Brother, and he had formerly received a Recommendation of him; but at preſent another Perſon was recommended by ſome of the Maſters, whom he expected to be farther recommended.

Mr. *Plummer.* My Lords, I deſire Mr. *Ellis* may be asked, how long, before Mr. *Thurſton* was admitted, was the Converſation about giving Security, that Mr. *Lucas* might be indemnified from the Deficiencies?

Mr. *Ellis.* My Lords, in one of the laſt Converſations, which was after I had ſpoken to my Lord *Macclesfield*, Mr. *Lucas* might ſay ſomething about having Security. But I don't recollect it with any Certainty; if he did, it was ſome Days before Mr. *Thurſton* was admitted.

Mr. *Serj. Probyn.* I deſire he may inform Your Lordſhips, Whether he ever told my Lord *Macclesfield* any thing of this Diſcourſe about Security?

Mr. *Ellis.* No.

Sir *Geo. Ovenden.* He ſays, He never told my Lord *Macclesfield* of that Converſation: I deſire to know, if he told my Lord *Parker*?

Mr. *Ellis.* No, my Lords, I told no body at all.

Mr. *Strange.* My Lords, I beg Leave to make one Obſervation; a Learned Manager was pleaſed to obſerve upon the Appearance of theſe Two Witneſſes together, That now the Evidence of Mr. *Lucas* is confirmed by Mr. *Ellis*: Your Lordſhips are pleaſed to remember, that Mr. *Ellis* was our Witneſs, and was firſt examined; and therefore I ſhould apprehend the Obſervation may be turned much properer the other way: That the Evidence of Mr. *Ellis*, who was our Witneſs, and was firſt examined, is now confirmed by Mr. *Lucas*.

Earl of *Macclesfield.* My Lords, I deſire he may inform Your Lordſhips with relation to the Diſcourſe that paſſed betwixt them about the Deficiencies; Whether the Objection did not relate ſingly to them?

Mr. *Ellis.* I don't well remember what paſſed upon the Subject of the Deficiencies; what I have ſaid to Your Lordſhips before, I remember full well, becauſe a particular Circumſtance made me recollect, that Mr. *Lucas* did ſay, he had heard there was no Deficiency in Mr. *Borret*'s Office; which I had heard too; but at what time that Diſcourſe was, I can't recollect; it might be as he repreſented it.

Earl of *Macclesfield.* Mr. *Lucas* ſaid to you, That he was willing to treat upon thoſe Terms?

Mr. *Edw. Lucas.* Upon thoſe Terms, or to that Effect, I did ſay.

Mr. *Plummer.* I only would make this Obſervation; Both theſe Evidences confirm this, that Mr. *Lucas* was an Inquiſitive Man, and would not part with his 6000 *l.* ſo eaſily as to ask no Queſtions.

Mr. *Serj. Pengelly.* We beg Leave now to call a Witneſs as to the Second Letter or Order, ſuppoſed to be ſent in *November* 1721. to all the Maſters. Mr. *Cottingham* could not take upon himſelf to ſay, that it was delivered; he had kept a *Memorandum* of the firſt, but none of that, and he believed he might ſay, it was delivered; we deny any ſuch Letter was delivered, and beg Leave to ask as to that particular Point.

Mr. *John Bennet* called.

Mr. *Serj. Pengelly.* I deſire he may be asked, whether in *November* 1721. any Second Letter, or Order, of the Purport of the firſt Order, was ſent, or delivered, in Relation to the Maſters bringing in their Accompts?

Mr. *J. Bennet.* My Lords, I never ſaw any ſuch Letter.

Mr. *Serj. Pengelly.* Did you ever hear of it?

Mr. *J. Bennet.* I never heard of it before, till I heard Mr. *Cottingham* read it at the Bar.

Mr. *Serj. Pengelly.* Did you receive any Account from the other Maſters, that they had received any ſuch Letter?

Mr. *J. Bennet.* No, my Lords, never.

Mr. *Serj. Pengelly.* Do you recollect any Diſcourſe between my Lord *Macclesfield* and your Brother, relating to your Brother's Account?

Mr.

Mr. *J. Bennet.* I don't recollect the whole.

Mr. *Serj. Pengelly.* What do you recollect?

Mr. *J. Bennet.* My Lord hath declared to me, That he wondered Mr. *Kinaſton* and my Brother ſhould put ſuch an *Item* in their Accompts, which would make a Diſcovery, that the Maſters had bought their Places with the Money of the Court, which might be of miſchievous Conſequence; that whenever it was objected to him, he had always taken great Pains to deny it.

Mr. *Serj. Pengelly.* When was this? About what Time?

Mr. *J. Bennet.* About *Chriſtmas* laſt.

Mr. *Serj. Probyn.* We beg leave to take Notice of the Nature of this Evidence, that it is very improper now, being new Evidence; not to the ſame Purpoſe to ſupport what was given before, but new Matter, and therefore not proper.

Mr. *Lutwyche.* We apprehend it is very proper, becauſe Mr. *Thomas Bennet*'s was objected to, and this confirms his Evidence.

Mr. *Holford* called.

Mr. *Serj. Pengelly.* My Lords, we deſire he may be asked, whether this Letter, or Order, of *November* 1721. was ever communicated to him by Mr. *Cottingham?*

Mr. *Holford.* No, my Lords, I never heard of it till now lately.

Mr. *Com. Serjeant.* I deſire Mr. *Holford* would inform Your Lordſhips, whether there were not then ſeveral Maſters ſenior to him? and whether it is not uſual to leave thoſe Letters, or Orders, with the Senior Maſters?

Mr. *Holford.* I don't know that ſuch Order, or Letter, was left at that Time. Mr. *Hiccocks* and Mr. *Fellowes* were Seniors to me.

Mr. *Com. Serjeant.* I deſire he may be asked the other Part of the Queſtion, Whether it is not uſual to leave Orders, wherein the Maſters are generally concerned, with the Senior Maſters?

Mr. *Holford.* It is not; but the Uſage generally is to be left at the Publick Office. It might be left with the Senior Maſter, for ought I know.

Mr. *Lovibond* called.

Mr. *Serj. Pengelly.* Did you ever hear or know of this Letter or Order of *Nov.* 1721?

Mr. *Lovibond.* I never heard of any ſuch Letter or Order, till I heard it read at this Bar.

Mr. *Kinaſton* called.

Mr. *Serj. Pengelly.* Mr. *Kinaſton,* will you give my Lords an Account, whether you heard of this Letter or Order of *Nov.* 1721?

Mr. *Kinaſton.* I ſuppoſe you mean the Letter which Mr. *Cottingham* read.

Mr. *Serj. Pengelly.* The ſame.

Mr. *Kinaſton.* I never heard of it, till I heard it read at this Bar.

Mr. *Serj. Pengelly.* I hope this will explain Mr. *Cottingham*'s Want of Memory, when he ſaid that he could not remember it.

Mr. *Lightboun* called.

Mr. *Serj. Pengelly.* I deſire to ask you, whether you know any Thing of this Letter of *Nov.* 1721?

Mr. *Lightboun.* I never heard of it, till I heard it at Your Lordſhips Bar from Mr. *Cottingham.*

Mr. *Edwards* called.

Mr. *Serj. Pengelly.* I deſire he may be asked, whether he ever heard of this Letter of *Nov.* 1721?

Mr. *Edwards.* I never heard of ſuch a Letter, till I heard it mentioned at this Bar.

Mr. *Serj. Pengelly.* So that, my Lords, we apprehend this Letter, when written by Mr. *Cottingham,* was a Pocket-Letter to be made uſe of on any proper Occaſion. The Managers have done with their Evidence and the Witneſſes, they ſhall call no more. We humbly apprehend, that we have cleared up the Reaſon, why the Lord took 5000 *l.* rather than 6000 *l.* it was from Hopes of greater Gain in having 5000 *l.* abſolutely, without being liable to refund, than 6000 *l.* liable to ſuch a Contingency. Upon the Evidence we ſubmit the whole Matter to Your Lordſhips Determination.

Mr. *Serj. Probyn.* My Lords, we will be ſhort in our Reflections upon this new Evidence. We apprehend their Evidence proves, what was inſiſted upon by us, that there was Care taken in diſpoſing of theſe Offices, and that my Lord *Macclesfield* having perſonal Knowledge of one Gentleman did prefer him before another, whom he did not know, tho' he had leſs Money from him, than he could have had of the other. It is agreed by Mr. *Lucas* and his Brother, that there was a propoſal of 6000 *l.* made upon this Occaſion: Mr. *Ellis* tells you, Mr. *Lucas* gave him Orders to propoſe it to my Lord *Macclesfield* without any Terms whatſoever: He never mentioned any Terms, or intimated any Condition or Reſtriction to my Lord *Macclesfield.* Upon that his Lordſhip was pleaſed to direct a proper Enquiry to be made, what Security he was able to give for the Diſcharge of his Offices; here there was 6000 *l.* propoſed without any Terms by one whom he did not know; but he preferred another whom he did know to be well qualified, for 5000 *l.* This doth not ſhew any Neglect in the noble Earl; but all the Care and Caution that ever could be taken; and this ſhews that the Earl could not do this out of an immoderate Deſire of Gain, when 6000 *l.* was propoſed to be given; but he preferred another whom he knew to be well qualified for leſs Money; ſo that we apprehend this is an Evidence which is much in favour of the Earl. As to the other Matter, the Maſters not knowing of this Letter, your Lordſhips obſerve what Evidence, was given by Mr. *Cottingham.* This is a Tranſaction ſometime ago, he ſays that he writ this Letter by the noble Lord's Order, that he cannot now ſay to which of the Maſters he delivered it, or whether it was perſonally delivered by him, or by one of his Clerks. Your Lordſhips will obſerve, that there were two Maſters Senior to Mr. *Holford, viz.* Mr. *Hiccocks* and Mr. *Fellowes;* and it might probably be delivered to one of them; one of them is ſince dead, the other is yet living; but we were not aware of the Objection, and ſo have not him here. This doth not impeach Mr. *Cottingham*'s Credit or his Evidence, ſo far as it concerns the Earl.

Mr. *Com. Serj.* My Lords, I will not enter into a ſtrict Comparing of the Evidence, we apprehend that what Mr. *Ellis* ſwore ſtands confirmed in every thing by Mr. *Lucas,* and we have

Reaſon

Reaſon to thank the Gentlemen of the Houſe of Commons for this Evidence. There was one material Part of our Evidence, that the Earl had a thorough Intention of entring into the Regulation of thoſe Matters; but by Diſputes ariſing in relation to the Juriſdiction of the Maſter of the Rolls, he was hindred.

Now the Evidence of Mr. *Lucas* Corroborates our Proof on this Head, he ſaith that Mr. *Cottingham* told him, tho' Security had not been taken, yet at preſent the noble Lord had a Reformation in View, and Security would be expected; and therefore he enquired what Security he could give, there was not only an Enquiry into his preſent Circumſtances, but likewiſe an Intimation that Security would be expected. This ſhews the Earl's Intention; and if the Thirſt of Gain had ſwayed him, Mr. *Lucas* would never have had thoſe Bugbears to affright him from giving ſo much Money. Upon the whole it appears that no part of our Evidence is any way impeached by the new Evidence they have given.

Earl of *Macclesfield.* My Lords, I beg leave to ſay a very few Words upon what hath been newly offered, as to the Evidence to take off my having preferred 5000 Guineas with a Perſon I thought a better Man, to 6000 *l.* with another, whom I thought a good Man. I apprehend it is not taken off at all by any Thing that has yet been offered. Mr. *Lucas* owns that at the firſt Time there was an Expectation of Security, and he has given your Lordſhips an Account that he asked what Security was expected; and was anſwered I think to the Value of 10,000 *l.* and that what he ſpoke of the Deficiency, was only that he ſhould not be liable to farther Orders to be made upon him for Contribution to the former Deficiencies of other Maſters; and in the latter Time, when the Clamour was greater, Mr. *Ellis* offered me 6000 *l.* abſolutely without any Condition, and I ſaid I approved of the Perſon and of the Offer, but I had another Gentleman then under Conſideration. Their Evidence indeed varies as to the Particulars of the Converſations they had upon this Subject: But whatever Diſcourſe paſſed between them, unleſs it came to my Knowledge, it ought not to affect me. I never head, nor is it ſo much as pretended, that I ever did hear, there were any manner of Terms or Conditions whatſoever annexed to the Propoſal made by Mr. *Lucas.*

Mr. *Ellis* has been asked this Queſtion, and has ſworn poſitively he mentioned none at all to me; ſo that there is not the leaſt Pretence that the Reſtriction, ſuppoſing Mr. *Lucas* annexed any to the Propoſal (which I muſt obſerve is flatly contradicted by Mr. *Ellis*'s Evidence) ever came to my Knowledge.

As to what Evidence is given in relation to the Letter of *November* 1721. your Lordſhips will remember, that when I ſpoke of that, I entred upon it as a Thing not at all neceſſary for me; becauſe they had not proved the Article, that the Letter writ in *February* was with an Intention to terrify the Maſters into a Contribution; but all the Proof they produced was, that the Maſters had paid a voluntary Contribution, and upon that they made ſome Obſervation; but not one of the Maſters ever gave your Lordſhips an Account that they did it by Reaſon of, or under the Terror of this Letter, they have called every one of them, and not one hath ſaid ſo, but agreed that they had paid it as a voluntary Contribution; ſo that there is no manner of Occaſion for what hath been ſaid about this Letter. Mr. *Cottingham* did ſay before your Lordſhips, that he thought the Letter was ſent, and he had no Reaſon to believe the contrary; but indeed he had no Memorandum of its being ſent. It is very extraordinary to ſuggeſt, that this ſhould be a pocket Letter. Can any Perſon imagine that that Letter was calculated for an Occaſion like this? Was there any Apprehenſion of this Proſecution in 1721? My Lords, it is not worth while to trouble your Lordſhips with any more Remarks about ſo groundleſs a Pretence. In the Reply there hath been ſomething new offered to your Lordſhips to make out my receiving Money from the Maſters to be an Offence at common Law; and there have likewiſe been mentioned ſeveral Acts of Parliament, to neither of which I have had any Opportunity of giving an Anſwer before; I therefore apprehend I have a Right to take Notice of them now. And firſt I beg Leave to obſerve to your Lordſhips, that every one of theſe Acts of Parliament relate plainly to Judges who take Bribes, or take Money for doing their Duty, or for doing thoſe Things they were bound to do; they lie upon your Lordſhips Table, and if your Lordſhips will but look upon them you will find all to be ſo.

That of *Magna Charta* is plainly ſo, that Juſtice ſhall be adminiſtred to the Party, without paying for it.

So the Statute of 12. *R.* II. that they ſhall. —

Mr. *Serj. Pengelly.* My Lord can not be regular to reply to us on that Statute.

Earl of *Macclesfield.* The Statute is, that they ſhall not make any Officer for Brokage.

Sir G. *Oxenden.* We muſt ſubmit it to your Lordſhips whether this can be regular; the noble Earl hath had his Defence, we have replyed; it is not regular for him to enter into a Debate now.

The Statute is upon your Lordſhips Table; and your Lordſhips will conſider it.

Earl of *Macclesfield.* I will not take up your Lordſhips Time any farther in inſiſting upon it; but I hope at leaſt thoſe Gentlemen will not oppoſe my taking Notice of one Thing that is new; though not any part of the Articles, which is what the Gentlemen have ſaid with relation to *Wilſon*'s Compoſition not being binding upon the Suitors of the Court; that it is matter of Horror that *Wilſon* ſhould truſt to the Faith of a Court of Juſtice, and upon that enter into a Compoſition, which at laſt ſhould not be effectual and binding. To that give me Leave to anſwer, that if *Wilſon* had acted honeſtly, and given a fair Account of his Eſtate and Effects in this Caſe, and it appeared upon the whole, that he could not pay more than according to this Compoſition; and at the ſame time that it muſt be a real advantage to the Suitors to have received their Proportion of what he was able to pay, without the Expences of a Statute of Bankrupcy; in that Caſe he would have the Benefit of it: But in Caſe he could have paid more, and this appeared only to be a fraudulent or unfair Compoſition, it would be no ways concluſive upon the Suitors; and as he ought not to reap any Benefit

Benefit, ſo neither would they ſuffer any Prejudice by it upon that Suppoſition.

Mr. Serj. *Pengelly*, The Managers are entitled to the Reply and Concluſion.

As to our Evidence newly given, it proves in the ſtrongeſt manner, that if there was a Reaſon for diſtinguiſhing between 5000 *l.* and 6000 *l.* it was becauſe the 6000 *l.* was attended with an Incumbrance; and if it be ſaid that the Earl had no Notice of it, it is prov'd that his Agent, or the Perſon whom he employ'd, had this Account deliver'd to him, and knew it; and we appeal to the Letter which is in their Hands. And therefore this is ſo far a Confirmation of the other part of the Charge of Neglect when Security was offered. Why was not the Perſon accepted? Why Mr. *Elde* preferr'd?

Mr. *Lucas*'s Directions to his Brother, and his Tranſactions are confirmed by Mr. *Ellis*, my Lord's own Chaplain; and the only Reaſon why the Bargain was not concluded, was, becauſe of the Privilege inſiſted upon by the Perſon to be indemnified from all Contributions and Charges.

E. of *Mac.* I beg your Pardon, if I trouble Your Lordſhips once more, in Relation to a Piece of new Evidence, which I did not before reflect upon; I am under a very great Diſadvantage from theſe Gentlemen, who are for tying me down to very great Hardſhips, ſo that if any thing ſlips my Memory, at what they call the proper Time, it muſt at this rate be loſt for ever. I would take Notice of one Thing, with relation to what Mr. *Thomas Bennet* ſaid of what I ſpoke, of denying that the Maſters paid for their Offices out of the Suitors Money; they are attemping to prove that I knew of their doing ſo, and they prove it by ſhewing, that I ſaid I had always denyed it. But, my Lords, is there any of the Maſters that came in in my Time, that ſays I knew any ſuch thing? No, my Lords, not one of all thoſe Maſters that came in in my Time, and appear to have tranſacted in this manner; there are only two, Mr. *Kinaſton*, and Mr. *Thomas Bennet*; but is there any of them, or any other, that pretend that I knew they did ſo? Here are two Perſons that paid for their Offices out of the Suitors Money; and becauſe I told one of them afterwards, admitting what he ſaid to be true, that I had heard it ſaid it was ſo, and deny'd it; Is it from thence to be concluded that I knew it was really ſo? My Lords, I beg leave to obſerve as to the Matter of the difference of the Prices; I gave Evidence of the difference of Prices in other Offices, and their Riſe from 50 *l.* to 500 *l.* in one Inſtance, and from 200 *l.* to 800 *l.* in another.

Mr. Serj. *Peng.* We are unwilling to interrupt the Lord; but now for him to go back again into the whole, is a greater Right than his Lordſhip is entitled to; therefore from the Duty we owe to your Lordſhips, we hope every Thing that is regular ſhall be obſerv'd.

E. of *Mac.* I ſubmit if your Lordſhips think I am irregular, in the Confuſion my Papers were in when I made my Defence from them. The Notes relating to this and ſome other Matters were overlook'd: But as to the Reply, I muſt beg leave to make one general Obſervation, That the Gentlemen have thought the Arguments uſed by me in that Defence, either ſuch as they could not anſwer, or ſuch as needed no Anſwer, ſince they have not attempted to anſwer any of them; and which of the two, I muſt leave to Your Lordſhips Determination.

Mr. *Onſlow*, My Lords, in the Courſe of our Reply, we made uſe of the Statute of *Henry* the 4th. We have it not Printed, but we have an atteſted Copy in Writing, and the Original Roll; if your Lordſhips pleaſe, this atteſted Copy may be brought up to your Lordſhips Table.

Mr. *Nicholas Paxton* Sworn.

Mr. *N. Paxton.* My Lords, I examined this Copy with the Deputy-keeper of the Rolls in the *Tower*, and it is a true Copy.

E. of *Mac.* Whether that Parliament Roll be in the Nature of a Journal or a Statute Roll, wherein the Act of Parliament is enter'd?

Mr. *Paxton*, My Lords, the Officer is here; he will give Your Lordſhips an Account.

Mr. *Lutwyche*, It is quoted by my Lord *Coke* to be of the ſame Nature as a Parliament Roll.

Mr. *Holmes* called.

Mr. Serj. *Peng.* Mr. *Holmes*, Where is this Roll kept?

Mr. *Holmes.* My Lords, I am Deputy-keeper of the Records.

Mr. Serj. *Peng.* Where?

Mr. *Holmes.* In the *Tower.*

Mr. Serj. *Peng.* What Roll is that?

Mr. *Holmes.* It is the Parliament Roll of the 11th of *Henry* the 4th.

E. of *Mac.* I deſire he may inform Your Lordſhips whether there be any difference or diſtinction between the Parliament Roll and the Statute Roll?

Mr. *Holmes*, There are a great many private Acts enter'd upon the Parliament Rolls; that are not in the Statute Rolls; what is in the Statute Roll was ſent down by Writ into the ſeveral Counties to be proclaim'd in the ſeveral County Courts.

Mr. Serj. *Peng.* Whether that is not the Original Roll?

Mr. *Holmes.* This is the Original Roll.

E. of *Mac.* I apprehend the Parliament Roll contains the Petitions, and the King's Anſwer.

Mr. *Holmes*, It doth.

E. of *Mac.* Before it comes to be publiſhed as a Law, is it not drawn up in Form, and enter'd upon the Statute Roll?

Mr. *Holmes.* The Petition is a piece of Parchment; after it hath paſſed King, Lords and Commons, then it is entred on this Roll.

Mr. *Onſlow*, Whether the King's Aſſent is not entred upon this Roll?

Mr. *Holmes.* There is *le Roy le Veut.*

Lord *Lechmere*, I deſire for Your Lordſhips Satisfaction, that he may read what is upon the Parchment Roll.

Mr. *Holmes*, Reads it, &c.

Parl. Rot. N°. 28. 11 *H.* 4.

Reſpectuatur per Dominum Principem & Concilium.

Item, QUE nul' Chaunceller, Treſorer Gardein de Privie Seal, Counſeiller du Roy, Serementz a Counſeill du Roy ne nul' autre Officer Jugge ne Miniſtre du Roy parnant fees ou gages de Roy pur lour ditz Offices ou Services, preigne en nulle manere en temps avenir aſcun manere de doun ou brocage de nully pur lour ditz Offices & Services affaire ſur peyne de reſpondre a Roy de la treble de ceo que iſſi preignont, & de ſatisfyer la Partie & punys al volunte de Roy, & ſont diſchargez de ſon Office, ſervice & Counſeill pur toutz jours, & que cheſcun qi vorra pur ſuer en la dite Matier eit la ſuit ſibien

ſibien pur le Roy come pur luy Meſmes & cit la tierce partie de ſome de qi le parties ſoit duement convict.

Le Roy le Voet.

E. of *Mac.* What is there in the Margin?

Mr. *Holmes*, *Reſpectuatur per Dominum Principem & Concilium.*

E. of *Mac.* That I may not be miſunderſtood in this Matter, and accuſed of going to quibble away an Act of Parliament; Your Lordſhips will give me leave to obſerve in the firſt Place, That ſuppoſing this to be an Act of Parliament, it relates to Caſes where Judgments are given, or where the Parties have a Right, and not any way to me or to my Caſe; and having premiſ'd this, Your Lordſhips will ſee how this Matter ſtands. There are two Rolls, the one is in the Nature of a Journal, wherein an Entry is made of the ſeveral Proceedings, and there are in it great Numbers of Petitions to the King by the Commons; whereby they pray, That Acts may be made, and the King's Anſwers upon them: The Anſwer it may be is agreeing to ſome part of what they pray, or ſometimes to no part, but a Proviſion made quite different from what they pray. At that Time the Judges drew up the Acts afterwards in Form, and thence then thoſe Acts were entred upon the Statute Roll; and they were promulgated at that Time by Proclamation on Writs iſſued to the Sheriffs of the ſeveral Counties. Now this hath in the Margin of the Parliament Roll, *Reſpectuatur per Dominum Principem & Concilium.* When the Judges came afterwards to draw up the Statutes of this Parliament, in order to publiſh them, there being a *Reſpectuatur* ſet upon this in the Parliament Roll; they forbore to draw it up amongſt the reſt, and it is not entred upon the Statute Roll at all, nor ever printed in any Statute Book ſince, nor was it ever publiſh'd by the Sheriffs, nor conſequently ſent to the ſeveral Courts of Juſtice, nor ever taken Notice of by them as a Law; for the Reaſon of that Maxim, That the Courts of Juſtice are bound to take Notice, *ex officio*, of publick Laws, and not of private Laws, was becauſe the publick Laws were tranſmitted to them under the Great Seal. The Fact then in this Caſe doth appear to be, that when the Acts of this Parliament of 11 *Hen.* 4. came to be drawn up and promulgated, this having a *Reſpectuatur* enter'd upon it, was not entred upon the Statute Roll, and ſo not publiſhed; this is the Fact. However it doth not concern me, nor doth it relate to the preſent Caſe at all, as I obſerved to Your Lordſhips before: If I had made a Decree for Money; if I had refuſed a Writ or *Subpæna*, unleſs the Party had paid me Money, then I had been within the Statute, but not in this Caſe.

Mr. *Lutwyche*, We ſay this Statute doth concern him: But as to what he ſaith, that there is an Entry in the Margin, *Reſpectuatur per Dominum Principem*; this is taken Notice of in the 3d Inſtitutes, where my Lord *Coke* particularly affirms, that this is an Act of Parliament in force, and is upon the Parliament Roll, and takes notice of *Reſpectuatur*, &c. that it was in Fact done by the Prince, the Son of King *Henry the* 4th, but without Authority; and that notwithſtanding ſuch Reſpite, this Act of Parliament is in full force.

Mr. *Weſt*, Suppoſing it to be an Act of Parliament it extends to the Earl's Caſe; but whether it be an Act of Parliament or no, is a Queſtion that the Noble Earl now makes. I thought it had been the common Learning, that all the old Laws were Petitions from the Commons, and the King's Anſwer to them; and that they were entred upon the Parliament Roll; and that the Parliament Roll was only a Voucher to the Statute Roll. I could give many Inſtances where that Voucher was not purſued, and the Statute Roll drawn up differs from the Parliament Roll; and that was the very Reaſon of altering the manner of paſſing Laws into the Method that is now uſed. This is my Lord Chief Juſtice *Hale*'s Account in one of the Modern Reports.

Mr. *Plummer*. The Earl Impeach'd hath principally inſiſted on two Things, the one is the taking a leſs Sum of Money for a Maſter's Place when Vacant, when he had a greater Sum offer'd him; and that therefore it follows that he hath not made corrupt Advantages in order to raiſe his own Fortune, and that he is Innocent. He hath called the Negotiator in this Affair to prove, that when he was offer'd 6000 *l.* he took 5000 *l.* The Commons have by their Witneſs explain'd it; and this Matter is now full clear'd, and Your Lordſhips have the whole before you, and I will make no further Obſervation upon it.

The ſecond Thing that he lays great Weight upon is, that he called for the Accounts of the Maſters, notwithſtanding the 500 *l.* apiece was paid in. Upon examining the Witneſſes, it doth not appear that any of the now Maſters knew any thing of it. I leave it to Your Lordſhips Conſideration, whether, if the Earl of *Macclesfield* had been in earneſt, he would not have had a Return of that Order. It doth not appear there was ever any Account given in; therefore when theſe two Points are made plainer againſt him now than they were on our firſt making good the Charge, tho' he ſeems to ſay the Sting of the Impeachment is taken out, yet it is plain the Sting is not taken out of it, but it ſtill remains; and Your Lordſhips will give ſuch Judgment as is juſt and legal.

Then the Managers for the Houſe of Commons and the Council withdrew, and then the Houſe adjourned.

Tueſday, 25 May, 1725. *The 11th Day, the Lords being ſeated in their Houſe, and the Managers being come, and ſeated as before, the uſual Proclamation was made for Silence.*

L. Ch. Juſt. *King*, MY Lords, Your Lordſhips having heard the Evidence in this Caſe, have agreed upon a Queſtion, which is ſeverally to be put to Your Lordſhips in the uſual Order. The Queſtion is this, Is *Thomas* Earl of *Macclesfield* guilty of high Crimes and Miſdemeanors charged upon him by the Impeachment of the Houſe of Commons, or not Guilty, upon your Honour?

L. Ch. Juſt. *King*, *Robert* Lord *Walpole*, What ſays your Lordſhip? Is *Thomas* Earl of *Macclesfield* guilty of High Crimes and Miſdemeanors charg'd upon him by the Impeachment of the Houſe of Commons, or not Guilty?

Lord *Walpole*, Guilty upon my Honour.

The ſame Queſtion was ſeverally put to the reſt, whoſe Names and Votes are as follow.

Nicholas Lord *Lechmere*, Guilty upon my Honour.
Matthew Lord *Ducie*, Guilty upon my Honour.
Thomas Lord *Onſlow*, Guilty upon my Honour.

Allen

Allen Lord *Bathurſt*,	Guilty upon my Honour.
Thomas Lord Foley,	Guilty, *&c.*
Samuel Lord *Maſham*,	Guilty, *&c.*
Thomas Lord *Trevor*,	Guilty, *&c.*
Thomas Lord *Montjoy*,	Guilty, *&c.*
George Lord *Hay*,	Guilty, *&c.*
John Lord *Gower*,	Guilty, *&c.*
Henry Lord *Herbert*,	Guilty, *&c.*
John Lord *Aſhburnham*,	Guilty, *&c.*
James Lord *Waldegrave*,	Guilty, *&c.*
Charles Lord *Lynn*,	Guilty, *&c.*
Charles Lord *Cornwallis*,	Guilty, *&c.*
Charles Lord *Bruce*,	Guilty, *&c.*
William Lord *Brooke*,	Guilty, *&c.*
James Lord *Compton*,	Guilty, *&c.*
William Lord *Hunſdon*,	Guilty, *&c.*
Hugh Lord *Clinton*,	Guilty, *&c.*
John Lord *Delawar*,	Guilty, *&c.*
Algernon Lord *Percy*,	Guilty, *&c.*
William Lord *Abergaveny*,	Guilty, *&c.*
Stephen Lord Biſhop of *Exeter*,	Guilty, *&c.*
William Lord Biſhop of *Briſtol*,	Guilty, *&c.*
Edward Lord Biſhop of *Chicheſter*,	Guilty, *&c.*
Richard Lord Biſhop of St. *Davids*,	Guilty, *&c.*
John Lord Biſhop of *Norwich*,	Guilty, *&c.*
John Lord Biſhop of *Carliſle*,	Guilty, *&c.*
William Lord Biſhop of *Bangor*,	Guilty, *&c.*
Joſeph Lord Biſhop of *Gloceſter*,	Guilty, *&c.*
Thomas Lord Biſhop of *Ely*,	Guilty, *&c.*
White Lord Biſhop of *Peterborough*,	Guilty, *&c.*
Samuel Lord Biſhop of *Rocheſter*,	Guilty, *&c.*
John Lord Biſhop of *Oxford*,	Guilty, *&c.*
John Lord Biſhop of St. *Aſaph*,	Guilty, *&c.*
Richard Lord Biſhop of *Winchеſter*,	Guilty, *&c.*
William Lord Biſhop of *Durham*,	Guilty, *&c.*
Edmund Lord Biſhop of *London*,	Guilty, *&c.*
George Lord Viſcount *Torrington*,	Guilty, *&c.*
Simon Lord Viſcount *Harcourt*,	Guilty, *&c.*
Richard Lord Viſcount *Cobham*,	Guilty, *&c.*
Henry Lord Viſcount *Tadcaſter*,	Guilty, *&c.*
Henry Lord Viſcount *Lonſdale*,	Guilty, *&c.*
William Lord Viſcount *Hatton*,	Guilty, *&c.*
Charles Lord Viſcount *Townſhend*,	Guilty, *&c.*
Lawrence Lord Viſcount *Say and Seal*,	Guilty, *&c.*
Thomas Earl of *Pomfret*,	Guilty, *&c.*
Bennet Earl of *Harborough*,	Guilty, *&c.*
William Earl of *Cadogan*,	Guilty, *&c.*
Talbot Earl of *Suſſex*,	Guilty, *&c.*
George Earl of *Halifax*,	Guilty, *&c.*
John Earl of *Briſtol*,	Guilty, *&c.*
Thomas Earl of *Strafford*,	Guilty, *&c.*
Waſhington Earl of *Ferrers*,	Guilty, *&c.*
Archibald Earl of *Ilay*,	Guilty, *&c.*
Henry Earl of *Deloraine*,	Guilty, *&c.*
John Earl of *Stair*,	Guilty, *&c.*
George Earl of *Orkney*,	Guilty, *&c.*
Charles Earl of *Selkirk*,	Guilty, *&c.*
James Earl of *Findlater*,	Guilty, *&c.*
David Earl of *Buchan*,	Guilty, *&c.*
John Earl of *Rothes*,	Guilty, *&c.*
George Earl of *Cholmondeley*,	Guilty, *&c.*
William Earl of *Albemarle*,	Guilty, *&c.*
Frederick Earl of *Rochford*,	Guilty, *&c.*
Richard Earl of *Scarborough*,	Guilty, *&c.*
Montague Earl of *Abingdon*,	Guilty, *&c.*
William Earl of *Yarmouth*,	Guilty, *&c.*
Richard Earl of *Burlington*,	Guilty, *&c.*
Charles Earl of *Carliſle*,	Guilty, *&c.*
Nicholas Earl of *Scarſdale*,	Guilty, *&c.*
Robert Earl of *Sunderland*,	Guilty, *&c.*
William Earl of *Denbigh*,	Guilty, *&c.*
Edward Earl of *Warwick*,	Guilty, *&c.*
George Earl of *Northampton*,	Guilty, *&c.*
John Earl of *Leiceſter*,	Guilty, *&c.*
Henry Earl of *Lincoln*,	Guilty, *&c.*
Thomas Earl of *Pembroke*,	Guilty, *&c.*
John Marquiſs of *Tweedale*,	Guilty, *&c.*
James Duke of *Chandos*,	Guilty, *&c.*
William Duke of *Mancheſter*,	Guilty, *&c.*
Phillip Duke of *Wharton*,	Guilty, *&c.*
Thomas Duke of *Newcaſtle*,	Guilty, *&c.*
Peregrine D. of *Ancaſter*, L. Great Chamb.	Guilty, *&c.*
John Duke of *Roxburghe*,	Guilty, *&c.*
James Duke of *Montroſs*,	Guilty, *&c.*
John Duke of *Montague*,	Guilty, *&c*
Charles D. of *Grafton*, Lord Chamberlain,	Guilty, *&c.*
John D. of *Greenwich*, Lord Steward,	Guilty, *&c.*
William D. of *Devonſhire*, Lord Preſident,	Guilty, *&c.*
William Lord Arch-Biſhop of *Canterbury*,	Guilty, *&c.*

L. Ch. Juſt. *King*, My Lords, your Lordſhips have unanimouſly found *Thomas* Earl of *Macclesfield*, guilty of High Crimes and Miſdemeanors charged upon him by the Impeachment of the Houſe of Commons.

Then the Managers for the Houſe of Commons and the Council withdrew; and then the Houſe adjourned.

Wedneſday, 26 May, 1725. *The 12th Day.*

The Lords being ſat, and the Managers being come, the uſual Proclamation was made for Silence.

THEN the Gentleman Uſher was commanded to call in the Earl of *Macclesfield*, who being come to the Bar, the Speaker acquainted him, that the Lords had fully conſidered of his Caſe, and had unanimouſly found him Guilty of High Crimes and Miſdemeanors charged upon him by the Impeachment of the Houſe of Commons.

E. of *Mac.* I attend Your Lordſhips in Obedience to Your Lordſhips Command; but I am perſuaded, that if Your Lordſhips knew what I ſuffer, Your Lordſhips would not have required this of me, the rather as I did not intend to make any Exceptions in relation to the Proceedings, or give Your Lordſhips any further Trouble. I am now to expect Your Lordſhips Judgment; and I hope that you will be pleas'd to conſider, that I have ſuffered no ſmall matter already in the Tryal, in the Expence I have been at, the Fatigue, and what I have ſuffered other ways; beſides the cruel Diſtemper which this hath brought upon me. I have paid back 10,800 *l.* of the Money already, I have loſt my Office, I have undergone the Cenſure of both Houſes of Parliament, which is in it ſelf a very ſevere Puniſhment. My Lords, the Deficiency of Mr. *Dormer* doth ſound large, 25,000 *l.* but my Lords, it was not through my Fault that the Deficiency happened, nor was that Maſter put in by me; on the contrary, with great Difficulty, it is reduced by my means to 10,000 *l.* leſs than otherwiſe it would have been. My Lords, all the Loſs that can be ſuſtain'd by any thing charged againſt me, is only what ſome of the Suitors might have had more for their Proportion, than they can do now out of Mr. *Dormer*'s Effects; his Debt came to about 47,000 *l.* his Effects to about 13,000 *l.* which is about a fourth Part: I don't find there

is one Suitor hath made his Complaint, that he hath not received his five Shillings in the Pound. Mrs. *Chitty* hath received her Share.

Mr. *Onslow*. My Lords, We must submit it to Your Lordships. This was proper when the Noble Lord was making his Defence; but it is not so in Arrest of Judgment. Your Lordships have found him Guilty of the Fact, and he is now arguing in Defence of it: If he hath any thing in Arrest of Judgment, he may say it, and the Commons are here ready to answer it.

I was very unwilling, my Lords, to interrupt the Earl, and do it now with great Reluctancy, but it is for the sake of Regularity in Your Lordships Proceedings; and we must appeal to Your Lordships whether the Noble Lord is not now going into the Repetition of what he said in his Defence?

E of *Mac*. My Lords, I submit whether this be not proper in mitigation of Your Lordships Sentence; but whether it be or be not, I leave my self to Your Lordships Justice and Mercy; I am sure neither of them will be wanting, and I entirely submit. I don't know whether Your Lordships will be pleased to dismiss my Attendance at this Time, or whether Your Lordships will require me to come again under this very great Uneasiness; I submit it to Your Lordships.

Then the said Earl, as also the Managers, were directed to withdraw; and the House ordered *Thomas* Earl of *Macclesfield* to be committed to the Custody of the Gentleman Usher of the *Black Rod*; and then proceeded to the Consideration of what Judgment to give upon the Impeachment against the said Earl, and afterwards adjourned to *Thursday* Eleven of the Clock, the 27th of *May*.

Thursday, 27 May, 1725. *The 13th Day.*

A Message was sent to the House of Commons by Mr. Baron *Page*, and Mr. Justice *Denton*, to acquaint them, That the Lords are ready to give Judgment against *Thomas* Earl of *Macclesfield*, if they with their Speaker will come and demand the same.

A Message was brought from the House of Commons, by Sir *William Gage* and others, to acquaint the House of Lords, That the Commons, with their Speaker, do intend immediately to come to demand Judgment against *Thomas* Earl of *Macclesfield*; and do desire that the Painted Chamber, and other Passages to the Lords House, may be cleared forthwith.

The Messengers were called in, and told, That the Lords had given Order as desired,

Which was done accordingly.

Then the Commons, with their Speaker, being present at the Bar of the House, the Lord Chief Justice *King*, Speaker of the House of Lords, directed the Gentleman Usher of the *Black Rod*, to bring *Thomas* Earl of *Macclesfield* to the Bar; who, after low Obeisances made, kneeled until the said Lord Chief Justice acquainted him he might rise.

Then the Speaker of the House of Commons said as follows,

My Lords,

'THE Knights Citizens, and Burgesses in 'Parliament assembled, in the Name of themselves, and of all the Commons of *Great Britain*, 'did at this Bar impeach *Thomas* Earl of *Macclesfield* of High Crimes and Misdemeanors; and 'did exhibit Articles of Impeachment against him; 'and have made good their Charge.

'I do therefore, in the Name of the Knights, 'Citizens, and Burgesses in Parliament assembled, 'and of all the Commons of *Great Britain*, demand 'Judgment of Your Lordships against *Thomas* 'Earl of *Macclesfield*, for the said High Crimes 'and Misdemeanors.

Then the Lord Chief Justice *King*, Speaker of the House of Lords, said,

'Mr. Speaker, The Lords are now ready to proceed to Judgment in the Case by you mentioned.

'*Thomas* Earl of *Macclesfield*, The Lords have 'unanimously found you Guilty of High Crimes 'and Misdemeanors, charged on you by the Impeachment of the House of Commons, and do 'now according to Law proceed to Judgment 'against you, which I am ordered to pronounce.

'Their Lordships Judgment is, and this High 'Court doth adjudge,

That you Thomas *Earl of* Macclesfield, *be fined in the Sum of Thirty Thousand Pounds unto our Sovereign Lord the King; and that you shall be Imprisoned in the* Tower *of* London, *and there kept in safe Custody, until you shall pay the said Fine.*

Then the Speaker with the Commons withdrew, and the Earl of *Macclesfield* was taken from the Bar.

Ordered, *That the Speaker of this House do give Order for the Printing and Publishing the Tryal of* Thomas *Earl of* Macclesfield; *and that no other Person but such as he shall appoint, do presume to Print the same.*

Ordered, *That the said Earl of* Macclesfield *be committed to the* Tower *of* London, *there to be kept in safe Custody until he shall pay the abovementioned Fine of Thirty Thousand Pounds to the King; and that the Gentleman Usher of the* Black Rod, *in whose Custody the said Earl at present is; do him safely convey to the said* Tower, *and deliver him to the Constable thereof, or in his Absence to the Lieutenant, or Deputy Lieutenant of the same; and that the said Constable, Lieutenant or Deputy Lieutenant do receive the Body of the said Earl, and him keep in safe Custody there, until he shall have paid the said Fine.*

Then the House adjourned to *Monday*, 31 *May*, 1725.

And the Earl of Macclesfield *was conveyed to the* Tower, *where he continued Prisoner for some Time till he paid his Fine.*

The Trial of Sir ROBERT SPOTISWOOD, *Preſident of the College of* Juſtice *in* Scotland, *and Secretary there to King* Charles I. *for* High-Treaſon, *in the Parliament held at* St. Andrews, November, December *and* January, 21 Car. I. 1645.

SIR *Robert Spotiſwood* having been ſent by the King into *Scotland* to negotiate Matters with the Marquiſs of *Montroſe*, and to carry him, among other things, a Commiſſion to be Generaliſſimo of all his Forces there, took the Opportunity of the Army's marching ſouthward for his more ſafe Return to his Maſter, to whom he was to give an Account of his Negotiation; but being unfortunately taken Priſoner at the Battle of *Philiphaugh*, where *Montroſe*'s Army was defeated by General *Leſlie*, he was carry'd firſt to *Glaſgow*, and afterwards to St. *Andrews*, where the following Proceſs was proſecuted againſt him.

DITTAY againſt Sir *Robert Spotiſwood.*

SIR *Robert Spotiſwood*, you are indicted and accuſed before the Committee of Eſtates of Parliament; that for ſuameikleas, by the common Law, Law of Nations, Laws and Acts of Parliament, and Practick of this Kingdom; and by all Juſtice, Reaſon, Equity and Conſcience, all that riſe in Arms, and concurr with the Adverſaries of this Kingdom, for ſubduing of their native Country; all Invaders, Aſſaulters, or Subduers of this Kingdom, or any part thereof, by Force of Arms; all who contribute their Help, Countenance and Aſſiſtance, to the Adverſaries, Aſſaulters, or Invaders thereof in an hoſtile way: All who are either Authors, Abettors, Maintainers, Suppliers, or concurr with the Adverſaries of this Kingdom, in the aſſaulting, or ſubduing thereof, or any part thereof: And all who are Art and Part of the ſaids Crimes, Miſdeeds and Malverſations above ſpecified, or any of them, incurr the Pain of High-Treaſon againſt his Majeſty, his Crown, and againſt the Eſtates of this Kingdom, and the pain of Forfaulture of Life, Lands, Eſtate, and Goods to be execute againſt them, by the Eſtates of this Kingdom, and the Benefit thereof to be apply'd to the uſe of the Publick for relief of their Burdens: And the Committers of the ſaids Crimes above-ſpecify'd, or any of them, are otherwiſe cenſurable and puniſhable in their Perſons, Names and Fame, and in their Lands, Goods, Means and Eſtate, by Fining, Confining, or otherwiſe, as the Eſtates of this Kingdom ſhall think expedient. And albeit, That by the Acts of Parliament of this Kingdom, eſpecially by the 130th Act of the 8th Parliament of King *James* VI. in *May* 1584. It is ſtatute and ordain'd, that none of the King's Liedges and Subjects preſume, or take upon hand, to impugn the Dignity and Authority of the Eſtates of Parliament, or to ſeek or procure the Innovation or Diminution of the Power and Authority of the Samen, or of any of the Eſtates thereof in any time coming, under the pain of Treaſon. Likeas, albeit by the fourth Act of the third Parliament of King *Charles*, dated 29th of *June* 1644. all takers up of Arms againſt the Kingdom and Eſtates of the Country, are guilty of Treaſon, and puniſhable by Forfaulture of Life, Lands, and Goods, or any other Cenſure the Parliament ſhall pleaſe to inflict. Yet nevertheleſs, the ſaid Sir *Robert Spotiſwood* having ſhaken off all Fear of God, and due Reſpect to the Laws of the Kingdom, and all Duty that as a Subject thereof you ought to have carry'd to this Kingdom, and to the Defence thereof, eſpecially in theſe troubleſome Times, when this Kingdom has been threaten'd to be ruin'd and deſtroy'd, with the hoſtile Invaſion of ſome of her unnatural Brood, and ſome *Iriſh* Rebels, and forgetting and contemning that gracious Favour mentioned in the 33d Act of King *Charles*'s ſecond Parliament, of Date 16 of *November* 1641. whereby the Eſtates of Parliament therein conveen'd did then declare, that for the good and grave Conſiderations mentioned, they would not proceed to a final Sentence againſt you, for ſuch Crimes and Miſdemeanors as at that time you were cited before them, and accuſed as guilty of, nor would inſiſt upon the Puniſhment thereof. You have preſum'd and taken upon hand, to abuſe the King's Majeſty, in purchaſing from his Majeſty by your pretended ways, the Office of Secretary to yourſelf, and have receiv'd the Signet thereof, which was formerly keeped by the Earl of *Lauerk*, who was appointed by his Majeſty and the Eſtates of Parliament in *Anno* 1641, to be Secretary to his Majeſty for this Kingdom of *Scotland*, and that contrary to his Majeſty's Declaration emitted by his Majeſty in the ſaid Parliament; whereby his Majeſty did declare, that he would not imploy you in any Office or Place of Court or State without Conſent of Parliament, nor grant you acceſs to his Perſon, whereby you might interrupt or diſturb the firm Peace was then ſo happily concluded. Likeas, ſince your purchaſing of the ſaid Office of Secretary, at leaſt taking the ſamen Office upon you, and of the keeping of the Signet thereof, you have docqueted with your Hand, ſigneted with the Signet of the ſaid Office, ſeveral Commiſſions granted to *James Grahame* ſometime Earl of *Montroſe*, a declared and for-

faulted Traitor, and an excommunicated Perſon: and eſpecially, a Commiſſion dated the 5th of *June* 1645, given by the King's Majeſty to the ſaid *James Graham*, making and conſtituting the ſaid *James Graham* Lieutenant Governor, and Captain General of all Forces rais'd or to be rais'd within this Kingdom; and giving Power and Authority to the ſaid *James Graham*, to raiſe and levy Forces within this Kingdom, and to lead and conduct them againſt the King's Majeſty's good Subjects, and againſt the Forces rais'd and levy'd in Arms by Authority of the Eſtates of Parliament of this Kingdom, for the Maintainence, Defence, and Proſecution of the mutual League and Covenant. By which Commiſſion ſo docqueted and ſigneted by you, as ſaid is, the King's Majeſty's good Subjects who have riſen in Arms for the Defence of the ſaid League and Covenant, and whoſe riſing in Arms is allow'd and authoriz'd by the Eſtates of Parliament of this Kingdom, are deſign'd as traiterous and ſeditious Perſons. And als, you have docqueted and ſigned with your Hand, a Proclamation alledged emitted by the King's Majeſty for holding of Parliaments within this Kingdom; which Proclamation is totally deſtructive of, and derogatory to the Dignity and Authority of the Eſtates of Parliament preſently conveen'd by vertue of the laſt Act of the laſt Parliament 1641, and which Proclamation annuls and condemns the Procedure thereof. And als, you have docqueted and ſign'd with your Hand, a Commiſſion granted by the King's Majeſty to *James Graham* ſometime Earl of *Montroſe*, to be Commiſſioner for his Majeſty for holding of the ſaid pretended Parliament: in docqueting and ſigning of which Proclamation, Commiſſions and Warrants, you have abuſed the aforeſaid Office of Secretary, and that to the derogation and diminution of the Honour, Dignity, and Authority of the Eſtates of Parliament of this Kingdom. Likeas, you not being contented with your abuſing of his Majeſty, in purchaſing of the foreſaid Office of Secretary from his Majeſty, contrary to his Majeſty's Declaration in Parliament, in manner and at the time as ſaid is, at leaſt with the taking the ſame upon you, and with the docqueting the foreſaid Commiſſions to the ſaid *James Graham*, and of the foreſaid Proclamation for the Parliament; which is not only derogatory to the Dignity and Authority of the Eſtates of Parliament, but alſo deſtructive of the whole Power thereof, and which declares the Procedure of the Eſtates of Parliament to be Treaſon: You have actually and really joined your ſelf in an unnatural and traiterous way againſt this Kingdom, with the ſaid *James Graham* and his rebellious Army, wherewith he infeſted and troubled the Peace of this Kingdom, and cruelly and unnaturally deſtroy'd and murder'd the King's Majeſty's loyal Subjects; and have been with the ſaid *James Graham* at all the Acts of Hoſtility committed by him and his rebellious Army within this Kingdom, within the Months of *Auguſt* and *September* laſt 1645, or one or other of them. And in ſpecial, you was with him and his rebellious Army after the Conflict at *Kilſyth*, which was upon the 15th of *Auguſt* laſt 1645, betwixt the Army and Forces of this Kingdom, and the ſaid rebellious Army conducted by the ſaid *James Graham*, where you did join your ſelf with the ſaid *James Graham* and his rebellious Army, and was actually with him thereafter, in his Progreſs going thro' the Country in ſubduing the ſame, *viz.* From *Kilſyth* to *Bothwel*, and from *Bothwel* to *Calder*, and from thence to *Limphoy*, and from thence to *Cramſton-riddel*, and from thence to *Torwoodley*, and from thence to *Kelſo*, and from thence to *Jedburgh*, and from thence to *Selkirk*, and to the Fields betwixt *Selkirk* and *Philiphaugh*, where the ſaid *James Graham* and his rebellious Army, were upon the 13th of *September* laſt, by the Mercy of God upon his diſtreſſed People, and by the Strength of his Right-hand againſt his Enemies, defeat and confounded, and where you were actually with the ſaid *James Graham* and his ſaid rebellious Army; at leaſt you the ſaid Sir *Robert Spotiſwood* did join with the ſaid *James Graham* and his rebellious Army, at one or other of the ſaids Places particularly above-ſpecify'd; and during your being with the ſaids *James Graham* and the ſaids Rebels the time foreſaid, you did ſubſcrive a Letter written by your ſelf to ſome Nobleman about the King's Perſon in *England*, of the Date, from about *Kelſo* the 10th of *September* laſt 1645, which was after the foreſaid Conflict at *Kilſyth*; wherein you boaſt, that you had diſperſed the King's Majeſty's Enemies within this Kingdom, ſome of them to *Ireland*, and ſome to *Berwick*; whereby you do expoſtulate, that no Party was ſent after Lieutenant-General *David Leſley*, who at that time came in with, and conducted Forces within this Kingdom for repreſſing and ſubduing that rebellious Army, wherein you were for the time: And in which Letter, you profeſs'd a Reſolution to follow that rebellious War whereunto you had aſſociate your ſelf, and to clear the Kingdom of the Rebels that had fled to *Berwick*. By which Name of Rebels you did mean and expreſs his Majeſty's beſt and moſt loyal Subjects, within this ſaid Letter of yours, containing many Expreſſions of your joining the ſaid *James Graham* and his rebellious Army, and of your unnatural and traiterous Reſolution to aſſiſt the Proſecution of the ruin and deſtruction of this Kingdom as the ſaid Letter bears. Which Crimes above-ſpecify'd, or one or other of them, you cannot deny; and therefore you as a Traitor to this Kingdom have incurr'd the pain of High-Treaſon, and the pain of Forefaulture of Life, Lands, Eſtate, and Goods to be execute againſt you by the Eſtates of this Kingdom, and the benefit thereof to be apply'd to the uſe of the Publick, for the relief of their Burdens, or otherwiſe, in the option of the ſaids Eſtates of this Kingdom, you are cenſurable and puniſhable in your Perſon, Name, and Fame, and in your Lands, Goods, Means and Eſtate, by fining, confining, or otherwiſe, as the ſaids Eſtates of this Kingdom ſhall think expedient.

Glaſgow, 5th *November* 1645.

The Committee ordains the Dittay to be tranſmitted, ſent and deliver'd to the above-written Sir *Robert Spotiſwood*, where he is preſently in the Caſtle of *Glaſgow*; and ordains the ſaid Sir *Robert* to be ready to anſwer to the ſaid Dittay. At St. *Andrews*, upon the 13th of *November* Inſtant 1645.

Sic Subſcribitur,

JA. PRYMROSE.

ANSWERS

ANSWERS *to the Dittay given in againſt Sir* Robert Spotiſwood.

IN regard the Defences given in by *James Ogilvie*, againſt the Relevancy of his Dittay, will militate likewiſe in my behalf, I repeat the ſame for me *brevitatis cauſa*.

This of mine is founded upon two Acts of Parliament, the one in *May* 1584, and the other in *June* 1644. By the firſt, it is declared to be Treaſon, to impugn the Dignity and Authority of the Eſtates of Parliament, or to ſeek and procure the Innovation or Diminution of the Power and Authority of the ſamen, or any of the Eſtates thereof. It is ſubſumed, that I have forefaulted againſt this Act, in ſo far as I, forgetting and contemning the Favour granted to me in the laſt Parliament 1641. have abuſed his Majeſty, in purchaſing from him the Office of Secretary, contrary to the Declaration emitted by his Majeſty in the ſaid Parliament. Likeas, ſince the Purchaſing thereof I have docqueted and ſigneted with the Signet of the ſaid Office, the two Commiſſions and Proclamation mentioned in the Dittay: In doing whereof I am alledged to have abuſed the foreſaid Office of Secretary, and that to the Derogation and Diminution of the Honour, Dignity and Authority of the Eſtates of Parliament of this Kingdom.

Firſt, To this Act of Parliament I anſwer; It cannot militate againſt me, in regard of the Scope and Intention thereof, which was only to reſtrain the Liberty which ſome in thoſe Times took to themſelves, to call in Queſtion the Power that one of the three Eſtates then had to ſit and vote in Parliament. Which is clear, both by the Preface of the ſaid Act (*viz.* finding the Power, Dignity and Authority of the Court of Parliament of late Years called in ſome doubt; at leaſt ſome curiouſly travelling to have introduced ſome Innovation thereanent) and by other Records of that time; eſpecially a Declaration of the King's, yet extant in print, publiſh'd in *Anno* 1585. In which he who knew beſt what was meant thereby, declareth this to have been only the Parliament's Intention in making of this Act. So that it cannot be extended to other Caſes, namely this in hand.

Secundo, Giving, that this Act of Parliament could be extended beyond the true Intent and Meaning thereof; yet the particular Deeds libelled, whereby I am alledged to have tranſgreſſed the ſame, and conſequently to be guilty of Treaſon, are not relevant to import ſo much. And firſt, whereas to aggravate the Matter, I am charged to have been unmindful and unthankful for the Favour I received at the laſt Parliament: Let me ſay this much without Offence, That as I eſteem highly of their Favour, ſo I was not obnoxious to their Cenſure at that time: Whereanent I refer myſelf to that Proceſs, wherein nothing was proven of all that was alledged againſt me.

As to the Purchaſing of the Secretary's Office, what paſt about that, and how far I had Intereſt therein, I remit to the Declaration given in by me to the Committee at *Glaſgow*, which I uſe as a part of my Defence againſt this Point. The Truth is, That the Lord Secretary being from Court at the time, and there being ſundry Sollicitors to his Majeſty for Grants of diverſe Natures, having relation to this Kingdom, he was pleaſed (there being none then about him fit for the Imployment) to intruſt me with the ſighting and preſenting of the ſame unto him, by ſending me a Warrant under his Sacred Hand to that effect, and the Signet withal, to be kept by me during the abſence of the Secretary, or while his Majeſty ſhould take further Order thereanent. In accepting whereof, I cannot imagine that I did commit any thing worthy of blame; or that his Majeſty did any thing contrary to the Declaration emitted by him in Parliament, he having conferred no ordinary Place or Office upon me, but only a temporary Imployment *in caſu neceſſitatis*, having none elſe for the time to lay it upon. Likeas I ſee not how I can be charged with Preſumption (as the Dittay bears) in doing thereof; in reſpect that by natural Allegiance (from which no Power under Heaven can looſe me) I am bound to ſerve and obey his Majeſty whenſoever he calls upon me for that effect. And as to that part of his Majeſty's Declaration, not to grant me acceſs to his Perſon; it was never his Intention otherwiſe but in the Caſe annexed, *viz.* whereby I might interrupt or diſturb the firm Peace then ſo happily concluded; which (I thank God) never ſo much as once enter'd into my Thought, as my own Conſcience, and my Behaviour about his Majeſty this while paſt doth bear me Witneſs. Beſides his Majeſty's Declaration, That he ſhould not give any acceſs to thoſe therein mentioned, is not a penal Statute, or Act of the Eſtates, diſabling or reſtraining them to repair to his Majeſty, under any Pain or Certification in caſe they ſhould contraveen, but only a Declaration emitted by his Majeſty himſelf, that he would not admit them to the end expreſſed in the Act. And therefore the ſame is inept to be the Ground or Aggravation of a Criminal Dittay.

As for docqueting and ſigneting Commiſſions, and other Warrants preſented by me, I hope in itſelf it is no Crime, altho I was not actual Secretary, I having done it by his Majeſty's ſpecial and expreſs Command. For the three Particulars chopt at in the Dittay, I can anſwer: *Firſt*, To the Commiſſion of Lieutenantry docqueted by me, it is but a Double, as the Docquet, I believe, bears, the Principal having been ſent long before by the *Engliſh* Secretary, who was the ſole mover and procurer of it.

Next, To the Proclamation for holding a Parliament, it was drawn *in terminis* by his Majeſty's ſpecial Direction, and docqueted by me, as it is, blank in Day and Place, and other Circumſtances; his Majeſty's Intention in it being only this, to have it come to his hand, to whom it was intruſted, who by ſpecial Order was to diſpoſe of it, as ſhould be found beſt for the Peace of the Kingdom, without Derogation to the ſtanding Laws thereof: neither hath there any Uſe at all been made of it, he having indicted a Parliament before it came to his Hands, by virtue of a preceeding Warrant. Wherein it may ſeem to annul and condemn the Procedure of the Eſtates of Parliament preſently conveen'd, or be otherwiſe deſtructive and derogatory to the Dignity and Authority thereof, it is not my part to meddle with, his Majeſty being moſt concerned therein, whoſe Buſineſs it is, I having no further hand in it, but in ſo far as I was obedient to my Maſter's Directions; which by no Law nor Act of Parliament

can

can bring me within the Compaſs of the leaſt Cenſure, let be the Guilt of Treaſon. For I am not here (neither can be) called in Queſtion for that which uſually the Miniſters of Princes have been charged with (*viz.* giving of bad Counſel) but only for docqueting and ſigneting theſe three Warrants, which I could not in Duty refuſe, being commanded by his Majeſty to do the ſame.

To the third and laſt Commiſſion I make the ſame Anſwer.

The ſecond Act of Parliament, whereupon this Dittay is founded, is in *June* 1644, bearing, That they who take up Arms againſt the Kingdom and Eſtates of the Country, are guilty of Treaſon. For Anſwer to this part of the Dittay, I ſay, it is not relevantly ſubſumed, that I took up Arms againſt the Kingdom: Only it is alledged, That I was in Company with *James Graham* in his Progreſs thro' the Country, after the Conflict at *Kilſyth*, which by no Interpretation, can be thought to be a taking up of Arms againſt the Kingdom; eſpecially ſince I was directed to him from his Majeſty, and by that Occaſion, and none other, was with him in Company.

Secundo, In the Act itſelf, it being propond in the Quere, Whether aſſiſting, or taking Arms with thoſe who have invaded the Country, ſhall be relevant to make up a Dittay againſt the Doers thereof, no Anſwer is given thereunto by the Parliament; which imports as much, that they thought it not reaſonable to make the Aſſiſters of ſuch as are in Arms againſt the Kingdom and Eſtates, guilty of Treaſon: If not their Aſſiſters, far leſs ſuch as were only in Company with them occaſionally, as I was.

As to the Letter written by me about *Kelſo*, whatever be in it, it cannot be charged upon me; becauſe it went no further than Intention, I having upon better Thoughts called it back, in regard of ſome Expreſſions in it, which might ſeem injurious to thoſe engaged on the other ſide. For whatever I think of the Courſe, I thank God, I hate no Man's Perſon that is imbarked therein, nor could wittingly irritate the meaneſt of them by any opprobrious Compellation. Always the moſt can be in it, is Inadvertancy.

To cloſe all, in all this Dittay (laying aſide the ſecond Act, which I hope is ſufficiently anſwered) I am not charg'd with any thing that is declared by any Law or Act of Parliament to be Treaſon, which by the 28 Act, 1641, is required, before any Perſon can be declared a Traitor.

Theſe Anſwers for your Lordſhips Satisfaction, I have given in preſently, under Proteſtation, That (in reſpect I have been ſtraitned with Time, and could not gather my Thoughts ſo well as was requiſite) I ſhall be heard to alledge what further I can bethink myſelf of, before the cloſing of the Proceſs, either by Writ or Word, as your Lordſhips ſhall be pleaſed to allow.

REPLIES *to Sir* Robert Spotiſwood's *Anſwers to his Dittay*, 12 December 1645.

WHere the Defender repeats the Defences given in by *James Ogilvie*, againſt the Relevancy of his Dittay, alledged by the Defender to militate in his behalf. It is replied, That there are no Defences given in by *James Ogilvie*, but only the Defence of Quarters, which is anſwered in the Reply given in againſt the Defence of Quarters.

To the firſt Defence, bearing, That the Act of Parliament in *May* 1584, does not militate againſt the Defender, alledging that the Scope and Intention thereof, was only to reſtrain the Liberty of ſome who called in Queſtion the Power of one of the three Eſtates. It is anſwered, The Defence ought to be repell'd, in reſpect of the diſpoſitive Words of the ſaid Act, militating againſt all thoſe who ſhould procure the Innovation or Diminution of the Power and Authority of the Eſtates of Parliament, or any of them; and the Parliament are the beſt Judges and Interpreters of the Acts of Parliament, and of the extent of the Senſe and Meaning thereof.

Where the Defender in his ſecond Defence ſeems to inſinuate, that nothing was proven againſt him in his Proceſs in *Anno* 1642, wherein he received the Parliament's Favour. It is anſwered, That the time preſcribed by the Parliament for the Trial of that whole Proceſs being but two Months, the Committee for the Incendiaries could not proceed at that time to further Trial, and if they had hade time, ſufficient Probation would have been gotten in theſe Proceſſes, for proving of all, or the moſt part of the Points contain'd therein.

Where in the ſaid ſecond Defence, the Defender affirms that he committed nothing worthy of blame, and that he cannot be charg'd with Preſumption, in taking upon him the Secretary's Office; becauſe by his natural Allegiance, he was bound to obey the King's Majeſty. It is replied, That ſeeing in the Parliament 1641, the Secretary's Office, and all the Officers of Eſtate are to be provided and filled by Advice and Approbation of the Eſtates of Parliament, during their ſitting, and of the Council, during the Interval betwixt the Parliaments: It was a high Preſumption in the Defender, to accept of the ſaid Office, without Advice and Approbation foreſaid; and his accepting thereof is a preſumptive Deed in prejudice of the Liberty of Parliament, by whoſe Advice he ſhould have been choſen and provided to the ſaid Office; his Preſumption being the greater, by the embracing of the ſaid Office, the ſame not being vacand, but was fill'd by Advice of Parliament: And therefore he ought modeſtly to have refuſed the ſaid Office, which he did not, but embraced the ſamen, and uſed it in manner libelled in his Dittay, to the Diſhonour of the Eſtates of Parliament of this Kingdom, by expeding and docqueting Commiſſions and Proclamations, declaring their Procedures to be ſeditious and treaſonable, chiefly the ſaid Commiſſions being in favour of *James Graham* a declared Traitor.

Where in the ſaid ſecond Defence, it is alledged, That his Majeſty's Intention was never to grant the Defender Acceſs to his Perſon, only in the Caſe annexed to his Majeſty's Declaration in *Anno* 1641, *viz.* whereby the Defender might diſturb the firm Peace then ſo happily concluded. It is replied, That theſe words of the King's Majeſty's Declaration, are not of the nature of a reſtricting Quality of the denied Acceſs mentioned in the King's Declaration, as if Acceſs to his Majeſty's Perſon had been granted to the Defender, upon Condition that the Defender ſhould not diſturb the

the firm Peace: But the Words are declaratory, That in reſpect the Eſtates of the Kingdom had upon juſt Grounds conceived, that the Defender's Acceſs to his Majeſty's Perſon heretofore, had diſturbed the Peace, and his Acceſs to his Majeſty's Perſon thereafter would diſturb the Peace; therefore his Majeſty was graciouſly pleas'd to make the foreſaid Declaration, That he ſhould not have Acceſs to his Perſon, and ſo the Eſtates would be in Security, that he ſhould not diſturb the Peace by his Acceſs. Likeas *de facto* the Defender's Actions, ſince his attending his Majeſty's Perſon, do teſtify, that he has had no ſmall hand in diſturbing the Peace, which are preſently laid to his Charge in his Dittay.

Where in the ſaid ſecond Defence, it is alledged, That the King's Majeſty's Declaration is no Penal Statute, reſtraining the Defender from having Acceſs to his Majeſty's Perſon, and therefore is ineptly libelled to be a Ground, or Aggravation of a criminal Dittay. It is replied, That albeit it were granted, That his Majeſty's Declaration were no Penal Statute reſtraining the Defender; yet the ſame is pertinently libelled, to aggravate the Defender's Carriage againſt the Honourable Eſtates of Parliament, by his expeding under his hand, as Secretary to his Majeſty, the Commiſſions and Proclamations mentioned in his Dittay; which Office of Secretary he did accept, whilſt he did accede to his Majeſty's Perſon, contrary to his Majeſty's Declaration made in Parliament.

Where the ſaid ſecond Defence bears, That the Defender cannot be quarrelled nor challenged for docqueting of the three particular Papers mentioned in his Dittay, he having done the ſame by his Majeſty's ſpecial Command, and he not being quarrelled for giving Counſel to the ſamen. It is reply'd, That the Defender's docqueting thereof, not only clears his Acceſſion to the evil Counſel, given to his Majeſty for granting the ſaid Commiſſions and Proclamations, but alſo is a part of the proſecuting of that evil Counſel, and of its deſired Effect. And it was the Defender's Part, as the part of a true and loyal Subject to his Majeſty, to have diverted his Majeſty from giving Ear to ſuch evil Counſels: But on the contrary, it is acknowledged by the Defender in his firſt Section of his third Defence, That he was ſent by his Majeſty to *James Graham*, whereby it is more than evident, that the Defender has had a great hand, not only in the framing or adviſing of the ſaid Commiſſions and Proclamations, but alſo in the conveying of the ſamen to the ſaid *James Graham*, he being a declared Traitor, and being in Arms againſt the Eſtates of this Kingdom both with Fire and Sword.

Laſtly, the whole ſecond Defence ought to be repell'd, in reſpect of the Dittay, bearing the Defender his acceding to his Majeſty's Perſon contrary to his Majeſty's Declaration in Parliament; his accepting of the ſaid Office of being Secretary, contrary to the Act of Parliament, anent the providing of the Places of Officers of Eſtate; and his abuſing of the ſame Office by docqueting and ſigneting Commiſſions and Proclamations, deſtructive of, and derogatory to the Dignity and Authority of the Parliament.

To the firſt Part of the third Defence, bearing that the Defender's being in Company with *James Graham* in his Progreſs thro' the Country after the Field at *Kilſyth*, cannot be interpreted the taking up of Arms againſt the Country, he being ſent to *James Graham* by his Majeſty. It is replied, that the Dittay is relevantly ſubſumed from the Act of Parliament, *viz.* That the Defender did join himſelf with *James Graham* and his rebellious Army, and was with him and his Army at the Places libelled in his Dittay, at leaſt at one or other of them; which joining of the Defender with the Rebels, who were in Arms againſt the Country, is a taking up of Arms againſt the Country. Likeas, the Defender in his Defence founded upon Quarters, grants that he was taken Priſoner by an Officer of our Army, and ſo grants that he was in the Rebels Army againſt ours.

To that part of the third Defence, bearing that the Act of Parliament 1644, makes no Anſwer to that part of the Query therein mentioned, anent Aſſiſters. It is replied, That the Dittay is founded upon the diſpoſitive Words of the Act of Parliament againſt taking up of Arms, and not upon what the Act of Parliament has not anſwered. And where the Defender affirms, that he was only occaſionally in Company with *James Graham*: It is replied, That it is contrary to the preceding Article of his third Defence, bearing that he was ſent to *James Graham* by the King's Majeſty, and ſo cannot alledge that he was there occaſionally.

To that part of the ſaid third Defence, bearing that the Letter mentioned in the Defender's Dittay, went no further than Intention, and was called back again. It is replied, That the Letter, albeit found upon the Defender himſelf, is a Declaration of the Defender's Reſolutions therein, and is mentioned in his Dittay, as an aggravation of his Carriage, whereof if he had repented, he would ſurely have deſtroyed the Letter, and retired himſelf from the Rebels. And where the Defender affirms, that he is not charged with any thing that is declared to be Treaſon by any Law or Act of Parliament, except upon the Act of Parliament 1644. ought to be repell'd in reſpect of the Dittay, which is alſo founded upon the Act of Parliament 1584.

Item, to the firſt part of the Eik anent the Defence of Quarters, the Procurators for the Eſtates refer the ſamen to the Commiſſioners for the Proceſs.

To that part of the Eik given in by the Defender upon the 15th of *December* 1645. bearing, that the Propoſition of his Dittay is not relevant, in ſo far as it is founded upon the Common Law, Equity, Reaſon and Conſcience, becauſe it is provided by diverſe Acts of Parliament, That the King's Leiges ſhould be governed by the King's Laws, and the Laws of the Realm. It is replied, That the Propoſition of the Dittay is relevant, as being founded upon the Common Law, Equity and Reaſon, becauſe by the 69th Act of the 6th Parliament of King *James* 5th, it is found by the Eſtates of Parliament, That the King's Majeſty has juſt Action to purſue all Summonds of Treaſon done and committed againſt his Perſon and Commonwealth, conform to the Common Law, good Equity and Reaſon, notwithſtanding there is no ſpecial Law, Act nor Proviſion of the Realm made thereupon before, and the Defender's Dittay is a Dittay of Treaſon.

Item, To that part of the Eik given in by the Defender upon the 15th of *December*, bearing that the Defender cannot be challenged upon the Act of Parliament 1644; becauſe the ſamen was not made by the King's Majeſty and Eſtates join'd together, making *communem reipub. ſponſionem*, which

is the ordinary Definition of Law. It is replyed, That the Defence clears the Defender's Carriage, and all the Paſſages libelled in his Dittay, to have been clearly againſt the Eſtates of Parliament, he now averring, that it were hard to challenge him upon the Act of Parliament 1644, becauſe the King's Majeſty was not preſent thereat. The Defence itſelf inſinuates tacitly, That this preſent Parliament is no Parliament: For if this be a Parliament, and was a Parliament *in Anno* 1644, then the Act is Obligatory, and does oblige all the Liegea, ſo that the Defence is rather a Declinator of the Honourable Eſtates of Parliament, than a Defence, and in effect merits no Anſwer, but Cenſure.

22d. *December*, 1645.

Produced by the Procurators of the Eſtates, and given up to Sir *Robert Spotiſwood* this day, with the Papers formerly given in by him, and orders him to give his Duply to this, againſt *Thurſday* next at Ten a Clock in the Forenoon *peremptorie*.

DUPLIES *given in by Sir* Robert Spotiſwood, *to the Replies made by the Procurators of Eſtate againſt his Anſwers to his Dittay.*

Firſt, WHereas it is Replied, That the diſpoſitive words of the Act of Parliament *May* 1584. militates againſt thoſe who procure the Innovation or Diminution of the Eſtates of Parliament. It is Duplied, That neither the diſpoſitive words of the Act, nor the Reply militates againſt me; becauſe neither is it, nor can be ſubſumed that I have impugned the Authority of the Eſtates of Parliament, or have procured the Diminution of their Power, by calling in doubt or in queſtion, or denying their Power anent the providing the Secretary's Office, and all other Places of the State by their Advice, and by procuring the Power and Liberty granted unto them by the Act of Parliament 1641. to be retreated and innovated, and taken from them; which is the only Crime forbidden by the diſpoſitive words of that Act, as is clear by the ſamen, and by the Narrative of the ſaid Act anent the occaſion of it, which declares the Diſpoſitive. And albeit I had accepted the Office of Secretary without the Advice and Approbation foreſaid, which is denied, my accepting thereof could not import a Contravening of the ſaid Act 1584, and a downright treaſonable Impugning of the Authority of the Eſtates, becauſe the contravening of an Act of Parliament, or the accepting of an Office not conform to an Act of Parliament, is not a direct Impugning of the Authority of the Eſtates of Parliament, but a null Act; *& quod eſt nullum de jure, nullum ſortitur effectum:* Otherwiſe if the conſequential Impugning of the Authority of the Eſtates of Parliament by contravening of Acts of Parliament, ſhould fall under the compaſs of the ſaid Act 1584, Treaſon ſhould be too frequent, in regard the Contraveners of any Act of Parliament does in conſequence impugn the Authority of the Eſtates.

Secondly, Whereas it is Replied, That if there had been ſufficiency of time, there ſhould have been ſufficient Probation gotten againſt me in my former Proceſs. It is anſwered, *De his quæ non ſunt, & non apparent, idem eſt judicium*; and notwithſtanding the pretended ſhortneſs of time, there was Proceſs gotten againſt others, but none againſt me.

Thirdly, Where it is further Reply'd, That it was a Preſumption in me to accept the ſaid Office, being already filled by the Advice of Parliament. It is anſwered, That all Preſumption is not Treaſon, and the Act of Parliament anent the providing of theſe Places by Advice of the Eſtates, does not bear, That if they ſhould be provided otherwiſe, the Accepters ſhould be puniſhed as Traitors.

2*d*, Repeats the Declaration given in by me and my Defence, and denys, that I imbraced or accepted the ſaid Office; and the doing of Acts otherwiſe incumbent to the Secretary, cannot import the accepting of the Office, ſeeing it cannot be denied, but either the neceſſary abſence of a Secretary, or in time of Sickneſs, or in the Vacancy, before his Majeſty could acquaint the Parliament or Council, or have the Advice and Approbation anent the filling theſe Places, his Majeſty may command any of his Subjects to ſupply the Place, without any hazard of Treaſon.

Fourthly, Whereas to the Defence, bearing, That his Majeſty's Declaration, that he ſhould not grant me acceſs to his Royal Perſon, whereby I might diſturb the Peace, It is no penal Statute, and conſequently it can be no ground of a Dittay: It is Reply'd, That the Declaration is not of a reſtricting Quality; and that tho his Majeſty's Declaration be not a penal Statute, yet the ſamen may be enough to aggravate my Carriage. I Duply, That I repeat the Defence, and oppones the Declaration itſelf: And if the Declaration be not a penal Statute, as it is acknowledged, it cannot be libelled pertinently to be a relevant Ground of a Dittay, and conſequently it cannot aggravate the Defender's Carriage; *& quod non relevat, non aggravat.*

Fifthly, Whereas it is Reply'd, That my docquetting the Papers mentioned in the Dittay, clears, that I gave ill Counſel in granting the ſaids Commiſſions and Declarations, and is a part of the proſecuting of that Counſel, and that as a good Subject I ſhould have diverted His Majeſty. It is Duply'd, That all theſe who are imployed to docquet or ſign Papers, are not admitted to be of his Council, and cannot in good manners intrude themſelves to divert His Majeſty from his Reſolutions, and refuſe to ſign or docquet ſuch Papers as His Majeſty is pleaſed to cauſe preſent to them, upon pretext, that they in their Judgment diſprove them; and I repeat my Anſwer, whereunto no Reply is made, That what I did in theſe Particulars, was in obedience to His Majeſty's expreſs Commands, and in Law *qui juſſu Judicis aliquid facit (multo magis* of the Supreme Judge and Magiſtrate*) non videtur dolo malo facere, qui parere neceſſe habet. ff.* de Regul. Juris *L.* 167. § 1.

Sixthly, Whereas it is Reply'd, That the Dittay is relevantly ſubſum'd; That I did join myſelf with *James Graham*, and was with him in his Army, and that in opponing my Defence for

Quarters, grants that I was in the Rebels Army againſt our Army: The Defence is repeated, and that Subſumption is no wiſe relevant, becauſe it is not conform to the Act of Parliament, that he took Arms: And an occaſional being in an Army cannot import a joining with it, and taking of Arms. And altho I have granted that I was taken Priſoner, being occaſionally in the Army, I have not granted that I was in the Army as an actual taker of Arms againſt the Country.

Seventhly, And where the Reply bears, That I cannot alledge, that I was occaſionally in the Army, becauſe I have granted in my Defence, that I was ſent by the King: It is anſwered, That in affirming that I was occaſionally in Company with *James Graham*, I am not contrary to myſelf, and my meaning being, that I was there being ſent, but not there of purpoſe to join actually with him in taking of Arms.

Eighthly, Whereas it is further Reply'd, That my Letter, albeit found upon me, is a Declaration of my Reſolution, and is mentioned as an Aggravation of my Dittay. The Defence is repeated, and the keeping and not ſending of that Letter, argues my Reſolution to the contrary.

Ninthly, Whereas to that part of the Defence, bearing, That the Propoſition of the Dittay is not relevant, in ſo far as it is founded upon the common Law, and other Grounds not authorized by Acts of Parliament: It is Replyed, That by the 69 Act of the 6th Parliament of King *James* 5th, it is found, That the King's Majeſty has juſt occaſion to purſue all Summonds of Treaſon conform to the common Law, Equity and Reaſon, notwithſtanding that there is no ſpecial Law nor Act of Parliament made thereupon. I Duply, That by the ſaid Act of Parliament in *Anno* 1540. it is provided, That tho there be not a ſpecial Law or Act of Parliament anent the raiſing of Summonds, and regulating of Proceſſes againſt Parties accuſed of Treaſon, the ſamen may be done conform to the common Law, Equity and Reaſon; but it is not meant, that Dittays of Treaſon may ſubſiſt on theſe pretended Grounds, without an Act of Parliament prohibiting the Lieges, and putting them *in mala fide* anent the committing of unlawful Acts under the pain of Treaſon; which is clear from the Act it ſelf, being made upon the occaſion of raiſing of Summonds againſt the Heirs of umquhil *Robert Leſly*, and to ſee his Memory delete and extinct, for certain Points of Leſe Majeſty. The Queſtion was then, and it was murmured, as the Act bears, not that he was accuſed of certain Points which were not Treaſon by any Act of Parliament or Law of the Country; but only that it was a Novelty to raiſe Summonds and move Action againſt a dead Perſon: And therefore the ſaid Act being only ordinatory *quoad* the Regulation of Proceſs, does not derogate from ſo many fundamental Laws, providing, that the King's Lieges ſhould be governed by the Laws of this Kingdom, and of no other; eſpecially ſeeing it is declared likewiſe by the 28 Act of His Majeſty's 2d Parliament, That no Perſon can be declared Traitor but for contravening a Law or Act of Parliament made, under pain of Treaſon. And it were abſurd, that the Subjects of this Kingdom, who cannot in reaſon be obliged to obey Laws, but *in quantum ſunt notificatæ*, ſhould be judged by Laws, which they neither know, nor can know.

Tenthly, Whereas the Replyer repeats as a Defence, that which is only humbly repreſented by me, and not proponed by way of Defence, in regrating how hard my Condition is to be judged, upon the late Act of Parliament made in the time of theſe unhappy Combuſtions, and draws odious Conſequences to irritate the Eſtates. I repeat my Paper, and conceive, that without giving occaſion of ſuch cruel Inferences, and without offence, I might regrate my hard Fortune, having adhered to His Majeſty *bona fide*, and following the light of my Judgment, out of confidence that I was not contravening any known Law. And now being brought to anſwer a Dittay founded upon a late Act of Parliament, made before the end of theſe unhappy Diſtractions *re non integra*, when I was out of the Kingdom, I would have expected, That ſince theſe Revolutions have brought the Replyer and me to appear in other Stations than we have been in formerly, that he ſhould have forborn to have uſed ſuch Expreſſions, as in the end of his Reply he hath done.

ANSWERS *for Sir* Robert Spotiſwood, *founded upon Quarters.*

ALTHO the Anſwers to theſe things, wherewith I am charg'd in my Dittay, be both eaſy and obvious; yet I do adhere mainly to that Defence, founded upon the Law of Nations and Humanity itſelf: That I cannot be put to my Anſwer, in regard when I was taken Priſoner, I had Quarters granted me by an honourable Perſon, an Officer of the Army, unto whoſe Promiſe and Word of Honour I do appeal. As to that which may be ſaid for the equity and neceſſity of maintaining this univerſal Practice of Nations, becauſe it is ſufficiently touched in the Defences given in by ſome others at this time, to avoid unneceſſary Repetition, I refer myſelf thereunto; whereunto I add this much only.

That hitherto, ſince the beginning of this unhappy War, Quarters and Exchange of Priſoners too, have been allowed on both ſides; which never having been diſcharged, to deny now to theſe are in your Power, after that by the Fortune of War you have got the Advantage in the Matter of Priſoners, I leave it to your Lordſhips Conſideration, if it be fair, and how it may be conſtrued in the Opinion of the World. Beſides, I hope your Lordſhips will uſe your Priſoners no worſe than your Friends and Aſſociates in *England* (who are in Arms for the ſelf-ſame Cauſe) are accuſtomed to do; between whom and the King's Party, there have always fair Quarters been granted. Which makes me wonder the more of the Report that is going, of ſome that come from thence, with Inſtructions to preſs the Execution of Juſtice upon the Priſoners. The which Advice, if it come from them, being ſo unſuitable to their own Practice, ought to be ſuſpected, as tending to the diſcredit and weakning of this Nation.

Now becauſe upon the Deciſion of this Point dependeth much of the welfare of this Kingdom, both Parties preſently in Arms, being to take it for a Rule hereafter, in the Matter of Quarters; I hope your Lordſhips will amongſt other reſpects, have before your Eyes the Safety of many innocent

cent Souls, who will be intereſted in the reſult thereof; and will not liſten to any Motions, which inſtead of curing the Sore, will inflame it, and be the ready Means to perpetuate our unnatural Diviſions, and make them irreconcileable.

Eiked Defences given in for Sir Robert Spotiſwood.

THAT he adhereth to the Defence already given in by him, founded upon Quarters, and craveth that it may be firſt diſcuſt, being a peremptory Defence *impediens Proceſſum*, and eliding both the Propoſition and Concluſion, in ſo far as Capital Puniſhment and Forfaulture of Life is inferr'd againſt him. And as in a criminal Purſuit before the Juſtice, if a Defence were propon'd upon a Remiſſion, remitting the Crime of Treaſon in ſo far as may infer Forfaulture of Life only, and not of Lands and Goods: The ſaid Exception, albeit partial, and not eluſory of the whole Propoſition and Concluſion, being propon'd *primo loco*, will be firſt diſcuſt. And therefore the Defender being in the ſame Caſe, and the Exception upon Quarters being in effect equivalent to a Remiſſion, ſo far as it ſecures his Life, and elides the concluſion of capital Puniſhment, he ought to have the like Benefit.

It is further anſwer'd for the Defender, that the Propoſition of the Dittay is nowiſe relevant, in ſo far as it is founded upon the common Law of Nations, Equity, Reaſon and Conſcience; becauſe the foreſaid Grounds before they be determined and authorized by poſitive Laws and Statutes, are not relevant to be Grounds of criminal Dittays, whereupon capital or arbitrary Puniſhments are inferr'd, in regard it is a fundamental Law in all well govern'd Kingdoms, *pœnam alicui non eſſe indicendam, niſi expreſſo jure cautum ſit.* ff. de Verb. ſignif. *l.* 131. Likeas it is expreſly provided by diverſe Acts of Parliament, that the King's Lieges ſhould be govern'd by the King's Laws, and Laws of this Realm allenarly, namely by an Act of the 5th Parliament of King *James* I. *cap.* 48. and another of the ſixth Parliament, King *James* IV. *cap.* 79.

Whereas the Dittay is founded upon the 4th Act in *June* 1644. The Defender repreſents, that as he had no hand in the beginning, and hath never been a Fomenter ſince of this unhappy Combuſtion and Diviſion between His Majeſty and his People, ſo he will carefully avoid all tickliſh Diſpute anent theſe Queſtions between them. Nevertheleſs he is confident, that without Offence he may remonſtrate how hard his Condition is, being put to anſwer a Dittay, having no other Warrant in Law but a late Act of Parliament, not made as all other former Acts and Laws, by his Majeſty and the Eſtates joined together, and making *communem Reipublicæ ſponſionem*; which is the ordinary Definition of Laws: but during, and in the time of an unhappy Diviſion between his Majeſty and his Subjects, being in Arms, as they both profeſs, for maintaining of their Rights and Privileges, without intention to prejudge or diminiſh the known Right one of another. When ſuch fatal Queſtions do fall out between ſuch Parties, and when Neceſſity involves all Men to ſide with one of them, and Men are left to their own Judgments and the Light of their Conſciences, without the clear direction of poſitive Laws, determining expreſly what the Carriage of private Men and Subjects ſhould be in ſo unhappy a Caſe: It hath ever been thought excuſable, that they ſhould follow the Light of their own Conſciences and Judgment, albeit miſtaken and erroneous; and therefore ſhould enjoy the Benefit and Privileges of the Law of War and Nations, whereof one of the main and principal is, that they ſhould not be judged by the Rules and Laws of theſe againſt whom they have ſided; eſpecially ſuch as are made during the Diſpute, and while the War is not ended, but either by the preceding Laws made in time of Peace, or by ſuch as are agreed upon by both Parties after a happy Pacification. The reaſon of this Law and Practice of Nations is, becauſe *in omnibus ſtatibus controverſiarum, fieri poteſt ut neutra litigantium pars ſit improba: & ſicut ex probabili cauſa litigantes in diſceptationibus fori, victi lite atque ſententia non condemnantur calumnia, utrinque tamen juratur de calumnia; ita cenſetur in diſceptatione & lite armorum.*

REPLIES, *to the Defence given in by Sir* Robert Spotiſwood, *founded upon Quarters.*

WHereas his Defence given in upon the 8th of *December* 1645, bears, that he cannot be put to anſwer his Dittay; in regard, when he was taken Priſoner, he had Quarters granted to him by an honourable Perſon, an Officer of the Army; and referring himſelf to the Defences given in by others, anent the Equity and Neceſſity of maintaining the univerſal Practice of Nations, anent Quarters.

It is reply'd, The Defence founded upon Quarters, alledged granted to him, is not relevant as it is ſet down; the Defence not condeſcending upon the Perſon Giver and Granter of the Quarters, and Time and Place, when and where. 2. Albeit it were condeſcended who gave him Quarters; yet the Defence bears not what the Granter of the Quarters promiſed to the Defender the time of the granting thereof: for at the taking of Captives, ſeveral Takers give ſeveral Promiſes to their Captives of ſeveral and diſtinct Natures. 3. The Defence founded upon Quarters, as being proponed to liberate the Defender from the Crimes libelled in his Dittay, and of the condign Puniſhment thereof, ought to be repell'd; becauſe, whatſoever hath been heretofore, or is preſently the Cuſtom of other Nations in their Wars, when one Nation is in Arms againſt another, the Eſtates of Parliament of this Kingdom are not to take notice thereof, but *in caſu de quo nunc agitur*, anent the bringing to due Trial and condign Puniſhment, theſe who have riſen in Arms, and taken Arms againſt the Eſtates of this Kingdom. The Alledgance founded upon any Promiſe, Pardon, Impunity, or Quarters given by ſome particular Men, cannot free the Defender from juſt Trial, and condign Puniſhment, ſeeing the Queſtion is not here of any Man taken *in bello*: But the Queſtion is anent the puniſhing of theſe who have taken Arms

in a treacherous and unnatural way againſt their own native Kingdom, and joined themſelves with a declared Traitor, riſen in Inſurrection within the Kingdom; who not only has taken Arms againſt the Eſtates of this Kingdom, and the Liberties of the Nation, but alſo againſt the Religion preſently profeſſed within this Kingdom, and againſt the mutual League and Covenant eſtabliſh'd by the Parliament and Aſſembly of this Kingdom: In defence whereof, many Thouſands of His Majeſty's good Subjects within this Kingdom have been cruelly cut off by that declared Traitor *James Graham*, to whom the Defender did join himſelf at the times libelled in his Dittay. The Caſe being thus ſtated, that the Defender is challenged and accuſed for riſing in Arms, and joining with *James Graham*, a declared Traitor and Enemy to this Kingdom, who had taken Arms againſt the Eſtates of the Kingdom, for oppoſing of the mutual League and Covenant: There is none who will think, that if any of his Adherents, Counſellors, or thoſe who are joined with him in Arms, being by the Lord's Mercy towards his diſtreſſed People in this Kingdom, deliver'd into the Hands of the Eſtates of this Kingdom, ſhould alledge for their Defence and Impunity, upon this Ground, that when they were taken, their Takers promiſed to ſave their Lives, or their Fortunes: It cannot be thought that this ſhould free the Delinquent, unleſs it be thought in the Power of any private Man in the Army whatſoever, in his private way, to pardon the greateſt Offenders againſt the Eſtates, and Oppoſers of our ſolemn League and Covenant; *quod eſt abſurdum*. If this Evaſion be ſuſtain'd, then (without any great hazard) there is a Door opened to all cloſe Malignants (who in their cautelous way, dare not appear what truly they are) to join in Arms with the publick Traitors, and to have ſome of their own Temper in our Army, ready to give them Quarters, when an adverſe Wind blows. Likeas, if this Defence of Quarters be ſuſtain'd, then the whole Nation, eſpecially the Eſtates of Parliament, do violate the Oath of the Covenant, and the Oath of the Parliament, anent the proſecuting and cenſuring of Malignants, oppoſers of the Covenant. And therefore there cannot be any Impunity promiſed in the Fields to a Delinquent, by any private Man whatſoever, in prejudice of the ſolemn League and Covenant, and Defence and Maintenance thereof: But theſe who have riſen in Arms againſt the Eſtates of this Kingdom, as they are puniſhable by the Laws of the Kingdom, ſo theſe Laws cannot be evacuate, and made of no effect by any Man's Protection or Promiſe.

Where in the Defence founded upon Quarters, an Example is cited of the Wars of *England*. It is anſwer'd, That the Eſtates of Parliament are not to be ruled by the Example of the Army of the Parliament of *England*, but are to proceed and to judge before God, that all Means may be eſſayed to divert his Wrath from this Nation; and are to proceed conform to the Laws of the Kingdom, in Proſecution of the ſolemn League and Covenant.

Where in the ſaid Defence it is inſinuate, that the Safety of many innocent Souls will be intereſted in the reſult of the Queſtion of Quarters. It is anſwer'd, that the ſamen needs no Anſwer in Law; but it may juſtly receive the Anſwer, That if Juſtice be done upon God's Enemies, the Lord will let us ſee Judgment upon the Enemies of this Kingdom, whoſe Terror is now caſten up, and upbraided.

And where in the Defence upon Quarters, it is alledged, that Scripture confirms the Law and Practice thereof, the 22d Verſe of the 6th Chapter of the 2d of the *Kings*, anent the Anſwer made by the Prophet *Eliſha* to the King of *Iſrael*'s Queſtion, *If he ſhould ſmite the* Syrians *whom the Prophet miraculouſly led blind into* Samaria. It is anſwer'd, that that Paſſage of Scripture does not confirm the Law and Practice of Quarters, becauſe the Prophet thereby does not confirm and allow the Law and Practice of Quarters, but cites a Cuſtom of the Kings of *Iſrael*, which of itſelf is not allowable; being reproved by the Spirit of God, both in *Saul* for *Agag*, and in *Ahab* for *Benhadad*, in the 15th of the 1ſt of *Samuel*, and in the 20th of the 1ſt of the *Kings*. And the Prophet *Eliſha* was alledging the Kings of *Iſrael* their unlawful Cuſtom, not to confirm the Cuſtom, but to ſhew the Kings of *Iſrael* what Miracle the Prophet had wrought. And where it may be anſwer'd That there was an expreſs Command of the Lord for the not ſparing of *Agag*; yet it is to be remember'd, that there is no ſuch expreſs Command for *Benhadad*. 2. The Tye of the Covenant is no ſmall Tye, for puniſhing the Enemies of Religion, and theſe who have riſen in Arms againſt the Eſtates of this Kingdom; and is a Bond tying the Eſtates of Parliament to the Proſecution of Delinquents to their condign Puniſhment.

Item, Albeit Quarters were to be ſuſtain'd within this Kingdom, (as they are not to be ſuſtain'd as aforeſaid) yet no Quarters could be granted to this Defender, he being by the Propoſitions of Peace ratified in both Parliaments of *Scotland* and *England*, put amongſt the Number of theſe who ſhould expect no Pardon. In prejudice of which Declaration of the Eſtates of Parliament, none but the Eſtates of Parliament, or others having their Power, could promiſe Impunity.

22 *December* 1645.

Produced by the Procurators of the Eſtates, and given up to Sir *Robert Spotiſwood* this Day, with the Papers formerly given in by him, and orders him to give in his Duply to this againſt *Thurſday* next, at Ten a-Clock in the Forenoon, *peremptorie*.

DUPLIES *by Sir* Robert Spotiſwood, *to the Replies made againſt his Defences upon Quarters.*

WHereas it is reply'd, that the Defence upon Quarters is not relevantly ſet down, becauſe it is not condeſcended upon the Giver of Quarters, and the Time and Place. It is duply'd, that Time and Place, when and where I was taken, is ſo nottour, that there needs not any further condeſcending; it being known that I was taken in the Field about *Philipbaugh*, immediately after the Conflict there. And the ſaid Defence is relevant, without condeſcending upon the Giver of Quarters, becauſe by the Law of War and Nations, theſe who are taken in the Field, *eo ipſo* that they are taken, by whomſoever, have the Right and Benefit of Quarters; neither are they obliged to take

preciſe notice of the Name and Quality of theſe who take them: Neither is it ſometimes poſſible in theſe Occaſions, when ſo many together are promiſcuouſly in Action. And yet I condeſcend that it was my good Fortune to be taken by an Officer belonging to a Man of Honour and Eminence, both in the State and the Army, the Earl *Lanerk*, to whom I was brought immediately thereafter, and had from him that courteous and favourable Reception that could be expected from ſuch a Man, in being ſecured from all Violence and Wrong. And as Honour and Nobility did weigh down in him theſe Prejudices, which he might have had, upon Miſinformation, againſt me; ſo I am confident that the unqueſtionable Law of Arms will not be violated in me, who am Priſoner of ſuch a Nobleman.

Where it is reply'd, that the Defence bears not what the Granter of Quarters promiſed to me in time of granting thereof, and that at the taking of Captives, ſeveral Takers make ſeveral Promiſes of diſtinct Natures. It is anſwer'd, that in theſe Occaſions, when Men are ſo much taken up with Action, they have not Leiſure, neither are they in uſe to ſtand upon Promiſes and Capitulations; and the granting of Quarters, without any other Expreſſion or Condition, is as binding by the Law of Arms, and ſecureth as much the Receiver's Life, as if there were a formal Inſtrument upon it: *Qui enim hoſtem non interficit, ſed capit, tribuit capto jus ex tacita pollicitatione*, tho there were no other Expreſſion. Yet to clear this part too, I refer my Quarters, and the manner thereof, to the Relation of the ſaid noble Earl, and of the Laird of *Silvertounhall*, one of his Captains, by whom I was firſt taken.

Where it is reply'd, that whatſoever hath been, or is the Cuſtom of other Nations, when one Nation is in War againſt another; *in caſu de quo nunc agitur*, Quarters cannot free me, becauſe I was not taken *in bello*, but in a treacherous way againſt my Country, and have joined myſelf with a declared Traitor. It is duply'd, 1. Albeit the Reply bears, that the Eſtates of Parliament are not to take notice of the Law and Cuſtom of Nations: Nevertheleſs, I (without preſcribing or prejudicating what the Eſtates of Parliament will, or are to take notice of) do adhere to the common Law of Nations and War, which hath Force every where; *jus enim gentium omni humano generi commune eſt*. Neither is the ſaid Law limited to the Caſe of a national and foreign War, when one Nation is in Arms with another; but hath place *in omni bello*, whether Foreign or Inteſtine, which falls under the Definition of War. For War is defined, *Publicorum armorum contentio*, upon ſome probable Grounds and Motives, which either Side conceive they have to be in Arms; which agreeth to Civil Wars as well as Foreign. And therefore the Neceſſity and favourable Laws of War have place in theſe Civil Wars and Diſtractions, and that with greater reaſon than in any other; becauſe albeit they be called Wars, thoſe who are engaged on either ſide, are not properly called *Hoſtes*, but *Adverſarii*; for this reaſon, *quia in civilibus diſſenſionibus, quamvis ſæpe Reſpub. lædatur, non tamen in exitium Reipub. contenditur*, as the Law ſaith. So that the Benefit of Quarters cannot be deny'd in Civil Wars, no more than in Foreign. Likeas, it was acknowledged elſewhere by the Replier, that Parties taken *in procinctu* of this War, may challenge the Benefit of Quarters; as appears by the Replies and Triplies in *James Ogilvie*'s former Proceſs, which are in the Clerk's Hands, and are repeated by me, *brevitatis cauſa*.

2. Where the ſaid Reply bears, that I was not taken *in bello*, but in an Inſurrection, and as the Replier ſtates the Queſtion, it is affirm'd, that none can think that the Defence upon Quarters ſhould free me. I humbly crave, that what I am neceſſitate to alledge for my juſt Defence be not miſtaken, ſeeing I have no Intention to diſpute ſo high a Queſtion as the Lawfulneſs or Unlawfulneſs of the War; but only to vindicate my ſelf, and make it appear that the Benefit of the Law of Nations ought not to be deny'd to me. Therefore I anſwer, that I cannot be judged by the Replier's Thought and Aſſertion, either in ſtating the Queſtion, or deciding it; and I cannot conceive, that I can be ſaid to be taken in an Inſurrection, and not *in bello*, ſeeing Inſurrection in the notion and definition of Law is properly, when in time of a happy Peace and Harmony betwixt a Prince and the collective Body of his People, private and factious Men, for their own Ends and Deſigns, *plebem contra Rempub. colligunt*; as *Sheba* the Son of *Bichri* did againſt *David*. But when there is a Diviſion betwixt the Prince and his People, it cannot be ſaid that he or his Adherents, who upon probable (tho poſſibly erroneous) Grounds, follow their own Judgment, are in an Inſurrection. And the Queſtion being ſtated, as truly it is, when a Sovereign Prince is in terms of Difference with his People, and both profeſs that they are for the ſame Ends, and that the Prince intends nothing but the Maintenance of his juſt Right, without Prejudice of Religion or Liberty of the Subject eſtabliſh'd by the Laws; and on the other part, theſe who are on the other ſide profeſs, that they intend nothing but the Preſervation of Religion, and their Liberty, without Diminution of the King's Greatneſs, Power and Sovereignty, eſtabliſh'd by ſo many Laws; and none being to interpoſe themſelves to be Judges of ſo high Differences, both Sides conceive they are neceſſitated to take Arms for theſe Ends reſpective. If the Prince give Commiſſion and Command to any of his Subjects who are of the ſame Opinion with himſelf, to make a Diverſion; whether or not are theſe who are taken upon that ſide, to be thought to be taken *in bello*, or in an Inſurrection? The Queſtion being ſo ſtated, it is evident upon the foreſaid Grounds, and from the Story of all Times, and the Treatiſes of theſe who have written upon War, and the Laws thereof, that ſuch a War by the Law and Practice of all Nations, admitteth and challengeth the Privileges *& Jura Belli*, whereof that of Quarters is a main one. Neither are the Perſons or Conditions of theſe who are intruſted with the managing of the War to be conſider'd, in prejudice of theſe who adhere to the Prince, and are with theſe whom he imployeth, not out of any perſonal Reſpect to them, but as they repreſent the Prince by Commiſſion. Neither can this War be thought to be of another Nature than that in *England*, where Quarters are neither deny'd nor violated. And what Moderation hath been uſed in the like civil Diſtractions in this Country, during that Conteſt and War betwixt the *Bruce* and the *Baliol*, and in the Times of King *James* III. and Queen *Mary*, and in the beginning of King *James* VI. his Reign, as alſo during the cruel Wars in *France*, or yet in thoſe of the Low Countries, the Hiſtories of thoſe Times

bear Record. It is reported, that King *Robert* the *Bruce* having taken many Priſoners, *dimiſit omnes humaniter habitos*; which are *Buchanan*'s own words. Theſe who ſided with King *James* III. and were at the Field of *Stirling*, tho not only the greateſt part of the Nobility and Country were on the other ſide, but alſo the Prince, were not eſteem'd or deſign'd Enemies to the Country, but are ſaid to have been of another and of an ill Opinion, *Act.* 3. & 5. of the 1ſt Parliament of King *James* IV. and are ſaid by *Buchanan* to have follow'd *diverſam ſectam*; and divers of the Nobility who had adhered to King *James* III. did vote in the next Parliament held by King *James* IV. as appears by the 8th Act of his 1ſt Parliament, of the Edition of *Likprivik*. And likewiſe theſe who adhered to the Queen Regent in the beginning of the Reformation, and thereafter in the Troubles of Queen *Mary*, divers of them being Noblemen of the higheſt Condition, as the Earls of *Argyle*, *Glencairn* and *Caſſils*, the Lord *Home* and *Boyd*, &c. tho they proceeded to the higheſt Acts of Oppoſition, and ſome of them were at the Battle of *Langſide*, and indicted and held a Parliament at *Edinburgh*, the ſame Time that another was holden in the *Cannongate* in the King's Name, yet were ſo favourably conſtrued, that *Archibald* Earl of *Argyle* was in the Liſt to be Regent after the death of the Earl of *Lennox*. And what were the happy Effects of the Moderation uſed towards them, it appear'd by the happy and firm Peace that follow'd, and by the loyal Carriage both of them and their Poſterity ever thereafter. And therefore, for theſe Reaſons, and becauſe Priſoners have been exchanged in this War, it cannot be deny'd, but the Laws and Benefit of Quarters being of the ſame nature, and founded upon the ſame Principles of Law and Nations, ſhould be received and practiſed in this War.

Whereas the Inconvenient is repreſented and aggravated, if it ſhould be in the Power of private Men to pardon the greateſt Offenders, a Door ſhould be opened to cloſe Malignants to uſe the cautelous way mention'd in the Reply, to join in Arms with the publick Traitors, upon hope that ſome of their own Temper on the other ſide will be ready to give them Quarters when an adverſe Wind blows. It is duplied, that the Queſtion is not of granting an abſolute Pardon, which is not craved by the Defence of Quarters, but a ſecuring of the Life of theſe who are taken: And if the Defence of Quarters ſhould not be ſuſtained, the repelling of it will open a greater Door to all ſort of Cruelty, and to far greater Inconvenience than that imaginary one in the Reply; ſeeing it cannot be thought that Men will engage and expoſe themſelves to Hazard, upon Confidence that they might when they pleaſed have recourſe to their cloſe Friends for Quarters, conſidering the Difficulty to find them out in a time of ſuch Confuſion.

Where it is further reply'd, That if Quarters be ſuſtained, the whole Nation, and eſpecially the Eſtates of Parliament, will violate the Oath of the Covenant, and that other of the Parliament anent the Proſecution of Malignants; and that there cannot be any Impunity granted to Delinquents by any private Man. It is duplied, that tho the Oaths of Covenant and Parliament oblige the Takers of theſe Oaths to diſcover Malignants, that they may be brought to Trial, they do not prejudge thoſe who are called in queſtion of their lawful Defences, competent to them by the Law of Nations, as that of Quarters; neither do they oblige the Judges to repel ſuch Defences, ſeeing by the Covenant they are not obliged to proceed againſt thoſe who are queſtioned as Malignants, notwithſtanding of ſuch Defences. 2. The Practice of the Eſtates in ſome particular Caſes evinceth, that they do not think themſelves ſo limitate by the ſaid Oaths, as the Replier would have, becauſe they have before this condeſcended to the exchanging of divers Priſoners, and have diſmiſſed divers others who were in the like Condition with me, being taken in the Field; and have not only ſpared ſome who were on the other ſide, but have employed them thereafter. And it were abſurd and injurious to charge upon the Eſtates Perjury and Violation of their Oaths, becauſe of theſe Practices, being founded upon the Law of Nations and good Conſiderations.

3. The Queſtion is not of Impunity granted by any private Man in the Field, as the Reply bears, but of Quarters granted by the Laws of War and Nations, which is authorized and approven by the Lieutenant General and Commander in Chief the Day of the Conflict at *Philiphaugh*, in ſo far as he gave no Command diſcharging Quarters to be given in general, but only diſcharged any to be given to the *Iriſh*: Which Exception of the *Iriſh*, militates in Favours of all others not excepted, *quia exceptio firmat regulam in non exceptis.*

Whereas it is further replied, That the Eſtates of Parliament are not to be ruled by the Example of the Parliament of *England*, but to judge before God, and to divert his Wrath, by proceeding againſt Delinquents conform to the Laws of this Kingdom. It is anſwer'd, That the Practice of *England* is urged, not as a Rule to the Eſtates of this Kingdom to regulate their Procedure by, but as an Inſtance of the Practice of Nations, conform to the Law of Nations; which being receiv'd in *England* in this War, which is principally for obtaining the Reformation of Religion and ſettling the Liberties of that Country, ought with far greater Reaſon to be received by us who were involved in that War, out of our Deſire to have theſe Ends eſtabliſh'd there, after we had obtained the ſame our ſelves.

Neither can the Laws of this Kingdom, and the mutual League and Covenant be ſtill obtruded for the repelling of the Defence of Quarters; becauſe there is no Law of this Kingdom diſcharging Quarters to be granted or kept, neither any Clauſe of the mutual League and Covenant againſt the ſame; otherwiſe the whole Nation of *England* and the Eſtates there, ſhould be involved in Perjury, ſeeing they joined with us in the mutual League and Covenant; and notwithſtanding think not themſelves obliged to refuſe Quarters contrary to all Nations.

Where it is urged by the Replier, to make me odious, That the Terror of the Enemies of this Kingdom is caſten up and upbraided, and therefore if Juſtice be done upon God's Enemies, the Lord will let us ſee Juſtice done upon the Enemies of this Kingdom. I am confident, that if my Defence and Expreſſions be conſidered, it will appear they cannot be wreſted to import any upbraiding, or caſting up of any Terror; and whatever odious Characters be put upon me, I cannot be thought to be an Enemy to God, except it were ſhown that I had intended ſomething againſt the Honour of God, Purity of Religion, or the Liberty of my Country.

Country. For in Civil Combuſtions, the naked difference of Opinion anent Civil Queſtions, and adhering of a Subject to his Prince, was never thought to be Enmity againſt God. This is evident from the 2 *Sam.* chap. 2. ver. 26, and 27. for in that Civil War between *David* and the Houſe of *Saul*, tho *David* (God's Prophet, and Anointed to be King.) was on the one ſide with God's People, yet they who were upon the other ſide of *Iſhboſheth* were not called Enemies to God, but their Brethren; and upon that reſpect *Joab* did not exhort them that were with him to purſue eagerly their Adverſaries, as God's Enemies, but bid them return from following their Brethren. And in chap. 4. ver. 11. *David* calleth *Iſhboſheth*, tho the Head of that Faction againſt him, a righteous Perſon. Likewiſe, when it pleaſed God to work Deliverances for his People, it was not conceived that there was a neceſſity to divert God's Wrath, by proceeding in Rigour againſt thoſe who had fallen in their Hands; but by the contrary, *David* after that great Victory againſt *Abſolom*, being preſſed to that purpoſe, anſwered, *Shall there any Man be put to death in* Iſrael? 2 Sam. 19. 22. And *Saul* after his Victory againſt the *Ammonites*, when the People urged that they ſhould be put to Death who had been againſt *Saul*, and had ſaid that he ſhould not be King; he anſwered, *There ſhall not a Man be put to death this day, for to day the Lord hath wrought Salvation in* Iſrael, 1 *Sam.* 11. 13.

Where it is further reply'd, That the Paſſage of Scripture cited in the Defence, out of 2 *Kings* chap. 6. doth not confirm the Law and Practice of Quarters, but that the Prophet citeth a Cuſtom of the Kings of *Iſrael*, which of itſelf is not allowable, being reproved by the Spirit of God, in the Caſe of *Agag* and *Benhadad*; and that that unlawful Cuſtom is alledged not to confirm the ſame, but to ſhew what Miracle the Prophet had wrought. It is anſwered, That the Text itſelf is opponed, whence it is clear, that the Prophet uſeth an Argument *a majori*; *quaſi dicat*, *ne eos quidem occideres*, *quos abduceres gladio tuo & arcu tuo*; *ergo multo minus alieno beneficio comparatos fas eſt occidere.* So it is underſtood by *Tremellius* commenting upon that Place, and *Diodati* in his Annotations upon the ſame. And therefore the Gloſs of the Reply, bearing that nothing is meant by the Prophet but to ſhew what Miracle he hath wrought, is abſurd, ſeeing there needed no Probation of that which was evident and undeniable; and is contrary to the expreſs words of the Text, which containeth a Queſtion moved by the King of *Iſrael* unto *Eliſha*, whether he ſhould ſmite the *Syrians* or not; and a Negative Anſwer of the Prophet, that he ſhould not, fortified with an Argument by way of Enthymeme: *Capti in bello non ſunt occidendi*; *Ergo multo minus alieno beneficio & miraculo comparati.* Which ſhould be an ill Argument, if the Antecedent were only founded upon an evil and reproved Cuſtom: And the Prophet cannot be thought to uſe an ill Cuſtom, to enforce a good Concluſion; it being as much againſt Rules, both of Goodneſs and good Reaſoning, to uſe an Argument from that which is Evil, to prove that which is Good, as to do Ill that Good may come of it. And that it was not only the Cuſtom of the Kings of *Iſrael* to ſpare Captives, but an Univerſal and Antient Cuſtom of Nations, it is evident, not only from innumerable Paſſages, as well of the Civil Law, as of Hiſtory, but from the 14th of *Geneſis*, where it is clear, that theſe who were taken by *Chedorlaomer*, were taken Captives and carried away with *Lot*.

Where the Reply bears, That the ſaid Cuſtom is reproved in the Caſe of *Agag* and *Benhadad*. It is anſwered, That for the firſt, it is acknowledged by the Replier himſelf, that there was a great Diſparity betwixt the Caſe of *Agag*, and of theſe who have gotten Quarters, becauſe *Agag* was in that Condition, that he was incapable of Quarters, in regard God commanded *Saul* expreſly to go and ſmite *Amalek*, and deſtroy all that they had, and ſpare neither Man, Woman, Infant, Ox, or Sheep; ſo that this was an extraordinary Caſe of a Perſon by God's Command devoted to Deſtruction, 1 *Kings* 15. As for the Caſe of *Benhadad*, it is clear from the Text, that he was appointed to Deſtruction by the Lord, for his Arrogancy and Blaſphemy againſt God: And the Word in the 42 ver. chap. 20. of the 1ſt of *Kings*, uſed by the Prophet when he told *Ahab* that he had let go a Man whom God had appointed to utter Deſtruction, *Anathemati devotum*, as it is rendred by *Tremellius*, evinceth that there was an extraordinary Warrant for deſtroying of *Benhadad*; becauſe that Word is only uſed in ſuch caſes, as when there was an extraordinary Command to deſtroy and devote *Jericho* and *Agag*; *nunc abi ut percutias* Amalechum *& Anathemati devoveas*: which is likewiſe more clear from the whole Context of 1 *Kings* chap. 20. for after *Benhadad* was foil'd the firſt time by *Ahab*, a Prophet came to the King of *Iſrael*, and told him that the King of *Syria* would come up againſt him at the return of the Year, and adviſed him to mark and ſee what he ſhould do. And when the Prophet came thereafter to *Ahab*, after he had diſmiſs'd *Benhadad*, to convince him, did ſuppoſe the Caſe of a Man that had brought to him a Priſoner, and ſaid keep this Man, and that upon Condition, if by any means he ſhould be miſſing, his Life ſhould be for his Life. In which Caſe there was an expreſs Charge given to keep the Priſoner, and not to let him go: which muſt be underſtood likewiſe in the true Caſe of *Benhadad*, otherwiſe there ſhould not be a Parity between the Caſes; neither could *Ahab* have been convinced, but might have had an Evaſion and Pretext, that he had not got the like Charge, and that God's Will concerning the Deſtruction of *Benhadad* had not been intimated to him.

I humbly repreſent how hard it is that ſuch Arguments ſhould be brought from extraordinary Caſes of Blaſphemous Pagans, devoted and anathematized by God, and inforced upon People at ſuch times and places, where they whom it concerns cannot make Anſwer; whereas it may be evinced from diverſe places of Scripture, what Moderation was uſed in Times of Civil Diſtraction, and that theſe who had been active, and leading on the other ſide, were not only ſpared, but advanced: Witneſs the Civil War betwixt the *Iſraelites* and the *Benjamites*; in which, tho the Cauſe was moſt unjuſt upon the *Benjamite*'s part, and that they had provoked mightily the reſt of the Tribes, by reaſon of two great Overthrows they had given them; yet after the *Iſraelites* had got the better of them, their Revenge went no further, than to kill ſuch as they could overtake in the Battel: But as for them that eſcaped to the Rock *Rimmon*, they called peaceably to them, and notwithſtanding of their Oath, provided

Wives

Wives for them, and made up again the Breach of that Tribe. The fair Quarters *Abner* and his Men had from *Joab* (tho in flying he had kill'd *Asahel*) is toucht before. Tho *Adonijah* exalted himself against King *Solomon*, and usurped the Kingdom, yet upon his Submission he was spared and dismissed: so was cursed *Shimei*. *Amasa* Captain of *Absalom*'s Host, was received into Favour, and made Captain over *Judah*. These and many more Places clearly evince, that Scripture is on our side, and that not one Passage thereof can be wrested against us.

Whereas it is reply'd, That Quarters could not be granted to me, because I am excepted in the Propositions of Peace, and declared to be such a Person as could expect no Pardon. It is answered, first, The Question is not of Pardon, which is not craved, but of Quarters already granted for securing my Life: And the said Propositions of Peace, are not a positive Declarator of my Incapacity and Exception in case of a happy Peace, but only contains the Desires and Propositions of the Estates to be made to his Majesty, which may be altered upon a mutual condescending betwixt his Majesty and them, before they be settled by an Act of Pacification; and the said Exception is only to take effect against such as should be Processed and Condemned, and therefore it is to be understood without prejudice of their lawful Defences, and namely that of Quarters; seeing by no Act of Parliament, nor by the foresaid Propositions, it is declared, that these who are excepted should be incapable of Quarters, and of the benefit of the Law of Nations. And that this was not the Intention of the Estates of either Kingdom, is clear by their Practice; for notwithstanding of the said Propositions contained in the said Exception, some of these who are excepted, have been exchanged, as the Laird of *Drum* Younger with us, and Colonel *Goreing* and others in *England*.

DEFENCES for my Lord *Ogilvie*, 10 *February*, 1645.

MY LORDS,

I Conceive that my Answer to the Dittay may be very short, and that I need not enter in a subtile Dispute of Law against it; the Subject is so tender and tickliſh, that I shall be loth to be put to the Question, unless I be necessitate.

My Answer then at this time is, That I conceive, That by the Law of Nations and War, I cannot be brought to answer a Dittay of Treason upon hazard of my Life and Estate, as long as I am in this Condition; because I am a Prisoner of War, and was taken by the *Lancashire* Forces, with my Sword in my hand, and upon Quarters and Assurance that my Life, and such Stuff and other things as I had about me, should be safe and unquestioned. War, albeit with its Noise it seem to cry down all other Laws, wants not its own necessary and inviolable Laws, without which it should be rather a bloody and brutish Butchery, than a lawful War, which God himself is pleased to own, entitling himself the God of Hosts and Battels. That the Law of Quarters, amongst all other *Jura Belli*, is the most necessary and equitable, it cannot be called in question: the Issues of Life and of Death are in God's Hands, who is pleased to dispense with that which is called the Fortune of War in so variable a way, that it may be justly said, *Inter utrumque volat dubiis victoria pennis*; to the end, that neither side should refuse to the other that Humanity and Favour which they may have occasion possibly the next day to desire themselves. And it is not to be conceived that Quarters consist in the Favour only and Grant of the Giver, but as founded rather upon the Equity and Obligement of a mutual Paction, whereby the Receivers of Quarters redeem their own Safety, with the Safety of moe who would be in hazard upon the other side; it being always to be presumed, That Men being prodigal of themselves, and despairing of their Life and Quarters, tho in the end they may be overcome by Multitudes, will sell their Lives at a dearer Rate, than those who would live to enjoy the Victory would be content to have it. This Law, as in all other Wars, so more especially is to be kept in Civil Dissensions, in regard the Ties and Interests both Parties have in others, plead both for excusing those who are taken, by reason of Interest they conceive they had to adhere to the Side which they followed, and likewise for Favour of those who have taken their Friends, in respect of the Interest they have in their Prisoners. I may instance many Practicks in these late Troubles in *England*, but shall only remember one, because it is famous and nottour. One Captain *Lilburn* was taken by some of his Majesty's Forces; the Gentleman being both a Parliament-Man and a Commander, had been so active in both ways, that he wanted not powerful Enemies, who upon probable Grounds and Motives, moved his Majesty to put him to a Trial for divers high Points of Treason. The Gentleman alledged the inviolable Privilege of a Prisoner of War, and the Law of Nations, and that he could not be put to answer any Charge, tho never so just, until he were dismissed. General *Rutbven*, and all other Soldiers of Fortune did interpose themselves, and sollicited that the Law of War should not be violated. In end, Justice did prevail with his Majesty's all other Respects, and the Gentleman was upon the said Ground acquit. Upon these Grounds I conclude, that I am in the like Case, and cannot be holden to answer to this Dittay: And yet, lest I should seem to shadow myself only under the said Privilege and Defence, and that my Actions may not appear still to your Lordships so ugly and horrid as they look in my Dittay, being represented naked, and without the Vesture of the favourable Circumstances, and probable Grounds and Motives, and the Sincerity of my Intentions, whereupon they proceeded, without any thought of Treason or Hostility: I have joined with this Defence, a short and true Relation of my Carriage in these late Troubles, for Information to your Lordships.

The Relation of James *Lord* Ogilvie *his Carriage in theſe late Troubles.*

WHatever the World may conceive of me and my Carriage in the firſt and late Troubles, my Conſcience bears me witneſs, and I may appeal to the knowledge of all thoſe who have had the Occaſion to know me inwardly, how free I have ever been of Diſaffection either to the Purity of Religion eſtabliſh'd here, or to my Native Country; and that I never countenanced nor complied with any thing which was conceived to be a Corruption either in Church or State, but was one of the firſt who petitioned for Redreſs of the ſamen during the firſt Troubles, tho ſome of our Houſes ſuffered the Extremity of War and Hoſtility: It cannot be inſtructed, that I appeared in any hoſtile way, or did any Act againſt my Country. After the Pacification of theſe Troubles, the Rebellion of *Ireland* having fallen out, I reſolved to take hold of that Occaſion, to expreſs to the World my conſtant Zeal for Religion and my Country. And to that purpoſe there having paſt ſome Diſcourſe betwixt General *Leſley* and me, concerning the Expedition for *Ireland*, which I conceived to imply an Invitation to engage in that Service; I ſent therefore a Gentleman of my own Name, to ſhow him, that I ſhould be content to ſerve in that War, upon ſuch Terms as others of my Quality were to have. But having found, that the General had not abſolute Power to diſpoſe of Places, and to prefer Officers; and not preſuming to have the like way and favour with others who had a Vote in the diſpoſing of them, I retired and lived quietly at home, without any meddling, until the Combuſtions in *England* broke out, and came to ſuch height, that they were like to involve this Kingdom, and to occaſion a Rupture betwixt his Majeſty and us. Then I began to bethink myſelf what my Carriage ſhould be: And in end I thought it beſt to keep myſelf free, and to convoy myſelf out of his Majeſty's Dominions, until it ſhould pleaſe God to put an end to theſe unhappy Differences. Upon this Reſolution I went to *England*, intending thence to go to *France*; but having gone to take leave of his Majeſty, I was commanded to ſtay and wait upon him. Being his Majeſty's Subject, and commanded to wait upon his Royal Perſon, at ſuch a time, when he was in diſtreſs and hazard, I neither did, nor can conceive how I could diſobey, without rubbing upon myſelf the Imputation both of Diſloyalty and Baſeneſs. This Country at that time had not entred in Covenant with the Parliament of *England:* I know not any Law obliging *Scots*-Men his Majeſty's Native Subjects, truſted by his Majeſty in Places of Reſpect and Eminence about his Perſon, wherein they may be uſeful to their Country, to deſert his Majeſty's Perſon and their Places, upon any occaſion of Rupture betwixt his Majeſty and his Subjects of *England*. I conceived then, that his Majeſty's Command did oblige me as well as others to wait upon his Perſon. The Article of the Treaty, which I am charg'd to have contraveen'd (tho I profeſs I was altogether ignorant of it, holding it no ſhame for one of my way to be unacquainted with ſome particular Laws) appears to me, having looked upon it upon this occaſion, not to mean or include the Caſe of perſonal Attendance, and Service of private Subjects, who in a private and perſonal way, adhere to his Majeſty in the time of Troubles and Queſtion with his People of *England*, as I did: For I went to *England* without Forces, yea without my ordinary Train, and accompanied only with one Servant. During my being in the South, I had no Charge but to wait upon his Majeſty; I neither commanded Forces, nor was inroll'd in any Regiment, or under the Command of any.

This was my Carriage in the South, until my Maſter commanded me with *Montroſe* and all our Country-Men who were about him, to go homeward. The Marquiſs of *New-Caſtle* being then in the Fields with an Army for his Majeſty, I could not have paſſed without ſeeing of him; my ſtay with him was ſo ſhort, that I neither had, nor could have had any Charge or Imployment under him. I do not deny but I came to this Country, but I profeſs it was by his Majeſty's expreſs Warrant and Command, and without any ſiniſter Intention againſt my Country and Country-Men. I came to *Dumfries* without any purpoſe of Hoſtility, but only to accommodate myſelf; and I believe none can complain of any Injury done at that time by me. Finding that the Country was diſpleaſed, I returned immediately, without doing harm to any. After my return I was acceſſary to neither of theſe Exploits libelled in the Dittay, of taking of *Morpeth* and the *Sheills*; neither was I preſent at either of theſe Places when they were taken; but I am able to make good, that I was at *New-Caſtle* at ſix or ſeven a-clock at Night, that day the Caſtle of *Morpeth* was taken, it being taken at one or two a-clock in the Afternoon: And having heard at *New-Caſtle* that it was taken, and being ſollicitous for my Country-Men, that they ſhould not have been well treated by the *Engliſh*, who had been irritate by them, in regard they had loſt ſome Men of Quality at the Place, I went of purpoſe at ſeven a-clock at Night from *New-Caſtle*, to procure favour to them; and I am confident, that theſe whom I found there will not deny, that they received ſuch tokens of my Favour as they ſtood in need of, and as I at that time was able to give. I neither had nor could have had any Imployment under Colonel *Slavering*, being a Gentleman beneath my own Quality.

When it was my Fortune to be taken, it was not in any Service or hoſtile Intention, but being upon my way to his Majeſty, with ſuch a ſmall number of People, as appeared afterwards not to be ſufficient for a Convoy, I was ſurprized and forced to beſtir myſelf for my juſt Defence, and ſafety of my Life, wherein it pleaſed God ſo to aſſiſt me, that theſe who were at the taking of me, were content to offer and give me Quarters; whereupon I ſuffered myſelf to be taken, and doubt not but that I may expect, that the Law of Nations and War, which is obſerved as ſacred and inviolable, when all other Laws are ſilent *inter arma*, ſhall not be broken in my behalf.

This is the true Relation of my Carriage in theſe troubleſome Times; for my Carriage before I ſhould be ſparing to ſpeak of it myſelf, if my after Actions were not painted with ſo foul and ugly Colours. To my knowledge before theſe Times, it cannot be condeſcended that I have offended any by any ſcandalous or injurious Act. And I am confident, that with God's Aſſiſtance I might have regulate

regulate ſo the whole courſe of my life to the end, that I ſhould not have ſeemed to have fail'd to any, much leſs in my Duty either to my Prince or Country, if the Times had not fallen out ſo irregular, that I could not witneſs my reſpect to either, without ſeeming to fail to the other. It being then my Misfortune to have fallen in ſuch hard Times, having ſo much Intereſt on both ſides, I have not been ſuffered to have been an idle Spectator; I followed the light of my Conſcience, which bindeth even when it is miſtaken, as Divines hold. I believe none will ſuſpect me to have been a Contriver, Plotter or Fomenter of this unnatural War, and am aſſured, that if from this Relation it may appear, that I have been in any wiſe an Actor, there was never one more harmleſs. None of my Country-Men may charge me with any Act of Inſolency, Wrong or Prejudice to them; and I doubt not but ſome will bear me witneſs, that I have ſhown them favour. Tho I conceived, that my adhering to my Prince in his diſtreſs by his ſpecial Command was incumbent to me by my Oath of Allegiance, and in Duty, Conſcience and Honour; yet if any thing may be thought to have eſcaped me, being a young Man, and not acquainted with Subtilties and Laws, in a Buſineſs of ſo tender a Nature, which hath both in the Diſpute of the Queſtion in the general, and in this particular Caſe, divided ſo many Lawyers, States-men, Divines and others in their Opinions, and hath ſet a-work their Tongues, Pens and Swords, to maintain the ſame, I may ſay with far better reaſon than an old States-Man and Lawyer did in the like Caſe of Civil Diſſenſions; *Erat obſcuritas, erat certamen inter clariſſimos duces: multi dubitabant quod optimum eſſet, & ſi aliquâ culpâ tenemur erroris humani a ſcelere certe liberi ſumus.*

DEFENCES for *Ogilvie.*

IT is anſwered, That he cannot be called in queſtion of Life and Fortune, and forced to anſwer at this time to this Dittay; becauſe he is Priſoner of War taken upon Quarters, and expreſs Capitulation with his Takers for his Safety; and by the Law and received Cuſtoms of all Nations, where War is not turned in a downright Butchery, there be *jura Belli* held ſacred and inviolable: Whereof a main one is *captivis parcendum, & ſicut reſiſtenti violentia redditur, ita captivo miſericordia debetur*, which are *Auguſtin*'s words repeated in *C.* 3. 23, 4, 1. *Danda enim eſt ad minimum vita his qui vitam hoſtibus & capientibus reliquerunt.* This was the Law of *Lycurgus*, of the *Romans*, and other Warlike Nations, as is clear from Hiſtory and Writers *de jure Belli.* It is founded not only upon common Equity, but upon the ſpecial Equity of an expreſs Paction, where any Capitulation is made; and where there is no expreſs Capitulation, it is founded upon a tacite and preſumed Paction, *nam qui hoſtem non interficit, ſed capit, videtur velle eum vivum habere; & capto eſt jus ex tacita pollicitatione ne poſſit poſtea interfici, & qui ſe dedidit cum hoſte paciſci de vita videtur:* eſpecially where Captives have rendred themſelves in Arms, *qui pugnando potuerunt non capi, aut non ſine ſanguine.*

Scripture itſelf confirmeth this Law and Practice: For the *Syrians* being ſtriken blind, and brought Captives by *Eliſha*, to the King of *Iſrael* at *Samaria*, he enquires at *Eliſha*, whether he ſhould ſmite them or not? He anſwers *negative*, ſaying, *Would thou ſmite thoſe whom thou haſt taken with thy Sword and Bow?*

This Law thus confirmed, is moſt obſervable in a Civil War betwixt a Prince profeſſing nothing but the Maintenance of his juſt Power, without prejudice of Religion, and his People's Liberties, to whom adheres a part of his Subjects: and his People on the other ſide profeſſing Loyalty to his Majeſty, Maintenance and Reformation of Religion, betwixt whom there is a Concurrence of ſo many Relations and Intereſts publick and private, as not only Quarters, but Exchange of Priſoners, both flowing from one Fountain, ſhould neceſſarily be obſerved. This is the Caſe of our unnatural War: Priſoners have been exchanged: And it ſhould be a Stain to this Kirk and Kingdom, if Quarters ſhould not be inviolably kept. The Conſequence alſo may prove dangerous, the Fortune of War being ambulatory; what is now the Defender's Caſe, may poſſibly be the Condition of others who appear ſecure for the preſent.

The Hiſtory of Wars betwixt the *Swedes* and *Ruſſians* ſheweth, That theſe Nations who at firſt have been ſo full of Animoſity as to refuſe Quarters, finding in the Progreſs ſo great Inconveniencies to follow, have been forced to acknowledge the neceſſity.

And therefore the Defender upon Quarters, having rendered himſelf, cannot now be proceſſed upon Life and Fortune; but before any Procedure whatſoever, he ought to be diſmiſſed and convoyed to a Place of Safety.

ANSWERS to the Lord *Ogilvie* his Defences.

THE firſt Defence founded upon the courſe of Martial Law, in giving Quarters and Conditions to parties taken, and keeping of the ſamen, can have no place for freeing of my Lord *Ogilvie* from anſwering to the Crimes contained in his Dittay. 1. Becauſe the Crimes whereupon he is challenged are theſe which were not only committed by him before his Apprehending, but alſo for which he was cited to compear before the Parliament, long before his Apprehending, and from Trial whereof he did withdraw himſelf by flying to *England*; wherein no Accident occurring to him occaſioned by his own Miſdemeanour can furniſh to him any Shadow of Excuſe. 2. The Benefit of Quarters founded upon Martial Law, is only conſiderable, when the ſamen are granted in *ipſo procinctu*, and by thoſe having Power, neither of which my Lord has, nor can alledge; but by the contrary in his Defences, he grants that he was not in any Service, but upon his way to his Majeſty. Likeas, they who took him, found about him certain Inſtructions from the Earl of *Montroſe* to his Majeſty, whereof the Copies were ſent to the Committee of Eſtates. 3. By the Martial Law, the Quarters alledged given, cannot be further extended, than to the Freedom from all Challenge

lenges within that Kingdom, within which the Quarters were granted: And my Lord being taken in *England*, might have had ſome colour (having cleared and verified the Quarters made to him) to have craved the Benefit of the Martial Law, which either he has not craved, or if crav'd, has been judged to be unjuſt; becauſe the Eſtates of the Kingdom where he was taken, have tranſmitted him to the Eſtates of this Kingdom whereof he is a Subject.

Item, As to the ſecond part of my Lord's Defence, which is anent his Carriage, oppones the Dittay and Probation thereof.

19 *February* 1645.

This Day about half Hour to Ten in the Forenoon, their Replies given in by the Procurators of Eſtates for eliding of the Defences given in by the late Lord *Ogilvie*, are delivered to him about Ten of the Clock before Noon, and ordains him to give in his Duplies, together with all other Defences he has, either in the principal Cauſe, or againſt the Probation, againſt *Friday* at two a Clock in the Afternoon.

REASONS *why the Defenders cannot be urged to give in any other Defences, till that of Quarters be Diſcuſſed.*

FIRST, the Defence proponed is inconſiſtent with other Defences, becauſe the Defence is, that the Defender is not obliged to anſwer at all to a Dittay, ſo long as he is in this Condition, for the Reaſons adduced in the Defence; and therefore he cannot be urged to give in other Defences. For albeit Defences *in cauſa* may be proponed together, yet a Defence of this Nature, which is not an Exception *in meritis cauſæ*, but is excluſive of Proceſs, *& quæ impedit litis ingreſſum*, cannot conſiſt with other Defences *in cauſa*, becauſe the proponing of other Defences would be a tacite paſſing from the ſame; and the Defender is in the like caſe, as if being purſued before the Juſtice, he would alledge to a Remiſſion; in which caſe, he could not be urged in Juſtice or Form of Proceſs, to give in other Defences before the ſaid Defences were diſcuſſed.

2. This Defence is ſo material, that if it be found relevant, as it ought to be, the Defender will poſſibly uſe no other Defences at all; and he is ſo confident of the Relevancy of it, that he has not thought upon, nor deſired his Advocates to think upon his other Defences *in Cauſa*.

3. It is not uſual before any Judicatory to cauſe the Defender give in all his Defences at firſt, eſpecially where a material Defence eluſory of the Inſtance is proponed, which before giving in of any other Defences ſhould be anſwered and diſcuſſed.

ANSWERS *to the Reaſons given in by* James Ogilvie, William Murray, *Sir* Robert Spotiſwood, *and* Nathaniel Gordon, *why they cannot be urged to give in any other Defences, till that Defence anent Quarters be diſcuſſed.*

TO the firſt Reaſon, where it bears, that the Defence of Quarters is excluſive of Proceſs, *& impedit litis ingreſſum*. It is anſwered, That the Defence of Quarters is not excluſive of Proceſs, *nec impedit litis ingreſſum*, becauſe albeit it were ſuſtained to the Defenders, that theſe who are taken in War, and get the benefit of Quarters, cannot be killed or ſlain; yet they who are taken *in bello* (albeit Quarters were granted to be lawful, which is denyed *in noſtro caſu*) are ſtill *Captivi*; and being Captives, the Procurators of the Eſtates, in name of the Publick, may crave Proceſs againſt the Captives, *ut Judex procedat ad ſententiam*, that it may be clear to the World that the Captives are guilty of ſuch and ſuch Crimes; which Guilt is neither pardoned, nor taken away by the giving of Quarters (albeit it were granted that Quarters were lawful *in hoc caſu*, as it is not, as ſhall be cleared in the diſcuſſing of the Defence founded upon Quarters) but the giving of Quarters *impedit tantummodo executionem ſententiæ, eamque partialem duntaxat, quatenus ea eſt extendenda ad vitam*; but impedes not the Criminal Purſuit it ſelf, whereby it is craved to be found that the Delinquents have committed ſuch and ſuch Crimes.

And where the foreſaid firſt Reaſon bears, That the Defence of Quarters cannot conſiſt with the other Defences *in Cauſa*, becauſe the proponing of other Defences ſhould be a tacite paſſing from the ſame. It is anſwered, The reaſon of the foreſaid Inconſiſtency is not relevant; for albeit the proponing of other Defences before the Defence founded upon Quarters might ſeem to the Defenders to prejudge the Defence of Quarters, as they conceive the Defence of Quarters to be *contra litis ingreſſum* (which it is not for the Anſwer above-written) yet proponing of the reſt of the peremptory Defences *ſimul & ſemel* with the Defence of Quarters, the Defence of Quarters preceding cannot be a paſſing from that Defence which is proponed *primo loco & per expreſſum*; but to eſchew Cavillation, the Defenders Procurators know very well, that they may propone the reſt of the Peremptors with this Caution (adhering to the Defence of Quarters, and may proteſt, that the proponing of the reſt ſhall not prejudge them of the Defence of Quarters) like as the Procurators of Eſtates declare, that the proponing of the reſt of the Defences, ſhall not prejudge their Defence of Quarters, but the ſame ſhall receive its own Anſwer with the reſt.

To the laſt part of the firſt Reaſon founded upon the *ſimile* of a Remiſſion. It is anſwered, That the ſame cannot be reſpected, 1. Becauſe an Alledgeance upon a Remiſſion was never alledged, but where it was inſtantly verified by Production of the Remiſſion. 2. A Remiſſion *perimit totam inſtantiam*, for it frees the Defender from all Sentence, or Execution, of the Crime laid to his Charge: And it is truly *contra litis ingreſſum*, becauſe it diſcharges the Judge to proceed. But the Defence of Quarters, as is above written, *nullam proceſſus*

partem impedit, but is only effective, when the Sentence of the Proceſs is to be put to execution.

To the ſecond Reaſon, bearing, That if the Defence of Quarters be ſuſtain'd to the Defenders as relevant, whereof they are confident, that poſſibly they will uſe no other Defences at all. It is anſwered, The Procurators of Eſtates are not to make anſwer to any thing that the Defenders mind poſſibly to do; but this anſwer they make, That this ſame may be alledged in all other peremptory Defences: For if any peremptory Defence be ſuſtained relevant and proven, the Defender needs propone no other Defences; which is abſurd, unleſs they will omit the proponing of them upon their own Peril, ſeeing it has ever been the Cuſtom of all Commiſſions from the Parliament, that all the Defences are proponed together, as has been in uſe to be proponed before the Juſtice.

To the third and laſt Reaſon, oppones the Cuſtom of the Juſtice Court, and of all preceding Commiſſions flowing from the Parliament for trying of Delinquents. For before the Juſtice Court, the Juſtice uſually urges the Pannal's Procurators to propone all the Defences, unleſs ſometimes the King's Advocat, for his own behoof, and in favours of the Purſuer, will make a Reply to a Peremptor, before he hear the reſt proponed: and before the Commiſſions of Parliament for trying of Delinquents, it has been always the Cuſtom to propone all the Defences together. And where the ſaid third Reaſon bears, that a material Defence eluſory of the Inſtance, ought to be diſcuſſed before the Defenders be urged to propone any further Defences. It is anſwered, 1. That the Defence of Quarters is not eluſory of the Proceſs, or any part thereof. 2. All total Exceptions are eluſory of the Inſtance. And therefore, in no Caſe in the Defenders Judgment, can the Defenders be urged to propone their peremptory Defences *ſimul & ſemel: quod eſt abſurdum.*

9th December, 1645.

Sent at half One of the Clock.

DUPLIES for *Ogilvie*, *William Murray*, Sir *Robert Spotiſwood*, and *Nathaniel Gordon*.

TO the Anſwer to the firſt Alledgeance, it is duplyed; That the Defence founded upon Quarters, not only impedes the Execution of the Sentence, but elides the very Propoſition of the Libel, and impedes the Sentence it ſelf, at the leaſt in ſo far as the Propoſition of the Libel carries, that whoſoever are Art and Part of the Crimes libelled, incur the pain of Treaſon, and Forefaulture of Life: Which is expreſly libelled in the Propoſition of their Libel. And the Life being the greateſt of all Pains, a Defence alledged for Safety thereof, and eluſory of that part of the Propoſition and Concluſion foreſaid againſt the ſamen, ſhould firſt, and *per ſe* be diſcuſſed: Eſpecially in regard that the Defenders are very loth to entangle themſelves in a Diſpute with the Eſtates concerning the Relevancy of the Libel, wherein many tender Points may occur to be agitate, and it ſhould tend to an unneceſſary protracting of them, if the Defenders ſhould be forced to give in all their Defences, which the Defenders Procurators have not as yet thought on, being confident that the Defence upon Quarters will be found relevant, and carry that whereof the Defenders ſhould be moſt careful, *viz.* Safety of their Life. And it is known, that before the Juſtice, and other inferior Judicatories, Defences are moſt frequently proponed and diſcuſſed in the ſame order. And it is time, after this material Defence ſhall be diſcuſſed, then to urge the Defenders to give in all their Defences. Likeas, in the former Proceſs purſued againſt *Ogilvie*, there being one of the ſame nature given in by him; there paſt in that Proceſs, Replies, Duplies, Triplies, and Quadruplies, before he was urged to give in any further Defences.

Secundo, Whereas it is alledged, That in all Commiſſions from the Parliament, it has been the Cuſtom to propone all Defences together, juſt as before the Juſtice General. The Defender denies any ſuch Cuſtom; but by the contrary Defences have ſeverally, and without Cumulation, been proponed and diſcuſſed, as in *Ochiltry*'s Proceſs, *Toſchock*'s, *Meldrum*'s, and many others.

The ſame Duply the Defenders repeat againſt the remanent Members of the Reply: And humbly repreſents to the Honourable Lords of the Committee the Expediency of diſcuſſing of this Defence *primo loco*, ſeeing the diſcuſſing thereof in their favours (which they expect) will ſhorten the Proceſs, and make them ready to give all poſſible Content to the Eſtates, and no wiſe to vex them with many more Defences, or tedious Diſpute.

The Report from the Commiſſioners for the Proceſs to the Parliament againſt Sir Robert Spotiſwood.

AT *Sanct-Andrews* the eight day of *January* one Thouſand ſix Hundreth and fourty ſix Years, The Lords and others Commiſſioners underwritten, appointed by the Eſtates of Parliament for the Proceſs, They are to ſay, *William* Earl *Mariſhal*, *William* Earl of *Glencairn*, *John* Earl of *Caſſils*, *John* Earl of *Weymes*, *Robert* Lord *Burghly*, *James* Lord *Coupar*, Sir *Archbald Johnſton* of *Wariſton*, one of the Lords of Seſſions, Sir *William Cochran* of *Colldoun*, Mr. *George Dundaſs* of *Maner*, Sir *Thomas Ruthven* of *Frieland*, Sir *John Weyms* of *Bogie*, *James Mackdougal* of *Garthland*, *John Kennedy* Burges of *Air*, *George Gairden* Burges of *Bruntiſland*, Mr. *Robert Cunningham* Burges of *Kingborne*, Mr. *Robert Barclay* Burges of *Irwing*, *William Glendinning* Burges of *Kirkudbright*, Mr. *James Campbel* Burges of *Dumbarton*, and Mr. *Alexander Colvil* of *Blair*, one of his Majeſty's Juſtice Deputes, not as Ordinary Judge in the Office of Juſticiary, but as one of the Commiſſioners delegate by the

the ſaids Eſtates of Parliament with the remanent Commiſſioners foreſaid, *Anent* the Dittay given in by Mr. *Roger Mowat*, Mr. *James Baird*, and *Thomas Nicolſon* Procurators for the Eſtates of this Kingdom to Sir *Robert Spotiſwood*, *Makand Mentioun*, &c. *as in the Dittay it ſelf is more fully contain'd.* The ſaid Mr. *Roger Mowat*, Mr. *James Baird*, and Mr. *Thomas Nicolſon* Procurators for the ſaids Eſtates, *Compearand* perſonally, who for inſtructing of the Points of the ſaid Dittay produced the foreſaid Commiſſion granted by the King's Majeſty to the ſaid *James Graham*, making and conſtituting him Lieutenant Governour and Captain General of all the Forces raiſed or to be raiſed within this Kingdom; and giving him Power and Authority to raiſe and levy Forces within this Kingdom, and to lead and conduct them againſt the Forces raiſed and levied by Authority of the Eſtates of Parliament of this Kingdom, as the ſamen of the Date, Tenor and Contents foreſaid, ſigneted, docqueted and ſubſcribed by the ſaid Sir *Robert*, at more length bears. And likewiſe produced the foreſaid Proclamation for holding of Parliaments within this Kingdom, together with the foreſaid Commiſſion granted by his Majeſty to the ſaid *James Graham* to be Commiſſioner for his Majeſty for holding of the ſaid Parliament, as the ſamen of the Tenor and Contents foreſaid, docqueted and ſubſcribed by the ſaid Sir *Robert*, alſo at more length bears. And in like manner likewiſe produced the foreſaid miſſive Letter written by the ſaid Sir *Robert Spotiſwood* during his being with the ſaid *James Graham*, to ſome of the Noblemen about the King's Perſon in *England*, as the ſamen of the Date, Tenor and Contents foreſaid, ſubſcribed by the ſaid Sir *Robert*, likewiſe at more length bears. And the ſaid Sir *Robert Spotiſwood* Defender *Compearand* Perſonally, who acknowledged Judicially the Signeting of the foreſaid firſt Commiſſion, and the Docqueting and Subſcription thereof; the Docqueting and Subſcriving of the foreſaid Proclamation, and ſecond Commiſſion to the ſaid *James Graham* for holding of the Parliament; and the foreſaid miſſive Letter and Subſcription thereof, to be all the ſaid Sir *Robert*'s own proper Hand write; whereupon the ſaids Procurators of Eſtates asked Inſtruments. *Thereafter* the Rights, Reaſons and Allegations, together with the Alledgeances, Replies and Duplies given in by the ſaid Parties *hinc inde*, with the hail Writs foreſaid, and other Probation deduced by the ſaids Procurators of Eſtates, being at length heard, ſeen and conſider'd by the ſaids Commiſſioners, and they being therewith ripely adviſed, the ſaids Commiſſioners according to the Power and Authority given to them by the ſaids Eſtates of Parliament, makes their Report as follows, *viz.* They find the ſaid Dittay founded upon the foreſaid Act of Parliament made in *May* 1584. anent the impugning the Dignity and Authority of the Eſtates of Parliament, ſeeking or procuring the Innovation or Diminution of the Power of the ſamen, being ſubſum'd upon, and qualified in manner contain'd in the ſaid Dittay, relevant to infer againſt the ſaid Defender any arbitrary Cenſure or Puniſhment the ſaids Eſtates of Parliament ſhall think expedient. And in the like manner find the ſaid Dittay founded upon the Act of Parliament above-written made in *June* 1644. anent the taking up of Arms againſt the Kingdom and Eſtates of the Country, relevant to infer the Concluſion contain'd in the ſaid Act, notwithſtanding of the hail Defences and Duplies proponed for the part of the ſaid Sir *Robert* in the contrary. And repels the Defence founded upon Quarters proponed by the ſaid Sir *Robert*, as the ſamen is proponed by him againſt the ſaid Dittay, to ſtay and impede the foreſaids Commiſſioners to proceed to diſcuſs the Relevancy and Probation of the ſaid Dittay. But the ſaids Commiſſioners remits and refers the ſaids Defences given in by the ſaid Sir *Robert* or *James Ogilvie*, to which the ſaid Sir *Robert* adheres, and which he repeats founded upon Quarters, to be diſcuſſed and decided by the honourable Eſtates of Parliament before the pronouncing of any Sentence of Condemnation to follow hereupon. And finds that Member of the Aſſumption of the ſaid Dittay, bearing Sir *Robert* has docqueted and ſubſcribed with his Hand, ſigneted with the Signet of the Office of Secretary, the foreſaid Commiſſion granted to the ſaid *James Graham* upon the firſt of *June* 1645, for raiſing and levying of Forces within this Kingdom, leading and commanding them againſt the Forces raiſed and levyed by Authority of the Eſtates of Parliament, and ſiklike, bearing that the ſaid Sir *Robert Spotiſwood* has docqueted and ſubſcribed with his hand the foreſaid Commiſſion granted by his Majeſty to *James Graham*, to be Commiſſioner for his Majeſty for holding the ſaid pretended Parliament, ſufficiently proven againſt the ſaid Sir *Robert*, to infer any arbitrary Cenſure or Puniſhment the foreſaids Eſtates of Parliament ſhall think fit. And in like manner find that Member of the ſaid Aſſumption of the foreſaid Dittay, bearing that the ſaid Sir *Robert* has joined himſelf with the ſaid *James Graham* and his rebellious Army, and his being with him at Acts of Hoſtility committed by him in the Month of *September* laſt, at the Battel of *Philiphaugh*, being taken in the Battel, and his Sword drawn in his hand; and ſo having taken up Arms againſt the Kingdom and Eſtates of the Country, ſufficiently proven againſt the ſaid Sir *Robert*, to infer the Pain and Puniſhment of Treaſon, and that therethorow he is puniſhable by Forefaulture of Life, Lands and Goods, or any other Cenſure the Parliament ſhall pleaſe to inflict, the Defence of Quarters being firſt diſcuſt as aforeſaid. *Sic Subſcribitur*,

Caſſilis I. P. D. Com.

13th January, 1646.
Read in Audience of the Parliament, and remitted to the ſeveral Bodies.

THE Eſtates of Parliament having heard the whole Diſpute contain'd in the Alledgeance, Reply and Duply, above and a back written, founded upon the Exception of Quarters, proponed for Sir *Robert Spotiſwood*, *Nathaniel Gordon*, *William Murray*, and Mr. *Andrew Guthrie*, and after full reading of the ſamen hail Diſpute in plain Parliament, and after full Debate there, the ſaids Eſtates repel the Alledgeance and Duply contained in this Paper, and in the other Papers produced, in reſpect of the Reply propon'd for eliding of the Alledgeance; whereupon Mr. *Thomas Nicolſon*, one of the Procurators for the Eſtates asked Inſtruments. *Sic ſubſcribitur*,

Crawfurd Lindſay, I. P. D. Parl.

16 *January*, 1646.

THE Report above written produced from the Commiſſion for the Proceſs, againſt Sir *Robert Spotiſwood*, together with the Interlocutor of Parliament given this day, repelling the Defence and Duply propon'd by him, founded upon Quarters, in reſpect of the Reply proponed for eliding of the ſame Defence, being read, heard, conſidered and adviſed by the Eſtates of Parliament; they approve the ſame Report and Interloeutor of Parliament foreſaid, and find and declare that the ſaid Sir *Robert Spotiſwood* has incurr'd the Capital Puniſhment of Death, in reſpect the Dittay founded upon the Act of Parliament in *May* 1584, is found relevant and proven againſt him by the foreſaid Report. And als find and declare, That the ſaid Sir *Robert Spotiſwood* has incurred the Pain and Puniſhment of Treaſon, and Forefaulture of his Life, Lands and Goods, in reſpect the Dittay founded upon the Act of Parliament made in *June* 1644, anent the taking up of Arms againſt the Kingdom and Eſtates of this Country, is alſo found relevant and proven againſt him by the Report above ſpecified. And therefore the Eſtates declare him a Traitor to this Kingdom and Eſtates thereof, and forefault him in Life, Lands and Goods, to be applyed to the uſe of the Publick; and ordain his Arms to be riven, and delete out of the Book of Arms, and himſelf to be execute to the Death by ſtriking of his Head from his Shoulders at the Mercat Croſs of St. *Andrews*, upon *Tueſday* next the twentieth day of *January* inſtant, at twelve a Clock that day, and ordain the Magiſtrats of St. *Andrews* to ſee the ſame done. *Sic Subſcribitur*,

Crawfurd Lindſay, I. P. D. Par.

The Procurators of the States preſented to the Commiſſioners the Form and Directory for proving Sir Robert Spotiſwood's *Dittay.*

St. Andrews, 27 December 1645, *The Subſumption of Sir* Robert Spotiſwood's *Dittay, in the ſeveral Members and Aggravations thereof libelled, is proven as after follows.*

THE Gracious Favour mentioned in his Dittay granted by the Eſtates of Parliament in *Anno* 1641, is contained in the 33 Act of King *Charles* his ſecond Parliament dated the 16 of *November* 1641.

The Nomination of the Earl of *Lanerk* to be Secretary by the King's Majeſty and Parliament is proven by the Act of King *Charles* his ſecond Parliament in *Anno* 1642.

The King's Majeſty's Declaration anent the Defender is in the Act of King *Charles* his Parliament in *Anno* 1641.

The Defender his Docqueting and Signeting of the two Commiſſions, and of the Proclamation mentioned in the Defender his Dittay, are proven by the ſaids two Commiſſions and Proclamation produced.

The Defender his Joining with *James Grahame* and his Army is proven by his own Declaration of the ſecond of *January* 1646.

The Writing of the Letter by the Defender of the date the tenth of *September* 1645. is proven by the Production of the Letter.

DOUBLE *of the King's Majeſty his Commiſſion to the Marquis of* Montroſe, *to be Lieutenant Governour, and General of all His Majeſty's Forces in* Scotland.

CHARLES R.

CHARLES by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* To our Right Truſty and Right entirely beloved Couſin *James* Marquis of *Montroſe*, greeting. Whereas divers traiterous and ſeditious Perſons of our Kingdom of *Scotland*, have levied War againſt us, and to the manifeſt Forefaulture of their Allegiance, and the Breach of the Act of Pacification, lately made between the two Kingdoms, have invaded our Kingdom of *England*, and poſſeſs'd themſelves in divers places therein, to the great Diſturbance of our Peace, and the Deſtruction and Spoil of our People: And yet further, if no courſe be taken by us to prevent that, intend to make a new Invaſion upon this our Kingdom, and bring in Forces for the Aſſiſtance of the Rebels here. Know ye therefore, that we repoſing eſpecial Truſt and Confidence in your approved Wiſdom, Courage, Fidelity and great Ability, whereof you have given hitherto moſt extraordinary and undeniable Proof, do by theſe Preſents name, conſtitute, ordain and authorize you the ſaid *James* Marquis of *Montroſe* to be our Lieutenant Governor, and Captain General of all our Forces raiſed, or to be raiſed in our Kingdom of *Scotland*, and of, and over all others brought, or to be brought thither out of our Kingdom of *England* and *Ireland*, or from any part whatſoever. And we hereby give you Power and Authority to raiſe and levy Forces meet and apt for the Wars within all the Parts of our ſaid Kingdom of *Scotland*, and to command and enjoin the Sheriff Lieutenants, Magiſtrats of Cities and Towns, and all others having Power and Authority under us, within every ſeveral County of our ſaid Kingdom, to ſend, or cauſe to be ſent unto you ſuch Number of our ſaid Subjects apt and meet for the War, to ſuch Place, or Places, and at ſuch time as you ſhall think expedient. And we do further by theſe Preſents, give you full Power and Authority to put in readineſs the Perſons ſo by you raiſed, or to be raiſed, levied, or aſſembled, ſent, conducted, or brought unto you and them, from time to time, to arm, lead and conduct againſt all and ſingular Enemies, Rebels and Traitors, and every of their Adherents attempting any thing againſt us, our Crown and Dignity, within any part of the ſaid Kingdom, and the ſaids Enemies, Rebels and Traitors, to invade, purſue, repreſs, and in caſe of Oppoſition or Reſiſtance, to ſlay, kill,

kill, and put to Execution of Death, by all ways and means, according to your good Diſcretion: And to do, fulfil and execute all and ſingular other things, which ſhall be requiſite for the Levying, Conducting and Government of the ſaid Forces, particularly to make, conſtitute and ordain Laws, Ordinances and Proclamations from time to time, as the Caſe ſhall require, for the good Government and Order of all the Forces that are, or ſhall be under your Command; and the ſame alſo, and every one of them to cauſe to be duly proclaimed, performed and executed. And likewiſe to puniſh all Mutinies, Tumults, Rapines, Murders, and all other Crimes and Miſdemeanours of any Perſon under your Command in your Army, according to the Courſe and Cuſtom of the Wars and the Laws of the Land. As alſo for us, and in our Name, as you in your Diſcretion ſhall think fit, to ſave ſuch as you pleaſe of theſe Traitors, Rebels, and Offenders as ſhall be apprehended or brought into Priſon, and make tender of our Royal Grace and Pardon to ſuch of them as ſhall ſubmit to us, and deſire to receive our Mercy. And further, we do give unto you full Power and Authority, for the better Execution of this our Commiſſion, to appoint and aſſign all Commanders and Officers neceſſary and requiſite for the Government and Command of our ſaids Forces, and to command all Cities, Towns, Caſtles and Forts within our ſaid Kingdom of *Scotland* to place Governors and Commanders within the ſame, and to remove, diſplace or continue ſuch as are in any of them already, according as you ſhall think meet for the Good of our Service, and Safety of that our Kingdom. And our further will and pleaſure is, and we do by theſe Preſents give unto you full Power and Authority, not only to repreſs and ſubdue ſuch as are in Arms againſt us within our ſaid Kingdom of *Scotland*, but alſo to advance your Forces into ſuch parts of our Kingdom of *England*, or any other of our Dominions as are infeſted and oppreſſed by any of our *Scotiſh* Subjects already brought, or hereafter to be brought in for aſſiſting the Rebels of this Kingdom, and there to purſue and beat out of ſuch Towns, Caſtles and Forts, as they have got Poſſeſſion of, without any part of our ſaid Kingdom of *England*, or other our Dominions, to recover the ſame for our uſe, and to relieve and free our *Engliſh* Subjects, and others, from the heavy Yoke that by that means lieth upon them. And becauſe of the ample Teſtimony you have given us of your ſingular Wiſdom and Fidelity in the ordering and diſpoſing of our great and weighty Affairs hitherto, to the end you may reward and encourage ſuch as have given, or ſhall give Aſſiſtance unto you towards the Advancement of our Service; We do hereby give unto you full Power and Authority from time to time to confer the Title, Degree and Honour of Knighthood upon ſuch Perſons, either Natives or others imployed under your Charge and Command, whom you in your Diſcretion ſhall conceive fit to receive the ſame; and whatſoever you ſhall do herein, according to the true Intent and Meaning of theſe Preſents, we do for us, our Heirs and Succeſſors, ratify and confirm upon the great Truſt and Confidence which we repoſe in you, that ye will make ſuch uſe of this Power given to you as may beſt conduce to the Advancement of our Service and Honour. Wherefore we will and command you our ſaid Lieutenant Governor, with all Diligence duly to execute the Premiſes with effect. And whatſoever you ſhall do by vertue of this our Commiſſion, and according to the Tenor and Effect of the ſame, touching the Execution of the Premiſſes, or any part thereof, you ſhall be for the ſame diſcharged, by theſe Preſents in that behalf againſt us, our Heirs and Succeſſors. And therefore we will and command all and ſingular our Subjects within our ſaid Kingdom of *Scotland*, of whatſomever Degree and Quality, whether Noblemen, Gentlemen, Burgeſſes, Magiſtrates in the Country or Towns, Privy-Counſellors, Officers of State Militant, Commanders and Soldiers, to whom it ſhall appertain, that they and every of them ſhall be from time to time attendant, aiding, aſſiſting and helping to you, and at the Commandment of you as aforeſaid in the due Execution hereof, and that they diligently and faithfully perform and execute ſuch Commands as you ſhall from time to time give them for our Service, as they and every of them tender our Diſpleaſure, and will anſwer the contrary at their utmoſt Perils. And theſe Preſents ſhall have Continuance during our Pleaſure, and ever while they be expreſly revoked by us. Given under our Sign Manual, and Privy Signit; At our Court at *Hereford* the twenty fifth of *June* 1645, and of our Reign the one and twentieth.

May it pleaſe your Majeſty,

THIS is a Double of the former Commiſſion granted by your Majeſty to the Marquis of *Montroſe*, to be Lieutenant Governor, and General of all your Majeſty's Forces in *Scotland*.

Robert Spotiſwood.

Follows the King's Majeſty his Proclamation for calling a Parliament.

CHARLES R.

CHARLES by the Grace of God, of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, *&c. To our Lovits*, Lyon King of Arms, Heralds, Purſevants, Meſſengers and Officers at Arms, our Sheriffs in that part, conjunctly and ſeverally greeting. Whereas by the ſeventh Act in the firſt Seſſion of our late Parliament in that our Kingdom, we with Advice of our Eſtates there, did ſtatute and ordain, that in every three years once at leaſt a Parliament ſhould be kept within that our Kingdom, in ſuch a convenient place and time as we with Advice aforeſaid ſhould at the cloſe of every Parliament determine and appoint; likeas by the laſt Act of our ſaid late Parliament, it was appointed, that the next Triennial Parliament ſhould meet and conveen at *Edinburgh* upon the 1ſt *Tueſday* of *June* laſt 1644. Which Date, in regard of the great Diſtempers both of this and that Kingdom, we could not keep at that time, neither in our own Perſon nor by our Commiſſioner. But now amidſt the many and weighty Affairs we have in hand, not laying aſide the Care

of that our antient and native Kingdom, we have thought good not to fruſtrate any longer the Expectation and Deſires that our good Subjects there may have of ſuch a Parliament; and that the rather, leſt any of them ſhould be abuſed in thinking, that we do or ever intend to acknowledge for lawful the Meeting begun at *Edinburgh* the firſt *Tueſday* of *June* laſt, and continued ſince under the Name of a Parliament; which howſoever the appointing of it to conveen by us at that Day and Place, might have been a ſufficient Warrant to them for their firſt Meeting, yet to continue the ſame in abſence of us, or ſome one at leaſt to repreſent our Royal Perſon amongſt them, and by themſelves, without our concurring Authority, to make pretended Laws and Ordinances, is ſuch a Preſumption as we are reſolved never to endure. For theſe therefore and other Cauſes us moving, but chiefly out of the tender Affection we carry to that our native Kingdom, the preſent diſtracted Eſtate whereof we much pity, and think it cannot better be remeided than by the Wiſdom and Authority of a lawful and free Parliament, by whoſe Counſel and Advice we will be govern'd in what may conduce to the perfect ſettling of Peace and Tranquillity there. We Will and Require you and every one of you conjunctly and ſeverally to paſs to the Mercat-Croſs of our Town of and there by open Reading of this our Proclamation, Summond and Warn all and ſundry Dukes, Marquiſes, Earls, Viſcounts and Lords within that our Kingdom, to give their perſonal Appearance within the of our ſaid Town of the Day of next, where and when we intend to hold our High Court of Parliament by ourſelf or our Commiſſioner to be appointed by us for that effect; as alſo that ye make Intimation of and Warning to the Sheriffs and Freeholders of every Shire within that our Kingdom, and to the Magiſtrates of all our Burroughs Royal within the ſame, having Place and Voice in Parliaments to elect and choiſe Commiſſioners to be ſent from their ſeveral Shires and Burroughs reſpective, that may give their Opinion and Counſel in ſuch things as ſhall be propoſed in the ſaid Parliament, and concur with our Nobility aforeſaid, to make ſuch Acts and Statutes as may conduce moſt to the Peace and Welfare of that Kingdom, and ſhall be approv'd and ratify'd by us or our Commiſſioner aforeſaid in our Name: Likeas we will and command you to intimate publickly to all our Lieges of whatſoever Quality and Condition, that may have any Suits, Complaints or Grievances to be repreſented to us in Parliament, that they reſort for that effect to our ſaid Town of at the Day aforeſaid, and have their Recourſe no where elſe within that our Kingdom (eſpecially to the pretended Parliament kept by the Rebels there at *Edinburgh*) as they would not have us to eſteem of them as Perſons diſaffected to our Royal Perſon and Government. Furthermore, it is our Pleaſure, That this being done, you paſs immediately to the Mercat-Croſſes of all the Head-boroughs within every ſeveral Shire of that our Kingdom, (or at leaſt to ſo many of them as are preſently under our Obedience) and publiſh this our Proclamation; provided always, that the Publication thereof at the Mercat-Croſs of our ſaid Town of allenarly ſhall be a ſufficient Intimation to all our Lieges to repair thither; and that ſuch of our Nobility and Commiſſioners of Shires and Burroughs as ſhall compear and attend upon us or our Commiſſioner at the Day and Place appointed hereby, ſhall have Power with the Conſent and Approbation of us or our Commiſſioner foreſaid, to make Laws and Acts of Parliament that ſhall bind all our Subjects of that Kingdom in the ſame manner that any preceding Acts of Parliament, either in our Time or our Predeceſſors, have done: And that you report this duly execute and indorſed Day and Place above written, as you and every one of you will Anſwer upon your Perils; whereanent theſe Preſents ſhall be a ſufficient Warrant. Given under our Royal Hand and Signet at

May it pleaſe your Majeſty,

This is a Proclamation for calling of a Parliament to meet in the Town of upon the Day of next.

Robert Spotiſwood.

Follows the King's Majeſty his Commiſſion to James *Marquiſs of* Montroſe *to be Commiſſioner to the foreſaid Parliament.*

CHARLES R.

CHARLES by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* To our right truſty and right entirely beloved Couſin, *James* Marquiſs of *Montroſe*, Lieutenant Governor of our Kingdom of *Scotland*, greeting. Whereas for the ſettling of the preſent Diſtractions within that our Kingdom, we have thought fit to call a Parliament, which is to meet and begin the Day of next within our Town of And in regard of the great and weighty Affairs we are taken up with here at this time, we not being able to be preſent in our own Perſon at that Meeting; therefore we repoſing a ſpecial Truſt and Confidence in your approved Wiſdom and Fidelity, do by theſe Preſents, Name, Conſtitute and Ordain you our Commiſſioner at the ſaid Parliament, authorizing you at the Day and Place above-mentioned for us and in our Name to meet and conveen with ſuch of our Nobility and Commiſſioners of Shires and Burroughs, as ſhall give their Appearance for holding of our High Court of Parliament in our ſaid Town of There to adviſe and conſult with our ſaid Nobility and others, of all ſuch things as may tend to the Peace and Welfare of that our Kingdom; and in our Name to propone unto them ſuch things as you ſhall think expedient to be enacted in our ſaid Parliament, which may conduce to the Good of our Service and happy State of our ſaid Kingdom: Giving you hereby full Power and Authority for us and in our Name, to approve and ratify all ſuch Acts and Statutes as ſhall be agreed upon by you and them, and to give them the Strength of Laws to bind and oblige all and whatſoever our Subjects of that Kingdom; with Power alſo to you to adjourn and continue the ſaid Parliament from time to time, or to diſſolve the ſame as you ſhall find it meet and expedient; and generally to do all and every thing that any Commiſſioner from us heretofore hath had Power

and Authority to do. Likeas alſo we give you full Power and Authority in abſence of our Chancellor, to appoint a Vice-Chancellor to ſupply his Place, and to do and perform ſuch things as any Chancellor heretofore in preceding Parliaments have been in uſe of: As alſo in abſence of the Clerk Regiſter and other neceſſary Members of Parliament, to appoint ſuch as you ſhall think fit to fill their Places and exerce their Charges during the Sitting of the ſaid Parliament. And furthermore, we Will and Ordain you to make publick Intimation to all our Lieges within that our Kingdom of all ſuch Acts, Statutes and Ordinances as ſhall be enacted and concluded in the ſaid Parliament; and generally to uſe all Solemnities requiſite for giving of them the Strength and Power of Laws, which may bind all our Subjects of that Kingdom, in the ſame manner that any preceding Act of Parliament in our time or any of our Predeceſſors have done. Given under our Royal Hand and Signet.

May it pleaſe your Majeſty,

This is a Warrant for the Marquis of *Montroſe* to be your Majeſty's Commiſſioner in this next Parliament, giving him Power to appoint a Vice-Chancellor in caſe of the Chancellor's Abſence, and other Officers during the Sitting of the ſaid Parliament, in caſe they that are now in place do abſent themſelves.

Robert Spotiſwood.

Sir Robert Spotiſwood's *Declaration from St.* Andrews, 2*d* January 1646.

In Preſence of the Laird of Bogie *and Mr.* Robert Barclay, *two of the Commiſſioners for the Proceſs.*

SIR *Robert Spotiſwood* being examined and interrogate when he went into *James Graham*'s Army, declares he went in to him at *Bothwel* upon the firſt Day of *September* laſt bypaſt, and went along with the ſaid *James Graham* and his Army all the way, till he came to *Philiphaugh*, and being in *Selkirk* the time of the Allarm, he followed down to the *Haugh* after *James Graham* had drawn down all his Men to the *Haugh*; and when the Deponer was come down, he found the Armies ready to join, and before he could come thro' the *Haugh* to the other ſide where the Baggage ſtood, *James Graham*'s Army was put to flight, and the Deponer ſeeing them flee, reſolved to flee alſo, and was thereafter taken by the Laird of *Silvertonhill*, and ſome of his Accomplices, holding his Sword in his hand. *Robert Spotiſwood*, *Ja. Weems* of *Bogie*, *Robert Barclay.*

For clearing the Generality of that part of my Depoſition, bearing that I was taken with my Sword in my Hand, the Manner of it was this. By the time that I came from the Town of *Selkirk* down to *Philiphaugh*, the Fight was begun (wherein I was never ingaged) and the Flight taken, in the which I was carry'd along with the Throng, having nothing but a Cane in my hand. But being upon a borrow'd Nag, that was not able to take me off, and being purſued cloſe by ſome Troopers with their drawn Swords, ſeeing no means to get free of them, I then drew my Sword to keep them off, if poſſible I might, until I had obtained Quarters of them; which I did, and in that Poſture was taken.

Robert Spotiſwood.

Sir Robert Spotiſwood's *Letter to the Laird of* Bogie *and Mr.* Robert Barclay, *from* St. Andrews *Caſtle*, 4 January 1646.

Right Worſhipful,

HAving bethought myſelf of my Depoſition laſt Day before you, leſt I might be prejudged by the Generality thereof, in regard of my Anſwer made to your Queſtion, That I was taken with my Sword in my Hand; I humbly deſire that this Specification of my ſaid Depoſition may be admitted at the time of the adviſing thereof, to wit, That as I have deponed already I was not ingaged in the Fight, neither ever drew Sword till after the Flight begun; in the which I being carry'd away with the reſt, and my Nag not being able to take me off, when I ſaw ſundry Troopers coming upon me with their drawn Swords, then I drew mine, to keep them off, if I could, until I had obtained Quarters, in which Poſture I was taken. This being the Truth, I hope to clear my Carriage in that Place the better, your Worſhips will allow me the Favour to let me eik this to my former Depoſition, *re adhuc integra*, before the concluding of my Proceſs. In Expectation whereof I reſt your Worſhips very humble Servant,

Robert Spotiſwood.

Directed thus: For the Right Worſhipful the Laird of Bogie *and Mr.* Robert Barclay.

Sir Robert Spotiſwood's *Letter to the Lord* Digby.

MY LORD,

WE are now arrived *ad columnas Herculis*, to *Tweed-ſide*, diſperſed all the King's Enemies within this Kingdom to ſeveral Places, ſome to *Ireland*, moſt of them to *Berwick*, and had no open Enemy more to deal with, if you had kept *David Leſly* there, and not ſuffered him to come in here, to make head againſt us of new. It is thought ſtrange here, that at leaſt you have ſent no Party after him, which we expected: altho he ſhould not come at all. You little imagine the Difficulties my Lord Marquiſs hath here to wreſtle with; the overcoming of the Enemy is the leaſt of them, he hath more to do with his own ſeeming Friends: Since I came to him (which was but within theſe ten days, after much toil and hazard) I have ſeen much of it. He was forced to diſmiſs his *Highlanders* for a Seaſon, who would needs return home to look to their own Affairs. When

they

they were gone, *Aboyn* took a Caprice, and had away with him the greateſt ſtrength he had of Horſe: Notwithſtanding whereof he reſolved to follow his work, and clear this part of the Kingdom (that was only reſting) of the Rebels that had fled to *Berwick*, and kept a buſtling here. Beſides he was invited hereunto by the Earls of *Roxburgh* and *Home*, who when he was within a dozen Miles of them, have rendered their Houſes and themſelves to *David Leſly*, and are carried in as Priſoners to *Berwick*. *Traquair* hath been with him, and promiſed more nor he hath yet performed. All theſe were great Diſheartnings to any other but to him, whom nothing of this kind can amate. With the ſmall Forces he has preſently with him he is reſolved to purſue *David Leſly*, and not ſuffer him to grow ſtronger. If you would perform that which you lately promiſed, both this Kingdom and the North of *England* might be ſoon reduced, and conſiderable Aſſiſtance ſent from hence to his Majeſty; however nothing will be wanting on our parts here: theſe that are together are both Loyal and Reſolute, only a little Encouragement from you (as much to let it be ſeen that they are not neglected, as for any thing elſe) would crown the Work ſpeedily. This is all I have for the preſent, but that I am your Lordſhip's moſt Faithful Servant,

Robert Spotiſwood.

Dated, Near to Kelſo, September 10. 1645.

THeſe are the Evidences whereupon the Sentence condemnator is founded, in pronouncing of which there was much Diviſion in the Court; and tho many liked not Sir *Robert*'s Party, yet they lov'd his Perſon, which made him many Friends, even among the Covenanters, in ſo much, that after the Sentence was read, ſome of the Nobility ſpoke in his behalf, and intreated the Houſe to conſider the Quality and Parts of that excellent Gentleman, and moſt juſt Judge, whom they had condemned, and begged earneſtly his Life might be ſpar'd: but an eminent Knowledge and Eſteem, which in other Caſes might be a Motive to ſave a Criminal, was one Cauſe of taking away his Life. For theſe Gentlemen who ſpoke were told, That the Authority of the then eſtabliſhed Government was not ſecure, while Sir *Robert Spotiſwood* was ſpared. Whereupon theſe Noblemen who preſided in the Meeting of the Eſtates at *Glaſgow*, and in the Parliament at St. *Andrews*, when they ſign'd the reſpective Sentences, openly declared to the reſt of the Members, That they did ſign as Preſes, and in Obedience to the Command of the Eſtates, but not as their particular Judgment.

The day before his Death, he wrote a Letter to the Marquiſs of *Montroſe*, telling, 'That he 'was condemn'd to die for being faithful to the 'King, and becauſe he had ſhown an inviolable 'Reſpect to his Lordſhip's Perſon. That whatever 'the Eſtates might pretend, he believed his 'taking part with his Lordſhip, was the only Motive which made them determine his Deſtruction, 'and he hop'd by his Death he would contribute 'more to his Majeſty's Service, than he could 'have done, had it pleas'd the Sovereign Providence to have prolong'd his Life. He intreated 'his Lordſhip to notice one thing he found neceſſary for the King's Service, which was, to continue his Gentleneſs and Moderation of Conduct, 'and not to imitate the barbarous Inhumanity of 'their Enemies, who gave his Lordſhip but too 'great Cauſe to follow their Example. And as a 'mark that his Services were not diſagreeable to 'his Lordſhip, he conjur'd him to take under his 'Protection his poor Orphans, and the afflicted 'Family of his Brother Sir *John Spotiſwood* of '*Dairſey*.'

The day of Sir *Robert Spotiſwood*'s Execution being come, the People were ſurprized with Aſtoniſhment, when they ſee appear upon the Scaffold, a Perſon whom in former Time they had with Love and Admiration ſeen preſide in the Supreme Judicature of the Nation, with great Sufficiency, and much Honour. He appeared with the ſame Gravity and Majeſty which did ever ſhine in his Countenance; and as he was about to ſpeak to the People, a Miniſter of the Place, knowing that the laſt Words of this great Man would make Impreſſion on the Minds of all the Spectators, cauſed the Provoſt of the Town impoſe on him ſilence. But Sir *Robert* foreſeeing this Treatment, had put in Writing what he had purpoſed to ſpeak to the People; ſo that finding himſelf interrupted, he threw among the Multitude the following Paper.

YE will expect ſomething from me of the Cauſe for which I am brought hither at this time to ſuffer in this kind; which I am bound to do for clearing the Integrity of my own Proceedings, vindicating his Majeſty's juſt and pious Intentions, and withal to vindicate you that are miſled in Ignorance, and made to believe that you are tied in Conſcience to ſet foreward this unnatural Rebellion, masked under the Covert and Pretext of propagating Religion, and maintaining of the Publick Liberties. You have perceived by the Fact that is gone before, *viz.* carrying Arms, *&c.* that I ſtand here adjudged to die by this pretended Parliament, as a Traitor to the Eſtates, and an Enemy to my Native Country. This is a Treaſon unheard of before in this Kingdom, againſt the Eſtates, a thing of a late Creation, which I believe there be ſome would have erected in Oppoſition to the juſt and lawful Authority of the King, under which we and our Predeceſſors have been ſo many hunders of Years governed. To come to my treaſonable Demeanour (as they eſteem it) the main one is, That I did docquet and bring down a Commiſſion of Lieutenantry from his Majeſty, to the Lord Marquiſs of *Montroſe*, with a Proclamation for indicting a Parliament by the King's Authority, wherein the ſaid Lord Marquiſs was to be Commiſſioner. Not to excuſe myſelf upon the Neceſſity laid upon me to obey his Majeſty's Command in a buſineſs of that Nature, in regard of the Charge I had about him, I cannot ſo far betray my own Conſcience, as to keep up from you my Judgment of the thing itſelf, ſeeing it may tend to the juſtifying of the King's part, and your better Information; for lack whereof, I know many are entangled in this Rebellion unwittingly: And who knoweth, but God in his merciful Providence hath brought us hither, to be Inſtruments of freeing you from the manifold Deluſions that are made uſe of to enſnare you. I ſay then, it was juſt and neceſſary to his Majeſty to grant ſuch Commiſſions, and by Conſequence an Act of Duty in me, to perform what he was pleaſed to Command me. It is known well enough what Contentment his Majeſty gave to this Kingdom at his laſt being

being here, both in the Affairs of Church and Policy; notwithſtanding whereof the World ſeeth what meeting he hath gotten from us. When the Rebellion burſt forth in *England*, all that he deſired of us, was only to ſtand neutral, and not to meddle between him and his Subjects there: Of which moderate deſire of his little reckoning was made; but on the contrary, at the requeſt of theſe Rebels, by the Power of their Faction amongſt us, an Army was raiſed and ſent to *England*, to aſſiſt them againſt our own native King. His Majeſty being reduced to this Extremity, what expedient could he find ſo fair and eaſy, as to make uſe of the help of ſuch of his Loyal Subjects here, as he knew had ſuch an unparallel'd Diſloyalty in Horror and Deteſtation? Amongſt whom that matchleſs Mirror of all true Worth and Nobility, the Lord Marquiſs of *Montroſe* having offered himſelf, it pleaſed his Majeſty to give him a ſubaltern Commiſſion at firſt; which he having execute with ſuch unheard of Succeſs, that his Memory ſhall be had in Honour for it in all Ages: his Majeſty for the better furthering of his own Service, and to countenance and encourage him the more in it, gave him an abſolute and independent one thereafter, which is that I delivered into his hands by his Majeſty's Command. Herewithal his Majeſty pitying the Miſery of this poor Kingdom, occaſioned by the rebellious ſtubbornneſs of a few factious Spirits, thought fit to give Power to the ſaid Lord Marquiſs to call a Parliament in his Majeſty's Name, to try if by that means, a Remedy might be found againſt the preſent evils, and to have all his Subjects of this Kingdom reduced by one means or other under his Obedience. In all this I ſee not what can be juſtly charged upon his Majeſty, or upon me as his Servant, who have done nothing againſt any authorized Law of the Kingdom, but have ſerved him faithfully, unto whom by Truſt and natural Allegiance I am ſo much bound.

Whereas I am declared an Enemy to my native Country, God be ſo propitious to me, as my thoughts towards it have been always publick, and tending to the Good and Honour thereof. I do profeſs, ſince the firſt time I had the Honour of that Noble Marquiſs his Acquaintance, I have been a Favourer of his Deſigns, knowing them to be both loyal and honourable: Beſide that I knew his Affection towards his Country to be eminent in this eſpecially, that he did ever ſhow himſelf paſſionate to vindicate the Honour of this Kingdom, which ſuffereth every where, by this ſtrange Combination of theirs with the Rebels of another Kingdom againſt their own Prince; wherein I concurred in Judgment with him, and thought there was no other way to do it, but by ſetting up a Party of true and loyal hearted *Scots*-Men for his Majeſty, whereby it might be ſeen that it is not a national Defection, but only ſtirred up by a Faction therein, who for their own Ends have diſhonoured their native Kingdom, and diſturbed the Peace thereof. In enterprizing and proſecuting of which heroical Deſign, God hath ſo favoured that Noble Lord, that he hath righted our Country in the Opinion of all the World, and diſcovered where the Rottenneſs lieth.

Thus far I am content to be accounted a Traitor, in their Opinion that have condemned me, being fully aſſured that God the righteous Judge of all, who knoweth the Uprightneſs and Integrity of my Intentions, will impute no fault to me in this kind; ſince to my Knowledge I have carried myſelf according to the direction of his Word, and the Practice of all good Chriſtians before theſe miſerable Times we are fallen into. My Exhortation therefore (which coming from one at the Point I am at, will, I hope, have ſome weight) ſhall be this unto you; That you will break off your Sins by Repentance, and above all, free yourſelf of this Maſter Sin of Rebellion that reigneth in this Land: whereunto moſt part are either forced, or drawn unawares, chiefly at the Inſtigation of thoſe who ſhould direct you in the way of Truth. It cannot be but a great Judgment upon a Land, when God's ſingular Mercies towards it are ſo little valued. He hath not given us a King in his Wrath, but one for Piety, Bounty, and all Virtues both Chriſtian and Moral, may be a Pattern to all Princes beſides. How thankful we are to God for ſo great a Bleſſing, our Reſpect towards him manifeſteth. Yet I fear there is a greater Judgment than this upon it, which occaſioneth all the Miſchiefs that afflict this poor Land, ſuch as was ſent upon *Ahab*: God hath put a lying Spirit in the Mouths of the moſt part of your Prophets, who inſtead of the Doctrine of Salvation, labour to draw your Hearts unto the Condemnation of *Core*. God Almighty look upon this poor miſerable Church and Kingdom, and relieve you out of the intolerable Servitude you lie under, which I do heartily wiſh for in your behalf. So let me have the Aſſiſtance of your Prayers, that God would be pleaſed to pardon all my Sins in Jeſus Chriſt, and gather my Soul with the Saints and Martyrs that are gone to their Reſt before. So I bid the World and you farewel.

Sir *Robert* was not diſturbed at the unmannerly Interruption he met with, when he was about to addreſs himſelf to the People; ſo that turning from them, he wholly beſtowed himſelf in Devotions and Prayers to Almighty God. The ſame Miniſter having asked, if he would have him and the People to pray for the Salvation of his Soul, he made anſwer, That he deſired the Prayers of the People, but was not ſollicitous for his Prayers, which he believed were abominable unto God: for (added he) of all the Plagues with which the offended Majeſty of God had ſcourged this Nation, this was much the greateſt (greater than the Sword, Fire or Peſtilence) that for the Sins of the People God had ſent *a lying Spirit into the Mouth of the Prophets.* With which ſaying this Preacher finding himſelf touched, grew ſo extremely in paſſion, that he could not forbear ſcandalous and contumelious language againſt Sir *Robert*'s Father, who had been long dead, and againſt himſelf who was now a dying: Which this mild Gentleman took no notice of, having his mind fixed upon higher Matters. At laſt with an undaunted Air he advances towards the Inſtrument of his Execution, and ſhewing no alteration either in Voice or Countenance, he laid down his Neck to the fatal ſtroak, and uttered theſe his laſt Words; *Merciful Jeſu, gather my Soul unto thy Saints and Martyrs, who have run before me in this race.*

A N

APPENDIX,

Containing several

RECORDS

Relating to the foregoing

Trials and Proceedings.

LONDON:
Printed in the Year MDCCXXX.

APPENDIX

(Continued)

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AN APPENDIX,

CONTAINING

Several RECORDS *relating to the foregoing* TRIALS *and* PROCEEDINGS.

THE Second and Third Trials in this Collection being for *Hereſy* (a Crime heretofore very frightful, and puniſhed with great Severity) it may not be amiſs to ſtate how the Law formerly ſtood relating thereto, and, ſince we have not the Precedents of the Proceſs iſſued in thoſe particular Inſtances, to give a Precedent or two in ſome others of the ſame Nature.

By the ancient [a] Law, Burning was the Puniſhment for Hereſy; but the Party accuſed was firſt to be tried and convicted thereof by the Archbiſhop and the reſt of the Clergy of his Province aſſembled in Convocation. After Conviction the Offender was delivered over into Lay-Hands, and the Sheriff of the County, by virtue of the Writ *de Hæretico comburendo*, was to cauſe him to be burnt. *Brit. lib.* 1. *c.* 17. *Bro. Abr. tit.* Hereſy. *Fitz. Nat. Brev.* 595.

The firſt Statute in relation to Hereſy is the 5th of *Rich.* II. *cap.* 5. whereby it is enacted, That the Sheriffs and other Civil Officers ſhould apprehend and impriſon Perſons ſuſpected of Hereſy, in order to their being tried by the Laws of Holy Church; and it being found inconvenient to ſummon the Convocation for the Trial of every Offender, a Statute was made the 2d of *Hen.* IV. *cap.* 15. impowering every Dioceſan to impriſon Perſons ſuſpected of Hereſy in their reſpective Dioceſes, and try them (ſo that ſuch Dioceſan proceeded judicially and openly againſt ſuch Perſons) and where any Perſon was convicted, he might be impriſoned at the Diſcretion of the Ordinary; or, if the Party refus'd to abjure his Errors, or, having abjured them, relaps'd, he was to be left to the Secular Arm; and the Sheriff (whom the Ordinary might call to be preſent at the Trial) was to cauſe the Party to be burnt in ſome high (or open) Place.

The Lord Chief Juſtice *Brook* (in his Abridgment, Tit. *Hereſy*) ſays, that upon this Statute it was reſolved, That if a Perſon was convicted of Hereſy in the Preſence of the Sheriff, the Ordinary might commit him to the ſame Sheriff, and he was to cauſe him to be burnt without the Writ *de Hæretico comburendo*; but if the Sheriff was abſent, or if the Heretic was to be burnt in another County, in either of theſe Caſes the Writ *de Hæretico comburendo* muſt be firſt obtained, before the Sheriff could burn him.

Some Authors have wonder'd, why the Writ *de Hæretico comburendo* was iſſued for the burning of *Sawtre*, when by the laſt mentioned Act the Sheriff was impowered to execute Perſons convicted of Hereſy without that Writ: But the Wonder ceaſes, if we conſider that the Sheriff could not proceed to execute the Offender by his own Authority, unleſs he was preſent at the Conviction; and though the Dioceſan might call the Sheriff to attend the Trial, yet he might too convict the Offender in his Abſence. And further, *Sawtre* was convicted by the Convocation; and it may be difficult to give one Inſtance where the Convocation called the Sheriff to aſſiſt at the Trial of an Heretic; and, if they had, ſuch a Conviction was not within the Letter of the Act: Therefore, upon this Conviction, the Sheriff was under a Neceſſity of waiting for the Writ *de Hæretico comburendo*, before he could execute him.

By the 2d of *Hen.* V. *cap.* 7. all Civil Officers were to be ſworn to aſſiſt the Ordinaries in extirpating Hereſies; and one convict of Hereſy was to forfeit his Goods and Chattels, and Fee-ſimple Lands.

By the 25th of *Hen.* VIII. *cap.* 14. the Act of the 2d of *Hen.* IV. is in part repealed; and it is thereby provided, That no Perſon ſhall be executed as an Heretic, without the Writ *de Hæretico comburendo* firſt obtained.

By the 1ſt of *Eliz. cap.* 1. the aboveſaid Statutes, as well as that other Statute of the firſt and ſecond of *Phil.* and *Mar. cap.* 6. againſt Heretics, are repealed.

[a] See *Whitlock*'s Speech in behalf of *James Naylor*, Vol. II. p. 273 N°. 52.

And by the 29th of *Car.* II. *cap.* 9. the Writ *de Hæretico comburendo*, with all Proceedings thereon, and all Capital Punishments in pursuance of any Ecclesiastical Censures, are from thenceforth utterly abolished.

So that at this day a Person convicted of Heresy is liable only to Excommunication, and such Pains and Disabilities as Persons standing excommunicated for any other Offence.

The Writ de Hæretico comburendo, *for burning* William Sawtre [b], *convicted of* Heresy *in Convocation* [c].

REX, &c. Majori & Vic' London salutem. Cum venerabilis Pater Thomas Archiepiscopus Cantuar' totius Angliæ Primas, & Apostolicæ sedis Legatus, de consensu & assensu, ac consilio Episcoporum, & confratrum suffragan' suorum, necnon totius Cleri provinciæ suæ in consilio suo provinciali congregat', juris ordinibus in hac parte requisit' in omnibus observat', Will' Sawtre, aliquando Capellanum in hæres' damnat', & per ipsum Willielmum præantea in forma juris abjurat', & ipsum Willielmum in hæresin prædict' relaps', per suam sententiam definitivam hæreticum manifestum pronunciav' & declarav', ac degradandum fore decreverit, & ab omni prærogativa & privilegio Clericali ea de causa realit' degradaverit, ipsumq; Will' foro seculari relinquendum esse decreverit, & realiter reliquit, juxta leges & canonicas sanctiones editas in hac parte, & sancta Mater Ecclesia non habet ulterius quod fac' in præmiss': Nos igitur, zelator justitiæ, & fidei catholicæ cultor, volentes Ecclesiam sanctam, ac jura & libertates ejusdem manutenere & defendere, & hujusmodi hæreses & errores de regno nostro Angliæ (quant' in nobis est) radicitus extirpar', ac hæreticos sic convictos animadversione condigna puniri; attendentesq; hujusmodi hæreticos, in forma prædict' convictos & damnatos juxta legem divinam & humanam canonica institutione, & in hac parte consuetudinar', ignis incendio comburi debere, Vobis distinctius quo possimus præcipimus, firmiter injungentes, quod præfat' Will' in custodia vestra existen', in aliquo loco publico & aperto infra libertat' civitatis prædict', causa præmissa, coram populo publice igni committ', ac ipsum in eodem igne realiter comburi fac' in hujus criminis detestationem, aliorumq; Christianorum exemplum manifestum; & hoc sub periculo incumbente nullatenus omittatis. Teste, *&c.*

The Form of the Warrant to the Lord Chancellor for issuing the Writ de Hæretico comburendo *against* Bartholomew Legatt, *on a Conviction for* Heresy *before the Ordinary.*

JAMES Rex.

JAMES, by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, *&c.* To our right trusty and right well-beloved Counsellor, *Thomas* Lord *Ellesmere*, our Chancellor of *England*, Greeting. Whereas the Reverend Father in God, *John* Bishop of *London*, having judicially proceeded in a Cause of Heresy against *Bartholomew Legatt*, of the City of *London*, in the Diocese of the said Bishop of *London*, concerning divers wicked Errors, Heresies, and blasphemous Opinions, holden, affirmed, and published by the said *Bartholomew Legatt*, and chiefly in these Thirteen blasphemous Positions following, *viz.* That the Creed called the *Nicene Creed*, and *Athanasius's Creed*, contain not a Profession of the true Christian Faith, or, that he will not profess his Faith according to the same Creeds; That Christ is not God of God begotten, not made, but begotten and made; That there are no Persons in the Godhead; That Christ was not God from everlasting, but began to be God when he took Flesh of the Virgin *Mary*; That the World was not made by Christ; That the Apostles teach Christ to be Man only; That there is no Generation in God, but of Creatures; That this Assertion, God to be made Man, is contrary to the Rule of Faith, and monstrous Blasphemy; That Christ was not before the Fulness of Time, except by Promise; That Christ was not God otherwise than anointed God; That Christ was not in the Form of God equal with God, that is, in Substance of God, but in Righteousness and giving Salvation: That Christ by his Godhead wrought no Miracle; That Christ is not to be pray'd unto: Wherein he the said *Bartholomew Legatt* hath, before the said Reverend Father, maintained his said most dangerous and blasphemous Opinions, as appeareth by many of his Confessions publickly made and acknowledged. For which his damnable and heretical Opinions, he is by definitive Sentence by the said Reverend Father *John* Bishop of *London*, with the Advice and Consent of other Reverend Bishops, Learned Divines, and others learned in the Laws, assisting him in Judgment, justly adjudged, pronounced, and declared to be an obstinate and incorrigible Heretick, and is left by them under the Sentence of the great Excommunication, and therefore as a corrupt Member to be cut off from the Church of Christ, and Society of the Faithful, and is to be, by our secular Power and Authority, as an Heretick punished, as by the *Significavit* of the said Reverend Father in God the said Bishop of *London*, bearing Date at *London* the third Day of *March*, in the Year of our Lord 1611. in the Ninth Year of our Reign, and remaining in our Court of *Chancery*, more at large appeareth. And although the said *Bartholomew Legatt* hath, since the said Sentence pronounced against him, been often very charitably moved and exhorted, as well by the said Bishop, as by many grave and learned Divines, to dissuade, revoke, and remove him from the said blasphemous and heretical Opinions, yet he arrogantly and wilfully persisteth and continueth in the same. We therefore, according to our Regal Function and Office, minding the Execution of Justice in this behalf, and to give Example to others, lest they should attempt the like hereafter, have determined, by the Assent of our Council, to will and require, and do hereby authorize and require you our said Chancellor, immediately upon the Receipt hereof, to award and make out, under our Great Seal of *England*, our Writ of Execution, accord-

[b] This Person was executed according to the Writ in the Year 1401, and was the first who was burnt in *England* for Heresy. See an Account of the Proceedings against him, and of his Execution, *Fox's Acts and Mon.* Vol. I. *p.* 586.
[c] See *Fitz. Nat. Brev.* 594.

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ing to the Tenor in theſe Preſents enſuing; and theſe Preſents ſhall be your ſufficient Warrant and Diſcharge for the ſame.

The Writ de Hæretico comburendo.

REX Vicecomitibus London ſalutem. Cum Reverendus in Chriſto Pater Johannes, London Epiſcopus, nobis ſignificavit, quod cum ipſe in quodam hæreticæ pravitatis negotio contra quendam Bartholomeum Legatt, ſubditum noſtrum civitatis London, dicti London Epiſcopi dioces' & juriſdict', rite & legitime procedens per acta inactitata, deducta, propoſita, & per confeſſiones ipſius Bartholomei Legatt coram præfato Epiſcopo judicialiter factas & recognitas, comperit & invenit præfatum Bartholomeum Legatt quamplurimos nefandos errores, falſas opiniones, hæreſes & blaſphemias execrandas, & ſcelerata dogmata catholicæ & orthodoxæ fidei & religioni, & ſacroſancto Dei Verbo expreſſe contraria & repugnantia, ſcienter, malicioſe, animoq; pertinaci, obdurato, planeque incorrigibili credere, tenere, affirmare, & publicare; idem Reverendus Pater London Epiſcopus, cum conſilio & conſenſu tam Reverendorum Epiſcoporum & aliorum Theologorum, quam Juris etiam peritorum in judicio aſſiden' & aſſiſten', eundem Bartholomeum Legatt, per ſententiam ſuam definitivam, obduratum, contumacem, & incorrigibilem hæreticum pronunciavit, decrevit, & declaravit, eaque occaſione tanquam protervum hæreticum, & membrum putridum & contagioſum, ab eccleſia Chriſti & fidelium communione reciſum & amputatum fore. Cum igitur ſancta mater Eccleſia non habeat quod ulterius facere & exequi valeat in hac parte, idem Reverendus Pater præfatum Bartholomeum Legatt, ut blaſphemum hæreticum, brachio noſtro ſeculari reliquit condigna animadverſione plectend', prout per Literas Patentes præfati Reverendi in Chriſto Patris London Epiſcopi in hac parte ſuperinde confect' nobis in Cancellar' noſtram certificat' eſt. Nos igitur ut zelator juſtitiæ, & fidei catholicæ defenſor, volentesq; Eccleſiam ſanctam, ac jura & libertates ejuſdem, & fidem catholicam manutenere & defendere, ac hujuſmodi hæreſes & errores ubiq; (quantum in nobis eſt) eradicare & extirpare, ac hæreticos ſic convictos animadverſione condigna puniri, attendenteſq; hujuſmodi hæreticum in forma prædict' convictum & damnatum juxta leges & conſuetudines regni noſtri Angliæ in hac parte conſuet', ignis incendio comburi debere: Vobis præcipimus, quod dictum Bartholomeum Legatt, in cuſtod' veſtra exiſten', apud Weſt-Smithfield in loco publico & aperto, ex cauſa præmiſſa, coram populo publice igni committi, ac ipſum Bartholomeum Legatt in eodem igne realiter comburi fac' in hujuſmodi criminis deteſtationem, aliorumq; Chriſtianorum exemplum manifeſtum, ne in ſimile crimen labantur; & hoc ſub periculo incumbente nullatenus omittatis. Teſte, &c.

Henry Hibirte.

The Writ for burning an Heretic in Engliſh.

THE King to the Sheriffs of *London*, Greeting. Whereas the Reverend Father in Chriſt, *John* Biſhop of *London*, hath ſignified unto us, that when he in a certain Buſineſs of heretical Pravity againſt one *Bartholomew Legatt*, our Subject of the City of *London*, of the ſaid Biſhop of *London*'s Dioceſe and Juriſdiction, rightly and lawfully proceeding by Acts enacted, drawn, propoſed, and by the Confeſſions of the ſaid *Bartholomew Legatt*, before the ſaid Biſhop judicially made and acknowledged, hath found the ſaid *Bartholomew Legatt* very many wicked Errors, falſe Opinions, Hereſies, and curſed Blaſphemies, and impious Doctrines, expreſly contrary and repugnant to the Catholick Faith and Religion, and the holy Word of God, knowingly and maliciouſly, and with a pertinacious, obdurate, and plainly incorrigible Mind, to believe, hold, affirm, and publiſh; the ſame Reverend Father the Biſhop of *London*, with the Advice and Conſent as well of the Reverend Biſhops and other Divines, as alſo of Men learned in the Law, in Judgment ſitting and aſſiſting, the ſame *Bartholomew Legatt*, by his definitive Sentence, hath pronounced, decreed, and declared to be an obdurate, contumacious, and incorrigible Heretic, and, upon that Occaſion, as a ſtubborn Heretic, and rotten contagious Member, to be cut off from the Church of Chriſt, and the Communion of the Faithful: Whereas the holy Mother Church hath not further to do and proſecute in this part, the ſame Reverend Father hath left the aforeſaid *Bartholomew Legatt*, as a blaſphemous Heretic, to our ſecular Power, to be puniſhed with condign Puniſhment, as by the Letters Patents of the ſaid Reverend Father in Chriſt the Biſhop of *London*, in this behalf above made, hath been certified unto us in our Chancery. We therefore, as a Zealot of Juſtice, and a Defender of the Catholick Faith, and willing to maintain and defend the Holy Church, and Rights and Liberties of the ſame, and the Catholick Faith, and ſuch Hereſies and Errors every where, what in us lieth, to root out and extirpate, and to puniſh with condign Puniſhment ſuch Heretics ſo convicted, and deeming that ſuch an Heretic, in Form aforeſaid convicted, and condemned according to the Laws and Cuſtoms of this our Kingdom of *England* in this part accuſtomed, ought to be burned with Fire; we do command you, that the ſaid *Bartholomew Legatt*, being in your Cuſtody, you do commit publickly to the Fire before the People, in a publick and open Place in *Weſt-Smithfield*, for the Cauſe aforeſaid; and that you cauſe the ſaid *Bartholomew Legatt* to be really burned in the ſame Fire, in Deteſtation of the ſaid Crime, for the manifeſt Example of other Chriſtians, leſt they ſlide into the ſame Fault; and this that you in no wiſe omit, under the Peril that ſhall follow thereon. Witneſs, *&c.*

The [forged] *Indictment and Outlawry of Sir* John Oldcaſtle[d], *Lord* Cobham, *for* High Treaſon.

Hil. 1 *Hen.* V. *Rot.* 7. *B. R.*

ALIAS coram Gulielmo Roos de Hamlak, Henrico le Scrop, Gulielmo Crowmere Majore civitatis London, Hugone Huls & ſociis Juſtic' Domini Regis, ad inquirend' per ſacram' proborum & legal' hominum de civitate Domini Regis London, & ſuburbiis ejuſdem, ac de com' Midd' tam infra libertates, quam extra, de omnibus & ſingulis proditionibus & inſurrectionibus, per quamplures ſubditos Domini Regis Lollardos vulgarit' nuncupatos, & alios in civitate, ſuburbiis, & com' prædictis factis & perpetratis, necnon de omnibus proditionibus, inſurrectionibus, rebellionibus, & feloniis in civitate, ſuburbiis, & com' præd' per quoſcunque & qualitercunq; factis, ſive perpetratis, & ad eaſdem proditiones, inſurrectiones, rebelliones, & felonias audiend' & terminand' ſecundum legem & conſuetudinem regni Domini Regis Angliæ, per literas ipſius Domini Regis patentes, aſſign' apud Weſt' die Mercurii proximo poſt feſtum Epiphaniæ Domini, anno regni Regis Henrici quinti poſt conqueſtum primo, per ſacram 'xii. jur' extitit præſentatum, quod Johannes Oldcaſtle de Coulyng in com' Kanc' chr' & alii Lollardi vulgar' nuncupat', qui contra fidem catholicam diverſas opiniones hæreticas, & alios errores manifeſtos legi catholicæ repugnantes diu temerarie tenuerunt, opiniones & errores prædictos manutenere, at in facto minime perimplere valentes, quandiu regia poteſtas, & tam ſtatus regal' Domini noſtri Regis, quam ſtatus & officium Prælaciæ dignitatis infra regnum Angl' in proſperitate perſeverarent, falſo & proditorie machinando, tam ſtatum regni, quam ſtatum & officium prælatorum, necnon ordines religioſorum infra dictum regnum Angl' penitus adnullare, ac Dominum noſtrum Regem, fratres ſuos, prælatos, & alios magnates ejuſdem regni interficere, necnon viros religioſos, relict' cult' divinis & religioſis obſervanciis ad occupationes mundanas provocare, & tam eccleſias cathedrales, quam alias eccleſias & domos religioſas de reliquis & aliis bonis eccleſiaſticis totaliter ſpoliare, ac funditus ad terram proſternere, & dictum Johannem Oldcaſtle regentem ejuſdem regni conſtituere, quamplura regimina ſecundum eorum voluntatem, infra regnum prædictum, quaſi gens ſine capite, in finalem deſtructionem, tam fidei catholicæ & cleri, quam ſtatus & majeſtatis dignitatis regal' infra idem regnum ordinare, falſo & proditorie ordinaverunt & propoſuerunt, quod ipſo inſimul cum quampluribus rebellibus Domini Regis ignotis, ad numerum viginti millium hominum de diverſis partibus regni Angl' modo guerrino arrivat', privatim inſurgent', & die Mercurii proximo poſt feſtum Epiphaniæ Domini, anno regni Regis prædicti prædicto, apud villam & parochiam ſancti Ægidii extra Barram veteris Templi London, in quodam magno campo ibidem unanimit' convenirent, & inſimul obviarent pro nephando propoſito ſuo in præmiſſis perimplend'; quo quidem die Mercurii apud villam & parochiam prædicti J. Oldcaſtle & alii in hujuſmodi propoſito proditorio perſeverantes, prædictum Dominum noſtrum Regem, fratres ſuos (videlicet, Thomam ducem Clarenciæ, Johannem de Lancaſtre, & Humfredum de Lancaſtre) necnon prælatos & magnates prædictos interficere, necnon ipſum Dominum noſtrum Regem, & hæredes ſuos, de regno ſuo prædicto exhæredare, & præmiſſa omnia & ſingula, necnon quamplura alia mala & intolerabilia, facere & perimplere falſo & proditorie propoſuerunt & imaginaverunt, & ibidem verſus campum prædictum modo guerrino arrivati' proditorie modo inſurrectionis contra ligeancias ſuas equitaverunt ad debellandum dictum Dominum noſtrum Regem, niſi per ipſum manu forti gratioſe impediti fuiſſent. Quod quidem inditament' Dominus Rex nunc, certis de cauſis, coram eo venire fecit terminandum. Per quod præceptum fuit Vic', quod non omitteret, *&c.* quin caperet præfatum Johannem Oldcaſtle, ſi, *&c.* & ſalvo, *&c.* ita quod haberet corpus ejus coram Domino Rege apud Weſtmonaſterium ad hunc diem, ſcilicet die Mercurii proximo poſt octavas ſancti Hilarii, iſto eodem termino ad reſpondendum Domino Regi de præmiſſis, *&c.* Ad quos diem & locum coram Domino Rege Vic', quod exigi faceret eum de com' in com' quouſque utlagetur, ſi non, *&c.* & ſi, *&c.* tunc eum caperet, & ſalvo, *&c.* ita quod haberent corpus ejus coram Domino Rege in octavas ſancti Johannis Baptiſtæ ex tunc proximum ſequentem, ubicunque, *&c.* ad reſpondendum Domino Regi de proditionibus & feloniis ſuperius ſibi impoſitis. Ad quas octavas ſancti Johannis Baptiſtæ, an' regni R. Henrici quinti poſt conqueſtum ſecundo, Johannes Sutton & Jo' Michell' Vic' Mid', coram Domino Rege returnaverunt, quod ad com' Midd' centum apud Braynford die Jovis proximo ante feſtum S. Barnabæ Apoſtoli, an' reg' R. Hen' quint' poſt conqueſtum ſecundo; & ad quatuor com' ex tunc ex proximo præcedentes, prædictus Johannes Oldcaſtle exactus fuit, & non comparuit; & quia ad nullum eorundem com' comparuit, ideo præſentibus Coronatoribus com' prædicti utlagat' fuit, per quod inquiratur de terra & catallis ſuis.

Rex verſus Dominum Audley[e], *for a* Rape.

7 *Car.* I.

Wilts, ff. JUratores pro Domino Rege ſuper ſacramentum ſuum præſent', Quod Martinus dominus Audley, nuper de Fountell Gifford in comitatu Wilts, & Ægidius Broadway de Fountell Gifford prædict' in comitatu prædicto generoſus, timorem Dei præ oculis ſuis non habentes, ſed inſtigatione diabolica moti & ſeducti, viceſimo die Junii, anno regni Domini noſtri Caroli, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defenſoris, ſexto, apud Fountell Gifford prædict' & comitatu prædicto, vi & armis,

[d] See Trials, Vol. I. p. 37 N°. 3. and *Fox*'s Acts and Mon. Vol. I. p. 655.

[e] Vol. I. p. 366. N°. 31. and *Hut.* Rep. 115.

&c. in & ſuper Annam dominam Audley, uxorem præfati domini Martini Audley, in pace Dei & dicti Domini Regis ibidem exiſtent' inſult' fecerunt. Et prædictus Ægidius Broadway prædictam Annam dominam Audley, vi & armis, contra voluntatem ipſius Annæ ad tunc & ibidem violenter & felonice rapuit, ac ipſam Annam ad tunc & ibidem contra voluntatem ſuam violenter & felonice carnaliter cognovit, contra pacem Domini Regis nunc, coron', & dignitat' ſuas, & contra formam ſtatuti in hujuſmodi caſu edit' & provis'.

Et ultra, juratores prædicti dicunt ſuper ſacramentum ſuum prædict', Quod prædictus Martinus dominus Audley prædicto viceſimo die Junii, ann' ſexto ſupradicto, apud Fountell Gifford prædictam, in comitatu prædicto, felonice fuit præſens, auxilians, & confortans, abettans, procurans, adjuvans, & manutenens prædictum Aegidium Br. ad feloniam prædictam, in forma prædicta felonice faciend' & perpetrand', contra pacem dicti Domini Regis nunc, coronam & dignitatem ſuas, ac contra formam ſtatuti prædicti.

Rex verſus Dominum Audley[f], *for* Sodomy.

7 Car' I.

Wilts, ſſ. JUratores pro Domino Rege ſuper ſacramentum ſuum præſent', Quod Martinus dominus Audley, nuper de Fountell Gifford in comitatu Wilts', Deum præ oculis non habens, nec naturæ ordinem reſpiciens, ſed inſtigatione diabolica motus & ſeductus, primo die Junii, an' regni Domini noſtri Caroli, &c. ſexto, apud Fountell Gifford prædict' in dicto comitatu Wilts, in domo manſionali ejuſdem Martini domini Audley, ibidem vi & armis in quendam Florence Fitz-patrick, yeoman, inſult' fecit, & cum eodem Florence F. ad tunc & ibidem nequit', diabolice, felonice, & contra naturam rem Veneream habuit, ipſumque F. ad tunc & ibidem carnaliter cognovit, peccatumque illud Sodomiticum deteſtabile & abominandum, Anglice vocat' Buggery (inter Chriſtianos non nominandum) ad tunc & ibidem cum eodem Florence F. nequit' diabolice, felonice, & contra naturam commiſit & perpetravit in magnam Dei omnipotentis diſplicentiam, ac totius humani generis dedecus, ac contra pacem dicti Dom' Reg' nunc, coronam & dignitat' ſuas, & contra formam ſtatuti in hujuſmodi caſu edit' & provis'.

Rex verſus Johannem Hampden[g], *in the Caſe of* Ship-Money.

Trin' 13 Car' I. *in Scacc'.*

MEmorand', quod brev' Domini Regis nunc ſub ſigillo hujus Scaccar' per conceſs' Baron', hic emanavit in hæc verba:

ſſ. CAROLUS Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, &c. Vic' Bucks ſalutem. Cum diverſæ & ſeparal' denar' ſummæ in ſchedul' huic brevi annex' ſpec', virtute brevis noſtri ſub magno ſigillo noſtro Angliæ geren' dat' quarto die Auguſti, anno regni noſtri undecimo, aſſeſſat' & onerat' fuer' ſuper ſeparal' perſon' in ead' ſchedul' nominat', in & verſus proviſion' navis pro guerra, una cum apparat' & al' eid' pertin', in eod' brevi particular' mentionat'; quibus quid' ſeparal' denar' ſummis ſic aſſeſſat' & onerat', & non ſolut' & ſatisfact' exiſten', per breve noſtrum de certiorar' geren' dat' nono die Martii, anno regni noſtri duodecimo, ſub magno ſigillo noſtro' præd' emanat', nomina earund' ſeparal' perſon' una cum ſeparal' denar' ſummis ſuper ipſos onerat', in cur' Cancellar' noſtræ certificat' fuer'. Ac per breve noſtrum de Mittimus ſub eodem ſigillo, geren' dat' quinto die inſtant' menſis Maii in Scaccar' noſtr' miſs' fuer' pro ulterior' proceſs' ſuper inde habend', prout per tenorem prædicti brevis geren' dat' quarto die Auguſti, anno regni noſtri undecimo, ac per prædict' breve de Certiorar' & certificat' ſuper inde fact' in dictum Scaccar' noſtrum miſs', & ibid' de record' in cuſtodia Rememorat' noſtri remanen' plenius apparet, tibi præcipimus, quod non omitt' propter aliqu' libertat', quin ea ingr', & per probos & legales homines de bal' tua ſcir' fac' præfat' ſeparal' perſon' in dict' ſchedul' nominat' & ſpec', quod ſint coram Baron' de Scaccar' noſtro apud Weſtm' in octab' ſanctæ Trinit' proxim' futur', ad oſtend' & proponend', ſiquid pro ſe habeant, vel dicere ſciant, quare ipſi de præd' ſeparal' denar' ſummis ſuper ipſos modo & forma prædict' aſſeſſat', & non ſolut', in ſchedul' il' ſpec', onerari & inde ſatisfacere non deb', & ad ulterius faciend' & recipiend' in præmiſſis, quod cur' noſtra tunc ibidem duxerit ordinand' & habeas ibi tunc hoc breve, & nomina eor' per quos eis ſciri feceris. Teſte Humfr' Davenport' Mil', apud Weſtm', viceſimo ſecundo die Maii, anno regni noſtri decimo tertio. *Per rotulum.*

Memorandum de eodem anno Regis in recordor' rotulo termini Paſchæ, Tenor ſchedul' præd' in brevi prædict' mentionat', quoad Johannem Hampden, ſequitur in hæc verba: ſſ. Schedul' de nominibus certar' perſonar' in com' Bucks, & cert' denar' ſummar' ſuper ipſos aſſeſſat' & onerat' in & verſus proviſion' navis de guerra, una cum apparat' & al' eid' pertin', virtute cujuſd' brevis ſub magno ſigillo Angliæ, geren' dat' quarto die Auguſti, anno regni Domini Reg' nunc Caroli undecimo, & in cur' Cancellar' Dom' Regis, virtute brevis de Certiorar' ſub ſigillo præd' eman', geren' dat' nono die Martii, anno regni ſui duodecimo, certificat' eſſe inſolut', ac per breve de Mittimus ſub eodem ſigillo in Scaccar' dict' Dom' Regis nunc miſſis pro ulterior' proceſs' ſuper inde faciend', prout per tenor' prædict' brevis geren' dat' quarto die Auguſti, anno regni dicti Domini Regis nunc undecimo ſupradict', ac per breve de Certiorar', & certificat' ſuperinde fact' in dictum Scaccar' noſtr' miſs', & ibidem de record' in cuſtod' Rememorat' Dom' Regis reman' plenius apparet.

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[f] Vol. I. p. 366. N°. 31. and *Hut.* Rep. 115.

[g] Vol. I. p. 483. N°. 37.

Stoake

Stoake Mandivile, ſſ. Johann' Hampden Eſq; Ad quem diem Anthonius Cheſter Baronet', Vic' com' prædict', quoad præfat' Johannem Hampden retorn', quod per Nicolaum Aris, Robertum Alexander, Richardum Harriſon, & Will'um Heyborne, probos & legales homines de ball' ſua, ſciri fecit, præfat' Johann' Hampden, inter al', quod ſit coram Baron' infra ſcript' ad diem & locum infra content', ad oſtendend' & proponend' ſi quid pro ſe habeat, vel dicere ſciat, quare ipſe de prædict' ſumma ſuper ipſum aſſeſſat', & non ſolut', in ſchedul' prædict' ſpec', onerari & inde ſatisfacere non debeat, prout ulterius ſibi præcipitur: Et modo, ſcilicet a die ſanctæ Trinitatis in tres ſeptiman' venit hic præd' Johannes Hampden, in ſchedul' præd' nominat', in propria perſona ſua, & petit audit' brevis de Sciri facias præd', retorn' ejuſdem, ac præd' ſchedul' eid' annexat', & ei leguntur; petit etiam audit' præd' brevis, geren' dat' quarto die Auguſti, anno regni dicti Domini Regis nunc Caroli undecimo, in brevi de Sciri facias mentionat', & ei legitur in hæc verba:

ſſ. Carolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, &c. Vic' com' noſtri Bucks, Ball' & Burgens' burgi & paroch' de Buckingham, Majori, Ball' & Burgens' burgi de Chipping-Wiccombe, alias Wiccombe, ac probis hominibus in eiſdem burgis & paroch', & membris eorund', & in villis de Agmondeſham, Wendover, & Marlow magna, ac in omnibus aliis burgis, villat', hamlet' & al' locis in dicto com' Bucks, ſalutem. Quia dat' eſt nobis intelligi, quod prædones quid', pirati, & mar' graſſatores, tam nominis Chriſtiani hoſtes Mahumetani, quam alii congregati, naves & bona ac mercim' non ſolum ſubditor' noſtr', verum etiam ſubditor' amicor' noſtr' in mari, quod per gent' Anglican' ab olim defend' conſuevit, nefarie diripientes & ſpoliantes, ad libitum ſuum deportavere, homines in eiſdem in captivitate miſerrima mancipantes: Cumque ipſos conſpicimus navigium indies præparantes ad mercatores noſtros ulterius moleſtand', & ad regnum gravand', niſi citius remedium apponatur, eorumque conatui virilius obvietur: Conſideratis etiam periculis, quæ undique his guerrinis temporibus imminent, ita quod nobis & ſubditis noſtris, defenſion' maris & regni omni feſtinatione, qua poterimus, accelerare convenit: Nos volentes defenſioni regni, tuitioni maris, ſecuritati ſubditor' noſtr', ſalva conductione navium & merchandizar' ad regnum noſtrum Angliæ venien', & de eod' regno ad partes exteras tranſeun', auxiliante Deo, providere; maxime cumque nos & progenitores noſtri Reges Angliæ domini maris præd' ſemper hactenus extiter', & plurimum nos tæderet, ſi honor iſte regius noſtris temporibus depereat, aut in aliquo minuatur; cumque onus iſtud defenſionis, quod omnes tangat, per omnes debeat ſupportari, prout per legem & conſuetudinem regni Angliæ fieri conſuevit, vobis præfat' Vicecomiti, Ball', Burgens', Majori, probis hominibus, & omnibus aliis quibuſcunq; ſupra mentionat' in burgis, villis, villat', hamlet', & locis ſupradict', eorumque membris, in fide & ligeantia, quibus nobis tenemini, & ſicut nos & honorem noſtrum diligitis, necnon ſub forisfactur' omnium quæ nobis forisfacere poteritis, firmiter injungend' mandamus, quod unam navem de guerra, portagii quadringint' & quinquagint' dolior', cum hominibus tam magiſtris peritis, quam marinar' valentioribus & expertis cent' & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus, pulvere tormentario, ac haſtis & telis, aliiſque armaturis neceſſar' pro guerra ſufficien', & cum duplici eskippamento, necnon cum victualibus uſque ad primum diem Martii jam proxime ſequent', ad tot homines competen', & abinde in vigint' & ſex ſeptiman' ad cuſtag' veſtra, tam in victualibus, quam in hominum ſalariis, & al' ad guer' neceſſar' per tempus illud, ſuper defenſionem maris in obſequio noſtro in comitiva cuſtodis maris (cui cuſtod' maris ante præd' primum diem Martii committemus) & prout ipſe ex parte noſtra dictaverit moratur', parari, & ad portum de Portſmouth citra dictum primum diem Martii duci faciatis, ita quod ſint ibid' eod' die ad ultimum, ad proficiend' exinde cum navibus noſtris, & navibus alior' fidelium ſubditor' noſtr', pro tuitione maris, defenſione noſtrum & noſtrorum, repulſioneque & debellatione quorumcunq; mercatores noſtros, & alios ſubditos fideles prædict' in dominia noſtra ex cauſa mercaturæ ſe diverſantes, vel abinde ad propria declinantes ſuper mare gravare ſeu moleſtare ſatagentium. Aſſignavimus autem vos Vic' com' noſtr' Bucks, Ball' & Major' burgor' & paroch' prædict', aut aliquos duos vel plures veſtrum, quorum te præfat' Vic' com' noſtri Bucks unum eſſe volumus, infra trigint' dies poſt receptionem hujus brevis, ad aſſidend' quantum de cuſtag' prædict' ſuper præd' burgos de Buckingham & Chipping-Wiccombe, alias Wiccombe, cum membris eorund', ſeparatim poni aut aſſideri debeat. Et ſi hujuſmodi aſſeſſament' infra prædict' triginta dies per vos duos, vel plures veſtrum fieri non contigerint, tunc aſſignavimus te præfat' Vic' com' noſtri Bucks ad aſſeſſamen' hujuſmodi ſuper prædict' burgos & paroch', & membr' eorund', faciend' prout rationabiliter vides faciend'; & volumus, quod de toto facto tu præfat' Vic' Bucks, ſub ſigillo tuo prædict' Majorem & Ballivos reddas certiores. Aſſignavimus etiam te præfat' Ball' burgi & paroch' de Buckingham, ad aſſidend' omnes homines in eodem burgo & paroch', & membris ejuſd', & terr' tenentes, in eiſdem navem vel partem navis prædict' non habentes, vel in eadem non deſervientes, ad contribuend' expenſis circa proviſion' præmiſſor' neceſſar'; & ſuper prædict' burgum & paroch', cum membris ejuſd' (ſicut præfertur) aſſidend' & ponend', *viz.* quemlibet eor' juxta ſtatum ſuum & facultates ſuas, & portiones ſuas ipſis aſſeſſat' per diſtrictiones, alioſve modos debitos levand', & collectores in hac parte nominand' & conſtituend', & omnes eos, quos rebelles & contrarios inveneris in præmiſſis carcere mancipand', in eodem moratur' quouſque pro eod' deliberatione ulterius duxerimus ordinand'. Aſſignavimus etiam te præfat' Major' burgi de Chipping-Wiccombe, alias Wiccombe, ad aſſidend' omnes homines in eod' burgo & membris ejuſdem, & ter' tenentes, in eiſd' navem vel partem navis præd' non habentes, vel in eadem non deſervientes, ad contribuend' expenſis circa proviſion' præmiſſor' neceſſar'; & ſuper prædict' burg', cum membris ejuſd' (ſicut præfertur) aſſidend' & ponend', *viz.* quemlibet eorum juxta ſtatum ſuum & facultates ſuas, & portiones ſuper ipſos aſſeſs' per diſtrictiones, alioſve modos debitos levand', & collectores in hac parte nominand' & conſtituend' & omnes eos, quos rebelles & contrarios inveneris in præmiſſis in carcere mancipand', in eod' moratur', quouſque

uſque pro eor' deliberatione ulterius duxerimus ordinand'. Et ulterius aſſignavimus te præfat' Vicecomitem com' noſtr' Bucks ad aſſidend' omnes homines in præd' villis de Agmondeſham, Wendover, & Marlow magna, & in membris eorund', & in omnibus aliis villis, villat', burgis, hamlet', & aliis locis in prædict' com' Bucks, & terr' tenentes in eiſdem, navem vel partem navis præd' non habentes, vel in eadem non deſervientes, ad contribuend' expenſis circa proviſionem præmiſſor' neceſſar', & ſuper prædict' villas, villat', burgos, hamlet' & locos, cum membris eorund' (ſicut præfertur) aſſidend' & ponend', *viz.* quemlibet eor' juxta ſtatum ſuum, & facultates ſuas, & portiones ſuper ipſos aſſeſſat' per diſtrictiones, aliosve modos debitos levand', & collectores in hac parte nominand' & conſtituend', & omnes quos rebelles & contrarios inveneris in præmiſſis carcere mancipand', in eod' moratur', quouſque pro eor' deliberatione ulterius duxerimus ordinand'. Et ulterius vobis mandamus, quod circa præmiſſa diligenter intendatis, & ea faciatis, & exequamini cum effectu ſub periculo incumbente. Nolumus autem quod colore prædict' mandat' noſtr', plus de eiſd' hominibus levari faciatis, quam ad præmiſſor' ſufficiet expenſas neceſſar', aut quod quiſquam, qui pecuniam de contributionibus ad prædict' cuſtag' faciend' levaverit, eam, vel partem inde aliquam penes ſe detineat, vel ad al' uſus quovis quæſito colore appropriare præſumat, volentes, quod ſi plus quam ſufficiat collect' fuerit, hoc inter ſolventes pro rata portionis ipſis contingen' exſolvatur. Teſte me ipſo apud Weſtm' quarto die Auguſti, anno regni noſtri undecimo. Petit etiam audit' prædict' brevis geren' dat' nono die Martii, anno regni dicti Domini Regis xii^mo, in prædict' brevi de Sciri facias mentionat', & ei ſimiliter legitur.

Carolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, *&c.* Vic' com' noſtri Bucks, qui fuer' inter quartum diem Auguſti anno regni noſtri undecimo, & primum diem Martii tunc proxime ſequent', Ball' burg' & paroch' de Buckingham, & Major' & Ball' burg' de Chipping-Wiccombe, alias Wiccombe, in dicto com' Bucks, qui fuer' inter tempus prædict', ſalutem. Per breve noſtrum ſub magno ſigillo noſtro Angliæ confect', geren' dat' prædict' quarto die Auguſti, anno undecimo ſupradict', pro defenſione regni, tuitione maris, ſecuritate ſubditor' noſtr', ac ſalva conductione navium & merchandizarum ad regn' noſtr' Angliæ venien', & de eodem ad partes exteras tranſeun', Vic' com' noſtri Bucks, Ball' burgi & paroch' de Buckingham, necnon Burgens' ejuſd' burgi, Major' & Ball' de Chipping-Wiccombe, alias Wiccombe, necnon Burgens' ejuſd' burgi, & probis hominibus in eiſdem burgis & paroch', & membris eorund', & in villis de Agmondeſham, Wendover, & Marlow magna, ac in omnibus aliis villis, burgis, villat', hamlet', & aliis locis in dicto com' Bucks, mandavimus, quod unam navem de guerra portagii quadringent' & quinquagint' dolior', cum hominibus tam magiſtris peritis, quam marinar' valentioribus & expertis centum & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus, pulvere tormentario, ac haſtis & telis, aliisque armaturis neceſſar' pro guerra ſufficien', & cum duplici eskippamento, necnon cum victualibus ad certum diem (in eod' brevi content') ad tot homines competen', & abinde in vigint' & ſex ſeptiman', ad cuſtag' hominum & terr' tenen' burg', paroch', vill', villat', & al' locor' ſupra mentionat' in dicto com' Bucks, tam in victualibus, quam in hominum ſalariis, & al' ad guerr' neceſſar' per tempus illud, ſuper defenſionem maris moratur' parari, & ad portum de Portſmouth citra tempus in eod' brevi limitat' duci faceretis. Cumque etiam per idem breve aſſignaverimus Vic' com' noſtri Bucks præd', Ball' burgi & paroch' de Buckingham præd', & Major' burgi de Chipping-Wiccombe præd', aut aliquos duos vel plures eorum, quor' Vic' dicti com' noſtri Bucks unum eſſe volumus, infra certum terminum proxim' poſt receptionem brevis illius, ad aſſidend' quantum de cuſtag' præd' ſuper præd' burg' & paroch' de Buckingham, & ſuper præd' burg' de Chipping-Wiccombe, alias Wiccombe, cum membris eorund', ſeparatim poni ſeu aſſideri deberet. Cumque etiam per præd' breve noſtrum aſſignaverimus Ball' burgi & paroch' de Bucking', & Majorem de burgo de Chipping-Wiccombe, alias Wiccombe, ſeparatim & reſpective, ad aſſidend' omnes homines in eiſd' ſeparal' burg' & paroch', & membr' eorund', & terr' tenentes in eiſdem, navem vel partem navis præd' non habentes, vel in eadem non deſervientes, ad contribuend' ad expens' circa proviſionem præmiſſor' neceſſar'; & ſuper præd' burg' & paroch' de Buckingham, & ſuper præd' burg' de Chipping-Wiccombe, alias Wiccombe, cum membris eorund', ſicut præfertur, ad tunc ſeparatim & diſtinctive ponend', *viz.* quemlibet eorum juxta ſtatum ſuum & facultates ſuas, & portiones ſuper ipſos aſſeſſat', per diſtrictiones aliosve modos debitos levand', & collectores in ea parte nominand' & conſtituend' modo & forma prout in eodem brevi præcept' fuit. Cumque per idem breve noſtrum ulterius aſſignaverimus Vic' dicti com' noſtri Bucks ad aſſidend' omnes homines in præd' villis de Agmondeſham, Wendover, Marlow magna, & in membris eorund', ac in omnibus aliis villis, villat', burgis, hamlet', & aliis locis in præd' com' Bucks, & terr' tenentes in eiſd', ad contribuend' expenſis circa proviſionem præmiſſor' neceſſar', & ad cætera faciend' & exequend' modo & forma, quibus per breve illud præceptum fuit. Et quia nonnulli homines & terr' tenentes in prædict' com', burg', paroch', vill', villat', hamlet', & aliis locis, per ſeparal' taxationes & denar' ſummas, per vos ſuper ipſos reſpective erga contribution' oneris præd', juxta exigen' brevis præd' poſit' & aſſeſſat', nondum ſolverint nec ſatisfecerint, ſed eas ſolvere recuſaver', & adhuc contradicunt, prout informamur: Cumq; nos nuper voluimus certiorari, tam de nominibus hominum & terr' tenent', qui ad contribuend' expenſis ſupradict' aſſeſs' fuiſſent, ac denar' ſic aſſeſs' non ſolviſſent, quam de ſeparal' portionibus vel denar' ſummis ſuper ipſos impoſit', vos tamen nihil in return' ejuſdem brevis noſtri miſiſtis, in noſtrum contemptum: Vobis igitur præfat' nuper Vic' com' noſtri Bucks mandamus, ſicut al' mandaverimus, quod tam de nominibus hominum & ter' tenen' in com' præd', per vos reſpective virtute dicti brevis noſtri aſſeſſat', quas denar' ſummis ſuper ipſos ſic aſſeſſat', quam nondum ſolver' nec ſatisfec', ſed eas ſolvere recuſant, quas de ſeparal' portionibus & denar' ſummis per vos præfat' nuper Vic' com' noſtri Bucks ſuper ipſos aſſeſſat', in ſcript' reduct', cum omnibus ill' tangen', nos in cancellar' noſtram ſub ſigillis veſtris diſtincte & aperte, ſine delatione, vel ad ultimum ante viceſimum

ſextum

ſextum diem April' proxime futuro, ubicunque tunc fuerit', reddat' certiores, una cum hoc brevi. Ac vobis præfat' nuper Ball' burgi & paroch' de Bucking', & Major' burg' de Chipping-Wiccombe, al' Wiccombe, mandamus, ſicut aliis mandaverimus, quod tam de nominibus præd' hominum & terr' tenen' in burg' & paroch' de Buckingham, & burg' de Chipping-Wiccombe, alias Wiccombe, per vos reſpective virtute dicti brevis noſtri ſuperius primo mentionat' aſſeſs', quam de ſeparal' denar' ſummis ſuper ipſos aſſeſs', quas nondum ſolver' nec ſatisfecer', ſed eas ſolvere recuſant, quam de ſeparal' portionibus & denar' ſummis per vos ſuper ipſos reſpective aſſeſs' in ſcriptis fideliter reduct', cum omnibus illis tangen', nos in cancellariam noſtr' præd' ſub ſigillo noſtro diſtincte & aperte, ſine delatione, vel ad ultim' ante prædict' viceſimum diem Aprilis proxime futur', ubicunque tunc fuerit', ſeparatim reddatis certiores, una cum hoc brevi. Teſte meipſo apud Weſtm' nono die Martii, anno regni noſtri duodecimo. EYRE.

Ad quem diem Petrus Temple & Heneagius Proby return' brev' præd' dors' ſic: *ſſ.* Executio hujus brevis patet in quibuſd' ſchedul' huic brevi annexat', quarum quidem ſchedul' tenor, quoad præfat' Johan' Hampden per præfat' Petrum Temple retornat', ſequitur in hæc verba: *ſſ.* Ego Petrus Temple Mil' & Baronet', qui fui Vic' com' Bucks, *viz.* inter quartum diem Auguſti, anno regni Domini noſtri Caroli nunc Regis Angliæ, *&c.* undecimo, & viceſimum ſecundum diem Februarii tunc proxime ſequen', quo die exivi ab officio meo Vic' com' præd', dicto Domino Regi in Cancellar' ſuam, virtute brevis ejuſdem Domini Regis huic ſchedul' annex', certifico, quod virtute & ſecundum exigen' brevis ipſius Domini Regis e Cancellar' ſua emanat', & ibidem de record' irrotulat', & Vic' dicti com' Bucks inter al' direct', geren' dat' quarto die Auguſti, anno undecimo ſupradict', aſſeſſavi, Anglice *have aſſeſſed*, ſuper ſeparal' homines & ter' tenentes com' Bucks præd', quorum nomina ſubſcribuntur, ſeparal' portiones & denar' ſummas ad eor' particular' inferius poſit' ad contribuend' expenſis circa proviſionem navigii in eod' brevi mentionat'; quas quidem portiones & denar' ſummas, ſive aliquam inde parcell', ante exitum ab officio meo Vic' com' prædict', ad manus meas, vel ad manus collector' in ea parte, virtute brevis ult' mentionat' per me conſtitut', præd' homines & ter' tenentes, aut eor' aliquis, quor' nomina ſubſcribuntur, non ſolverunt, ſed eas ſolvere recuſaver', *viz.* Stoake Mandivile, *ſſ.* John Hampden Eſq; Et tenor al' ſchedul' per præfat' Heneag' Proby fidelit' return', & eid' brevi annex', ſequitur etiam in hæc verba: *viz. There is to be accounted upon by the Aſſeſſors, High Conſtables, Petty Conſtables within the ſaid County in general, which cannot be accounted for by Sir* Peter Temple, *being, as it is conceived, ſhort, Four Pounds.*

Ego Heneagius Proby Arm', qui fui Vic' com' Bucks inter viceſimum ſecundum diem Februar', anno Regni Dom' noſtri Caroli nunc Reg' Angliæ, *&c.* undecimo, & ab eodem die & anno uſque primum diem Martii tunc proxime ſequen', dicto Domini Regi in Cancellar' ſuam, virtute brevis ejuſdem Domino Reg' huic ſchedul' annex', certifico, quod homines & ter' tenentes com' Bucks præd', aut eor' aliquis, quor' nomina in quibuſd' ſchedul' huic brevi annex' exprimuntur, qui aſſeſs' fuer' per Petrum Temple Mil' & Baronet', nuper Vic' com' Bucks præd', dum in officio Vic' ejuſd' com' ſteterit, in ſeparal' denar' portionibus, & denar' ſummis ad eor' ſeparal' nomina ſuperius poſit', ad contribuend' expenſis circa proviſionem navigii, virtute & ſecundum exigen' brevis ipſius Domini Regis e Cancell' ſua emanat', & ibidem de record' irrot', Vic' dicti com' Bucks inter alios direct', geren' dat' quarto die Auguſti, anno undecimo ſupradict', Heneag' Proby exiſten' Vic' prædict' com' Bucks proxime poſt exitum dicti Petri Temple Mil' & Baronet' ab officio Vic' ejuſd' com', vel ad manus collector' in ea parte virtute brevis ultimo mentionat' conſtitut', non ſolver', ſed eas ſolvere recuſaverunt. Et ulterius præfat' Johannes Hampden petit ſimiliter audit' præd' brevis de Mittimus, de quo in brevi de Sciri facias præd' fit mentio, & ei legitur in hæc verba:

ſſ. Carolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, *&c.* Theſaur' & Baronibus de Scaccario ſuo, ſalutem. Tenore cujuſdam brevis noſtri ſub magno ſigillo noſtro Angliæ confect', geren' dat' quarto die Auguſti, anno regni noſtri undecimo, in rotulis Cancellar' noſtræ irrotulat', per quod Vic' com' noſtri Bucks, Ball' & Burgen' burgi & paroch' de Buckingham, Major', Ball', & Burgens' burgi de Chipping-Wiccombe, alias Wiccombe, ac probis hominibus in eiſd' burgis & paroch', & membris eorund', & in villis de Agmondeſham, Wendover, & Marlow magna, & in omnibus aliis burgis, villis, villatis, hamlet', & aliis locis in dicto com' Bucks, mandavimus, quod pro defenſione regni, tuitione maris, ſecuritate ſubditorum noſtrorum, ac ſalva conductione navium & merchandizarum ad regnum noſtrum Angliæ venien', & de eod' ad partes exteras tranſeun', pararent unam navem de guerra portagii quadringent' & quinquagint' dolior', cum hominibus tam magiſtris peritis, quam marinariis valentioribus & expertis centum & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus, pulvere tormentario, ac haſtis & telis, aliisque armaturis neceſſar' pro guerra ſufficien', & cum duplici eſkippamento, necnon cum victualibus ad certum diem, in eod' brevi content', ad tot homines competen', & abinde in vigint' & ſex ſeptiman', ad cuſtag' hominum & terr' tenen' burgor', vill', villat', hamlet', & al' locor' ſupra mentionat' in dicto com' Bucks, tam in victualibus, quam in hominum ſalar', & al' ad guerram neceſſar' per tempus illud ſuper defenſionem maris in obſequio noſtro, in comitiva cuſtod' maris moratur', & ad portum de Portſm', circa tempus in eod' brevi limitat', duci facerent. Quodq; reſpective aſſiderent omnes homines in præd' burg' & paroch' de Buckingham, & burg' de Chipping-Wiccombe, alias Wiccombe, & cæteris burgis, villis, villat', hamlet', & aliis locis in dicto com' Bucks, & membris eorund', & ter' tenentes in eiſd', ad contribuend' expenſis circa proviſionem præmiſſor', & ad cætera faciend' & exequend', modo & forma prout per idem breve præcept' fuit; vobis mittimus præſentibus inter claus' breve, pro eo quod ſalus regni noſtri Angliæ, & populi noſtri ejuſdem periclitabatur, quod e dicta Cancellar' noſtra emanari narravimus, inter al' brevia ad hujuſmodi proviſionem & aſſeſſament' faciend' per ſingulos com', civitat', burg', vill', villat', hamlet', & locos regni noſtri Angliæ & Walliæ, & membris eorund', e Cancellar' noſtr' præd' nuper emanat', & ibidem ſimiliter irrot'; ac

etiam quod dictum al' breve noſtrum ad certificand' nobis in eand' Cancellar', tam de nominibus hominum & terr' tenen' in præd' burg' & paroch' de Buckingham, & burg' de Chipping-Wiccombe, alias Wiccombe, & in cæteris burgis, villis, villat', hamlet' & locis dicti com' Bucks, qui de mandato noſtro præd' ad contribuend' erga proviſion' præmiſſor' aſſeſs' fuerint, ac denar' ſuper ipſos ſic aſſeſs' non ſolver', quam de ſeparal' portionibus & denar' ſummis ſuper homines & terræ tenen' illos ſic onerat' & impoſit', necnon certificationes quaſdam in ſcriptis, virtute brevis illius reduct', & in dictam Cancellar' noſtram miſs'. Vobis etiam mittimus præſentibus interclaus', mandantes, quod inſpectis brevibus & certificat' præd' ulterius inde pro levatione, collectione, & receptione omnium & ſingularum præd' denar' ſummar' de præd' contributionibus adhuc non ſolut', fieri fac', prout de jure & ſecundum legem & conſuetudinem regni noſtr' Angliæ fuerit faciend'. Teſte meipſo apud Weſtm' quinto die Maii, anno regni noſtri tertio decimo. EYRE. Sicut in eiſdem brevibus, & ſchedul' eiſd' annex', in Scaccar' dicti Dom' Regis certificat', & ibidem in cuſtod' Rememorator' ejuſd' Dom' Regis de record' remanen' plenius continetur. Quibus lectis, auditis, & per ipſum intellectis, idem Johannes queritur, ſe colore ſeparal' brev', return' eorund', & ſchedul' eiſd' annexat', graviter vexat' fore & inquietat', & hoc minus juſte; quia dicit, quod præd' ſeparal' brevia ſuperius mentionat', return' eorund', & ſchedul' eiſdem annexat', materia in eiſd' content', minus ſufficien' in lege exiſtunt ad onerand' ipſum Johannem Hampden de aut cum ſolutione præd' ſumm' vigint' ſolid' ſuper ipſum in ſchedul' præd', modo & forma præd', taxat' & aſſeſſat', aut alicujus inde parcell', ad quæ ipſe neceſſe non habet, nec per legem terr' tenetur reſpondere. Unde ob inſufficien' præd' ſeparal' brevium ſuperius mentionat', return' eorund', ſchedul' eiſdem annex', ac materiæ in eiſdem brevibus ac ſchedul' content', ipſe idem Johannes Hampden petit judicium, Si dictus Dominus Rex nunc ipſum de præd' vigint' ſolid', aut aliqua inde parcell', ulterius impetere, ſeu onerare debeat aut velit.

Robert Holborne.

Et Johannes Banks Mil', Attorn' Dom' Regis nunc general', qui pro eodem Domino Rege ſequitur, præſens hic in cur' ad eund' diem in propria perſona ſua, dicit, quod præd' ſeparal' brevia, & return' eorund', ac ſchedul' præd' eiſdem' annex', materiaq; in eiſdem content', ſufficien' in lege exiſtunt ad præd' Johan' Hampden de præd' vigint' ſolid' ſuper ipſum in forma & ex cauſa præd' aſſeſſat' onerand'; quam quidem materiam ipſe dictus Attornat' dicti Dom' Regis general', pro eodem Dom' Rege paratus eſt verificare; quamq; materiam præd' Johannes Hampden non dedicit, nec ad eam aliqualiter reſpondit, ſed verificationem illam admittere omnino recuſat: Pro eodem Dom' Rege idcirco petit judicium, & quod præd' Johannes Hampden de eiſd' vigint' ſolid' oneretur, & inde ſatisfaciat, *&c.*

Johannes Banks.

A Copy of the Judgment, as it is entred upon Record in purſuance of the ſaid Motion, and according to the major Votes.

ET quia Barones hic ſe adviſare volunt de & ſuper præmiſſis, priusq' judicium inde reddant, dies dat' eſt præfat' Johanni Hampden eod' ſtatu quo nunc hic in octab' ſancti Michaelis, ut dicti Barones ſe interim de iiſdem præmiſſis adviſare poſſint, ac cum Juſticiar' de utroq' banco inde deliberent, eo quod iidem Barones hic inde nondum, *&c.* Et ſuper hoc concordat' eſt inter Barones hic, tam ex aſſenſu dict' Attornat' dict' Domini Reg' general', quod dict' Attornat' præd' Johannis Hampden, & Conſiliarior' in lege peritor' ejuſdem Johannis Hampden, quod aliqui legis periti, tam de conſilio & parte dict' Domini Reg', quam de conſilio & parte dict' Johannis Hampden, de præd' materia in lege, & cæteris præmiſſis in camera hujus Scaccarii, vulgariter nuncupat' *The Exchequer Chamber*, coram iiid' Baronibus, aſſidentibus eis Juſticiar' de utroque banco, argumentari interim publice audiantur. Ad quas quid' octabas ſancti Michaelis præd' Johannes Hampden venit hic ut prius. Et quia Barones hic ulterius ſe adviſare volunt de & ſuper præmiſſis, priusq' judicium inde reddant, dies ulterius dat' eſt præfat' Johanni Hampden, eod' ſtatu quo nunc hic uſq' in octab' ſancti Hilarii, ut aliqui legis periti, tam de conſilio & parte dict' Domini Reg', quam de conſilio & parte dict' Johannis Hampden, de præd' materia in lege, & cæteris præmiſſis, in præd' camer' hujus Scaccarii, coram Baronibus præd', aſſidentibus eis præd' Juſticiar' de utroque banco, argumentari interim publice audiantur; ac iid' Barones, cum eiſd' Juſticiar' inde deliberent, eo quod nullus in lege peritus, vel de conſilio ipſius Domini Reg', vel de conſilio dict' Johannis Hampden adhuc auditur, & Barones hic inde non adviſantur, *&c.* Poſteaq' medio tempore in præd' octab' ſancti Michaelis, & præd' octab' ſancti Hilarii, tum Attornat' & Solicitator ipſius Domini Reg', quam duo legis periti de conſilio præd' Johannis Hampden, in præmiſſis exiſten' ex parte ejuſd' Johannis Hampden, duodecim ſeparal' diebus in præd' camer' Scaccarii, coram Baronibus hujus Scaccarii, aſſidentibus eis tunc ibid' præd' Juſticiar' de utroq' banco, de præd' mater' in lege & cæteris præmiſſis (recitato tunc ibid' record' præd') ad largum & ſummat' argumentari quidq' inde ex utraq' parte dicere potuiſſent aut voluer', palam & ſingulatim audit' fuer'. Et præd' Attornat' & Solicitator general' diverſa & quamplurima record', brevia, commiſſion', & præceden' tam hujus Scaccarii, quam cur' Cancellar', cur' de Banco Reg', ac de Commu' Banco, mater' in lege, & cætera præmiſſa in ſeparal' brevibus return', & ſchedulis præd' content', ex parte dict' Domini Reg' proban', confirman', & manutenen', ad tunc & ibid' produxer', oſtenſer', & expoſuer'; & ad præd' octabas ſancti Hilar' præd' Johannes Hampden venit hic ut prius, & quia Barones hic ulterius ſe adviſare volunt de & ſuper præmiſſis priuſquam judicium inde reddant, dies ulterius dat' eſt præfat' Johanni Hampden, eod' ſtatu quo nunc hic, uſq' a die Paſchæ in quindecim dies, ut dicti Barones interim, cum præfat' Juſticiar' de utroq' Banco ulterius deliberent, eo quod iidem Barones hic inde nondum, *&c.* Ad quem diem præd' Johannes Hampden venit hic ut prius, & quia Barones hic ulterius ſe adviſare volunt de & ſuper præmiſſis priuſquam judicium inde reddant, dies ulterius dat' eſt eid' Johanni, eod' ſtatu quo nunc hic, uſq' in cro' ſanctæ Trin', & dict' Barones interim cum præfat' Juſticiar' de utroq' banco ulterius inde deliberent, eo quod iidem Juſticiar' hic inde nondum, *&c.* Ad quem diem

præd' Johannes Hampden venit hic ut prius, & ſuper hoc viſis præmiſſis, & per Barones hic plene intellectis, habitaque inde matura deliberatione cum præd' Juſticiar' de utroque banco, ac poſt argumenta tam per eoſd' Juſticiar', quam per præd' Barones ſingulatim in præd' camer' Scaccarii publice inde fact', videtur inde Baronibus, ex adviſamento Juſticiar' præd', quod ſeparal' bre- via præd', & return' eorund', ac ſchedulæ præd' eiſd' annex', ac mater' in eiſd' content', ſufficien' in lege exiſtunt ad præfat' Johannem Hampden de præd' vigint' ſolid', ſuper ipſum in forma & ex cauſa præd' aſſeſſat' onerand'. Ideo conſiderat' eſt per eoſd' Barones, quod præd' Johannes Hampden de eiſd' vigint' ſolid' oneretur, & exinde ſatisfaciet, *&c.*

Rex verſus Harriſon[h], *for a* Miſdemeanour.

Trin' 14 *Car'* I. *B. R.*

Middx' *ff.* ALias, ſcilicet die Jovis prox' poſt octab' ſanctæ Trin' iſto eod' termino, coram Domino Rege apud Weſtm', per ſacrament' xii. jur' extitit præſentat', Quod cum cur' Domini Regis de Communi Banco eſt, & a tempore cujus contrar' memoria hominum non exiſtit, fuit antiqua cur' de recordo dicti Domini Regis nunc, & progenitor' & anteceſſor' ſuor' Reg' & Reginar' Angliæ, pro adminiſtratione juſtitiæ ſubdit' hujus regni Angliæ, & aliis in communibus pl'itis per tot' regnum Angliæ præd' motis & emergentibus. Cumque eſt contra coron' & dignitat' Regiæ majeſtatis, necnon contra legem & conſuetudinem hujus regni Angliæ, pro aliqua perſona, vel aliquibus perſonis cur' præd', ſeu aliquos Juſticiarios ejuſd' cur', ead' cur' aperta exiſten', & Juſticiar' cur' illius in cur' ill' præſentibus, & judicialiter ſedentibus, diſturbare. Cumq' Ric' Hutton miles eſt, & per diverſos annos jam ult' elapſos fuit, & adhuc eſt, unus Juſticiar' dict' Domini Regis nunc præd' cur' ſuæ; quidam tamen Thomas Harriſon de Creek in com' Northampton Clericus, Deum præ oculis ſuis non habens, ſed inſtigatione diabolica mot' & ſeduct', ſecum malitioſe imaginans, atque in animo compaſſans, quibus modis poſſit præd' Ricardum Hutton Milit', & adtunc & adhuc un' Juſtic' Domini Regis nunc de Communi Banco præd' exiſten', multipliciter defamare & ſcandalizare, machinansque & malitioſe intendens, quantum in ipſo fuit, ipſum Ricardum Hutton in ſcandalum, ignominiam, contempt', & vilipend' inducere, ipſumq' Ricardum Hutton de vita ſua, ac de bonis & catallis, terris, & tenementis ſuis praviter & malitioſe deprivare, necnon ad diſplacentiam & indignationem dict' Domini Regis nunc erga præfat' Ricard' Hutton incitand' & provocand', ac ipſum Ricardum Hutton pro proditore tam apud dict' Dominum Regem, & magnates hujus regni Angliæ, quam apud omnes ligeos ſubditos ejuſd' Domini Regis haberi & exiſtimari ſatagens, ac ad præd' cur' dict' Domini nunc de Communi Banco, & Juſticiar' dict' Domini Regis ejuſd' cur', in cur' ill' præſent' exiſtent', & judicialit' ſedentibus, diſturband', & adminiſtrationem juſtitiæ in cur' ill' impediend', quarto die Maii, anno regni Domini noſtri Caroli, Dei gratia Angliæ, Scotiæ, Franc', & Hibern' Regis, fidei defenſoris, *&c.* decimo quarto, apud civitat' Weſtm' in com' Midd', viz. in magna aula pl'itorum ibidem, cur' ipſius Domini Regis coram ipſo Rege cur' Cancellar', & præd' cur' Communi Banco in præd' magna aula pl'itorum præd' apert', ac Juſtic' ejuſd' Domini Regis in cur' præd' tunc ibidem præſentibus, & judicialiter ſedentibus, materias & cauſas Domini Regis, populi ſui, ac regni ſui Angliæ aſſidue attendent' & audient', legesq' regni præd' ſubdit' ipſius Domini Regis miniſtrant', præd' Thomas Harriſon ad barram præd' cur' dicti Domini Regis de Communi Banco, ad tunc & ibidem violenter, vi & armis, *&c.* acceſſit præd' cur' de Communi Banco adtunc & ibidem in præd' magna aula, ut præfertur, aperta exiſten', ac Ricardo Hutton Milit', & aliis Juſticiar' dicti Domini Regis cur' de Communi Banco præd', in cur' illa tunc ibidem (ut præfertur) præſentibus, & judicialit' ſedentibus, & præd' Thomas Harriſon adtunc & ibidem, ex ſua mera malitia, malò animo, & malevola intentione, in præſentia & audit' præfat' Juſticiar' præd' cur' de Communi Banco, ac diverſorum ſervien' ad legem, multor' viror' venerabilium, & alior' dicti Domini Regis fidelium ſubditor', falſo, nequit', & malitioſe præfat' Ricardum Hutton Milit' de alta proditione accuſavit, & adtunc & ibidem falſo, nequit', & malitioſe hæc ſcandaloſa, venenoſa, defamatoria Anglicana verba, palam, publice, & alta voce dixit, *I* (ipſum præfat' Thomam Harriſon innuendo) *do accuſe Mr. Juſtice* Hutton (præfat' Ricardum Hutton Milit', un' Juſticiar' dicti Domini Regis de Communi Banco præd' innuendo) *of High Treaſon)* in dicti Domini Regis nunc, coron', dignitat', & Regiæ poteſtatis ſuæ læſionem & derogationem, & cur' ſuæ præd' contempt', & ſcandalum manifeſtum jurisque & legum ipſius Domini Regis regni ſui præd', ac cur' de Communi Banco præd', & Juſticiar' dicti Domini Regis, cur' illius, & adminiſtration' juſtitiæ in ead' cur', in nequiſſimum exemplum omnium aliorum malefactorum tali caſu delinquent', & ad graviſſimum ſcandalum, infamiam, dedecus, & final' deſtructionem præd' Ricardi Hutton Milit', & contra pacem dicti Domini Regis nunc, coronam, & dignitates ſuas, *&c.* Cum per quod præcept' fuit Vic', quon non omittat, *&c.* quin venire fac' eum ad reſpondend', *&c.* Cum & modo, ſcilicet die Veneris prox' poſt octabas ſanctæ Trin' iſto eod' termino, coram Domino Rege apud Weſtm' ven' præd' Thomas Harriſon Clericus, cuſtod' Henrici Hopkins Arm', guardian' priſonæ dicti Regis de la Fleete, virtute brevis dicti Regis de Habend' corpus ad ſubjic', *&c.* ei inde direct', ad barr' hic duct' in propria perſona ſua, qui committ' præfat' Marr', *&c.* Et ſtatu' de præmiſſis eo alloquunt' qualiter ſe inde acquietari, dicit, quod ipſe non eſt inde culpabil', & de hoc ponit ſe ſuper patriam. Et Johannes Keeling Ar', Cleric' Coronæ, & Attornat' Domini Regis in cur' ipſius Regis, coram ipſo Rege, qui pro eod' Domino Rege in

[h] Vol. I. p. 699. N°. 38.

hac parte ſequitur, ſimiliter, &c. Jo' ven' inde jur' coram Domino Rege apud Weſtm', die Lunæ prox' poſt quindenam ſanctæ Trin', & quia nec, &c. ad recogn', &c. quia tam, &c. Idem dies dat' eſt tam præfat' Johanni Keeling, qui ſequitur, &c. quam præd' Thomæ Harriſon Clerico, ſub cuſtod' præd' Marr' interim commiſſo ſalvo cuſtodiend', quouſq', &c.

Rex verſus Crook & alios, *for not taking the* Oaths.

14 *Car.* II. *O. B.*

London ſſ. JUr' pro Domino Rege ſuper ſacrament' ſuum præſentant, Quod ad general' quarterial' ſeſſion' pacis Domini Regis, tent' pro civitat' London apud Guildhald' ejuſdem civitat', die Mercurii ſcil' viceſimo quinto die Junii, anno regni Domini noſtri Caroli ſecundi, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defenſoris, &c. quarto decimo, coram Johanne Frederick Milite, Majore civitat' London, Thoma Adams Mil' & Baronet', Ricardo Browne Mil' & Baronet', & Thoma Aleyn Milite & Baronet', Aldermannis dictæ civitat', ac al' ſociis ſuis Juſtic' dicti Dom' Regis, ad pacem in civitat' præd' conſervand', necnon ad divers' felon', tranſgr', & al' malefacta infra eandem civitat' perpetrat', audiend' & terminand' aſſign'. Seſſio iſta pacis adjornat' fuit per præfat' Juſtic' dicti Dom' Regis ibidem uſque diem Jovis, ſcilicet viceſimum ſextum diem ejuſdem menſis Junii, anno ſupradicto, ad horam ſeptimam ante merid' ejuſdem diei, apud Juſtice-Hall in le Old Bailey, in paroch' ſanct' Sepulchri, in warda de Farringdon extra London præd', tenend' coram præfat' Juſtic' & al' ſociis ſuis, ad faciend' ulterius prout cur' con', &c. Ac ad eundem diem Jovis, viceſimum ſextum diem Junii, anno quarto decimo ſupradicto, general' quarterial' ſeſſio iſta pacis tent' fuit pro civitat' London præd' per adjournament' præd', apud Juſtice-Hall præd', in paroch' & ward' præd', coram præfat' Johe' Frederick Milite, Majore civitat' London, Thoma Adams Mil' & Baronet', Ricardo Browne Mil' & Baronet', & Thoma Aleyn Mil' & Baronet', Aldermannis dictæ civitat', ac Willielmo Wilde Mil' & Baronet', uno Servien' dicti Dom' Regis ad legem, ac Recordator' civitat' præd', ac al' ſociis ſuis Juſtic' dicti Dom' Regis ad pacem in civitat' præd' conſervand', necnon ad divers' felon', tranſgr', & al' malefacta infra eandem civitat' perpetrat', audiend' & terminand' aſſign'. Ac adtunc & ibidem præd' general' quarterial' ſeſſio pacis præd' ulterius adjornat' fuit per præfat' Juſtic' uſque diem Veneris, ſcilicet viceſimum ſeptimum diem dicti menſis Junii, anno quarto decimo ſupradicto, ad horam ſeptimam ante merid' ejuſd' diei, apud Juſtice-Hall præd', in parochia & warda præd' tenend', coram præfat' Juſtic' & al' ſociis ſuis, ad faciend' ulterius prout cur' con'. Ac ſuperinde ad iſtam eandem general' quarterial' ſeſſion' pacis, tent' pro civitat' London per adjornament' præd' apud Juſtice-Hall præd', in paroch' & warda præd', dicto die Veneris viceſimo ſeptimo die Junii, anno quarto decimo ſupradicto, coram præfat' Johanne Frederick Milite, Majore civitat' London, Thoma Adams Mil' & Baronet', Ricardo Brown Mil' & Baronet', Ricardo Chiverton Armigero, & Thoma Aleyn Mil' & Baronet', Aldermannis dictæ civitat', ac Willielmo Wilde Milite & Baronet', uno Servien' dicti Domini Regis ad legem, ac Recordator' ejuſdem civitat', ac al' ſociis ſuis Juſtic' dicti Domini Regis ad pacem in civitat' præd' conſervand', necnon ad divers' felon', tranſgr', & al' malefacta infra eand' civitat' perpetrat', audiend' & terminand' aſſign', in aperta general' quarterial' ſeſſion' præd', præfat' Juſticiar' pacis ult' nominat', exiſtentes major pars Juſtic' pacis ipſius Domini Regis infra dictam civitatem London adtunc, ſcilicet dicto viceſimo ſeptimo die Junii, anno quarto decimo ſupradicto, apud dictam paroch' ſancti Sepulchri, in warda de Farringdon extra London præd' præſen' exiſtent', obtulerunt (Anglice *did tender*) Johanni Crooke nuper de London Generoſo, Johanni Bolton nuper de London Aurifabro, & Iſaac Gray nuper de London Generoſo, & eor' cuilibet ſeparatim per ſe (ad tunc exiſten', & cuilibet eor' exiſten' ultra ætat' octodecim annorum) jurament' content' in quodam actu in parliament' Domini Jacobi nuper Regis Angliæ, tent' per prorogationem apud Weſtm' in com' Middleſex, quinto die Novembris, anno regni ſui Angliæ, Franc', & Hiberniæ tertio, & Scotiæ triceſimo nono, nuper edit' & provis' in his Anglicanis verbis ſequen', *viz. I do truly and ſincerely acknowledge, profeſs, teſtify, and declare in my Conſcience before God and the World, that our Sovereign Lord King* Charles *the Second is lawful and rightful King of this Realm, and of all other his Majeſty's Dominions and Countries; and that the Pope neither of himſelf, nor by any Authority of the Church or See of* Rome, *or by any other means with any other, hath any Power or Authority to depoſe the King, or to diſpoſe of any of his Majeſty's Kingdoms or Dominions, or to authorize any foreign Prince to invade or annoy him, or his Countries, or to diſcharge any of his Subjects of their Allegiance and Obedience to his Majeſty, or to give Licence or Leave to any of them to bear Arms, raiſe Tumults, or to offer any Violence or Hurt to his Majeſty's Royal Perſon, State, or Government, or to any of his Majeſty's Subjects within his Majeſty's Dominions. Alſo I do ſwear from my Heart, that notwithſtanding any Declaration, or Sentence of Excommunication, or Deprivation made or granted, or to be made or granted by the Pope or his Succeſſors, or by any Authority derived, or pretended to be derived from him or his See, againſt the ſaid King, his Heirs, or Succeſſors, or any Abſolution of the ſaid Subjects from their Obedience, I will bear Faith and true Allegiance to His Majeſty, his Heirs and Succeſſors, and him and them will defend to the uttermoſt of my Power, againſt all Conſpiracies and Attempts whatſoever, which ſhall be made againſt his or their Perſons, their Crown and Dignity, by reaſon or colour of any ſuch Sentence or Declaration, or otherwiſe; and will do my beſt Endeavour to diſcloſe and make known unto his Majeſty, his Heirs, and Succeſſors, all Treaſons and traiterous Conſpiracies which I ſhall know or hear of to be againſt him, or any of them. And I do further ſwear, that I do from my heart abhor, deteſt, and abjure, as impious and heretical, this damnable Doctrine and Poſition,* That Princes which be excommuni-

communicated or deprived by the Pope, may be depoſed or murdered by their Subjects, or any other whatſoever. *And I do believe, and in my Conſcience am reſolved, that neither the Pope, nor any Perſon whatſoever, hath Power to abſolve me of this Oath, or any part thereof, which I acknowledge by good and full Authority to be lawfully miniſtred unto me, and do renounce all Pardons and Diſpenſations to the contrary. And all theſe things I do plainly and ſincerely acknowledge and ſwear, according to theſe expreſs Words by me ſpoken, and according to the plain and common Senſe and Underſtanding of the ſame Words, without any Equivocation, or mental Evaſion, or ſecret Reſervation whatſoever. And I do make this Recognition and Acknowledgment heartily, willingly, and truly, upon the true Faith of a Chriſtian. So help me God.* Ac quod præfat' Juſtic' pacis ult' nominat' ad tunc, ſcil' dicto viceſimo ſeptimo die Junii, anno quarto decimo ſupradicto, apud paroch' & ward' præd', in dicta quarterial' ſeſſion' pacis præd', coſdem Joh'em Crooke, Joh'em Bolton, & Iſaacum Gray, & eor' quemlibet ſeparatim per ſe requiſiver' ad jurament' illud ſuper ſacroſancta Dei Evangel' capiend'. Quodq; iidem Joh'es Crooke, Joh'es Bolton, & Iſaacus Gray, jurament' præd', ſic per præd' nominat' Juſtic' pacis ejuſdem Joh'i Crooke, Joh'i Bolton, & Iſaaco Gray, ut præfertur, oblat' & requiſit', ad tunc & ibidem obſtinate & pertinaciter capere recuſaver', & quilibet eor' recuſavit, in malum exemplum omnium alior' dicti Domini Regis nunc fidel' ſubdit', & in contempt' dicti Domini Regis nunc, legumq; ſuar', contra formam ſtatut' præd', ac contra pacem dicti Domini Regis nunc, coron' & dignitat' ſuas, *&c.*

WILD.

Rex verſus Green, Hill[i], *and others, for the* Murder *of Sir* Edmund Bury Godfrey.

Mich' 30 Car' II. B. R.

Midd' ſſ. JUrator' pro Dom' Rege ſuper ſacrament' ſuum præſentant, Quod Robertus Green nuper de paroch' ſanctæ Mariæ le Strond in com' Midd' labor', Laurentius Hill nuper de paroch' prædict' in com' præd' lab', Dom' Kelley nuper de paroch' præd' in com' præd' Cler', & Philbert Vernat nuper de paroch' præd' in com' præd' lab', Deum præ oculis ſuis non habentes, ſed inſtigat' diabolica mot' & ſeduct', 12 die Oct', anno regni Domini Caroli ſecundi, Dei gratia Angl', Scot', Franc', & Hiberniæ Regis, fidei defenſor', *&c.* 30. vi & armis apud paroch' ſanctæ Mariæ le Strond præd', in com' præd', in & ſuper quendam Edmundum Bury Godfrey Mil', in pace Dei & dict' Dom' Regis nunc, adtunc & ibidem exiſten', felonice, voluntarie, & ex malitia ſua præcogitata inſult' fecer'. Et quod præd' Robertus Green quoddam ſudarium panni lin', Anglice *a Linen Handkerchief*, valor' ſex denar', circa collum ipſius E. B. G. adtunc & ibidem felonice, voluntar', & ex malitia ſua præcogitat', plicavit & fixavit, Anglice *did fold and faſten.* Et quod prædict' R. G. cum prædict' ſudario ſic per ipſum R. G. plicat' & fixat' circa collum ipſius præd' E. B. G. adtunc & ibidem ipſum præd' E. B. G. felonice, voluntarie, & ex malitia ſua præcogitat', ſuffocavit & ſtrangulavit, Anglice *did choak and ſtrangle*, de quibus quidem ſuffocation' & ſtrangulation' ipſius E. B. G. præd' per ipſum præd' R. G. in forma præd' fact' & perpetrat' ipſe præd' E. B. G. adtunc & ibidem inſtant' obiit. Et quod præd' L. H. D. K. & P. V. adtunc & ibidem felonice, voluntarie, & ex malitia ſua præcogitat' fuer' præſentes, auxiliantes, abettantes, confortantes, aſſiſtentes, & manutenentes præfat' R. G. ad præd' E. B. G. in forma præd' felonice, voluntarie, & ex malitia ſua præcogitat' interficiend' & murdrand'. Et ſic jur' præd' dicunt ſuper ſacrament' ſuum præd', quod præd' R. G. L. H. D. K. & P. V. modo & forma præd' præfat' E. B. G. felonice, voluntarie, & ex malitia ſua præcogitata interfecer' & murdraver' contra pacem dict' Dom' Reg' nunc, coron', & dignitat' ſuas, *&c.*

Rex verſus Tasborough *and* Price[k], *for Subornation of* Perjury.

Paſchæ 32 Car' II. B. R.

ſſ. ALias ſcilicet die, *&c.* ult' præterit' coram Domino Rege apud Weſtm', per ſacramen' 12 jur' probor' & legalium hominum com' præd', jurat' & onerat' exiſten' ad inquirend' pro dicto Dom' Rege & corpore com' præd præſent' exiſtit', Quod cum quidam Tho' White, alias Whitebread, Clericus, Johannes Fenwick Clericus, Willielmus Harcourt alias Harriſon Clericus, Johannes Gavan Clericus, Anthonius Turner Clericus, & Jacobus Corker, falſi proditor' contra ſereniſſimum Dominum noſtrum Carolum ſecundum, Dei gratia Angl', *&c.* 13 die Junii, anno regni dicti Domini regis nunc 31. ad deliberation' gaol' dicti Domini Regis de *Newgate*, tent' per adjornament' pro com' præd' apud Juſtice-Hall in le *Old Bailey*, in ſuburbiis civitatis London, coram juſtic' ad gaol' præd' adtunc & ibidem deliberand' aſſign', ſteterunt indictat' pro compaſſation' (Anglice *the compaſſing*) mortis & finalis deſtruction' dicti Domini Regis, & al' altis proditionibus in eodem indictamento ſpecificat', poſteaque ad ſeſſion' præd' præd' T. W. alias, *&c.* J. F. W. H. alias, *&c.* J. G. & A. T. per jurat' patriæ adtunc & ibidem debito modo inde triat' & convict' fuer', & per judic' cur' adtunc & ibidem debito modo attinct' fuer', prout patet per record' inde juratoribus præd' in evidenc' oſtens': Cumque etiam quidam Richardus Langhorn Ar' poſtea ſcilicet ad deliberation' gaol' dicti Domini Regis tent' per adjornament' pro civitat' London' apud Juſtice-Hall præd', coram juſticiar' ad gaol' præd' adtunc & ibidem deliberand' aſſign', 14. die Junii, anno regni dicti Dom' Regis nunc 31,

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[i] Vol. II. p. 756. N°. 78.

[k] Vol. II. p. 1013. N°. 90.

ſuprad',

ſuprad', legitimo modo ſtetit indictat' pro compaſſatione (Anglice *compaſſing*) mortis & final' deſtruction' dicti Domini Regis, & al' altis proditionibus in eodem indictamento ſpecificat'; poſteaque ſuperinde ad eandem ſeſſion' triat' per jur' patriæ, & adtunc & ibidem per judic' cur' attinct' fuit, prout patet per record' inde juratorib' præd' ſimilit' in evidenc' oſtens'. Cumque etiam quidam Stephanus Dugdale ſuper ſeparal' triation' indictament' præd' fuit teſtis product' & jurat' ex parte dicti Domini Regis nunc, & adtunc & ibidem legitimo modo material' evidenc' verſus præd' T. W. W. H. J. G. A. T. & R. L. dedit ad proband' ipſos culpabil' de materia in præd' indictamento ſpecificat', quidam Johannes Tasburgh, nuper de, &c. Gen', alias dict' J. Tiſburgh de, &c. Gen', & Anna Price de, &c. Spinſter, præmiſſa præd' ſatis ſcien' & exiſten' perſon' diabolice affectat' erga ſereniſſimum Dom' noſtrum Carolum ſecundum nunc Regem Angl', &c. ſupremum & naturalem Dominum ſuum, ac machinant' & tot' virib' ſuis intenden' pacem & communem tranquillitat' hujus regni Angl' perturbare, impedire, & ſupprimere (Anglice *to ſtifle*) ulteriorem divulgationem (Anglice *diſcovery*) dictar' prodition', &, quantum in ipſis fuit, debitum legis curſum eludere, necnon cauſare & procurare quod credit' foret, quod perſon' ſic ut præfertur attinct', minus juſte attinct' fuiſſent, præd' J. T. & A. P. ante triation' præd' W. H. ſcilicet præd' 13. die Junii, anno, &c. nunc 31. ſuprad', apud paroch' ſancti Andreæ Holbourn in com' Midd', falſo, illicite, injuſte, corrupte, & contra ligeanc' ſuæ debit', ſolicitabant, ſubornabant, & conat' fuer' perſuader', & uterque eor' adtunc & ibidem ſolicitabat, ſubornabat, & conat' fuit perſuadere præfat' Stephanum Dugdale, quod ipſe præfat' S. D. non foret teſtis, nec daret evidenc' verſus præfat' W. Harcourt, alias, &c. ſuper triation' ipſius W. H. alias, &c. pro proditionibus præd'. Et quod præd' J. T. & A. P. poſt triation' præd', ſcilicet 14. die Octobr', anno &c. nunc 31. ſupradicto, apud præd' paroch' ſancti Andreæ Holbourn in com' Midd', falſo, illicite, injuſte, adviſate, contra ligeanc' ſuæ debit' ſolicitabant, ſubornabant, & conati fuer' perſuadere, & uterq; eor' adtunc & ibidem, falſo, illicite, adviſate, corrupte, & contra ligeanc' ſuæ debitum ſolicitabat, ſubornabat, & conat' fuit perſuadere præd' Stephanum Dugdale, quod ipſe præd' Stephanus Dugdale retraheret & denegaret totam evidenc', quas ipſe præd' S. D. ut præfertur, dediſſet contra præd' proditor' eiſdem J. T. & A. P. adtunc & ibidem falſo, illicite, injuſte, adviſate, corrupte promitten' & uterque eor' promitten' præd' S. D. magn' & ingent' denar' ſum' & mercedes, ſi ipſe præd' S. D. retraheret & denegaret totam evidenc' per ipſum S. D. verſus præd' proditor', ut præfertur, dat', & ſeipſum S. D. in locis incognit' & tranſmarin' retraheret & abſentaret. Et quod præd' J. T. & A. P. ad nequiſſimas machination', practication', & intention' ſuas præd' perimplend' & pro perficiend', poſtea ſcilicet 14. die Octobr', anno, &c. 31. ſuprad', apud paroch' ſancti Andreæ Holbourn præd' in dicto com' Midd', falſo, illicite, injuſte, adviſate, & corrupte contra ligeanciar' ſuar' debit', produxer' & oſtender', & uterque adtunc & ibidem produxit & oſtendit præfat' S. D. quandam notam in ſcriptis, tenor cujus quidem notæ ſequitur in his Anglican' verbis ſequen', videlicet, *Being touched with a true Remorſe of Conſcience, and hearty Sorrow for the great Ill I did, in coming in a Witneſs againſt the Catholicks, and there ſpeaking things which in my own Conſcience I know to be very far from the Truth, I think my ſelf bound in Duty both to God and Man, and for the Safety of my own Soul, to make a true Declaration how I was drawn into this wicked Action: but being very well ſatisfied that I ſhall create my ſelf many powerful Enemies upon this account, I have retired my ſelf to a Place of Safety, where I will with my own hand diſcover the great Wrong that hath been done the Catholicks, and hope it may gain belief. And likewiſe I proteſt before Almighty God, that I have no motive to induce me to this Confeſſion, but a true Repentance for the Miſchiefs I have done, and hope Almighty God will forgive me.* Quodque præd' J. T. & A. P. poſtea ſcilicet dicto 14. die Octob', anno, &c. nunc 31. ſuprad', ad paroch' ſancti Andreæ Holbourn præd' in com' Midd' præd', falſo, illicite, injuſte, adviſate, corrupte, & contra ligeanc' ſuar' debitum, præfat' Stephanum Dugdale ad præd' notam in ſcript', ſic ut præfertur, eidem S. D. product' & oſtens' ſignare & ſubſcribere ſolicitabant, & perſuadere conat' fuer', & uterque eor' adtunc & ibidem ſolicitabat & perſuadere conat' fuit, & adtunc & ibidem falſo, illicite, injuſte, adviſate, corrupte promiſer', & uterque eor' adtunc & ibidem promiſit, quod ſi ipſe præd' S. D. præd' notam in ſcript' ſignaret & ſubſcriberet, quod tunc ipſe præd' S. D. magn' & ingent' denar' ſum' haberet & reciperet, in malum & pernitioſum exemplum omn' al' in tali caſu delinquen', ac contra pacem dicti Domini Regis, coron', & dignitat' ſuas, &c.

Rex verſus Smith[1], *for a* Libel.

32 *Car.* II. *B. R.*

ff. JUrator' pro Domino Rege ſuper ſacram' ſuum præſentant, Quod Franciſcus Smith, nuper de in librar', Deum præ oculis ſuis non habens, ſed inſtigatione diabolica motus & ſeduct', & falſo & malicioſe machinans, & intendens ſereniſſimum Dominum noſtrum Carolum ſecundum, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, fidei defenſorem, & regimen ſuum, in odium & infamiam inter ſubditos ſuos inducere & inferre, & ſeditionem inter ſubditos dict' Dom' Regis movere, 24 die Decembris, anno regni dict' Dom' Regis 32. apud in vi & armis, falſo, ſeditioſe, & malitioſe ſcripſit & publicavit, & ſcribi, imprimi, & publicari cauſavit quendam fict', fals', ſedit', & ſcandalos' libell', intitulat', *A Speech lately made by a noble Peer of the Realm.* In quo quidem libello continent' hæc falſa, ficta, & ſcandaloſa verba ſequentia: *My Lords, 'tis a very hard thing to ſay, that we cannot truſt the King; and that we have been already deceived ſo*

[1] Vol. II. p. 1036. N°. 92.

often,

often, that we see plainly the Apprehensions of Discontent in the People is no Argument at Court; and tho' our Prince be in himself an excellent Person, that the People have the greatest Inclination imaginable to love, yet we must say, he is such an one, as no Story affords us a Parallel of. How plain, and how many are the Proofs of the Designs to murther him? How little is he apprehensive of it? Et in altera parte ejusdem libelli continent' hæc falsa, ficta, & scandalosa verba sequentia: *ff. My Lords, I hear of a Bargain in the House of Commons, and an Address made to the King; but this I know, and must boldly say it, and plainly, That the Nation is betray'd, if upon any Terms we part with our Money, till we are sure the King is ours. Have what Laws you will, and what Conditions you will, they will be of no Use, but Waste Paper before* Easter, *if the Court have Money to set up for Popery and arbitrary Designs in the mean while. On the other hand, give me leave to tell you, my Lords, the King hath no reason to distrust his People. No man can go home and say, That if the King comply with his People, they will do nothing for him, but tear all up from him. We want a Government, and we want a Prince that we may trust even with the spending of half our annual Revenues for some time, for the Preservation of these Nations.* In malum & pernicioſiſſimum exemplum omnium alior' in tali casu delinquen', contra pacem dict' Dom' Regis, coronam, & dignitat' suas. Unde idem Attornat' petit advisament' cur' in præmissis, & debit' legis processum.

Rex versus Cellier[m], *for a* Libel.

32 *Car'* II. *O. B.*

ff. JUratores pro Dom' Rege super sacramentum suum præsentant, Quod Eliz' Cellier uxor ---- Cellier, de parochia sanct' Clementis Dacor' in com' Midd' Gen', eadem Eliz' existen' religionis papalis, Deum præ oculis suis non habens, sed instigatione diabolica mot' & seduct', & falso & malitiose machinans & intendens, serenissimum Dominum nostrum Carolum secundum, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, & gubernationem suam hujus regni Angliæ, necnon veram religionem protestan', infra hoc regnum Angliæ lege stabilit', in odium, infamiam, & contemptum inducere & inferre, & scandalum & infamiam imponere super quibusdam personis, qui producti fuissent testes, & testimon' dedissent ex parte dicti Dom' Regis contra præd' Eliz' Cellier', & alias personas, de alta proditione indictat' primo die Augusti, anno regni dicti Dom' Regis tricesimo secundo, apud prædict' parochiam sancti Clemen' Dacor', in com' Midd' præd', falso, malitiose, & seditiose scripsit & publicavit, & scribi, imprimi, & publicari causavit, quendam fictum, falsum, & scandalosum libellum, intitulat', *Malice defeated, or a brief Relation of the Accusation and Deliverance of* Elizabeth Cellier; *wherein her Proceedings both before and during her Confinement are particularly related, and the Mystery of the Meal Tub fully discovered; together with an Abstract of her Arraignment and Trial, written by herself for the Satisfaction of all lovers of undisguised Truth.* In quo quidem libello continentur hæc falsa, ficta, & scandalosa verba, & figuræ sequentia: *ff. I hope it will not seem strange to any honest and loyal Person, of what Way or Religion soever, that I, being born and bred up under Protestant Parents, should now openly profess my self of another Church* (Ecclesiam Romanam innuendo) *for my Education being in those Times, when my own Parents and Relations, for their constant and faithful Affection to the King and Royal Family, were persecuted, the King himself murdered, the Bishops and Church destroyed, the whole loyal Party, meerly for being so, oppress and ruined, and all, as was pretended by the Authors of these Villanies, for their being Papists and Idolaters, the constant Character given by them to the King and his Friends; and to make them odious, they assuming to themselves only the Name of Protestants, making that the glorious Title by which they pretended Right to all things. These sort of Proceedings, as I grew in Understanding, produced in me more and more Horror of the Party that committed them, and put me on enquiring into that Religion, to which they pretend the greatest Antipathy, wherein, I thank God, I found my innate Loyalty not only confirmed, but encouraged; and, let Calumny say what it will, I never heard from any Papist, as they call them, Priest or Layman, but that they and I, and all true Catholicks, owe our Lives to the Defence of our lawful King, which our present Sovereign* Charles *the Second is, whom God long and happily preserve so. These sort of Doctrines agreeing to my publick Morals, and no way, as ever I was taught, contradicting my private ones, commending at the same time to me Charity and Devotion, I without any Scruple have hitherto followed, glorying my self to be in Communion with those* (Papistas innuendo) *who were the humble Instruments of his Majesty's happy Preservation from the fatal Battle at* Worcester, *and whom, though poor, no Temptation could invite to betray him to those, who by a pretended Protestant Principle sought his innocent Blood. These Truths, I hope, may satisfy any innocent Person in my present Change; nor can they wonder at my Continuance therein, notwithstanding the horrid Crimes of Treason and Murder laid to the Charge of some Persons, considerable for their Quality and Fortunes, in that Party: For when I reflected who were Witnesses, and what unlikely things they deposed, and observed that many of the chiefest Sticklers for the Plot were those, or the Sons of those that acted the principal parts in the last Tragedy, which History told me too had the Prologue of a pretended Popish Plot; I say, these things made me doubtful of the whole; and the more I searched for Truth, the more I doubted that the old Enemies of the Crown were at work again for its Destruction. I being fully confirmed in this, thought it my Duty, through all sorts of Hazards, to relieve the poor imprisoned Catholicks, who in great numbers were locked up in Gaols, starving for want of Bread; and this I did some Months before I ever saw the Countess of* Powis, *or any of those honourable Persons that were accused, or receiving one Peny of their Money, directly or indirectly, till about the latter end of* January

[m] Vol. III. p. 89. N°. 100.

(1678) *the Priſoners increaſing very much.* Et in alia parte ejuſdem libelli (inter alia) continentur hæc falſa, ficta, & ſcandaloſa verba, *ſſ. About this time I went daily to the Priſons, to perform thoſe Offices of Charity I was obliged to; and on* Thurſday January 9. (1678) *I dined in* Newgate, *in the room called the* Caſtle, *on the Maſter Debtors ſide; and about Four in the Afternoon I came down into the Lodge, with five Women, of which three were Proteſtants; and we all heard terrible Groans and Squeeks, which came out of the Dungeon called the* Condemn'd Hole: *I asked* Harris *the Turnkey what doleful Cry it was; he ſaid, it was a Woman in Labour; I bid him put us into the Room to her, and we would help her; but he drove us away very rudely, both out of the Lodge, and from the Door. We went behind the Gate, and there liſtened, and ſoon found that it was the Voice of a ſtrong Man in Torture, and heard, as we thought, between his Groans, the Winding up of ſome Engine. Theſe Cries ſtopped the Paſſengers under the Gate; and we ſix went to the Turner's Shop without the Gate, and ſtood there, amazed with the Horror and Dread of what we heard; when one of the Officers of the Priſon came out in great Haſte, ſeeming to run from the Noiſe: One of us caught hold of him, ſaying, Oh! what are they doing in the Priſon?* Officer, *I dare not tell you, Miſtreſs.* Cell. *It's a Man upon the Rack, I'll lay my Life on't.* Offic. *It is ſomething like it.* Cellier, *Who is it,* Prance? Offic. *Pray, Madam, do not ask me, for I dare not tell you; but it is that I am not able to bear any longer; pray let me go. With that he ran away towards* Holbourn *as faſt as he could. We heard theſe Groans perfectly to the End of the* Old Baily: *They continued till near Seven of the Clock; and then a Perſon in the Habit of a Miniſter, of middle Stature, grey-haired, accompanied with two other Men, went into the Lodge; the Priſoners were locked up, and the outward Door of the Lodge alſo, at which I ſet a Perſon to ſtand and obſerve what ſhe could; and a Priſoner loaded with Irons was brought into the Lodge, and examined a long time; and the Priſoners that came down as low as they could, heard the Perſon examined, with great Vehemency ſay often, I know nothing of it; I am innocent; he forced me to bely my ſelf; what would you have me ſay? will you murder me becauſe I will not bely my ſelf and others? Several other ſuch like Expreſſions they heard ſpoken, as by one in great Agony. About four of the Clock the next Morning the Priſoners, that lay in a place about the Hole, heard the ſame Cry again two Hours, and on* Saturday *Morning again; and about eight of the Clock that Morning, a Perſon, I employed to ſpy out the Truth of this Affair, did ſee the Turnkeys carry a Bed into the Hole: ſhe asked who it was for; they told her it was for* Prance, *who was gone mad, and had torn his Bed in pieces. That Night the Examiners came again, and* Prance *was led away to the Preſs-yard. This, and many things of like nature, made me very inquiſitive to know what paſſed in the Priſon. Soon after this* Francis Coral *a* Scotchman, *that had been put into* Newgate *upon Suſpicion of carrying away Sir* Edmund Bury Godfrey's *Body, and lay there thirteen Weeks and three Days in great Miſery, got out: I went to ſee him, and found him a ſad Spectacle, having the Fleſh worn away, and great Holes in both his Legs, by the Weight of his Irons; and having been chained ſo long double, that he could not ſtand upright: He told me much of his hard and cruel Uſage, as that he had been ſqueezed and haſped into a thing like a Trough in a Dungeon under Ground, which put him to inexpreſſible Torment, inſomuch that he ſwooned; and that a Perſon in the Habit of a Miniſter ſtood by all the while; that a Duke beat him, pulled him by the Hair, and ſet a drawn Sword to his Breaſt three times, and ſwore he would run him through; and another great Lord had laid down a heap of Gold, and told him it was Five hundred Pounds; that he ſhould have it all, and be taken into the aforeſaid Duke's Houſe, if he would confeſs what they would have him: And one F. a Vintner, that lives at the Sign of the* Half-Moon *in* Ch—— St——, *by whoſe Contrivance he was accuſed, took him aſide, and bid him name ſome Perſon, and ſay they imployed him to take up the dead Body in* Somerſet-yard, *and gave him Money for ſo doing; That if he would do this, both* F. *and he ſhould have Money enough. He alſo told me, that he was kept from* Thurſday *till* Sunday *without Victuals or Drink, having his Hands every Night chained behind him; and being all this time locked to a Staple, which was driven into the Floor, with a Chain not above a Yard long; that in this great Extremity he was forced to drink his own Water; and that the Gaoler beat his Wife becauſe ſhe brought Victuals, and pray'd he might have it, and threw Milk on the Ground, and bid her be gone, and not look at him.* Et in altera parte ejuſdem libelli continent' (inter al') hæc falſa, ficta, & ſcandaloſa verba ſequentia: *ſſ. My Arraignment, which, in Confidence of my own Innocency I continually preſs'd for; not but that I knew the Danger, as to this Life, of encountering the Devil in the worſt of his Inſtruments, which are Perjurers encouraged to that degree, as that profligated Wretch* (quendam Thomam Dangerfield teſtem product' ex parte Dom' Regis contra præd' Elizabetham Cellier, pro alta proditione innuendo) *was, and has been ſince his being expoſed to the World in his true Colours, both at mine and another's Trial.* Et in altera parte ejuſdem libelli continentur hæc falſa, ficta, & ſcandaloſa verba ſequen': *ſſ. Nor have I ſince received any thing towards my Loſſes, or the leaſt Civility from any of them, whilſt* Dangerfield (prædict' Thomam Dangerfield iterum innuendo) *when made a Priſoner for apparent recorded Rogueries, was viſited by and from Perſons of conſiderable Quality, with great Sums of Gold and Silver, to encourage him in the new Villanies he had undertaken, not againſt me alone, but Perſons, in whoſe Safety all good Men (as well Proteſtants as others) in the three Kingdoms are concerned.* Et in altera parte ejuſdem libelli, vocat' *A Poſtſcript to the impartial Reader,* continent' hæc falſa, ficta, & ſcandaloſa verba ſequentia: *ſſ. And whenſoever his Majeſty pleaſes to make it as ſafe and honourable to ſpeak Truth, as it is apparent it hath been gainful and meritorious to do the contrary, there will not want Witneſſes to teſtify the Truth of more than I have written, and Perſons that are above being made the Hangman's Hounds for weekly Penſions, or any other Conſiderations whatſoever.* In malum & perniciofiſſimum exemplum omn' alior' in tali caſu delinquen' contra pacem dict' Dom' Regis, coron', & dignitat' ſuas.

Rex

Rex verſus Dominum Gray[n] *& al', for a* Miſdemeanour, *in debauching the Lady* Henrietta Berkley.

Mich' 34 *Car'* II. *Rot.* 1. *B. R.*

¶ QUod Ford Dom' Gray de Wark, R. C. nuper de, *&c.* Gen', A. C. ux' præd' R. C. D. J. F. J. ux' præd' D. J. & R. I. cum divers' al' male diſpoſit' perſon', eidem Attorn' dicti Dom' Regis nunc general' adhuc incognit', 20. die Auguſti, anno regni Dom' Caroli ſecundi nunc Regis Angl', *&c.* 34. & divers' al' dieb' & vicibus, tam antea, quam poſtea, apud paroch' de Epſom in com' Surr', falſo, illicite, injuſte, & nequiſſime, per illicitas & impuras vias & medias, conſpiran', machinan', practican', & intenden' final' ruinam & deſtruction' Dominæ Henriet' Berkley, tunc virgin' innupt' infra ætatem 18. annorum, & un' filiar' prænobilis G. comit' Berkley (eadem Dom' H. B. tunc & ibidem ſub cuſtod', regimine, & educat' præfat' prænobil' G. C. B. patris ſui exiſten') præd' Ford Dom' Gray, R. C. *&c.* & divers' al' perſon' ignot' adtunc & ibidem falſo, illicite, injuſte, & diabolice ad nequiſſimas, nefandiſſimas, & diabolicas intention' ſuas præd' perimplend', perficiend', & ad effectum redigend', præd' Dom' H. B. ad deſerend' præfat' prænobilem G. C. B. patrem præd' Dom' H. & ad ſcortac', fornicat', & adulterium committend', & in ſcortat', fornicat', & adulter' cum præfat' F. D. G. (eodem F. D. G. adtunc, & diu antea, & adhuc marito exiſten' Dom' Mariæ al' fil' præd' prænobil' G. C. B. & ſoror' præd' Dominæ H.) contra omnes leges tam divin', quam human', impie, nequit', impure, & ſcandaloſe vivere & cohabitare tentaver', incitaver', & ſolicitaver', & quilibet eorum tunc & ibidem tentavit, incitavit, & ſolicitavit. Et quod præd' F. D. G. R. C. *&c.* ac al' perſon' ignot', vi & armis, *&c.* illicite, injuſte, ſine licentia, & contra voluntat' præfat' prænobil' G. C. B. in proſecution' nefandiſſimar' conſpirac' ſuar' præd', præfat' Dom' H. B. ibidem circa horam 12. in nocte præd' 20. diei Auguſt', anno ſuprad', apud præd' paroch' de E. in com' S. præd', e domo manſional' præd' prænobil' G. C. B. ibidem ſcituat' & exiſten', & e cuſtod' & regimine ejuſdem G. C. B. ceper', aſportaver', & abduxer'. Et præd' Dom' H. B. a præd' 20. die Auguſt', anno ſuprad', & continue poſtea, uſque diem exhibition' hujus information', apud paroch' de E. præd' in com' præd', & in divers' locis ſecret' ibidem, cum præfat' F. D. G. illicite, nequit', & ſcandaloſe vivere, cohabitare, & remanere procuraver' & cauſaver', & quilibet eorum procuravit & cauſavit, in magn' Dei omnipotent' diſplicent', ad ruinam & deſtruction' præfat' D. H. B. & amicor' ſuorum triſtitiam & diſconſolat', in malum & pernitioſum exemplum, *&c.* Unde, *&c.*

Rex verſus Major' & Commun' & Civ' *civitatis* Londini[o].

An Information in nature of a Quo Warranto.

Paſchæ 34 *Car'* II. *B. R.*

London *ff. Memorand', Quod Robertus Sawyer Miles, Attorn' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte ſequitur, in propria perſona ſua ven' hic in curia dicti Domini Regis, coram ipſo Rege apud Weſtm', die Lunæ prox' poſt quinden' ſancti Martini ult' præterit', & pro eodem Domino Rege protulit hic in cur' dicti Domini Regis, coram ipſo Rege tunc & ibidem, quand' Information' verſus Majorem & Communitat' ac Cives civitat' London; quæ quidem Informatio ſequitur in hæc verba: ff.*

London' ff. MEmorandum, Quod Robertus Sawyer Miles, Attorn' Dom' Regis nunc generalis, qui pro eodem Dom' Rege in hac parte ſequitur, in propria perſona ſua ven' hic in cur' dict' Dom' Regis, coram ipſo Rege apud Weſtm', die Lunæ prox' poſt quinden' S. Martini iſto eodem termino, & pro eodem Dom' Rege, dat cur' hic intelligi & informari, Quod Major & Communitas ac Cives civitat' London' præd', per ſpacium unius menſis jam ult' elaps', & amplius, uſi fuerunt, & adhuc utuntur, ac clamant habere & uti, abſque aliquo warranto, ſive regali conceſſione, infra civitat' London præd', & libertat' & precinct' ejuſdem civitat', diverſis libertat', privileg', & franchis' ſequen', videl', Fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London', ac per idem nomen placitare & implacitari, reſpondere & reſponderi, ac etiam habere Vicecomit' civitat' & com' civitat' London', & nominare & eligere ex ſeipſis duas perſonas fore Vicecomit' civitat' præd' & com' ejuſd' civitat', ac ill' ſic nominat' & elect' præficere & conſtituere Vic' civit' præd' & com' ejuſdem civitat', ad execution' & retorn' omnium brevium, billarum, & præceptorum Dom' Regis pro adminiſtratione & executione juſtic' infra civit' præd' & com' ejuſdem civit' exequend', faciend', ac ad faciend' & exequend' omnia & ſingula al' infra civit' præd', & com' ejuſdem civit', quæ ad officium Vic' faciend' pertinent; ac etiam habere Vic' com' Middleſex, & nominare, eligere, & conſtituere ex ſeipſis Vic' com' Middleſex, pro eodem com' ut Vicecomes inde deſervitur', ac omnia brevia, billas, & præcepta Dom' Regis infra com' Middleſex' præd' pro adminiſtratione & executione juſtic' ibid' exequend', & retorn' inde faciend', abſque aliqua commiſſione, ſive aliquibus literis patentibus a Dom' Rege inde obtent', ſive obtinend'. Ac etiam quod Major & Aldermanni ejuſdem civit' fuerunt Juſtic' Dom' Regis ad pacem infra civit' præd' conſervand', ac ad ſeſſiones pacis & placita coronæ infra eandem civit' tenend', ac ad omnes felon', riot', & conventic' illicit' infra civit' præd' inquirend', audiend', &

[n] Vol. III. p. 515. N°. 112.

[o] Vol. IV. p. 769.

terminand'

terminand' authoritate ipſorum propria, abſque aliqua commiſſione, ſive al' authoritate a Dom' Rege in ea parte conceſs' ſive obtent'. De quibus quidem omnibus & ſingulis libertat', privileg', & franchis' iidem Major & Communitas, ac Cives civit' London præd', per totum tempus ſupradictum ſuper dictum Dom' Regem nunc uſurpaverunt & adhuc uſurpant, in dict' Dom' Regis nunc contempt', prærogativæ ſuæ regiæ grave dampnum & præjudicium. Unde idem Attorn' dict' Dom' Regis nunc general', pro eodem Dom' Rege pet' adviſament' cur' hic in præmiſs', & debit' legis proceſs' verſus præfat' Major' & Communitat', ac Cives civit' London præd', in hac parte fieri ad reſpondend' dict' Dom' Regi, Quo Warranto clamant habere, uti, & gaudere libertat', privileg', & franchis' ſupradict', *&c.* Per quod præceptum fuit Vicecomitibus London, quod venire fac' eos ad reſpondend', *&c.*

Et modo, ſcilicet die Lunæ prox' poſt craſtinum Aſcens' Dom', iſto eodem termino, coram Dom' Rege apud Weſtm', ven' prædicti Major & Communitas, ac Cives civitatis London', per Benedictum Brown Attornat' ſuum, & habito auditu information' præd', querunt, ſe colore ejuſdem informationis gravit' fore vexat' & inquietat', & hoc minus juſte; quia proteſtando quod informatio præd', materiaq' in eadem content' min' ſuffic' in lege exiſt', ad quam quidem informat' ipſi neceſſe non habent, nec per legem terræ tenent' aliquo modo reſpondere: Pro placito tamen, quoad libertat', privileg', & franchis' ſequen' (*viz.*) ipſos Major' & Communitat', ac Cives civit' London fore de ſe ipſis unum corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi, in informat' præd' ſuperius ſpecificat', iidem Major & Communitas, ac Cives Civit' London dicunt, quod dict' Dom' Rex nunc ipſos occaſione inde impetere ſeu occaſionare non debet, quia dicunt, quod præd' civit' London eſt, & a tempore cujus contrar' memoria homin' non exiſt', fuit antiqua civitas; quodque Cives ejuſdem civit' ſunt, & a præd' tempore cujus contrar' memor' homin' non exiſt', fuerunt un' corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London, ac per idem nomen per tot' tempus illud placitaver' & implacitat' fuerunt, reſponder' & reſpons' fuerunt, & placitare & implacitari, reſpondere ac reſponderi a toto tempore ſupradicto uſi fuerunt & conſuever'. Quodque in Magna Charta de libertat' Angl', in Parliament' Domin' Henrici quondam Regis Angl' tertii, apud Weſtm' in comitat' Midd', anno regni ſui nono tent', edit' & provis', continet', quod civitas London habeat omnes libertat' ſuas antiquas & conſuetud' ſuas; & iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod Domin' Edwardus quondam Rex Angl' tertius, in parliamento ſuo apud Weſtm' in comit' Midd', anno regni ſui primo tent', per quandam chartam ſuam, de conſenſu Prælator', Comit', Baron', ac totius Communitat' regni ſui in eodem parliament' ſuo apud Weſtm' præd' convocat' exiſten', ac authoritat' ejuſdem parliament', confirmavit tunc Civibus civit' London præd' libertat' ſubſequen' (*int' alia*) habend' ſibi & ſucceſſoribus ſuis in perpetuum, imprimis recitando, Quod cum in Magna Charta de libertat' Angl' contineat', quod civit' London habeat omn' libertat' ſuas antiquas & conſuetud' ſuas; & quod iidem Cives tempore confection' dictæ chartæ, ac temporibus ſancti Edwardi Regis & Confeſſoris, & Willielmi Conqueſtoris, & al' progenitor' dict' Regis Edwardi tertii, divers' libertat' & conſuetud' tam per chartas ipſor' progenitor' ſuor', quam ſine chartis ex antiqua conſuetud' habuiſſent, voluit & conceſſit idem Rex Edwardus tertius, pro ſe & hæredibus ſuis, per chartam illam, authoritat' præd', quod iidem Cives haberent libertat' ſuas ſecund' form' Magn' Chartæ ſupradict', & quod pro aliqua perſonali tranſgr', vel judicio perſonal' alicujus miniſtri ejuſdem civit', non caperent' libertat' civit' ill' in manus ejuſdem Regis Edwardi tertii, vel hæred' ſuor', ſed hujuſmodi miniſter, prout qualitas tranſgreſs' requireret, puniret', prout per eandem chartam geren' dat' apud Weſtm' præd' ſexto die Martii, anno regni dict' Regis Edwardi tertii primo ſupradict', ſub magno ſigillo ſuo Angl' ſigillat', hic in cur' prolat' (*inter alia*) plenius apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, Quod ad inſtant' & requiſit' Communitat' regni Angl', in parliamento Domin' Richardi nuper Regis Angl' ſecundo poſt Conqueſt', apud Weſtm' præd' anno regni ſui ſeptimo tent', aſſemblat' pro majore quiete & pace inter ligeos ejuſdem nuper Regis fovend', & pro bono publico, omnes conſuetud', libertat', privileg', & franch' civit' prædict' tunc Civibus civit' illius, & eor' ſucceſſor', licet uſi non fuerint, vel abuſi fuerint eiſdem, authorit' ejuſdem parliament' ratificat' & confirmat' fuer'. Quodq' Domin' Henricus nuper Rex Angl' ſextus, per literas ſuas patent', ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo ſexto die Octobr', anno regni ſui viceſimo tertio, quas iidem Major & Communitas, & Cives civit' London hic in cur' proferunt pro ſe, hæredibus & ſucceſſoribus ſuis, confirmavit Majori & Communitat', ac Civibus civit' London, & ſucceſſor' ſuis, omnes & ſingulas ſuas libertat', franch', & liberas conſuetud' adeo integras & illæſas, ſicut eas unquam aliquo tempore progenitor' ejuſdem nuper Regis Henrici ſexti melius, quietius, & liber' habuiſſent & tenuiſſent, prout per eaſdem literas patent' (*int' alia*) plenius apparet. Quodq' Domin' Edwardus nuper Rex Angl' quartus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' nono die Novembr', anno regni ſui ſecundo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe & hæredibus ſuis, confirmavit Majori & Communitat', ac Civibus civit' London, & ſucceſſoribus ſuis in perpetuum, omn' & ſingulas ſuas libertat', franc', & liberas conſuetud' adeo integr' & illæs', ſicut eas unquam aliquo tempore progenitor' ejuſdem nuper Reg' Edwardi quarti melius, quietius, & liber' habuiſſent & tenuiſſent. Et ulterius idem nuper Rex Edwardus quartus, per eaſdem literas ſuas patent', conceſſit eiſdem Majori & Communitat', ac Civibus, quod licet ipſi, vel prædeceſſor' ſui, aut Major & Alderman' civit' prædict', vel prædeceſſor' ſui præantea, vel ſucceſſor' ſui extunc in poſter', aliqua vel aliquibus libertat' quietant' conceſs' ordinat' articulor' ſeu liberar' conſuetud', aut alior' eiſd' literis patent' ejuſdem nuper Regis Edwardi quarti, ſeu al' literis ſuis, aut progenitor' ſuor' quondam Reg' Angl', eiſdem Majori & Communitat' conceſs' content', aliquo caſu emergente

plene non uſi, vel abuſi fuerint, noluit tamen idem nuper Rex Edwardus quartus, quod propt' hoc ipſi Major & Communitas, Alderman' & Cives, ſeu ſucceſſores ſui, forisfactur' aliquor' præmiſs' incurrerent; ſed quod ipſi, & eor' ſucceſſor', univerſis & ſingulis libertat' quietant' conceſs', ordinat' articulis, liberis conſuetud', & quibuſcunque al' in chartis & literis prædict' content', taliter non uſis, vel etiam abuſis, & eor' quolibet extunc de cætero plene & libere gauderent, & eis uterent' ſine impetition' vel impediment' ejuſdem nuper Regis, ſeu hæred' ſuor', Juſtic', Eſchætor', Vicecom', aut al' Balliv' ſeu miniſtr' ipſius nuper Regis, vel al' quorumcunque, prout per eaſdem literas patent' ejuſdem nuper Regis Edwardi quarti hic in cur' prolat' (int' alia) plenius apparet. Quodque Domin' Henricus nuper Rex Angl' ſeptimus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' prædict' viceſimo tertio die Julii, anno regni ſui viceſimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe, hæredibus & ſucceſſoribus ſuis ratificavit & confirmavit Majori & Communitat', ac Civibus civit' London, & eor' ſucceſſor', omnia & ſingula libertat', privileg', quietant' & liberas conſuetud', quibus ipſi Major & Communitas, & Cives ſeu prædeceſſor' ſui habere, exercere, ſeu gaudere conſueviſſent, vel uſi fuiſſent, aut debuiſſent, adeo plene, plan', & integre, ac ſi ea omnia & ſingula ſeparatim & verbat' in eiſdem literis patent' expreſs' declarat' & manifeſtat' eſſent & fuiſſent, prout per eaſdem literas patent' (int' alia) plenius apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod Domin' Jacobus nuper Rex Angl', *&c.* per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Honorem ſuum de Hampton Court viceſimo quarto die Septembris, anno regni ſui Angl' ſexto, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, recitando, quod cum quamplurimi progenitores ipſius nuper Regis, quondam Reges Angl', de gratia ſua ſpecial', ac pro gratis, laudabil', multiplicib', & contin' ſervit' per Majorem & Communitat', ac Cives civit' London, & prædeceſſor' ſuos temporibus retroact' fact' & impens', necnon pro divers' al' urgent' cauſis & conſideration' eos ſeparatim moven', dediſſent, conceſſiſſent, & confirmaſſent Majori & Communitat', ac Civibus civit' London præd', & ſucceſſor' ſuis, divers' libertat', privileg', franch', immunitat', authoritat', juriſdiction', ordinat', conſuetud', quietant', prout per ſeparal' literas patent' progenitor' & prædeceſſor' ſuor' quondam Regum Angl' plenius & manifeſtius liquebat & apparebat; idem nuper Rex Jacobus pro & in conſiderat' ſummæ fidelitat', conſtant', & prompt' & laudabil' ſervit' per Major' & Communitat', ac Cives civit' London prædict' eidem nuper Regi, in ipſius regn' ſui primis auſpiciis, & continue uſque tunc manifeſt', & fideliſſim' fact' & impens', omnes & ſingulas literas patent', chartas, & confirmac' præclariſs' progenitor' & anteceſſor' ſuor', eiſdem Majori & Communitat', ac Civibus civit' London prædict', & prædeceſſor' ſuis, per quæcunque nomina incorporat' antea tunc tempora fact', conceſs', ſeu confirmat', ac omnes & ſingulas donac', conceſs', confirmac', reſtitut', conſuetud', ordinac', explanac', articul', & omnes al' res quaſcunque, in quibuſcunque literis patent' ſive chartis quorumcunque progenitor', prædeceſs', aut anteceſſor' ſuor' Regum Angl', necnon omnia & ſingula in dict' literis patent', chartis, conceſs', confirmat', ſeu eor' aliquibus content', recitat', ſpecific', confirmat', ſeu explanat', ac omnia & ſingula juriſdiction', authoritat', privileg', libertat', franch', quietanc', immunitat', liberas conſuetud' & hæreditament' quæcunque, quæ præd' Major & Communitas, ac Cives civit' London prædict', vel prædeceſſor' ſui, per nomen Major' & Communitat', ac Civium civit' London, ſeu per nomen Major' & Aldermann' civit' London, ſeu per nomen Majoris, Civium, & Communitat' civit' London, ſeu per nomen Majoris, & Civium civit' London, ſeu per nomen Majoris & Communitatis civitatis London, ſeu per nomen Civium civit' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civit' London, ſeu per aliquod al' nomen quodcunque, ratione ſeu vigore aliquar' literar' patent', chartar', ſeu confirmac' aliquor' progenitor', prædeceſſor', aut anteceſſor' ejuſdem nuper Regis Jacobi quondam Regis Angl', aliquo tempore, vel aliquibus temporibus habuiſſent, ſeu rationabilit' uſi fuiſſent, aut exercuiſſent, rata habuit & grata, ac pro ſe, hæred' & ſucceſſor' ſuis acceptavit & approbavit, ac ea omnia & ſingula præfat' Major' & Communitat', ac Civibus civit' London' prædict', & eor' ſucceſſoribus, per eaſdem literas ſuas patent' ratificavit & confirmavit habend', tenend', gaudend' & exercend' omnia & ſingula præmiſs', eiſdem Major' & Communitat', ac Civibus civit' London prædict', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, ac ſi ſeparatim, ſingulatim, & nominatim in literas patent' ill' expreſs' nominat', declarat', recitat', & manifeſt' eſſent & fuiſſent, prout per eaſdem literas patent' (inter alia) plenius apparet. Quodque Domin' Carolus primus nuper Rex Angl', *&c.* per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' prædict' decimo octavo die Octobris, anno regni ſui quarto decimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, omnia & ſingula privileg', libertat', franc', quietanc', immunitat', & liberas conſuetud' quæcunque, quæ prædict' Major & Communitas, ac Cives civit' London præd', vel prædeceſſor' ſui, per nomen Majoris & Communitat', ac Civium civit' London, ſeu per nomen Majoris & Aldermann' Civium & Communitat' London, ſeu per nomen Majoris & Civium civit' London, ſeu per nomen Majoris & Communitat' civit' London, ſeu per nomen Civium civit' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civit' London, ſeu per aliquod al' nomen quodcunque, ratione ſeu vigore literar' patent', chartar', ſeu confirmac', in eiſdem literis patent' dicti nuper Regis Caroli primi mentionat', vel uſu vel præſcriptione, aut alio legal' modo aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabiliter uſi fuiſſent, aut exercuiſſent, rat' habend' & grata, ac pro ſe, hæredibus, & ſucceſſoribus ſuis acceptavit & approbavit, ac ea omnia & ſingula præfat' Majori & Communitat', ac Civibus civit' London, & eor' ſucceſſor', per eaſdem literas ſuas patent' ratificavit & confirmavit, prout per literas patent' ill' (int' alia) plenius liquet & apparet. Quodque præd' Domin' Rex nunc per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd'

viceſimo

viceſimo quarto die Junii, anno regni ſui decimo quinto, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ipſo Rege, hæredibus & ſucceſſoribus ſuis, ratificavit & confirmavit Major' & Communitat', ac Civibus civit' London, & ſucceſſor' ſuis, omnia & ſingula juriſdiction', authoritat', privileg', libertat', franch', quietanc', immunitat', & conſuetud' quæcunque, quæ præfat' Major & Communitas, ac Cives civit' London, vel prædeceſſor' ſui, per nomen Major' & Communitat', ac Civium civit' London, ſeu per nomen Majoris, Aldermannor', Civium & Communitat' London, ſeu per nomen Majoris & Civium civit' London, ſeu per nomen Major' & Communit' civit' London, ſeu per nomen Civium civit' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod al' nomen quodcunque, ratione vel vigore literar' patent', chartar', ſeu confirmat' in eiſdem literis patent' dicti Domin' Regis nunc præmentionat', vel alicujus, ſeu aliquor' uſus, vel uſu præſcription' vel præſcriptionum, ſeu al' legali modo quocunque, aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabilit' uſi fuiſſent, ſeu exercuiſſent, habend', tenend', gaudend', & exercend' omnia & ſingula præmiſs' prædict' eiſdem Majori & Communitat', ac Civibus civit' London prædict', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, prout in eiſdem literis patent' ſuperius mentionat' fore data ſive conceſſa, aut alit' uſu, præſcription', vel al' legali modo, ſeu jure quocunque ante tunc reſpective habit', obtent', ſive gaviſa fuiſſent, ac ſi ſeparatim, ſingulatim, & nominatim in & per dictas literas patent' ipſius Domin' Regis nunc expreſs' nominat', declarat', conceſs', & manifeſta eſſent & fuiſſent, prout per eaſdem literas patent' (inter alia) plenius apparet. Et eo warranto iidem Major & Communitat', ac Cives civitat' London, per tempus in informatione prædicta ſuperius ſpecific' uſi fuer', & adhuc utunt', ac clamant habere & uti, libertat', privileg', & franch', fore de ſeipſis unum corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi, prout eis bene licuit & licet: Abſque hoc, quod iidem Major & Communitas, ac Cives civitat' London, de libertat', privileg' & franch' ill' ſuper dictum Domin' Regem nunc, per tempus præd' in informatione præd' ſuperius ſpecific', uſurpaver' ſeu uſurpant, prout per information' ill' pro dicto Domin' Rege nunc ſuperius ſupponitur. Quæ omnia & ſingula iidem Major ac Communitas, ac Cives civitat' London parat' ſunt verificare; unde petunt judicium, & quod libertat', privileg', & franch' ill' eis & ſucceſſoribus ſuis in perpetuum deinceps allocent' & adjudicent', & quod ipſi, quoad præmiſs' ill', ab hac cur' dimittant', *&c.* Et iidem Major & Communitas, ac Cives civit' London, quoad libertat', privileg', & franch' ſequen', *viz.* ipſos habere Vicecom' civit' & com' civit' London, & Vicecom' Midd', & nominare & eligere ex ſeipſis duas perſonas fore Vicecom' civit' prædict', & com' ejuſdem civit', & Vicecom' Midd', ac ill' ſic nominat' & elect' præficere & conſtituere Vicecom' civit' prædict' & com' ejuſdem civit', & Vicecom' Midd', ac ut Vicecom' civit' prædict', & com' ejuſdem civit', ad execut' & return' omnium brevium, bill', & præcept' Domin' Regis, pro adminiſtratione & execut' juſtic' infra civit' prædict', & com' ejuſdem civit' exequend', faciend', quæ ad officium Vicecom' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula alia infra civit' prædict', & com' ejuſdem civit', quæ ad officium Vicecom' faciend' pertinent, ac ut Vicecom' com' Midd' pro eodem com' deſervitur'; ac omnia brevia, bill', & præcept' Domin' Regis infra com' Midd' prædict', pro adminiſtratione & executione juſticiæ ibidem exequend', & return' inde faciend', quæ ad officium Vicecom' faciend' pertinen'; dicunt, quod dictus Dominus Rex nunc ipſos Majorem & Communitat', ac Cives civitat' London, occaſione inde impetere ſeu occaſionare non debet, quia dicunt, quod prædict' civit' London eſt, & a tempore cujus contrar' memoria homin' non exiſt', fuit antiqua civitas & antiqu' comit' de ſe, quodque præd' com' Midd' per totum tempus præd' fuit & eſt antiquus comit', quodque cives ejuſdem civit' ſunt, & a præd' tempore cujus contrar' memor' homin' non exiſt', fuer' un' corpus corporat' & politic', tam per nomen Major' & Communitat' ac Civium civit' London, quam per nomen Civium London; quodque Domin' Johannes quondam Rex Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud bonam villam ſuper Tokam quinto die Julii, anno regni ſui primo, quas iidem Major & Communitas, & Cives civitat' London hic in cur' proferunt, conceſſit civibus London' præd', Vicecomit' London & de Midd', cum omnibus rebus & conſuetudinibus, quæ pertinebant ad præd' Vicecom' infra civit' & extra, per terras & per aquas, habend' & tenend' eis in perpetuum. Et præterea idem Domin' Rex Johannes, per literas ſuas patent' præd' conceſſit eiſdem civibus London, quod ipſi de ſeipſis facerent Vicecom' quoſcunque voluerint, & amoverent quando voluerint, prout per eaſdem literas patent' (inter alia) plenius apparet. Quodque in Magna Charta de libertatibus Angl', in parliament' Domin' Henrici quondam Regis Angl' tertii, apud Weſtm' in com' Midd', anno regni ſui nono tent', edit', & provis', continet', quod civit' London habeat omnes libertat' ſuas antiquas, & conſuetud' ſuas. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod idem Domin' Rex Henricus tertius, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' decimo octavo die Februarii, anno regni ſui undecimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, confirmavit Civibus London Vicecom' London & de Midd', cum omnibus rebus & conſuetudinib', quæ pertineb' ad præd' Vicecom' infra civitat' & extra, per terras & per aquas, prout per eaſdem literas patent' (int' al') plenius apparet. Quodque Domin' Edwardus quondam Rex Angl' tertius, in parliament' ſuo apud Weſtm' in com' Midd', anno regni ſui primo tent', per quandam chartam ſuam de aſſenſu Prælator', Comit', Baron', ac totius Communitat' regni ſui in eodem parliamento ſuo apud Weſtm' præd' convocat' exiſten', ac authoritate ejuſdem parliamenti, confirmavit tunc Civibus civit' London præd' libertat' ſubſequen', int' al', habendi ſibi & ſucceſſoribus ſuis in perpetuum, imprimis recitando, quod cum in magna Charta de libertat' Angl' contineat', quod civitas London habeat omnes libertat' ſuas antiquas & conſuetud' ſuas; &

& quod iidem Cives tempore confection' dictæ chartæ, ac temporibus ſancti Edwardi Regis & Confeſſoris, & Willielmi Conqueſtor', & al' progenitor' dicti Regis Edwardi tertii, diverſas libertat' & conſuetud', tam per chartas ipſor' progenitor' ſuor', quam ſine chartis ex antiqua conſuetud' habuiſſent, voluit & conceſſit idem Rex Edwardus tertius pro ſe & hæredibus ſuis per chartam ill', authoritat' præd', quod iidem Cives haberent libertat' ſuas ſecund' formam Magn' Chartæ ſupradict'; & quod pro aliqua perſonal' tranſgr', vel judicio perſonal' alicujus miniſtri ejuſdem civit', non caperet' libertas civit' ill' in manu ejuſd' Reg' Edwardi tertii, vel hæred' ſuor', ſed hujuſmodi miniſter, prout qualitas tranſgr' requireret, puniretur, prout per eandem chartam geren' dat' apud Weſtm' præd' ſexto die Martii, anno regni dicti Regis Edwardi tertii primo ſupradict', ſub magno ſigillo ſuo Angl' ſigillat', hic in cur' prolat' (int' alia) plenius apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod ad inſtant' & requiſition' Communitat' regni Angl' in parliamento Domin' Richardi nuper Regis Angl' ſecundi poſt Conqueſtum, apud Weſtm' præd' anno regni ſui ſeptimo tent', aſſemblat' pro majore quiet' & pace inter ligeos ejuſdem nuper Regis fovend', & pro bono publico, omnes conſuetud', libertat', privileg', & franch' civit' præd', tunc civibus civitat' illius & eor' ſucceſſoribus, licet uſi non fuerint, vel abuſi fuerint eiſdem, authoritat' ejuſdem parliament' ratificat' & confirmat' fuer'. Quodque Dominus Henricus nuper Rex Angl' ſextus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo ſexto die Octobris, anno regni ſui viceſimo tertio, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe, hæredibus & ſucceſſoribus ſuis confirmavit Majori & Communitat' ac Civibus civit' London, & ſucceſſoribus ſuis, omnes & ſingulas ſuas libertat', franch', & liberas conſuetud', adeo integras & illæſas, ſicut eas unquam aliquo tempore progenitor' ejuſdem nuper Regis Henrici ſexti melius, quietius, & liber' habuiſſent & tenuiſſent, prout per eaſdem literas patent' (int' al') plenius apparet. Quodq' Domin' Edwardus nuper Rex Angl' quartus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' nono die Novembr', anno regni ſui ſecundo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe, & hæredibus ſuis, confirmavit Majori & Communitat', ac Civibus civit' London, & ſucceſſoribus ſuis in perpetuum, omnes & ſingulas ſuas libertat', franch', & liberas conſuetud', adeo integr' & illæs', ſicut eas unquam aliquo tempore progenitor' ejuſdem nuper Regis Edwardi quarti melius, quietius, & liber' habuiſſent & tenuiſſent. Et ulterius idem nuper Rex Edwardus quartus, per eaſdem literas ſuas patent' conceſſit eiſdem Majori & Communitat' ac Civibus, quod licet ipſi, vel prædeceſſores ſui, aut Major & Aldermann' civit' præd', vel prædeceſſor' ſui præantea, vel ſucceſſores ſui extunc in poſterum, aliqua vel aliquibus libertat' quietant' conceſs', ordination' articulor', ſeu liberar' conſuetudin', aut alior' in eiſdem literis patentibus ejuſdem nuper Regis Edwardi quarti, ſeu al' literis ſuis, aut progenitor' ſuor' quondam Regum Angl', eiſdem Majori & Communitat' conceſs' content', aliquo caſu emergente plene non uſi vel abuſi fuerint. Noluit tamen idem nuper Rex Edwardus quartus, quod propter hoc ipſi Major & Communitas, Alderman' & Cives, ſeu ſucceſſor' ſui, forisfactur' aliquor' præmiſſor' incurrerent, ſed quod ipſi & eorum ſucceſſor' univerſis & ſingulis libertat' quietant' conceſs', ordinat' articulis, liberis conſuetud', & quibuſcunque al' in chartis & literis præd' content', talit' non uſis, vel etiam abuſis, & eor' quolibet extunc de cætero plene & libere gauderent, & eis uterent' ſine impetratione vel impediment' ejuſdem nuper Regis, ſeu hæred' ſuorum, Juſtic', Eſchætor', Vicecom', aut al' Balliv' ſeu miniſtr' ipſius nuper Regis, vel alior' quorumcunq', prout per eaſdem literas patent' ejuſdem nuper Regis Edwardi quarti hic in cur' prolat' (int' al') plenius apparet. Quodque Dom' Henricus nuper Rex Angl' ſeptimus, per literas ſuas patent' ſub magno ſigillo ſuo Angliæ ſigillat', geren' dat' apud Weſtm' præd' viceſimo tertio die Julii, anno regni ſui viceſimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe, hæredibus & ſucceſſoribus ſuis, ratificavit & confirmavit Major' & Communitat', ac Civibus civit' London, & eorum ſucceſſoribus, omnia & ſingula libertat', privileg', quietant', & liberas conſuetudines, quibus ipſi Major, Communitas, & Cives ſeu prædeceſſor' ſui habere, exercere, ſeu gaudere conſueviſſent, vel uſi fuiſſent, aut debuiſſent, adeo plene, plane, & integre, ac ſi ea omnia & ſingula ſeparatim & verbatim in eiſdem literis patent' expreſs' declarat' & manifeſtat' eſſent & fuiſſent, prout per eaſdem literas patent' (inter alia) plenius apparet. Quodque Dom' Henricus nuper Rex Angl' octavus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' duodecimo die Julii, anno regni ſui quinto, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, omnes conceſſiones, & al' quæcunque in præd' literis patent' præd' Dom' Regis Johannis ſuperius ſpecificat' content', pro ipſo Rege Henrico octavo, & Hæredibus ſuis, Majori & Communitat', ac Civibus civitat' London, & ſucceſſoribus ſuis ratificavit & confirmavit, prout per eaſdem literas patent' ejuſdem nuper Regis Henrici octavi (inter alia) plenius apparet. Quodque Dom' Edwardus nuper Rex Angl' ſextus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo primo die Februarii, anno regni ſui ſecundo, quas iidem Major & Communitas, ac Cives civit' London præd' hic in cur' proferunt, omnes conceſſion', & al' quæcunque in præd' literis patent' dicti Dom' Regis Johannis ſuperius ſpecificat' content', pro ipſo nuper Rege Edwardo ſexto, & hæredibus ſuis, Major' & Communitat', ac Civibus civit' London præd', & ſucceſſoribus ſuis ratificavit & confirmavit, prout per eaſdem literas patent' ejuſdem nuper Regis Edwardi ſexti (inter alia) plenius apparet. Quodque Dom' Maria nuper Regina Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' primo die Martii, anno regni ſui primo, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt pro ipſa nuper Regina, hæred' & ſucceſſoribus ſuis, omnes conceſſiones & al' quæcunque in præd' literis patent' dicti Dom' Regis Johannis ſuperius ſpecificat' content', Majori & Communitat', ac Civibus civitat' London præd', & ſucceſſoribus ſuis ratificavit & confirmavit, prout per eaſdem literas patent' ejuſdem nuper Reginæ (int' al') plenius apparet.

apparet. Quodque Domina Elizabetha nuper Regin' Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' nono die Maii, anno regni ſui quarto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt, pro ipſa nuper Regina Elizabetha, hæred' & ſucceſſoribus ſuis omnes conceſſion', & al' quæcunque in præd' literis patent' dicti Dom' Regis Johann' ſuperius ſpecificat' content', Majori & Communitat', ac Civibus civit' London, & ſucceſſoribus ſuis ratificavit & confirmavit, prout per eaſdem literas patent' ejuſdem nuper Reginæ Elizabeth' (inter alia) plenius apparet. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod Dom' Jacobus nuper Rex Angl', per literas ſuas patentes ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Honorem ſuum de Hampton Court viceſimo quarto die Septembris, anno regni ſui Angl' ſexto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt, recitando, quod cum quamplurim' progenitor' ipſius nuper Regis, quondam Reges Angl', de gratia ſua ſpeciali, ac pro gratis, laudabil', multiplicibus, & continuis ſervitiis per Majorem & Communitat', ac Cives civitat' London, & prædeceſſores ſuos temporibus retroactis fact' & impens', necnon pro diverſis al' urgentibus cauſis & conſiderationibus eos ſeparatim moventibus, dediſſent, conceſſiſſent, & confirmaſſent Majori & Communitati, ac Civibus civitat' London præd', ac ſucceſſoribus ſuis, diverſa libertat', privileg', franc', immunitat', authoritat', juriſdiction', ordinanc', conſuetudin', & quietantias, prout per ſeparal' literas patent' progenitor' & prædeceſſor' ſuor' quondam Regum Angl' plenius & manifeſtius liquebat & apparebat, idem nuper Rex Jacobus pro & in conſideratione ſummæ fidelitat', conſtant', prompt', & laudabil' ſervitii per Majorem & Communitat', ac Cives civitat' London prædict', eidem nuper Regi in ipſis regni ſui primis auſpiciis, & continue uſque tunc manifeſtat', & fideliſſim' fact' & impens', omnes & ſingulas literas patentes, chartas, & confirmation' præclariſſimor' progenitor' & anteceſſor' ſuor', eiſdem Majori & Communitat', ac Civibus civitat' London prædict', & prædeceſſoribus ſuis per quæcunque nomina incorporat' ante tunc tempora fact', conceſs', ſeu confirmat', ac omnes & ſingulas donationes, conceſſiones, confirmation', reſtitution', conſuetudines, ordinationes, & explanationes, articul', & omnes al' res quaſcunque in quibuſcunque literis patentibus, ſive chartis quorumcunque progenitor', prædeceſſor', aut anteceſſor' ſuor' Regum Angl', necnon omnia & ſingula in dictis literis patentibus, chartis, conceſſionibus, confirmationibus, ſeu eor' aliquibus content', recitat', ſpecificat', confirmat', ſeu explanat', ac omnia & ſingula juriſdictiones, authoritates, privilegia, libertates & franchis', quietant', immunitates, liberas conſuetudines, & hæreditament' quæcunque, quæ præd' Major & Communitat', ac Cives civitat' London præd', vel prædeceſſor' ſui, per nomen Majoris & Communitat', ac Civium civitat' London, ſeu per nomen Majoris & Aldermann' civitat' London, ſeu per nomen Majoris, Civium, & Communitat' civitat' London, ſeu per nomen Majoris & Civium civitat' London, ſeu per nomen Major' & Communitat' civitat' London, ſeu per nomen Civium civitat' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod aliud nomen quodcunq', ratione ſeu vigore aliquar' literar' patent', chartar', ſeu confirmation' aliquor' progenitor', prædeceſſor', aut anteceſſor' ejuſdem nuper Regis Jacobi, quondam Regum Angl', aliquo tempore, vel aliquibus temporibus habuiſſent, ſeu rationabilit' uſi fuiſſent, aut exercuiſſent, rata habuit & grata, ac pro ſe, hæredibus & ſucceſſoribus ſuis acceptavit & approbavit, ac ea omnia & ſingula præfat' Majori & Communitat', ac Civibus civitat' London predict', & eor' ſucceſſoribus, per eaſdem literas ſuas patent' ratificavit & confirmavit, habend' & tenend', gaudend' & exercend' omnia & ſingula præmiſſa eiſdem Majori & Communitat', ac Civibus civitat' London prædict', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, ac ſi ſeparatim, ſingulatim, & nominatim in literis patentibus ill' expreſs' nominat', declarat', recitat', & manifeſtat' eſſent & fuiſſent, prout per eaſdem literas patentes (inter alia) plenius apparet. Quodque Dominus Carolus primus nuper Rex Angl', &c. per literas ſuas patentes ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' decimo octavo die Octobris, anno regni ſui quartodecimo, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt, omnia & ſingula privilegia, libertat', franch', quietant', immunitates, & liberas conſuetudines quæcunque, quæ præd' Major & Communitas, ac Cives civitat' London præd', vel prædeceſſor' ſui per nomen Majoris & Communitat', ac Civium civitat' London, ſeu per nomen Majoris & Alderman', Civium & Communitat' London, ſeu per nomen Majoris & Civium civitat' London, ſeu per nomen Majoris & Communitatis civitat' London, ſeu per nomen Civium civitat' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod aliud nomen quodcunque, ratione ſeu vigore præd' literar' patent' præd' Dom' Regis Johannis, aut aliar' literar' patent', chartarum, ſeu confirmation' in eiſdem literis patentibus dicti nuper Regis Caroli primi mentionat', vel uſu, vel præſcription', aut alio legali modo aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabilit' uſi fuiſſent aut exercuiſſent, rata habens & grata ea pro ſe, hæredibus & ſucceſſoribus ſuis acceptavit & approbavit, ac ea omnia & ſingula præfat' Majori & Communitati, ac Civibus London, & eor' ſucceſſoribus, per eaſdem literas ſuas patentes ratificavit & confirmavit, prout per literas patent' illas (inter alia) plenius apparet. Quodque prædictus Dominus Rex nunc per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' prædict' viceſimo quarto die Junii, anno regni ſui decimo quinto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt pro ipſo Rege, hæredibus & ſucceſſoribus ſuis, ratificavit & confirmavit Majori & Communitati, ac Civibus civitat' London, & ſucceſſoribus ſuis, omnia & ſingula juriſdiction', authoritat', privilegia, libertates, franch', quietant', immunitates, & conſuetudin' quæcunque, quæ præfat' Major & Communitas, ac Cives civitat' London, vel prædeceſſores ſui per nomen Majoris & Communitat', ac Civium civitatis London, ſeu per nomen Majoris, Aldermannor', Civium & Communitat' London, ſeu per nomen Majoris & Civium civitatis London, ſeu per nomen Major' & Communitat' civit' London, ſeu per nomen Civium civitat' London, ſeu

ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod aliud nomen quodcunque, ratione vel vigore præd' literar' patent' præd' Dom' Regis Johannis, aut aliarum literar' patent', chartar', ſeu confirmation' in eiſdem literis patentibus dicti Dom' Regis nunc præmentionat', vel alicujus ſeu aliquor' uſus vel uſuum, præſcription' vel præſcription', ſeu alio legali modo quocunque aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabilit' uſi fuiſſent, aut exercuiſſent, habend', tenend', gaudend', & exercend' omnia & ſingula præmiſſa præd' eiſdem Majori & Communitat', ac Civibus civitat' London præd', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, prout in eiſdem literis patentibus ſuperius mentionat' fore data, ſive conceſſa, aut alit' uſu, præſcription', vel alio legali modo ſeu jure quocunque ante tunc reſpective habit', obtent', ſive gaviſa fuiſſent, ac ſi ſeparatim, ſingulatim, & nominatim in & per dictas literas patentes ipſius Dom' Regis nunc expreſs', nominat', declarat', conceſſa & manifeſta eſſent & fuiſſent, prout per eaſdem literas patent' (inter alia) plenius apparet.

Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod a tempore confection' præd' literar' patent' præd' quondam Regis Johannis hucuſque iidem Major & Communitas, ac Cives civitat' London habuer' Vicecom' civit' & com' civit' London, & Vicecom' comitat' Midd', & quolibet anno nominaverunt & elegerunt ex ſeipſis duas perſonas, cives ejuſdem civitat', fore Vicecom' civitat' præd', & com' ejuſdem civitat', & Vicecom' com' Midd', ac ill' ſic nominat' & elect' præfecerunt & conſtituerunt Vicecom' civitat' præd', & com' ejuſdem civitat', & Vicecom' com' Midd', ac ut Vicecom' civitat' præd', & com' ejuſdem civitat', ad execut' & retorn' omnium brevium, billar', & præceptor' Dom' Regis pro adminiſtratione & executione juſtitiæ infra civit' præd', & com' ejuſd' civitat', exequend' & faciend' omnia & ſingula alia infra civitat' præd', & com' ejuſdem civitat', quæ ad offic' Vicecom' faciend' pertinent, ac ut Vicecom' Midd' pro eodem com' deſervitur', ac omnia brevia, billas, & præſcripta Dom' Regis infra com' Midd' præd', pro adminiſtratione & executione juſtitiæ ibidem exequend', & retorn' inde faciend', quæ ad officium Vicecom' faciend' pertinent. Et eo warranto iidem Major & Communitas, ac Cives civitat' London, per tempus in informatione prædicta ſuperius ſpecificat', uſi fuer' & adhuc utunt', ac clamant habere & uti libertat', privileg', & franch' habere Vicecom' civit' & com' civit' London, & Vicecom' comitat' Midd', & nominare & eligere ex ſeipſis duas perſon' fore Vicecom' civitat' præd', & com' ejuſdem civit', & Vicecom' Midd', ac ill' ſic nominat' & elect' præficere & conſtituere Vicecom' civit' præd', & com' ejuſdem civitat', & Vicecom' Midd', ac ut Vicecom' civitat' præd', & com' ejuſdem civitat', ad execut' & retorn' omnium brevium, billar', & præceptor' Dom' Regis pro adminiſtratione & executione juſtitiæ infra civit' præd', & com' ejuſdem civit', exequend' & faciend', quæ ad officium Vicecom' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula alia infra civitat' præd', & com' ejuſdem civitat', quæ ad offic' Vicecom' faciend' pertinent, ac ut Vicecom' Midd' pro eodem com' Midd' deſervitur', ac omnia brevia, billas, & præcepta Dom' Reg' infra com' Midd' præd', pro adminiſtratione & executione juſtitiæ ibidem exequend', & retorn' inde faciend', quæ ad officium Vicecom' faciend' pertinent, prout eis bene licuit & licet.

Abſque hoc, quod iidem Major & Communit', ac Cives civitat' London, de libertat', privileg' & franch' ill' ſuper dictum Dom' Regem nunc, per tempus præd' in informatione prædicta ſuperius ſpecificat', uſurpaver', ſeu uſurpant', prout per inform' illam pro dicto Dom' Rege nunc ſuperius ſupponitur, quæ omnia & ſingula iidem Major & Communitas, ac Cives civit' London, parati ſunt verificare; unde petunt judicium, & quod libertat', privileg', & franch' ill' eis & ſucceſſoribus ſuis in perpetuum deinceps allocent', & adjudicentur, ac quod ipſi, quoad præmiſſa ill', ab hac cur' dimittantur, *&c.*

Et iidem Major & Communitas, & Cives civit' London, quoad libertat', privileg', & franch' ſequend', *viz.* Major dictæ civitat', & hujuſmodi Aldermann' ejuſd' civit', qui officium Majoritat' civit' illius ſuſtinuer', ac inde fuer' dimiſſi, ac tres ſenior' Aldermann' civit' prædict', qui diutius in offic' Aldermanat' civit' præd' ſteter', & onus & officium Majorat' civit' præd' non ſuſtinuer', fore Juſtic' Dom' Regis ad pacem infra civitat' præd' conſervand', ac ad ſeſſion' pacis, & placita coron', ſcilicet, talia placit' coronæ, qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' legitim' tenere poſſent infra eandem civit' tenend', ac ad omnes felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand', in informatione præd' ſuperius ſpecificat' dict', quod dict' Dom' Rex nunc ipſos Majorem & Communitat', ac Cives civitat' London, occaſione inde impetere, ſeu occaſionare non debet, quia dicunt, quod præd' civit' London eſt, & a tempore cujus contrar' memor' homin' non exiſtit, fuit antiqua civitas ac antiquus comitat' de ſe, ac cives ejuſdem civit' ſunt, & a prædicto tempore, cujus contrar' memor' homin' non exiſtit, fuer' unum corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London. Quodque Dom' Carolus primus nuper Rex Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' decimo octavo die Octobris, anno regni ſui quarto decimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, pro ipſo nuper Rege, hæred', & ſucceſſorib' ſuis, conceſſit Majori & Communitat', ac Civibus civit' London, & eor' ſucceſſoribus, quod Major & Recordat' civit' præd', qui tunc fuer', ac Majores & Recordator' civit' præd', qui pro tempore forent, ac tam ill' Aldermann', qui Major' civitat' illius præantea extitiſſent, quam ill' Aldermann', qui onus & officium Majorat' civitat' prædict' tunc in poſterum ſuſtinuerent & gererent, licet a Majorat' ill' ceſſarent, aut inde eſſent dimiſſi, quamdiu Aldermann' ibidem ſtarent, & tres ſeniores Aldermann' civit' pro tempore exiſten', qui diutius in officium Aldermannat' ſteter', & ante tunc onus & officium Majorat' civitat' illius non ſuſtinuer', in perpetuum forent cuſtodes, & quilibet eor' eſſet cuſtos pacis ejuſdem nuper Regis, hæred', & ſucceſſor' ſuorum, infra civitat' London præd', & libertat' ejuſdem conſervand' & cuſtodiend', ac eoſdem Majorem & Recordator', ac Aldermann' præd', ad omnia & ſingula ſtatuta & ordinationes pro bono pacis dicti nuper Regis, hæred'

red' & ſucceſſorum ſuor', ac pro conſervatione ejuſdem, ac pro quiet', regimine, & gubernatione populi ipſius nuper Regis, hæred' & ſucceſſor' ſuor', edit' & edend' in omnib' ſuis articul', tam infra civitat' præd', quam libertat' ejuſdem, juxta vim, formam, & effectum eorundem cuſtodiend', & cuſtodire faciend', ac ad omnes illos, quos juxta formam & effectum ordination' & ſtatutor' eorundem, & eorum alicujus in civitat' prædict', & libertat' ejuſdem, delinquentes invenirent, caſtigand' & puniend', prout ſecundum formam ordination' & ſtatutor' ill' foret faciend'; & ad omnes illos, qui alicui vel aliquibus de populo ejuſdem nuper Regis, hæred', vel ſucceſſor' ſuor' de corporibus ſuis, vel de incendio domor' ſuar' minas facerent, ad ſufficien' ſecuritat' de pace, vel bono geſtu ſuo erga ipſum nuper Regem, hæred' & ſucceſſores ſuos, & cunctum populum ejus, hæred', vel ſucceſſor' ſuor', inveniend', & ſi hujuſmodi ſecuritat' invenire recuſarent, tunc eos in gaola ejuſdem Domin' Regis de Newgate, vel in aliqua al' priſona hæred' vel ſucceſſor' ſuor' in præd' civit' London, quouſque hujuſmodi ſecuritat' invenirent, ſalvo cuſtodiri faciend', Cuſtodes & Juſticiar' ipſius nuper Regis, & quemlibet eorum Cuſtodem & Juſticiar' ejus hæred' & ſucceſſor' ſuor' infra civit' London præd', & libertat' ejuſdem, idem nuper Rex Carolus primus, pro ſe, hæredibus & ſucceſſoribus ſuis, conſtituit, fecit, & ordinavit per literas patentes ſuas præd', ac ad omnia & ſingula alia exequend' & peragend', quæ Juſtic' & Cuſtod' pacis ejus, hæred' vel ſucceſſor' ſuor', infra aliquem com' regni ſui Angl' exequi, ſive peragere valerent, poſſent, aut deberent, virtute aliquor' ſtatutor' & ordination' hujus regni ſui Angl', aut virtute commiſſionis ejus, hæred' & ſucceſſor' ſuor', ad pacem in aliquo hujuſmodi com' conſervand'. Voluit etiam idem nuper Rex Carolus primus, ac per eaſdem literas patentes pro ſe, hæredibus & ſucceſſoribus ſuis, conceſſit præfat' Majori & Communitati, ac Civibus civitat' London, & eorum ſucceſſor', quod Major, Recordator civit' præd' pro tempore exiſten', & hujuſmodi ut præfert', Aldermann' pro tempore exiſten', qui officium vel locum Majorat' civit' illius antea ſuſtinuer' & exercuer', & tres hujuſmodi, ut præfert', ſeniores Aldermann' pro tempore exiſten', qui locum Majorat' prædict' non ſuſtinuer', vel quatuor eorundem, Major', Recordator', & Aldermannorum, quorum dict' Major vel Recordator pro tempore exiſten' unum eſſe voluit, forent Juſticiar' ipſius nuper Regis, hæred' & ſucceſſor' ſuor', & ipſos Juſticiar' ſuos, hæred' & ſucceſſor' ſuor', pro ſe, hæredibus & ſucceſſor' ſuis in perpetuum, aſſignat' ad inquirend', quoties & quando eis melius videret' expedire, per ſacramentum probor' & legalium hominum, tam de civitat' præd', quam de libertat' ejuſdem, per quos rei veritas melius ſciri poſſet de omnibus murdris, felon', veneficiis, incantation', ſcortileg', arte magica, tranſgr', foreſtallar', regretar', ingroſſar', & extortionibus quibuſcunque, ac de omnibus & ſingulis al' malefactis & offenſis, de quibus Juſticiar' pacis ipſius nuper Regis, hæred' & ſucceſſor' ſuor' legitime inquirere poſſent aut deberent, per quoſcunque & qualitercunque infra civit' præd', ſeu libertat' ejuſdem, ante tunc habit' ſeu perpetrat', vel quæ ex tunc ibidem fieri vel attemptari contingerent, & tam de omnibus ill' qui in civitat' præd', & libertat' ejuſdem, in conventiculis, contra pacem ipſius nuper Regis, hæred' & ſucceſſor' ſuor', in perturbatione populi ſui, hæred' & ſucceſſor' ſuor', ſeu vi armata irent vel equitarent, ſeu extunc ire vel equitare præſumerent. Ac etiam de hiis quæ ibidem ad gentem dict' Dom' Regis, hæred', vel ſucceſſor' ſuor' mahemand', vel interficiend' in inſidiis jacerent, vel in poſterum jacere præſumerent. Ac etiam de hoſtellar', & al' omnibus & ſingulis perſon', qui in abuſu menſurar' & ponderum, ſive in venditione victual' contra formam ordination' & ſtatut', vel eor' alicujus inde pro communi utilitate regni ſui Angl', & populi ejuſdem nuper Regis, hæred' & ſucceſſor' ſuor' ejuſdem edit' & edend' delinquerent vel attemptarent in civit' præd', & libertat' ejuſdem, ſeu extunc in poſterum delinquere vel attemptare præſumerent. Ac etiam de quibuſcunque Vicecom', Conſtabular', Cuſtod' gaolæ, & al' offic', qui in execut' officiorum ſuor' circa præmiſſa, vel eor' aliqua indebite ſe habuer', aut in poſterum indebite ſe habere præſumerent, aut tepidi, remiſs', vel negligentes fuer', aut extunc tepidi, remiſs', vel negligent' fore contingerent infra civit' præd' & libertat' ejuſdem, ac de omnibus & ſingulis articulis & circumſtant', & al' quibuſcunque, per quoſcunque & qualitercunque in civit' præd' & libertat' ejuſdem fact' ſive perpetrat', & quæ extunc ibidem fieri, vel attemptari contingerent qualitercunque præmiſs', aut eor' aliqua concernen'. Et ad indictament' quæcunque, quæ coram Majore aut Recordatore civit' præd' pro tempore exiſten', & hujuſmodi, ut præfert', Aldermann', vel quatuor aut pluribus eorundem, quor' dict' Major vel Recordator' pro tempore exiſten' unum eſſe voluit, tunc in poſterum caperent' inſpiciend', & ad proceſs' inde verſus omnes & ſingul' ſic indictat', vel quos in poſterum ſic indictat' contingerent, quouſque caperent', redderent ſe, vel utlagarent' faciend' & continuand', & ad omnia & ſingula murdra, felon', venefic', incantat', ſcortileg', artes magic', tranſgreſs', falſas conſpiration', & al' malefact', foreſtall', regretar', ingroſſar', extortion, conventicul', indictament' præd', cæteraque omnia & ſingula præmiſs' ſecund' leges & ſtatut' regni ſui Angl', prout in hujuſmodi caſu fieri conſuevit aut debuit, audiend' & terminand', & ad eaſdem delinquen', & quamlibet eorum, pro delictis ſuis per fines, redemption', amerciament', forisfactur', aut al' modo, prout ſecundum legem & conſuetud' regni ſui Angl', ac formam ordination' & ſtatut' eorundem fieri conſuevit aut debuit, caſtigand' & puniend', ac ad omnia al' & ſingula faciend', exercend', audiend', terminand', & exequend' infra civit' præd', ac libertat' ejuſdem, quæ Juſtic' ad pacem per leges vel ſtatut' hujus regni ſui Angl' facere, exercere, inquirere, vel exequi poſſent & valerent, & in tam amplis modo & forma, prout aliquis al', aut aliqui al' Juſtic' ad pacem in aliquibus al' com' hujus regni ſui Angl' legitime facere, exercere, inquirere, punire, vel quoquo modo exequi poſſent aut valerent, prout per eaſdem literas patent' (int' al') plenius apparet. Quodque præd' Dom' Rex nunc, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' prædict' 24° die Junii, anno regni ſui decimo quinto, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, omnes conceſſion' & al' quæcunque in prædict' literis patent' prædict' nuper Regis Caroli primi ſuperius ſpecificat', pro eodem Domin' Regis nunc, hæred' & ſucceſſor' ſuis, Majori & Communitat', ac Civibus civit' London præd',

præd', & ſuor' ſucceſſor' in perpetuum, ratificavit & confirmavit, prout per eaſdem literas patent' ipſius Domin' Regis nunc (inter al') plenius apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod tempore confection' præd' literar' patent' præd' nuper Regis Caroli primi, & diu antea, & extunc hucuſque fuer', & adhuc exiſtunt Major & Recordator civit' præd', ac Alderman' ejuſdem civit', qui Major dictæ civit' extitiſſent, & onus Majorat' civit' illius ſuſtin', ac tres & plures al' Alderman' ejuſdem civit', qui onus Majorat' civit' ill' non ſuſtinuiſſent. Quodque a tempore confection' earundem literar' patent' præd' nuper Reg' Caroli primi hucuſq', Major & Recordator civit' præd' pro tempore exiſten', ac hujuſmodi Alderman' ejuſd' civitat' pro tempore exiſten', qui onus Majorat' civit' ill' ſuſtin', necnon tres ſenior' Alderman' civit' præd' pro tempore exiſten', qui diutius in officium Aldermannat' civit' præd' ſteter', & onus & officium Majorat' civit' ill' non ſuſtin', virtute literar' patent' ill' fuer' Juſtic' ad pacem infra civit' præd', & libertat' ejuſdem conſervand', ac virtute literar' patent' ill', & ſecundum formam & effectum eorund' de tempore in tempus, per tot' tempus ill', tenuer' ſeſſion' pacis, & placita coron', ſcilicet, talia placita coron', qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' per idem tempus legitime tenuer', vel tenere potuer' infra eandem civitat'.

Et eo warranto iidem Major & Communitas, ac Cives civitat' London, per tempus in informatione præd' ſuperius ſpecificat' uſi fuer', & adhuc utuntur, ac clamant habere & uti libertat', privileg', & franch', quod Major dict' civit', & hujuſmodi Aldermann' ejuſdem civit', qui onus Majorat' civit' ill' ſuſtinuer', ac inde fuerunt dimiſſi, ac tres ſeniores Aldermann' ejuſdem civit', qui diutius in offic' Aldermannat' civit' præd' ſteter', & onus & officium Majorat' civit' ill' non ſuſtinuer', fuer' Juſtic' dicti Dom' Regis ad pacem infra civit' præd' conſervand', ac ad ſeſſion' pacis, & placita coronæ, ſcilicet, talia placita coron', qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' legitime tenere poſſent, infra eand' civit' tenend', ac ad omnes felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand', prout eis bene licuit & licet.

Abſque hoc, quod iidem Major ac Communitas, ac Cives civit' London, de libertat', privileg', & franchis' ill' ſuper dictum Dom' Regem nunc, per tempus præd' in informatione præd' ſuperius ſpecificat' uſurpaver', ſeu uſurpant, prout per inform' illam pro dicto Dom' Rege nunc ſuperius ſupponit'; quæ omn' & ſingula iidem Major & Communitas, ac Cives civit' London parati ſunt verificare; unde petunt judicium, & quod libertat', privileg', & franch' ill', eis & ſucceſſoribus ſuis in perpetuum deinceps allocentur & adjudicent', ac quod ipſi quoad præmiſſa illa ab hac curia dimittantur, &c.

Et quoad reſid' libertat', privileg', & franch' in information' prædict' ſpecificat', per ipſos Majorem & Communitat', ac Cives civitat' London ſuperius minime clamat', iidem Major & Communitas, ac Cives civit' London libertat', privileg', & franch' illis nunquam uſi fuerunt, ſeu utuntur, ſed de eiſdem penitus declamant, &c.

Et præd' Robertus Sawyer Attorn' dicti Dom' Regis nunc General', qui pro eod' Dom' Rege in hac parte ſequitur, habito auditu placiti præd' præfat' Majoris & Communitat', ac Civium civit' præd' petit inde diem loquendi uſq; craſtinum Sanctæ Trinitat'; & ei conceditur coram Dom' Rege ubicunque, &c. Idem dies dat' eſt præd' Majori & Communitat', ac Civib' civit' London præd', &c. Ad quod quidem craſtinum Sanctæ Trinitat' coram Dom' Rege apud Weſtm' ven' tam præd' Robertus Sawyer Miles Attorn' Dom' Regis nunc General', qui pro eodem Dom' Rege in hac parte ſequitur, quam præd' Major & Communitas, ac Cives civit' præd' per Attorn' ſuum præd'. Et idem Attorn' dicti Dom' Regis nunc General', quoad libertat', privileg', & franch' præd', per ipſos ſuperius clamat' (viz.) ipſos Majorem & Communitat', ac Cives civitat' London fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi, ſuperius placitat' pro eodem Dom' Rege nunc dic' quod per aliqua per præfat' Majorem & Communitat', ac Cives civitat' London præd' ſuperius placitando allegat', eadem libertat', privileg', & franch' eiſdem Majori & Communitat', ac Civibus civitat' London præd' allocari, ſeu adjudicari non debent; nec iidem Major & Communitas, ac Cives de premiſs' in Informac' præd' ſuperius ſpecifiat' exonerari debent, quia dic', quod Cives civit' London præd' a tempore cujus contrar' memor' homin' non exiſtit, non fuer' corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, modo & forma prout prefat' Major & Communitas ac Cives civit' London præd' ſuperius placitando allegaver'. Et hoc idem Attorn' dict' Dom' Regis nunc General' pro eodem Dom' Rege nunc pet', quod inquiratur per patriam. Et præd' Major & Communitas, & Cives civit' London præd' ſcilicet, &c. Et præd' Attorn' dict' Dom. Regis nunc General', quoad placitum præfat' Majoris & Communitat', ac Civium civit' London præd', quoad libertat', privileg', & franchis' præd' per ipſos ſuperius clamat' (viz.) ipſos Majorem & Communitat' ac Cives civit' London fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi ſuperius placitat', ulterius dic' quod per aliqua per præfat' Majorem & Communitat', ac Cives civit' London præd' ſuperius placitando allegat' eadem libertat', privileg', & franchiſ. eiſdem Majori & Communitat', ac Civibus civit' London præd' allocari, ſeu adjudicari non debent, nec iidem Major & Communitas, ac Cives de premiſs' in Informatione præd' ſuperius ſpecificat', exonerari debent; quia proteſtando, quod Cives ejuſdem civitat', a tempore cujus contrar' memor' homin' non exiſtit, non fuer' corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitatis, ac Civium civit' London, ac per idem nomen per totum tempus illud placitaver', ac implacitat' fuerunt, reſponder' ac reſpons' fuer', & placitare & implacitari, reſpondere ac reſponderi, a toto tempore ſupradict' uſi fuer' & conſuever', prout præd' Major & Communitas, ac Cives civit' London præd' ſuperius placitando allegaverunt: pro placito tamen idem Attorn' dict' Dom' Regis nunc General' pro eodem Dom' Rege

ge nunc ulterius dic', quod præd' Major & Communitas, ac Cives civit' London præd' aſſumentes ſuper ſe fore corpus corporat' & politicum, ac ratione inde poteſtatem & authoritatem, habere ad ſeipſos inſimul convocand' & aſſembland' ad bona & ſalubria leges, ordines, & ordinat', legibus & ſtatutis hujus Regni Angl' minime repugnan' ſive contrar', faciend' & conſtituend' pro meliori regim' & gubernat' Civit' præd', ac civium & inhabitant' ejuſdem civitat', ac pro conſervat' pacis Dom' Regis infra civit' præd', iidem Major & Communitas, ac Cives civit' London præd', ſub colore & prætextu inde, eorum privatum lucrum & commodum ſolum reſpicien', contra fiduciam in corpore corporato & politico per Dom' Regem & Leges hujus Regni Angl' repoſit', aſſumpſer' illicitam & injuſtam poteſtatem & authoritat', ad denar' de ſubdit' ac ligeis Dom' Regis nunc levand' ad uſum ipſorum Majoris & Communitat' ac Civium civitat' London præd' propr', colore legum ſive ordination' per ipſos de facto ordinat' & ſtabilit', abſq; aliquo alio jure, titulo, ſive authoritate quibuſcunq; ac in proſecution' & execution' hujuſmodi illegalis & injuſtæ poteſtat' & authoritat' per ipſos ſic uſurpat', iidem Major & Communitas, ac Cives civitat' London præd', die Jovis decimo ſeptimo die Septembris, Anno Regni dict' Dom' Regis nunc viceſimo ſexto, in eorum Communi Concilio adtunc tent', in Camera Guildhall civit' London præd' (viz.) in Paroch' Sancti Michaelis Baſſiſhaw London inſimul aſſemblat' fuer', condider' & publicaver' quandam Legem, per ipſos de facto inactitat', pro levatione ſeparalium denar' ſummar' de omnibus ſubdit' ac Ligeis Dom' Regis nunc, tam liberis quam non liberis hominibus Civit' præd', & aliis extraneis ad publica Mercata infra Civitat' præd' tent' acceden' cum victual' & proviſionibus ſuis ibidem vendend' (viz.) de qualibet perſona pro quolibet onere equino (Angl' *Horſeload*) proviſion' in aliquod public' Mercat' infra Civit' præd' per ipſum importat' ibidem vendend', duorum denar' per diem, & pro qualibet caniſtra (Angl' *Doſſer*) proviſion' in aliquod Mercat' præd' ibidem vendend' importat' unius denar' per diem, & pro qualibet carectata proviſion' tract' cum non plur' quam tribus equis in aliquod Mercat' præd' ibidem vendend' importat', quatuor denar' per diem, & pro qualibet carectata proviſion' tract' cum quatuor equis vel plur' in aliquod Mercat' præd ibidem vendend' importat' ſex denar' per diem, ac diverſarum al' denar' ſum' de quibuſlibet perſonis, quæ aliqua victualia ſive proviſion' ad Mercat' infra' civit' London præd', ſeu eorum aliqua vel aliquod importarent ibidem vendend', ac per eandem legem ſic per eos illegalit' fact' iidem Major & Communit' ac Cives civit' London præd' de facto ordinaver', quod eædem ſeparal' denar' ſummæ ſolut' forent ad propr' opus & uſum præfat' Majoris & Communitat', ac Civium civit' London præd', ac quod ſi aliquis in Mercat' præd' exiſten' cum victual' ſive proviſionibus ſuis ibidem vendend' recuſaret, ſive differret ſolvere reſpectivas ratas præd', tunc talis recuſans ſive differrens amot' foret a loco ſuo Mercat' præd'. Et ulterius idem Attorn' dict' Dom' Regis nunc General' pro eodem Dom' Rege nunc dic', quod præd' Major & Communitas, ac Cives civit' London præd' ſub ſolo colore & prætextu legis præd', ſic per ipſos pro eorum privato lucro & commodo illegalit' fact', & abſq; aliquo alio jure, titulo, ſive authoritate quibuſcunq; diverſas ingentes denar' Summas, in toto ſc. attingen' ad quinq; mille libras per annum, per ſpatium ſeptem annorum poſt præd' decimum ſeptimum diem Septembris, Anno viceſimo ſexto ſupradicto prox' ſequen', & amplius, apud London præd' in Paroch' præd', de omnibus Dom' Regis ligeis & ſubditis ad publica Mercata per totum ſpatium præd' infra Civit' præd' tent', cum victualibus & proviſionibus ibidem vendend' accedentibus, exegerunt, levaver', & exigi & levari fecerunt, & denarios illos ad eorum proprios uſus converterunt & diſpoſuerunt, in ſubverſionem boni regiminis & gubernationis Civitatis præd', & in magnam oppreſſionem & depauperation' ſubditor' dic' Dom' Regis nunc ad Mercat' prædi t' cum victualibus & proviſion' ſuis acceden' & venien', ad grave dampn' & nocument' omnium Ligeorum & Subdit' dict' Dom' Regis, in augmentac' preciorum omnium victual' & proviſion' in Mercatis præd' vendit', ac in dict' Dom' Regis nunc & Coronæ ſuæ Regiæ exhæredation' manifeſtam, ac contra fiduciam in corpore corporat' & politico per Dom' Regem ac Leges hujus Regni Angl' repoſit'. Et ulterius idem Attorn' dicti Dom' Regis nunc General' pro eodem Dom' Rege nunc dic', quod ubi Seſſio Parliamenti Dom' Regis nunc per Prorogation' tent' fuit apud Weſtm' in Com' Middleſex ſuper viceſimum primum diem Octobris, anno Regni dicti Dom' Regis nunc triceſimo ſecundo, ac ibidem continuat' uſq; decimum diem Januar' tunc prox' ſequen', ac ſuper eodem decimo die Januarii, anno Regni dict' Dom' Regis nunc triceſimo ſecundo ſupradict' apud Weſtminſt' præd' idem Parliamentum prorogat' fuit per dict' Dom' Regem nunc uſq; viceſimum diem tunc inſtantis Januar', præd' Major & Communitas, ac Cives civitat' London præd' poſtea ſcil' die Jovis decimo tertio die Januar' anno Regni dict' Dom' Regis nunc triceſimo ſecundo ſupradict', in eorum Communi Concilio tent' in Camera Guildhall Civit' præd', viz. in Paroch' Sancti Michaelis Baſſiſhaw London præd' aſſemblat', illicite, malitioſe, adviſate, & ſeditioſe, & abſq; aliqua legali authoritate in ſe aſſumpſer' ad cenſend' & judicand' dict' Dom' Regem nunc, & Prorogation' Parliamenti per dict' Dom' Regem nunc ſic fact. Ac adtunc & ibidem iidem Major & Communitas ac Cives civitat' London, ſic in eodem Communi Concilio aſſemblat', vota & ſuffragia ſua deder' & ordinaver', quod quædam Petitio ſub nomine Majoris, Aldermannorum & Commun' civit' London, in Communi Concil' aſſemblat', dicto Dom' Regi nunc exhibit' foret, in qua quidem Petitione content' fuit, quod per præd' prorogation' Parliamenti præd' proſecutio Juſtic' publicæ hujus Regni ac præparatio (Angl' *the making proviſion*) neceſſar' pro præſervation' dicti Dom' Regis nunc, ac ejus ſubditorum proteſtantium recepiſſent obſtruction' (Angl' *Interruption*) & iidem Major & Communitas ac Cives civitat' London, præd', in Communi Concilio præd', ſicut præfertur, aſſemblat', illicite, malitioſe, adviſate, & ſeditioſe, & ea intentione, quod eadem Petitio publicat' & diſperſa foret inter ſubditos dict' Dom' Regis nunc fideles ad ipſos in opinion' inducend', quod idem Dom' Rex nunc per prorogation' Parliamenti præd' publicam Juſtic' Regni obſtruxiſſet, & ad eoſdem Subditos dict' Dom' Regis incitand' in odium perſonæ dict' Dom' Regis, & gubernation' in hoc regno ſtabilit', & ad perturband' pacem & tranquillitat' in hoc Regno Angl' adtunc & ibidem ordinaver', quod eadem Petitio ſic continen' ſeditioſam & ſcandaloſam

ſcandaloſam materiam præd' impreſs' foret, ac poſtea ſcil' die & anno ult' ſupradict', apud London præd' in Paroch' præd' eandem Petition' ea intentione, quod eadem publicat' & diſpers' foret inter ſubdit' dict' Dom' Regis nunc ad affectiones ſuas a dict' Dom' Rege nunc & gubernation' ſua alienand' & divertend', malitioſe, adviſate, & ſeditioſe, impreſſer' & imprimi & publicari fecer' & cauſaver', in contempt' & ſcandalum dict' Dom' Regis nunc ac gubernation' ſuæ hujus Regni Angl', ac in promotion' & excitation' ſeditionis, & perturbation' pacis & tranquillitat' infra hoc Regnum Angl', & in pernitioſum aliorum Dom' Regis nunc Subdit' & Ligeorum exemplum, per quod idem Major & Communitas ac Cives civitat' London præd' libertat', privileg', & franchis', præd' fore de ſeipſis corpus corporat' & politicum, per nomen Majoris & Communitat' ac Civium civitat' London forisfecer', præd' tamen Major & Communitas ac Cives civitat' London præd' poſtea, ſcil' per tempus ſuperius in Informatione præd' ſpecificat', libertat', privileg' & franchis' ill' ſuper dict' Dom' Regem nunc uſurpaver' & adhuc uſurpant, prout per Information' præd' ſuperius verſus eos ſupponitur. Et hoc idem Attorn' dict' Dom' Regis nunc General' pro eodem Dom' Rege nunc parat' eſt verificare, unde petit judicium, & quod præd' Major & Communitas ac Cives civitat' London de præmiſs' præd' convincantur, ac de libertat', privileg' & franchis' ill' abjudicentur & excludantur, &c. Et quoad placitum præfat' Majoris & Communitat' ac Civium civitat' London præd', quoad libertat', privileg' & franchis' præd per ipſos ſuperius clamat' (viz.) ipſos habere Vicecom' Civit' & Com' civit' London, & Vicecom' Com' Midd', & nominare & eligere ex ſeipſis duas perſonas fore Vicecom' Civit' præd', & Com' ejuſdem Civit', & Vicecom' Com' Midd', ac illos ſic nominat' & elect' præficere & conſtituere Vic' Civit' præd' & Com' ejuſdem Civit', & Vic' Com' Midd', ac ut Vicecom' Civitat' præd' & Com' ejuſdem Civitat' ad execution' & retorn' omnium brevium, billarum & præcept' Dom' Regis pro Adminiſtration' & Execution' Juſticiæ infra Civit' præd' & Com' ejuſdem Civit', exequend' & faciend' quæ ad Officium Vic' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula alia infra Civit' præd' & Com' ejuſdem Civit', quæ ad Officium Vicecom' faciend' pertinent, ac Vicecom' Com' Middleſex pro eod' Com' deſervitur', ac omnia brevia, billas, & præcept' Dom' Regis infra Com' Middleſex præd' pro Adminiſtratione & Executione Juſticiæ ibidem exequend' & retorn' inde faciend', quæ ad officium Vic' faciend' pertinent, ſuperius placitat' : Necnon quoad placitum præfat' Majoris & Communitat' ac Civium civitat' London præd', quoad libertat', privileg' & franchis' per ipſos ſuperius clamat' (viz.) Major dict' Civitat' & hujuſmodi Alderman' ejuſdem Civitat', qui Officium Majorat' Civit' illius ſuſtinuer', ac inde fuer' dimiſſi, ac tres Alderman' ſen' Civit' præd', qui diutius in officio Alderman' Civit' præd' ſteter', & onus & officium Majorat' Civit' præd' non ſuſtinuer', fore juſticiar' Dom' Regis ad pacem infra Civit' præd' conſervandam, ac ad Seſſion' pacis & placita Coronæ (ſcilicet) talia placita Coronæ, qual' Juſticiar' Dom' Regis ad pacem conſervand' aſſign' legitime tenere poſſent, infra eandem Civitat' tenend', ac ad omnia Felon', Riot', Rout' & Conventicul' illicit' infra Civitat, præd' inquirend', audiend', & terminand' ſuperius placitat', idem Attorn' Dom' Regis nunc General', qui pro eodem Dom' Rege in hac parte ſequitur, pet' licenc' inde interloquend' coram Dom' Rege uſq; a die Sancti Michaelis in tres ſeptimanas ubicunq; &c. Et ei conceditur, &c. idem dies dat' eſt præfat' Major' & Communitat' ac Civibus civit' London præd', &c.

Et præd' Major & Communitas, ac Cives civitat' London, quoad præd' placit' præd' Attorn' dicti Dom' Regis nunc generalis, in aſſign' forisfactur' libertat, privileg', & franchis' ſequen', videlicet, ipſos Majorem & Communitat', ac Cives civitat' London, fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi, per ipſos ſuperius clamat', ſuperius replicando placitat' proteſtando, quod placit' illud, ac materia in eodem content', minus ſufficien' in lege exiſtunt ad ipſos Major' & Communitat', ac Cives civitat' London, de libertat', privileg', & franchis' illis abjudicand' ſive excludend'; proteſtando etiam, quod nullus actus vel factum, neque aliqua ordinatio (Angl' *By-Law*) per Commune Concilium, vel per Majorem, Aldermannos, & Commune Concilium civitat' præd' confect', eſt actus vel factum corporis corporat' & politici præd'; proteſtandoq; etiam, quod ipſi præd' Major & Communitas, ac Cives civitat' London, contra fiduciam in eis repoſit', nunquam aſſumpſer' ſuper ſe aliquam illicitam vel injuſtam poteſtatem, ad denar' de ſubditis & ligeis Domini Regis levand' ad privat' lucrum & commodum ipſor' Majoris & Communitat', ac Civium civitat' London, colore legum ſive ordinationum per ipſos fact' ſive ordinat', prout præd' Attorn' dicti Dom' Regis nunc generalis, pro eodem Dom' Rege ſuperius ſuppon'; proteſtandoque ulterius, quod iidem Major & Communitas, ac Cives civitat' London non levaver' ſeu exeger' tantas denar' ſummas per annum, de perſonis ad publica mercata infra civitat' præd' tent', cum victualibus & proviſionibus ibidem venden' acceden', quant' dictus Attorn' generalis pro eodem Domino Rege ſuperius allegavit. Pro placito tamen, quoad confection' & publication' legis pro levatione denarior' de perſonis ad publica mercata infra civitat' præd' tent', cum victualibus & proviſionibus ibidem venden' acceden', ac exactionem & levation' hujuſmodi denar' ſuperius fieri ſuppoſit', iidem Major & Communitas, ac Cives civitat' London dicunt, quod Civitas London præd' eſt, & a tempore cujus contrar' memoria hominum non exiſtit, fuit ſumma & capitalis civitas & metropolis, ac principalis portus hujus regni Angl', & in civibus & inhabitantibus maxime populoſa, & in concurſu hominum tam ligeor' Dom' Regis, quam extraneor' copioſiſſima, emporiumque totius Europæ celeberrimum; quodq' habentur & tenentur, & a tempore cujus contrar' memoria hominum non exiſtit, habebantur & tenebantur publica mercata infra civitat' præd' pro victualibus & proviſionibus adinde adduct' ibidem vendend'; quodque ipſi præd' Major & Communitas, ac Cives civitat' London præd', decimo ſeptimo die Septembris, anno viceſimo ſexto ſupradicto in replicatione præd' mentionat', necnon continue poſtea, & a tempore cujus contrar' memoria hominum non exiſtit, ſeizit' fuer', & adhuc ſeizit' exiſtunt, de & in publicis mercatis præd' in

Dom'

Dom' ſuo, ut de feodo, ac per totum idem tempus ſumptibus ſuis propriis provider', ac providere conſuever' & debuerunt, fora mercatoria, ſive loca ubi hujuſmodi mercata tent' fuer', quotieſcunque neceſſe fuit, & ſtallas, ſtationes, & al' accommodationes pro perſonis ad eadem mercata venien' cum victualibus & proviſionibus ibidem vendend', pro meliori & magis convenien' venditione & expoſitione eorundem, & ſuperviſores, & alios officiarios mercatorum illorum, pro præſervatione boni ordinis in eiſdem mercatis, & meliori regulatione eorundem, & magni concurſus populi adinde confluen', ac emundaverunt, & emundare conſueverunt & debuerunt, fora mercatoria prædicta, & pro ſuſtentatione dictorum ſumptuum ſuorum per totum tempus prædictum habuer' & perceper', ac habere & percipere conſuever', diverſas rationabiles tolnet', ratas, ſive denariorum ſummas de quibuſcunque perſonis ad mercata præd', ſicut præfertur, venien', pro ſtallis, ſtationibus, & aliis accommodationibus per eas pro venditione, expoſitione hujuſmodi victualium & proviſionum in mercatis illis habit'. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod cives & liberi homines civitatis præd', prædicto decimo ſeptimo die Septembris, anno viceſimo ſexto ſupradicto, & ſemper fuer', & adhuc exiſtunt valde numeroſi, videlicet, quinquaginta mille homines, & plur'; quodque infra dictam civitat' London, videlicet, apud præd' Parochiam ſancti Michaelis Baſſiſhaw, a tempore cujus contrar' memoria hominum non exiſtit, habebatur & fuit Commune Concilium ejuſdem civitatis, de tempore in tempus, quoties neceſſe fuit, in eadem civitate aſſemblat', conſiſtens de Majore & Alderman' dictæ civitatis pro tempore exiſten', ac de quibuſdam Civibus exiſten' liberis hominibus civitatis illius, non exceden' numerum ducentar' & quinquagintar' perſonarum, e civibus & liberis hominibus civitat' præd' annuatim elect', fore de Communi Concilio illo, qui quidem Cives ſic elect' in hujuſmodi Communi Concilio vocantur Communiarii (Angl' *Commons*) civitat' London. Quodque infra civitat' præd', videlicet, apud præd' parochiam ſancti Michaelis Baſſiſhaw, habetur & exiſtit, & a tempore cujus contrar' memoria hominum non exiſtit, habebatur & fuit talis conſuetudo uſitat' & approbat', videlicet, quod Major & Alderman' dict' civit', ac hujuſmodi Cives ſic elect' fore de Com' Conc' ejuſdem civitatis pro tempore exiſten', in Communi Concilio ſuo infra civitat' ill' aſſemblat', a toto tempore ſupradicto, ſecundum conſuetudinem civitat' præd', fecer' & conſtituer', ac facere & conſtituere conſuever' & poſſunt, ac potuer', leges & ordinationes pro meliori regulatione & gubernatione publicor' mercator' infra civitat' præd', ac pro appunctuatione convenien' locor' & tempor', quando & ubi infra eandem civitat' mercata illa tent' fuerint, & pro aſſeſſione, & in certitudin' reductione rationabilium tolnet', ratar', ſive denar' ſummarum ſolvend' per perſonas ad eadem mercata venien', pro ſtallis, ſtationibus, & aliis accommodationibus per eas pro venditione, expoſitione victualium & proviſionum in mercatis illis habit', quoties & quando eis videbitur expediri; dum tamen leges & ordinationes hujuſmodi Dom' Regi & populo ſuo ſint bonæ fidei, & rationi conſonæ, ac legibus & ſtatut' hujus regni Angl' minime contrar'. Quodque in Magna Charta de libertatibus Angl', in parliamento Dom' Henrici quondam Regis Angl' tertii, apud Weſtm' in Com' Middleſex, anno regni ſui nono tent', edit' & proviſ', continetur, quod civitas London habeat omnes libertates ſuas antiquas, & conſuetudines ſuas; & iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod Dom' Edwardus quondam Rex Angl' tertius, in parliamento ſuo apud Weſtm' in com' Midd', anno regni ſui primo tent', per quandam chartam ſuam de aſſenſu Prælator', Comitum, Baronum, ac totius Communitatis regni ſui, in eodem parliamento ſuo apud Weſtm' præd' convocat' exiſten', ac authoritate ejuſdem parliamenti, confirmavit tunc Civibus civitat' London præd' libertates ſubſequen' (inter alia) habend' ſibi & ſucceſſoribus ſuis in perpet', imprimis recitando, quod cum in Magna Charta de libertatibus Angl' contineatur, quod civitas London habeat omnes libertates ſuas antiquas, & conſuetudines ſuas, & quod iidem Cives tempore confectionis dictæ chartæ, ac temporibus ſancti Edwardi Regis & Confeſſoris, & Will' Conqueſtoris, & al' progenitor' dicti Regis Edwardi tertii, diverſas libertates & conſuetudines, tam per chartas ipſor' progenitorum ſuorum, quam ſine chartis ex antiqua conſuetudine habuiſſent, voluit & conceſſit idem Rex Edwardus tertius pro ſe, & hæredibus ſuis per chartam ill', authoritate præd', quod iidem Cives haberent libertates ſuas ſecundum formam Magnæ Chartæ ſupradict', prout per eandem chartam geren' dat' apud Weſtm' præd' ſexto die Martii, anno regni dicti Regis Edwardi tertii primo ſupradicto, ſub magno ſigillo ſuo Angl' ſigillat', hic in cur' prolat' (inter alia) plenius apparet. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod ad inſtant' & requiſitionem Communitatis regni Angl' in parliamento Dom' Richardi nuper Regis Angl' ſecundi poſt Conqueſt', apud Weſtm' præd' anno regni ſui ſeptimo tent', aſſemblat' pro majori quiete & pace inter ligeos ejuſdem nuper Regis fovend', & pro bono publico, omnes conſuetudines, libertates, privileg', & franchis' civitat' præd' tunc Civibus civitat' præd', & eorum ſucceſſoribus, authoritate ejuſdem parliamenti ratificat' & confirmat' fuer'. Quodque prædictus Dominus Rex nunc, per literas ſuas patentes ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo quarto die Junii, anno regni ſui decimo quinto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt pro ipſo Rege, hæred' & ſucceſſoribus ſuis, ratificavit & confirmavit Majori & Communitati, ac Civibus civitat' London, & ſucceſſoribus ſuis, omnia & ſingula juriſdictiones, authoritat', privileg', libertates, franchis', quietantias, immunitates, & conſuetudines quæcunque, quæ præfat' Major & Communitas, ac Cives civitat' London, vel prædeceſſores ſui, per nomen Majoris & Communitat', ac Civium civitat' London, ſeu per nomen Majoris, Alderman', Civium & Communitat' London, ſeu per nomen Majoris & Civium civitat' London, ſeu per nomen Major' & Communitat' civitat' London, ſeu per nomen Civium civitat' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod aliud nomen quodcunque, ratione vel vigore literar' patent', chartar', ſeu confirmation' in eiſdem literis patentibus dicti Dom' Regis nunc præmentionat', vel alicujus ſeu aliquor' uſus vel uſuum, præſcriptionis vel præſcriptionum, ſeu alio legali modo quocunque,

que, aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabilit' uſi fuiſſent, aut exercuiſſent, habend', tenend', gaudend', & exercend' omnia & ſingula præmiſs' præd' eiſdem Majori & Communitati, ac Civibus civitat' London præd', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, prout in iiſdem literis patentibus ſuperius mentionantur fore data ſive conceſſa, aut aliter uſu, præſcript', vel alio legali modo, ſeu jure quocunque ante tunc reſpective habit', obtent', ſive gaviſa fuiſſent, ac ſi ſeparatim, ſingulatim, & nominatim in & per dictas literas patentes ipſius Dom' Regis nunc expreſs', nominat', declarat', conceſs', & manifeſta eſſent & fuiſſent, prout per eaſdem literas patentes (inter alia) plenius apparet. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod poſt magnam illam conflagration' maximæ partis civitat' London præd', quæ fuit in menſe Septembris, anno Dom' milleſimo ſexcenteſimo ſexageſimo ſexto, ac alteration' in civit' & mercat' præd' perinde occaſionat', diverſæ controverſiæ, & quæſtiones ortæ fuer' infra eandem civitat' de & concernen' ſtabilition' publicorum mercator' infra civit' ill', & denar' ſummar' per ligeos Dom' Regis pro victualibus & proviſionibus in mercatis illis venditioni expoſit' ſolubil', ac ſuperinde præd' die Jovis decimo ſeptimo die Septembris, anno regni dicti Dom' Regis nunc viceſimo ſexto ſupradicto, quidam Will' Hooker Miles, tunc Major civitat' præd' & Alderman' dictæ civitat', ac Communiarii, ſive Cives de Communi Concilio ejuſdem civitatis, tunc exiſten' in Communi Concilio ſuo infra eandem civitat' (ſcil' in præd' camera Guildhall civitatis illius, ſituat' in præd' parochia ſancti Michaelis Baſſiſhaw) ad tunc aſſemblat' ſecundum conſuetudinem dictæ civitat', ac authoritate ejuſdem Communis Concilii, fecer', conſtituer', & publicaver' quendam actum, ſive ordination' pro meliori regulatione & gubernatione publicorum mercator' infra civitat' præd' tent', intitulat', *An Act for the Settlement and well ordering of the ſeveral publick Markets within the City of London*; per quem quidem actum, ſive ordination' (inter alia) recitando, quod cum pro accommodation' populi mercat' (Angl' *of Market People*) cum ſtallis, aſſeribus, tectur' (Angl' *Shelter*) & aliis hujuſmodi rebus neceſſariis, pro eor' ſtationibus in aliquibus mercat' infra civitat' ill', ac pro emundand', paviend', eſcurand', & munda cuſtodiend' eadem, ac etiam pro ſuſtinendo (Angl' *defraying*) inciden' onera reparationis & manutentionis dictorum mercator', & ſimiliter ad gratificand' & munerand' curam & attendentiam talium perſonarum, qual' forent occupat' in eiſdem, quædam rationabiles ratæ pro dict' accommodationibus & oneribus ſemper ſolut' fuiſſent; & ad intentionem quod dictæ ratæ forent certe & publice factæ omni populo mercatorio (Angl' *Market People*) per quod perſonæ, quæ extunc per ordinem illius cur' Com' Concilii occupat' forent, tanquam collectores vel receptores earundem ratar', prævenirentur a demandando, exigendo, ſeu recipiendo plus quam allocat' fuit per actum ſive ordination' ill', ordinat' & inactitat' fuit authoritate ejuſdem Com' Concilii (inter alia) quod omnes & quælibet perſona & perſonæ, ad aliquod dict' mercator' accedend' ad commoditates ſuas vendend' & utterand', extunc ſolverent tali perſonæ ſeu perſonis, quales fuer' vel forent de tempore in tempus appunctuat' ad capiend' & recipiend' proficua omnium, vel aliquor' dictor' mercator', ad uſum Majoris & Communitat', ac Civium civitat' London, de & ab omni populo mercatorio adinde acceden', pro ſtallis, ſtationibus, & aliis accommodationibus ſuis in ſeparal' mercatis præd', ut præfertur, ſecundum ratas ſequen', & non amplius; videl', pro qualibet ſtalla ſive ſtation' de longitudine octo pedum, & latitudine quatuor pedum, pro venditione carnis aut piſcis, duos ſolid' & ſex denar' per ſeptimanam; pro qualibet ſtalla ſive ſtatione de longitudine ſex pedum, & latitudine quatuor pedum, duos ſolid' per ſeptiman'; pro qualibet ſtalla ſive ſtatione de longitudine ſex vel octo pedum, & latitudine quatuor pedum, pro aliis commoditatibus, tres denar' per diem; pro quolibet onere equino proviſion' non ſuper ſtallas, vel ſub publica tectur' (Angl' *Shelter*) duos denar' per diem; pro qualibet caniſtra (Angl' *Doſſer*) conſimilis proviſion', un' denar' per diem; pro qual' carectat' tract' cum non plur' quam tribus equis, quatuor denar' per diem; & pro qualibet carectat' tract' cum quat' equis vel pluribus, ſex denar' per diem. Ac ulterius ordinat' & inactitat' fuit dicta authoritate, quod collectores aut receptores appunctuat' vel appunctuand', ut præfertur, haberent poteſtatem ſuper obſtinata denegatione ſeu dilatione alicujus populi mercatorii, ad ſolvend' reſpectivas ratas præd', illos ab eorum reſpectivis ſtationibus & locis amovere & diſlocare. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod eædem ratæ per actum ſive ordinationem ill', ut præfertur, ſolvi ordinat', præd' tempore confectionis ordinationis illius, & extunc hucuſque fuerunt rationabiles, & adhuc rationabiles exiſtunt; quodque ratæ & denariorum ſummæ per eundem actum ſive ordinationem ſolvi ordinat', ſunt omnes ratæ, tolnet', & denarior' ſummæ pro victualibus & proviſionibus in mercat' præd' vendit', ſeu venditioni expoſit' per aliquas perſonas a dicto tempore confectionis ejuſdem ordinationis hucuſque, ad uſum Majoris & Communitat', ac Civium civitat' London ſolubil' & ſolut', quas quidem ratas ſic ſolvi ordinat', & null' alias, iidem Major & Communitas, ac Cives civitat' London, a tempore actus ſive ordinationis illius, ut præfertur, fact', hucuſque exeger' & perceper' ſecundum formam & effectum ejuſdem actus ſive ordinationis; qui quidem actus ſive ordinatio eſt eadem lex per ipſos Majorem & Communitat', ac Cives civitat' London ſuperius de facto inactitat' & publicat', ſuppoſit' in præd' placito præd' Attorn' generalis ſuperius replicando placitat' ſpec'; abſque hoc, quod aliqua lex, actus, ſive ordinatio pro levatione denar' præd' de perſonis ad mercata præd' accedent' cum victualibus & proviſionibus ibid' vendend', inactitat', fact', ſive publicat' fuit aliter, vel alio modo, quam iidem Major & Communitas, ac Cives civitatis London ſuperius allegaver', prout idem Attorn' generalis pro dicto Dom' Rege nunc ſuperius ſuppon', & hoc parat' ſunt verificare. Et quoad reſid' præd' placiti præd' Attornat' generalis in aſſign' foriſfactur', ut præfertur, ſuperius replicando placitat', iidem Major & Communitat', ac Cives civitat' London dicunt, quod viceſimo quarto die Aprilis, anno regni dict' Dom' Regis nunc triceſimo, & per diverſos annos tunc ult' elapſos, ac poſt eundem viceſimum quartum diem Aprilis, infra hoc regnum Angl', & alibi, videlicet, apud London præd',

in præd' parochia ſanct' Michaelis Baſſiſhaw, proditoria & execrabilis conſpiratio & conjuratio machinat' & proſecut' fuit per Papiſtas (Angl' *Papiſts*) ad interficiend' & murdrand' Dom' Regem nunc, & ad alterand', mutand', & ſubvertend' antiquas gubernation' & leges ejuſdem regni, & ad ſupprimend' veram religionem in eodem ſtabilit', & ad extirpandum & deſtruendum profeſſores ejuſdem religionis; quæ quidem conſpiratio & conjuratio machinat' & proſecut' fuer', & diverſis locis, & per ſeparal' vias & media, ac per magnum numerum perſonarum ſeparal' qualitat' & graduum, quæ agebant & ſe occupaver' in eiſdem, ad exequend' & perimplend' prædicta ſcelerata & proditoria machinationes & propoſita; quodque poſtea, ſcilicet, viceſimo ſeptimo die Septembris, anno triceſimo ſupradicto, Edmundus Bury Godfrey, Miles, tunc unus Juſticiar' Dom' Regis ad pacem in com' Midd' conſervandum aſſignat', ſecundum officii & juramenti ſui debitum, apud parochiam ſancti Martini in campis, in eodem comitat' Midd', cepit examination' & information' de præfat' conſpiratione & conjuratione, ac information', quod magna illa conflagratio maximæ partis civitatis London, quæ fuiſſet in menſe Septembris, anno Dom' milleſimo ſexcenteſimo ſexageſimo ſexto, fact' fuit per Papiſtas; poſteaque per adviſamentum, aſſenſum, conſilium, inſtigationem, & procurationem aliquorum dictorum conſpiratorum, diverſæ perſonæ in inſidiis jacuer' & inſecut' fuerunt præfat' Edmund Bury Godfrey diverſis diebus, ea intentione, ad ipſum murdrand', videlicet, apud parochiam ſanct' Mariæ le Savoy, in dicto comitat' Midd; quod quidem murdrum poſtea, ſcil', duodecimo die Octobris, anno triceſimo ſupradicto, apud eandem parochiam, per eos perpetrat' & effectum fuit; ac perpetrat' & effectum fuit ea intentione, ad ſupprimendum examination' & information', quas ipſe, ut præfertur, cepiſſet, & ad deterrend' & intimidand' magiſtrat' & al' ab agendo in ulteriori detectione conſpirationis & conjurationis præd'; pro quo quidem murdro quidam Robertus Green,

Girald Clericus, Henricus Bury, Laurencius Hill, Dominic Kelley, & Filibertus Vernat, poſtea (ſcilicet, termino ſanct' Hilarii, annis regni dict' Dom' Regis nunc triceſimo, & triceſimo primo) in curia Dom' Regis coram ipſo Rege apud Weſtm', in dicto com' Midd', per quandam jurat' præd' ejuſdem com' Midd', debita juris forma indictat' fuerunt; ad quod quidem indictamentum, poſtea (ſcilicet, eodem termino) præd' Robertus Green, Henricus Bury, & Laurencius Hill, ſeparatim placitaver', quod ipſi non fuer' inde culpabiles, & de eo poſuer' ſe ſuper patriam; ac poſtea, ſcilicet, eodem termino ſanct' Hilarii, in eadem cur' apud Weſtm' præd', pro dict' felonia & murdro per jurat' patriæ præd', in debita juris forma triati fuerunt, & inde legitime convicti & attincti, prout per record' inde in eadem curia Dom' Regis coram ipſo Rege apud Weſtm' præd' reſiden' plenius apparet. Quodque pro altis proditionibus & proditoriis conſpirationibus & conjurationibus præd' quidam Edwardus Coleman & Willielmus Ireland, Thomas Pickering & Johannes Grove, ac Thomas White alias Whitebread, Willielmus Harcourt alias Harriſon, Johannes Fenwick, Johannes Gavan, & Antonius Turner, ac Richardus Langhorne, Arm', exiſten' Papiſtæ, & ſuperſtition' Romanam profitentes ante præd' decimum tertium diem Januarii, anno triceſimo ſecundo ſupradicto, debito modo, & ſecundum legis hujus regni Angl' formam triat', convict' & attinct' fuer' (ſcil', præd' Edwardus Coleman termino ſanct' Michaelis, anno regni Dom' Regis nunc triceſimo, in cur' Dom' Regis coram ipſo Rege; eadem cur' apud Weſtm' in com' Midd' adtunc & adhuc exiſten') prout per recordum & proceſſum inde in eadem cur' reſiden' plenius apparet; ac præd' Willielmus Ireland, Thomas Pickering, & Johannes Grove, ad deliberation' gaolæ Dom' Regis de Newgate, tent' pro dicto com' Midd' apud Juſtice Hall in le Old Baily, in ſuburbis dictæ civitatis London, in menſe Decembris, anno triceſimo ſupradicto, prout per recordum & proceſſum inde in cuſtod' Cuſtodis Rotulorum dict' com' Midd' reman' plenius apparet; ac præd' Thomas White alias Whitebread, Johannes Fenwick, Willielmus Harcourt alias Harriſon, Johannes Gavan, & Antonius Turner, ad deliberationem gaolæ Dom' Regis de Newgate, tent' per adjornament' pro com' Midd' præd', apud præd' Juſtice Hall in le Old Bailey, in ſuburbiis civitatis London, die Veneris decimo tertio die Junii, anno regni dict' Dom' Regis nunc triceſimo primo, prout per recordum & proceſſum inde in cuſtodia dict' Cuſtodis Rotul' ejuſdem com' Midd' remanen' plenius apparet; & præd' Rich' Langhorne ad deliberationem gaolæ Dom' Regis de Newgate, tent' per adjornament' pro dict' civit' London apud Juſtice Hall in le Old Bailey, in parochia ſanct' Sepulchri, in warda de Farrington extra London, die Sabbati decimo quarto die Junii, anno triceſimo primo ſupradict', prout per record' & proceſs' inde in cuſtod' Cuſtodis Rotul' dict' civitat' London remanen' plenius apparet: quodque Willielmus comes Powis, Willielmus vicecomes Stafford, Henricus dom' Arundel de Wardor, Willielmus dom' Petre, & Johannes dom' Bellaſis, triceſimo die Novembris, anno regni dict' Dom' Regis nunc triceſimo ſupradict', apud Weſtm' præd' in præd' com' Midd' de altis proditionibus, & proditoriis conſpirationibus & conjurationibus præd' legitime accuſati, & ſuper inde priſonæ Dom' Regis, ſcil', Turri London commiſs' fuer', ibidem ſalvo cuſtodiend', ac in cuſtodia ſic exiſten' iidem Williel' comes Powis, Williel' vicecomes Stafford, Henricus dom' Arundel de Wardor, Willielmus dom' Petre, & Johannes dom' Bellaſis, ad ſeſſion' parliamen' dict' Dom' Regis nunc, apud Weſtm' præd' decimo quinto die Martii, anno regni ſui triceſimo primo, per prorogation' tent', per Communes hujus regni Angl' in eodem parliamento aſſemblat', coram Magnatib' & Procerib' ejuſdem regni in parliamento illo convocat' & convent', de eo quod per multos annos tunc ult' præterit' proditoria & execrabilis conſpiratio & conjuratio infra hoc regnum Angl', & alibi machinat' & proſecut' fuit per Papiſtas, ad alterand', mutand', & ſubvertend' antiquas gubernation' & leges hujus regni & nationis, & ad ſupprimend' veram religionem in eiſdem ſtabilit', & ad extirpand' & deſtruend' profeſſores inde; quæ quidem conſpiratio & conjuratio machinat' & proſecut' fuiſſet in diverſis locis, & per ſeparal' vias & media, & per magnum numerum perſonar' ſeparal' qualitatum & graduum, quæ agebant in eiſdem, & intendebant per inde ad exequend' & conſummand' præd' ſcelerat' & proditorias machinationes & propoſita. Quodque dic' Willielmus comes Powis, Willielmus vicecomes Stafford,

Stafford, Henricus dom' Arundel de Wardor, Willielmus dom' Petre, & Johannes dom' Bellaſis, ſimul cum Phil' Howard, communiter voc' Cardinal de Norf. Thoma White alias Whitebread, com' voc' Provincial' Jeſuitar' in Anglia, Rich' Strange nuper voc' Provincial' Jeſuitar' in Anglia, Vincent, com' voc' Provincial' Dominicor' in Anglia, Jacobo Cooper com' voc' Præſident' Benedictinor', Johanne Warner alias Clare Baronetto, Williel' Harcourt, Johanne Keins, Nicho' Blundel, Pool, Edwar' Mico, Thoma Bedinfield alias Benefield, Baſil' Langworth, Carolo Peters, Rich' Peters, Joan' Conyers, Dom' Georgio Wakeman (Anglice *Sir George Wakeman*) Thoma Fenwick, Dominick Kelly, Fitz-Gerald, Evers, Dom' Thoma Preſton (Anglice *Sir Thomas Preſton*) Willielm' Lovel, *Jeſuitis*, Dom' Baltemore, Johanne Carrel, Johanne Townly, Rich' Langhorne, Willielm' Fogarty, Thoma Penny, Matthæo Medbourne, Edward' Coleman, Willielm' Ireland, Johanne Grove, Thoma Pickering, Johanne Smith, & diverſis aliis Jeſuitis, ſacerdotib', fratrib' (Angl' *Fryers*) & aliis perſonis, ut falſi proditores Dom' Regi nunc, & huic Regno infra Tempus ult' præd' proditorie conſuluiſſent, machinat' fuiſſent & egiſſent, ad & pro conſummatione dict' improbar' pernitioſar' & proditoriar' machination', & ea de cauſa nequiſſime & proditorie agreaſſent, conſpiraſſent, & determinaſſent impriſonare, deponere, & murdrare ſacram Majeſtatem Dom' Regis nunc, & ipſum de regali ſtatu, corona, & dignitate ſuis deprivare, & per malicioſam & adviſat' Locutionem, Scriptionem, & alit' declaraſſent tal' ſua propoſita & intentiones, ac etiam hoc Regnum & Nationem Papæ & tyrannicæ ſuæ Gubernationi ſubjicere, & ſtatus & hæreditates Proteſtant' ſubdit' Dom' Regis ſeizire, & int' ſeſe partiri, ac erigere & reſtituere Abbatias, Monaſteria, & al' Convent' & Societates, quæ dudum per Leges hujus Regni pro ſuperſtitione & idololatria ſuis ſuppreſs' fuiſſent, & eis tradere & reſtituere terras & poſſeſſiones in Dom' Rege nunc & ſubditis ſuis per Leges & Statuta hujus Regni veſtit', ac etiam nova Monaſteria & Conventus fundare & erigere & omnes Proteſtant' Epiſcopos, & al' perſonas Eccleſiaſticas ab officiis, beneficiis, & promotionib' ſuis amovere & deprivare, & eo modo perſonam Dom' Regis nunc deſtruere, Proteſtantem Religionem extirpare, jura, libertates & proprietates omnium probor' ſubditor' Dom' Regis evertere, legalem gubernationem hujus Regni ſubvertere, & idem Tyrannidi ſedis Romanæ ſubjicere. Quodq; dic' Conſpiratores & eorum participes & confederatores proditorie habuiſſent & tenuiſſent ſeparales conventiones, aſſemblationes, & conſultationes, in quibus inter eos machinat' & deſignat' fuiſſet, quæ media uterentur, & quæ perſonæ & Inſtrumenta impens' forent ad Dom' Regem nunc murdrand', & ad tunc & ibidem determinaſſent id efficere per venefic', diſploſionem (Angl' *Shooting*) perforationem (Angl' *Stabbing*) vel aliqua tal' vias & media, & obtuliſſent munera & promiſſiones de advantag' ſeparalib' perſonis ad idem exequend', ac conduxiſſent & impendiſſent ſeparales improbas perſonas ire ad Windſor, & alia loca ubi Dom' Rex reſidebat, ad ipſum Dom' Regem murdrand' & deſtruend', quæ quidem perſonæ, ſeu earum aliqu' talia munera acceptaſſent, & perpetrationem inde ſuſcepiſſent, & actualit' ad dic' loca intentione & propoſito ill' iviſſent. Quodq; dic' Conſpiratores ad melius perimplend' proditorias ſuas machinationes conſuluiſſent ad levand', ac procuraſſent & levaſſent homines, monetam, equos, arma & ammunitionem, ac etiam applicationem feciſſent ad, & tractaſſent & correſpondiſſent cum Papa, ejus Cardinalib', Nunciis & Agentib', & aliis forinſecis miniſtris & perſonis, ad levand' & obtinend' ſupplementa (Ang' *Supplies*) homin', monet', armor' & ammunitionis, cum eiſdem facere, levare & excitare guerram, rebellionem & tumultus infra hoc Regn' & idem invadere cum virib' forinſecis, & deprehendere (Angl' *to ſurprize*) ſeſire & deſtruere RegiæMajeſtatis claſſem (Angl' *Navy*) fortalitia (Angl' *Forts*) armamentaria (Angl' *Magazines*) & loca fortia (Angl' *Places of Strength*) infra hoc Regn', ſuper quo calamitates guerræ, murdra innocenc' ſubditor', viror', mulier' & liberor', conflagrationes, rapinæ, devaſtationes & al' tremend' miſeriæ & exitia inevitabil' inſequerentur, in ruinam & deſtructionem hujus nationis; & quod dic' conſpiratores procuraſſent, & acceptaſſent, ac deliberaſſent ſeparal' inſtrumenta, commiſſiones, & poteſtates fact' & conceſs' per aut ſubt' Papam vel al' illicitam & uſurpat' authoritatem, ad levand' & diſponend' homines, monetam, arma, & al' neceſſaria pro eor' ſceleratis & proditoriis machinationibus, ac nominatim Commiſſionem pro dic' Henrico Dom' Arundel de Wardor fore Dom' Cancellar' Angl', aliam Commiſſion' dic' Willielm' Comit' Powis fore Dom' Theſaurarium Angl', aliam Commiſſion' dic' Johanne Dom' Bellaſis fore ducem General' (Angl' *General*) ad exercitus levand', al' Commiſſionem dic' Willielmo Dom' Petre fore locum tenen' ducis General' (Angl' *Lieutenant General*) dic' exercitus & poteſtatem Angl' (*a Power*) pro dic' Willielmo Vicecomite Stafford fore Expenditorem (Angl' *Paymaſter*) exercitus illius. Quodq; in ordine ad animand' ſeipſos in proſecutione dictar' ſceleratar' conjurationum, conſpiration' & prodition', & ad celand' & impediend' detectionem earundem, & ad ſeipſos a juſticia & punitione ſecurand' Conſpiratores præd' participes & confederatores ſui uſi fuiſſent multis impiis & diabolicis praxib', videlt', cauſaſſent ſacerdotes ſuos adminiſtrare dic' Conſpiratorib' juramentum taciturnitatis (Angl' *of Secrecy*) una cum eor' ſacramento, ac etiam cauſaſſent dic' Sacerdotes ſuos ſuper Confeſſionib' dare abſolutiones ſuas ſub conditione, quod ipſi concelarent dic' Conſpirationem', ac cum circa menſem Septembris tunc ult' præterit' Edmundbury Godfrey miles Juſtic' pacis ſecundum juramenti & officii ſui debit' cepiſſet ſeparal' examinationes & informationes concern' præfat' conſpirationem & conjurationem, dic' conſpiratores, ſeu eor' aliqui, per adviſamenſum, aſſenſum, conſil' & inſtigationem reſid' eor' incitaſſent & procuraſſent diverſas perſonas in inſidiis jacere, & inſequi præfat' Edmundbury Godfrey diverſis dieb' ea intentione ad ipſum murdrand', quod poſtea per eos perpetrat' & effectum fuit (pro quib' quidem horridis criminib' & offenſis Robertus Green, Henricus Berry, & Laurentius Hill, poſtea attincti fuiſſent, ac Dominick Kelley & Girald, & alii fugam feciſſent pro eiſdem) poſt quod quid' murdrum, & antequam cadaver invent' fuit, vel murdrum cognitum aliquibus niſi participibus, in eodem dic' perſon' falſe retuler' quod vivus fuit, & privatim maritat', & poſtquam cadaver' invent'

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fuit, diſperſer' falſam & malitioſam relationem, quod ipſe ſeipſum murdraſſet. Quod quidem murdrum commiſſum fuit ea intentione, ad celand' & ſupprimend' evidentiam quam ipſe cepiſſet, ac de qua notitiam habuit, & intimidand' & deterrend' Magiſtrat' & alios ab agendo in ulteriori detectione conſpirationis & conjurationis præd', ea etiam intentione dic' Edmundbury Godfrey, dum vivus fuit, per eos ac participes & fautores ſuos minatus & deterritus fuit in ejus proſecutione inde, quodq' de eor' ulteriori malicia ſcelerate machinati fuiſſent perquam plurimas ſuggeſtiones impon' imputationem & culpam præd' horridor' & deteſtabl' criminum ſuper Proteſtantes, ita quod perinde ipſimet evitarent punitiones, quas juſte meruiſſent, & exponerent Proteſtantes ſcandalo magno, & eos ſubjicerent proſecutioni & oppreſſioni in omnibus regnis & patriis, ubi Romana Religio recepta & profeſſa fuit. Quodque omnia ill' proditiones, crimina & offenſæ præmentionat' fuer' machinat', commiſs', perpretat', acta & facta per præd' Willielm' Comitem Powis, Willielm' Vicecomitem Stafford, Willielmum Dom' Petre, Henricum Dom' Arundel de Wardor, & Johannem Dom' Bellaſis, ac alios conſpiratores præd' contr' Dom' Regem nunc, Coronam & Dignitat' ſuas, ac contr' Leges & Statuta hujus Regni ſecund' Lege' & conſuetudinem Parliament' impetit' fuer' ac inde debite onerat', & in Priſona præd' ea occaſione detent', prout per Record' & proceſs' inde int' Recorda Parliament' remanen' plenius apparet. Et iidem Major & Communitas ac Cives civitat' London ulterius dicunt, quod in Seſſion' præd' Parliamenti dic' Dom' Regis nunc, apud Weſtm' præd' per prorogation' tent' ſuper prædict' viceſimum primum diem Octobris, Anno Regni dicti Domini Regis nunc triceſimo ſecundo ſupradict', in replicatione præd' mentionat' ad inchoation' ejuſdem Seſſionis Dom' Rex nunc, ex maxima regali cura & ſedulitate ſua pro præſervatione Religionis Proteſtan' & ſubditor' a periculis per Papiſticas Conſpirationes imminen', per ejus gratioſam oration' ambab' domibus ejuſdem Parliamenti adtunc & ibidem fact' & allocut', inter alia recommendavit Dom' & Commun' in Parliamento illo aſſemblat', ad proſequend' ulteriorem examinationem Conſpiration' præd' cum ſtricta & impartiali inquiſitione, & eis tunc dixit, quod ipſe non putavit ſeipſum neque ipſos ſecur' quouſque materia illa plenarie perageretur. Ac ideo quod neceſſar' foret, quod præd' Dom' in præd' priſona Turris London ad celerem triation' ſuam adducerentur, quod Juſticia fieret. Et iidem Major & Communitas ac Cives civitat' London ulterius dicunt, quod poſtea in eadem Seſſion' Parliamenti utraque domus Parliamenti illius in proſecution' dic' direction' Dom' Regis ſtrictam & impartialem inquiſition' de præd' conſpiratione fecer', & ſuper inquiſition' ill' declaraver', quod fuiſſet horribilis conſpiratio & conjuratio per Papiſtas contra perſonam dic' Dom' Regis & Gubernation' ſuam, quæ tunc continuabant; ac Commun' in eodem Parliamento aſſemblat' ulterius declaraverunt, quod conſpiratio & conjuratio ill' ſupportat' & proſecut' fuiſſent per poten' & irrequiet' molimina & machinationes, præſertim duran' tunc nuperis receſſib' Parliamenti, & poſtea in eadem Seſſione Parliamenti Dom' Spirituales & Temporales ac Communes in eodem Parliamento aſſemblat', eorum humilem Supplicationem (Angl' *Addreſs*) eidem Dom' Regi apud Weſtm' præd' fecer' & exhibuer', in forma ſequen', videl', Quod ipſi Subditi Regiæ ſuæ Majeſtatis obſequentiſſimi & fideliſſimi Dom' Spirituales & Temporales, ac Communes in tunc præſenti Parliamento illo aſſemblat', profunde ſenſibiles exiſten' de triſti & calamitoſa conditione hujus Regni, præcipue per impias & horrendas Conſpirationes Papalis Factionis cauſat', quæ non ſolum deſtructionem Regalis Perſonæ Regiæ ſuæ Majeſtatis, verum etiam totalem ſubverſionem Gubernat' & veræ Religion' in hoc Regno Angl' ſtabilit' conſpiraviſſet & intendiſſet, ac invenien' eaſdem deteſtabiles machinationes adtunc obſtinate per eandem Factionem proſecut', tam fovendo diviſiones inter Majeſtatis ſuæ fideles Subdit' Proteſtan', quam per omnes al' nequiſſimas machinationes, non obſtan' quamplurimis detectionibus inde (magna Dei miſericordia & mirabili providentia) tunc nuper in lucem prolat', quæ omnia tremenda judicia tunc fuer' ſuper hoc Regnum impenden' pro pluribus & gravibus ſuis peccatis, quam meritiſſime ac alit' humana ratione evitari nequibant, quam per benedict'on' Dei particularem ſuper conſultationes & conamina magni Concilii ipſius Dom' Regis tunc in Parliamento aſſemblat', in omni humilitate Regiæ ſuæ Majeſtati ſupplicaver', quod per Proclamation' ſuam Regalem dies ſolempnit' foret dedicat', in quo tam ipſi, quam omnes ipſius Dom' Regis Subdit' per jejun' & preces Deo omnipotenti reconciliationem conarentur. Ac cum cordibus humilibus & penitentibus eum implorarent, per ejus potentiam & bonitatem, ad judicia ill' divertend', & ad impia conſilia & machinationes inimicorum ſuorum fruſtrand', ad corda fidelium Proteſtan' Subdit' dict' Dom' Regis uniend', & ad miſericordiam ſuam & Evangelii ſui lumen eidem Domino Regi & dictis Subdit' ſuis, & eor' Poſteritat' continuand', ac præcipue ad abundantes benedictiones ſuas ſuper ſacram Majeſtatem ipſius Dom' Regis & tunc præſen' Parliament' impendend', quod conſultationes & conamina eor' honorem, incolumitatem, & proſperitatem Regiæ ſuæ Majeſtati ac Populo ſuo producerent; & ſuperinde dictus Dominus Rex nunc duran' dicta Seſſione Parliamenti, ſcilicet ſecundo die Decembris anno Regni ſui triceſimo ſecundo ſupradicto, per proclamationem ſuam Regalem ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' eiſdem die & anno, recitando, quod cum Dom' Spirituales & Temporales ac Communes in Parliamento illo aſſemblat' per eor' Supplication' (Angl' *Addreſs*) eidem Domino Regi exhibit', notum ei feciſſent, quod ipſi profunde ſenſibiles fuer' de triſti & calamitoſa conditione hujus Regni per impias & horrendas Conſpirationes Papalis Factionis cauſat', quæ non ſolum deſtructionem Regalis Perſonæ Regiæ ſuæ Majeſtatis, verumetiam total' ſubverſionem Gubernat' & veræ Religionis apud ipſum Regem & Subditos ſuos ſtabilit', conſpiraviſſet & intendiſſet; quodque eædem deteſtabiles machinationes adtunc obſtinate per eandem Factionem proſecut' fuer, tam fovendo diviſiones int' ejus fideles Subdit' Proteſtan', quam per omnes al' nequiſſimas machinationes, non obſtan' quamplurimis detectionibus inde (magna Dei miſericordia & mirabili providentia) tunc nuper in lucem prolat', quæ omnia tremenda judicia tunc fuer' ſuper eundem Dom' Regem & dictos Subdit' ſuos impendend' pro pluribus & gravibus ſuis peccatis, quam meritiſſime ac alit' humana ratione præve-

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niri nequibant, quam per benedictionem Dei particularem ſuper conſultationes & conamina magni Concilii ipſius Dom' Regis tunc in Parliamento aſſemblat', eidem Domino Regi humillime ſupplicaſſent, quod dies maxime ſolempnit' foret dedicat', in quo Rex ipſemet & omnes Subditi ſui fideles per jejunium & preces Deo omnipotenti reconciliationem conarentur, ac cum cordibus humilibus & pœnitentibus eum implorarent, per ejus potentiam & bonitatem ad judicia illa divertend' & ad impia conſilia & machinationes inimicorum ipſius Dom' Regis & dict' Subdit' ſuor' fruſtrand', ac corda fidelium Proteſtan' Subdit' dict' Dom' Regis uniend', & miſericordiam ſuam & Evangelii ſui lumen eidem Domino Regi & dictis Subdit' ſuis & eor' Poſteriat' continuand', ac præcipue ad abundantes benedictiones ſuas ſuper ipſum Dom' Regem & tunc præſen' Parliament' impendend', quod conſultationes & conamina eor' honorem, incolumitatem, & proſperitatem dicto Domino Regi ac populo ſuo producerent, idem Dominus Rex ad illam eor' humilem requiſitionem promptiſſime inclinavit, ac per illam ejus Regalem Proclamation' mandavit generale & publicum Jejunium per totum hoc Regnum obſervari, in tali modo quali poſtea per eandem Proclamationem fuit direct' & præſcript', ita quod tam idem Dominus Rex, quam populus ſuus preces & ſupplicationes ſuas Deo omnipotenti emitterent ad & pro propoſitis præd', ac ea intentione, quod tam Religioſum Exercitium ad unum & idem tempus performaretur, dictus Dominus Rex per Proclamation' ill' publicavit & declaravit omnibus Subditis ſuis amantibus, ac ſtricte præcepit & mandavit, quod die Mercurii exiſten' viceſimo ſecundo die Decembris tunc inſtan' jejunium ill' religioſe obſervat' & celebrat' foret' per Regnum ſuum Angl' Dominium Walliæ, & Villam Berwici ſuper Twedam, & ut idem cum omni decentia & uniformitate performaretur, idem Dominus Rex per adviſamentum reverend' Epiſcopor' ſuor' componi, imprimi, & publicari direxerat talem formam Divini Servicii, qual' ipſe apt' uti cenſuerat in omnibus Eccleſiis & Locis ad tempus præd', & Epiſcopis ſuis dederat in mandatis ad ill' congruent' diſpergend'. Quæ omnia idem Dominus Rex per Proclamationem ſuam præd' reverent' & decent' obſervari expreſſe præcepit & mandavit, per omnes ſubdit' ſuos amantes, ſicut favorem Dei Omnipotentis reſpexer', ac iram & indignation' ejus contra hanc terram evitarent, & ſub pœna ſubeundi tales punitiones, qual' dictus Dominus Rex juſte infligere poſſet ſuper omnes, qui tam religioſum officium contemnerent ſeu negligerent, prout per irrotulament' ejuſdem proclamationis in cur' Cancellar' ipſius Dom' Regis de recordo remanen' plenius apparet. Qui quidem dies jejunii ſecundum formam & effect' proclamat' præd' debite & ſolempnit' obſervat' & celebrat' fuit in & per totum hoc regnum Angl', ac præcipue apud London præd', in parochia ſancti Michaelis Baſſiſhaw. Quodque in eadem ſeſſione parliamenti ult' mentionat', Communes hujus regni in eodem parliamento aſſemblat', reſolution' fecerunt procedere ad triationem præd' Dominor' in priſona Turris London tunc exiſten', ſicut præfertur, impetit', & ſtatim incipere cum præfat' Vicecomite Stafford, ac notitiam inde Dominis parliamenti illius tunc deder', & eos requiſiver' ad convenien' diem pro triatione ejuſdem Vicecomitis Stafford appunctuand', & ſuperinde præd' Vicecomes Stafford de altis proditionibus, & proditoriis conſpirationibus & conjurationibus præd', unde ipſe, ut præfertur, impetit' fuit per Dominos Temporales in eodem parliamento convent' ad proſecution' Commun' hujus regni in parliamento illo aſſemblat', in eadem ſeſſione parliamenti triat', convict', & debita juris forma attinct' fuit, prout per record' & proceſs' inde inter recorda parliament' remanen' plenius apparet, poſteaque in eadem ſeſſione parliamenti Willielmus Scrogs Miles, tunc Capital' Juſtic' Dom' Regis ad placita coram ipſo Rege tenend' aſſign' per Communes hujus regni Angl' in eodem parliamento aſſemblat' coram magnatibus & proceribus ejuſdem regni in parliamento illo convocat' & convent' ſecundum legem & conſuetudinem parliamenti accuſat' & impetit' fuit de alta proditione, & aliis magnis criminibus & malegeſturis (inter alia) quod ipſe dictus Willielmus Scrogs tunc exiſten' Capital' Juſtic' cur' Domini Regis coram ipſo Rege proditorie & nequit' conat' fuiſſet ſubvert' leges fundamental' & ſtabilit' religion' hujus regni Angl', ac loco inde introducere Papiſmum (Angl' *Popery*) & arbitrariam & tyrannicam gubernationem contra legem, quod ipſe declaraſſet per diverſa proditoria & improba verba, opiniones, judicia, praxes, & facta: Ac etiam quod cum fuiſſet horribilis & diabolica conſpiratio machinat' & proſecut' per Papiſtas pro murdrando Dominum Regem nunc, ſubvertendo leges & gubernationem hujus regni, & pro deſtruendo religionem Proteſtan' in eodem regno, quæ omnia dictus Willielmus Scrogs bene ſciviſſet, in quantum ipſemet non ſolum triaſſet, verum etiam judicium reddidiſſet contra ſeparal' hujuſmodi delinquentium, nihilominus dictus Willielmus Scrogs ad diverſa tempora & loca, tam in cur' ſeden', quam alit', palam defamaſſet & ſcandalizaſſet ſeparal' de teſtibus, qui probaſſent dictas proditiones contra diverſos de conſpiratoribus, & dediſſent evidentiam contra diverſas alias perſonas, quæ tunc fuer' minime triat', ac conatus fuiſſet defamare (Angl' *to diſparage*) eor' evidenciam, & adimere credentiam eorum, per quod, quantum in ſe fuit, proditorie & nequit' ſuppreſſiſſet & ſuffocaſſet detectionem dictæ Papalis conſpirationis, ac animaſſet conſpiratores (ad procedend' in eadem) in magnum & manifeſtum periculum ſacræ vitæ dicti Domini Regis nunc, & bene ſtabilit' gubernation' & religionis hujus regni Angl', prout per record' inde inter record' parliamen' remanen' plenius apparet. Ac etiam in eadem ſeſſione parliamenti, Dom' Spiritual' & Temporal', ac Communes in eod' parliamento aſſemblat', ſe declaraver' eis manifeſt' eſſe, quod ad tunc fuit, & per diverſos annos tunc ult' elaps', fuiſſet horrenda & proditoria conſpiratio & conjuratio, machinat' & proſecut' per ill' de Papali religione in regno Hiberniæ pro trucidatione (Angl' *maſſacring*) Anglor', & ſubverſion' religionis Proteſtan', & antiquæ ſtabilit' gubernationis regni illius; de qua quidem horrenda & proditoria conſpiratione & conjuratione Richardus Power Comes Tyrone in regno Hiberniæ, ad eandem ſeſſion' parliamenti per Communes hujus regni Angl' in eodem parliamento aſſemblat' coram Magnatibus & proceribus ejuſdem regni Angl' in parliamento illo convocat' & convent' ſecundum legem & conſuetudinem parliamenti impetit' fuit, ac inde debite onerat', & priſonæ Dom' Regis de le Gate-houſe Weſtm' ea occaſione commiſſus fuit, prout per record'

record' inde inter recorda parliament' remanen' plenius apparet. Quodque tam Domin', quam Communes in dicto parliamento aſſemblat' in eadem ſeſſione parliamenti fuer' præparantes billas ſecundum curſum parliament' in leges inactitand' pro præſervatione Domini Regis nunc, & ſubditorum ſuorum Proteſtan', contra proditorias conſpirationes & conjurationes prædicta penden', quibus quidem ſeparalibus impetitionibus verſus eundem Richardum Power, & dictum Willielm' Scrogs, ac prædict' Willielm' Comitem Powis, Henricum Dominum Arundel de Wardour, Willielm' Dom' Petre, & Johannem Dom' Bellaſis, minime determinat', ac eiſdem Willielm' Comite Powis, Henrico Domino Arundel de Wardour, Willielm' Dom' Petre, Johanne Dom' Bellaſis, & Richardo Power in priſon' Domini Regis ex cauſis præd', ut præfertur, exiſten', idem parliament', ſuper præd' decimum diem Januarii, anno regni dicti Dom' Regis nunc triceſimo ſecundo ſupradicto, prorogat' fuit, prout præd' Attorn' dict' Dom' Regis nunc generalis ſuperius inde allegavit, abſq; aliqua triatione dictor' Willielm' comit' Powis, Henric' Dom' Arundel de Wardour, Willielm' Dom' Petre, Johan' Dom' Bellaſis, Willielm' Scrogs, & Richard' Power, ſeu eorum alicujus, de altis prodition', & al' præmiſſis (unde ipſi reſpective, ut præfertur, impetit' fuer', ac qui aliter quam in parliament' inde triari non potuer') fact' ſive habit', ac antequam hujuſmodi billæ in leges inactitat' fuer' : Quæ quidem oratio dicti Dom' Regis, ac declarationes & proceſſus Dom' & Commun' parliamenti illius, duran' dicta ſeſſione ejuſdem parliament', ut præfertur, fact', ante eandem prorogationem parliamenti illius publicat' fuer', videl', apud London præd', in prædicta parochia ſancti Michaelis Baſſiſhaw, ratione quorum quidem præmiſſor', cives & inhabitan' præd' civitatis London, fideles ſubdit' dicti Dom' Regis nunc exiſten', maxime perterriti, & in animis affecti, ac quam plurimum inquietat' fuer', profundo ſenſu & apprehenſione magnor' periculor' perſonæ Dom' Regis nunc, & gubernationi ſuæ hujus regni, ac religioni Proteſtan', & profeſſoribus ejuſdem, occaſione conſpiration' præd' impenden' & imminen', non aliter (prout per Dom' Spirituales & Temporales, ac Communes in dicto parliamento aſſemblat', in ſupplicatione ſua præd', per Dom' Regem in proclamat' præd', ut præfert', publicat' affirmat') humana ration' evitand', quam per benedictionem Dei particularem ſuper conſultationes & conamina ejuſdem parliamenti, quidam cives & inhabitantes ejuſdem civitatis, nomine civium & inhabitantium dict' civitatis, ante petitionem inde in prædicto placito præd' Attorn' general' ſuperius replicando placitat' ſpec' fact', ſeu fieri ordinat', ſcil', præd' decimo tertio die Januarii, anno regni dict' Dom' Regis nunc triceſimo ſecundo ſupradict', Patient' Ward Mil', tunc Majori civitatis London, & Alderman' dict' civitatis, ac Communiariis ſive Civib' de Com' Concilio ejuſdem civitatis, in Communi Concilio adtunc in prædicta camera Guildhall ejuſdem civitatis, in parochia ſancti Michaelis Baſſiſhaw præd', ſecundum conſuetudinem dictæ civitatis aſſemblat', exhibuer' quandam petitionem, continen', quod ipſi cives & inhabitan' civitat' London, profunde ſenſibiles exiſten' de malis & exitiis ſuper hanc nationem in generali, ac ill' civitatem London in particulari penden', in reſpect' periculi perſonæ Dom' Regis nunc, religion' Proteſtan', & bene ſtabilit' gubernation' ſuæ, per continuat', infernales, & diabolicas machinationes Papiſtar', & alior' adhærentium ſuor', ac ſcientes nullam viam (ſub Deo) tam effectual' ad præſervand' Dom' Regem, ac cives & inhabitan' ill' ab extrema ruina & deſtructione minat', quam per celerem ſeſſionem tunc præſentis parliamen', cujus inopinata prorogatio magnopere addidit & augebat juſtos timores & ſuſpiciones animor' dictor' petitionarior' ; ipſi iidem petitores obſecraver' eidem Com' Concilio, ſic ut præfertur aſſemblat', ad informand' Regiam Majeſtatem de ill' eor' timoribus & apprehenſionibus, ac quod fuit humile & fervens deſiderium, tam eor' petitor', quam ipſor' Majoris & Aldermannor', ac Communiar' de Com' Concilio illo, quod Regiæ ſuæ Majeſtati placeret, pro totali fruſtratione impior' & ſanguinolentor' propoſitor' inimicor' ſuor', ad permittend' ill' tunc præſens parliamentum, quod extitit prorogat' uſque viceſimum diem tunc inſtan' Januarii, adtunc aſſemblare, & ſedend' continuare, quouſque effectualit' ſecuraret hoc regnum contra Papiſm', ac reformaret (Angl' *redreſſed*) multiplicia gravamina, ſub quibus tunc gemuit, & pro immediata ſecuritate ſua, quod iidem Major & Alderman', ac Communiarii de Com' Concilio ill', ordinarent quodcunque aliud, quod neceſſar' & expedien' eis videretur in illo tempore periculi imminen', pro incolumitate magnæ civitatis illius. Et quia per legem terræ hujus regni Angl' licitum eſt ſubdit' Dom' Regis in anguſtiis & difficultatib' ſuis ad humilit' ſupplicand' Dom' Regi pro remedio congruo in ea parte habend', præd' die Jovis decimo tertio die Januarii, anno regni dict' Dom' Regis nunc triceſimo ſecundo ſupradict', præd' Patient' Ward Miles, tunc Major præd' civitatis London, & Alderman' ejuſdem civitat', ſcil', Thomas Alleyn Miles & Bar', Johannes Fredericke Miles, Johannes Lawrence Miles, Georgius Waterman Miles, Joſephus Sheldon Miles, Jacobus Edwards Miles, Robertus Clayton Miles, Johannes Moore Miles, Gulielmus Pritchard Miles, Henricus Tulſe Miles, Jacobus Smith Miles, Robertus Jeffrey Miles, Johannes Shorter Miles, Thomas Gould Miles, Gulielmus Rawſterne Miles, Thomas Beckford Miles, Johannes Chapman Miles, Simon Lewis Miles, Thomas Pilkington Arm', & Henricus Corniſh Arm', ac Communiarii ſeu Cives de Com' Concilio dict' civitatis, in Com' Concilio ſuo infra eandem civitatem, ſcil', in præd' camera Guildhall civitatis illius ad tunc ſecund' conſuetudinem dict' civitatis aſſemblat', vota & ſuffragia ſua, ex animis Dom' Regi perfidelib', & pro ſatisfaction' civium & inhabitan' ejuſdem civitat', qui petitionem eis in forma præd' exhibuiſſent, pro alleviatione timoris & apprehenſionis, & inquietudinis illor', ac ea intentione, quantum in ſe fuit, pro præſervatione perſonæ Dom' Regis nunc, & gubernation' ſuæ hujus regni Angl', & religionis Proteſtan', deder', ac nemine contradicente agreaver' & ordinaver', quod quædam petitio ſub nomine ipſor' Majoris, Alderman', & Commun' civitatis London in Communi Concilio aſſemblat', dicto Domino Regi nunc exhibita foret ; cujus quidem petitionis tenor ſequitur in his Anglicanis verbis, videlicet, *To the King's moſt Excellent Majeſty: The humble Petition of the Lord Mayor, Aldermen, and Commons of the City of* London *in Common Council aſſembled, moſt humbly ſheweth, That your Majeſty's Great Council in Parliament, having*

having in their late Seſſion, in purſuance of your Majeſty's Direction, entred upon a ſtrict and impartial Inquiry into the horrid and execrable Popiſh Plot, which hath been for ſeveral Years laſt paſt, and ſtill is carried on, for the Deſtruction of your Majeſty's Sacred Perſon and Government; and extirpation of the Proteſtant Religion, and the utter Ruin of your Majeſty's Proteſtant Subjects: And having ſo far proceeded therein, as juſtly to attaint, upon full Evidence, one of the five Lords impeached for the ſame, and were in further Proſecution of the remaining four Lords, and other Conſpirators therein: And as well the Lords Spiritual and Temporal, as the Commons in your ſaid Parliament aſſembled, having declared, That they are fully ſatisfied that there now is, and for divers Years laſt paſt, hath been a horrid and treaſonable Plot and Conſpiracy contrived and carried on by thoſe of the Popiſh Religion in Ireland, *for Maſſacring the* Engliſh, *and ſubverting the Proteſtant Religion, and the antient eſtabliſhed Government of that Kingdom: And your ſaid Commons having impeached the Earl of* Tyrone, *in order to the bringing him to Juſtice for the ſame, and having under Examination, other Conſpirators in the ſaid* Iriſh *Plot: And your ſaid Commons having likewiſe impeached Sir* William Scrogs, *Chief Juſtice of your Majeſty's Court of King's Bench, for Treaſon, and other great Crimes and Miſdemeanors, in endeavouring to ſubvert the Laws of this Kingdom by his arbitrary and illegal Proceedings; and having voted Impeachments againſt ſeveral other Judges for the like Miſdemeanors, your Petitioners, conſidering the continual Hazards to which your Sacred Life and the Proteſtant Religion, and the Peace of the Kingdom are expoſed, while the Hopes of a Popiſh Succeſſor gives Countenance and Encouragement to the Conſpirators, in their wicked Deſigns: And conſidering alſo the Diſquiet and dreadful Apprehenſions of your good Subjects, by Reaſon of the Miſeries and Miſchiefs which threaten them on all Parts, as well from Foreign Powers, as from the Conſpiracies within your ſeveral Kingdoms, againſt which no ſufficient Remedy can be provided but by your Majeſty; and your Parliament were extreamly ſurprized at the late Prorogation, whereby the Proſecution of the publick Juſtice of the Kingdom, and the making the Proviſions neceſſary for the Preſervation of your Majeſty, and your Proteſtant Subjects, have received an Interruption. And they are the more affected herewith, by reaſon of the Experience they have had of the great Progreſs which the emboldened Conſpirators have formerly made in their Deſigns, during the late frequent Receſſes of Parliament; but that which ſupports them againſt Deſpair is, the Hopes they derive from your Majeſty's Goodneſs, that your Intention was and does continue by this Prorogation to make way for your better Concurrence with the Counſels of your Parliament. And your Petitioners humbly hope, that your Majeſty will not take Offence that your Subjects are thus zealous, and even impatient of the leaſt delay of the long hoped for Security, whilſt they ſee your precious Life invaded, the true Religion undermined, their Families and innocent Poſterity likely to be ſubjected to Blood, Confuſion, and Ruin, and all theſe Dangers increaſed by reaſon of the late Endeavours of your Majeſty and your Parliament, which have added Provocation to the Conſpirators, but have had little or no effect towards ſecuring againſt them; and they truſt your Majeſty will graciouſly accept of this Diſcovery, and Deſire of their loyal Hearts to preſerve your Majeſty, and whatever elſe is dear to them, and to ſtrengthen your Majeſty againſt all Popiſh and pernicious Counſels, which any ill affected Perſons may preſume to offer: They do therefore moſt humbly pray, that your Majeſty will be graciouſly pleaſed (as the only means to quiet the Minds, and extinguiſh the Fears of your Proteſtant People, and prevent the eminent Dangers which threaten your Majeſty's Kingdoms, and particularly this your great City, which hath already ſo deeply ſuffered for the ſame) to permit your ſaid Parliament to ſit from the day to which they are prorogued, until by their Counſels and Endeavours thoſe good Remedies ſhall be provided, and thoſe juſt Ends attained, upon which the Safety of your Majeſty's Perſon, the Preſervation of the Proteſtant Religion, the Peace and Settlement of your Kingdoms, and the Welfare of this your ancient City, do ſo abſolutely depend; for the purſuing and obtaining of which good Effects, your Petitioners unanimouſly do offer their Lives and Eſtates, and ſhall ever pray,* &c. Ac adtunc & ibidem ulterius agreaver' & ordinaver', quod petitio ill', poſt præſentation' inde eidem Dom' Regi, impreſſa foret per talem perſonam, qual' dictus tunc Major civitat' London præd' appunctuaret; quæ quidem petitio ſic fuit imprimi ordinat', ea intentione, quod publicatio falſor' rumor' & relation' de & concernen' præd' petition' dicto Domino Regi exhibit' evitaretur, inimici Domini Regis, & conſpiratores præd', a procedendo in conſpiratione ſua præd' deterrerentur, perturbationes, quas boni & fideles ſubditi dicti Domini Regis nunc in animis ſuis ex cauſis prædictis concepiſſent, alleviarentur, & cives & inhabitan' ejuſdem civitat' melius ſcirent quid factum fuiſſet in dicto Communi Concilio de materia in petitione præd' eidem Communi Concilio, ut præfertur, exhibit' content'. Quodque præd' petitio dicto Dom' Regi ſic præſentari agreat', poſtea (ſcil', præd' decimo tertio die Januarii, anno triceſimo ſecundo ſupradicto) eidem Dom' Regi humillime præſentat' fuit, videlicet, apud London præd', in prædicta parochia ſancti Michaelis Baſſiſhaw, ac poſtea (ſcil', decimo quinto die ejuſdem menſis Januarii) per Samuelem Roycroft, quem dictus Patient' Ward tunc Major civitat' London ad inde appunctuavit, impreſſa fuit juxta ordinem præd' in ea parte fact', videlicet, apud London præd', in parochia prædict'; quæ quidem petitio, & impreſſio inde in forma prædict', & ea ex cauſa præd' fact', ſunt eædem petitio, & impreſſio, & publicatio inde in præd' placito præd' Attorn' generalis ſuperius replicando placitat' ſpec': Abſque hoc, quod aliqua petitio de vel concernen' prorogation' parliamenti præd' fact', ordinat', publicat', ſeu impreſs' fuit, alit' vel alio modo, quam iidem Major & Communitas, ac Cives civitat' London ſuperius allegaver', prout idem Attorn' generalis pro dicto Domino Rege ſuperius ſuppon'; & hoc ſimiliter parat' ſunt verificare. Unde iidem Major & Communitas, ac Cives civitat' London non intendunt, quod ipſi per aliqua præallegat' præd' libertat', privileg', & franchis' fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi, per ipſos ſuperius, ut præfertur, clamat' forisfecer', ac, ut prius, pet' judicium, & quod libertat', privileg', & franchis' ill' eis & ſucceſſoribus ſuis in perpetuum deinceps allocentur & adjudicentur, ac quod ipſi,

quoad præmiſs' ill', ab hac cur' dimittantur, &c.

Et quoad exit' int' Dom' Regem, & Major' & Communitat', ac Cives civitat' London ſuperius in forma præd' junct', idem Attorn' dict' Dom' Regis nunc general' dicit, quod Major & Communitas, ac Cives civitat' London præd', ſunt partes Defendentes, vers' quos idem Attorn' dicti Dom' Regis nunc general' proſecut' eſt information' præd', & ea de cauſa pet' breve Vicecom' Hertf. (exiſten' Com' civit' præd' prox' adjacen') dirigend' de Venire fac' coram Dom' Rege duodecim, &c. de vicineto Vill' de Hertf. in Com' præd', quæ quidem Villa de Hertf. in Com' præd' eſt villa & viſn' in Com' Hertf. prox' adjacen' civit' London præd'. Et quia præd' Major & Communitas ac cives civitat' præd' hoc non dedicunt, ideo præcept' eſt Vic' com' Hertf. præd', quod Venire fac' coram Dom' Rege a præd' die ſancti Michaelis in tres ſeptiman' ubicunq; &c. duodecim, &c. de vicineto præd', per quos, &c. & qui, &c. ad recogn', &c. quia tam, &c. Idem dies dat' eſt tam præfat' Roberto Sawyer Miles, qui ſequitur, &c. quam prædict' Majori & Communitat', ac Civibus civitat' London prædict, &c. Et præd' Attorn' dicti Dom' Regis nunc general', quoad placitum præfat' Major' & Communitat', ac Civium civitat' London præd' ſuperius rejungendo placitat', pet' inde diem interloquendi coram dicto Dom' Rege, a die ſancti Michaelis in tres ſeptiman' ubicunq; &c. & ei conceditur, &c. idem dies dat' eſt præfat' Majori & Communitat', ac Civibus civit' London præd', &c. ad quas quidem tres ſeptim' ſancti Michaelis coram dicto Dom' Rege apud Weſtm' venit tam præfat' Robertus Sawyer Miles, qui ſequitur, &c. quam præd' Major & Communitas, ac Cives civitat' London præd' per Attorn' ſuum præd'. Et præd' Vic' com' Hertf. non miſit inde breve, ideo ſicut alias præcept' eſt Vic' com' Hertf. præd', quod venire fac' coram dicto Dom' Rege in octab' ſancti Hilar' ubicunque, &c. duodecim, &c. de vicineto de villa Hertf. præd, &c. per quos, &c. & qui, &c. ad recogn', &c. quia tam, &c. idem dies dat' eſt tam præfat' Roberto Sawyer Militi, qui ſequitur, &c. quam prædict' Majori & Communitat', ac Civibus civitat' London, &c.

Et præd' Attorn' dict' Dom' Regis nunc general', qui, &c. quoad placitum ipſorum Major' & Communitat', ac Civium civitat' præd', quoad confectionem & publicationem legis pro levatione denariorum de perſonis ad publica mercata infra civitat' præd' tent' cum victualibus & proviſionibus ibidem vendend' acceden', ac exactionem & levationem hujuſmodi denar' ſuperius fieri ſuppoſit' per ipſos Majorem & Communit', ac Cives, ſuperius rejungendo placitat', pro eodem Dom' Rege nunc dicit, quod per aliqua per ipſos ſuperius inde allegat' libertat', privileg', & franchis' fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi per ipſos ſuperius, ut præfertur, clamat', eiſdem Majori & Communitat' ac Civibus allocari non debent, quia proteſtando, quod ipſi præd' Major & Communit', ac Cives civitat' London præd', decimo ſeptimo die Septembris, anno viceſimo ſexto ſupradicto, in replicatione præd' mentionat', necnon continue poſtea, & a tempore cujus contrar' memoria hominum non exiſtit' minime ſeiſit' fuer', ſeu adhuc ſeiſit' exiſtunt de & in publicis mercatis præd' in dominico ſuo, ut de feodo, nec per totum idem tempus ſumptibus ſuis propriis proviſerunt, ſeu providere conſuever' & debuer' fora mercatoria, ſive loca ubi hujuſmodi mercata tent' fuer', quotieſcunq; neceſſe fuit, ſtallas, ſtationes, & alias accommodationes pro perſonis ad eadem mercata venien' cum victualibus & proviſionibus ibidem vendend', pro meliori & magis convenien' vendition' & expoſition' eorundem, prout præd' Major & Communitas, ac Cives ſuperius rejungendo allegaver'; proteſtandoq; etiam, quod rat' præd' per actum ſive ordination' præd', ut præfertur, ſolvi ordinat' præd', tempore confectionis ordinationis illius, & extunc hucuſq; non fuer' rationabiles, nec adhuc rationabiles exiſtunt, prout iidem Major & Communitas, ac Cives ſuperius ſimiliter allegaverunt. Pro placito tamen idem Attorn' dict' Domin' Regis nunc generalis dicit, quod per quendam actum in parliamento dict' Dom' Regis nunc tent' apud Weſtmonaſter' per ſeparales prorogationes, decimo quarto die Februarii, anno regni dict' Dom' Regis nunc viceſimo ſecundo (inter alia) inactitat' fuit, ad finem quod apti & commodi loci infra dictam civitat' & libertat' ejuſdem, extrapoſit' & appunctuat' forent pro reædificand' & cuſtodiend' mercata ampliori convenientia quam antea fuer', ita quod principales ſtratæ non forent impedit' (Angl' *peſtred*) & obſtruct' perinde, prout antea conſuet' fuit, & quod Regale Excambium, Guildhall, le Seſſions houſe in le Old Baily, & commun' gaolæ & priſonæ infra præd' civitat', forent amplificat' & fact' magis commoda pro publicis uſu & ornament' Civitatis, & melius ſecuritand' a periculo & caſualitate conflagrationis, & quod aliquæ convenien' diſtantiæ, intervall' & circuitus fundi forent relict' inter Regal' Excambium, & alias domos ædificand' infra civitat' præd', quod Major, Aldermanni, & Commun' civitat' præd' in Commun' Concilio aſſemblat' impenderent (Angl' *ſhould and might imploy*) & per actum præd' authoritat' fuer' impendere talia loca & portion' fundi infra Civitat' præd' & libertat' ejuſdem, prout per & cum dicti Dom' Regis nunc approbation' tunc fuer', vel ante decimum diem Martii, milleſimo ſexcenteſimo ſexageſimo nono, forent extrapoſit' & adjudicat' neceſſar' & convenien', tam pro publicis mercatis ibidem, quam etiam pro ornamento, amplificatione, & convenien' præd' Regal' Excambii, & aliorum locorum præmentionat', & cujuſlibet vel alicujus eorundem reſpective, & ad intention', quod rationabilis ſatisfactio dat' foret proprietar', & aliis habent' aliquem ſtatum ſive intereſſe in fundis & locis, quæ fuiſſent vel forent extrapoſit', capiend' & occupand' pro publicis locis mercatoriis, præd' Major, Aldermann', & Commun', per ipſos, vel alios in ea parte fore appunctuat' & authorizat', tractarent & agrearent cum proprietar' & al' intereſſat' in eiſdem, & in caſu voluntariæ recuſationis, ſive alicujus talis inhabilitatis, ſive impediment' qual' in quodam al' actu parliamenti in eodem actu ſpecificat', pro re-ædificatione civitat' London, nuper antea fact', mentionat' fuer', ſeu alius incapacitat' cujuſcunq; in proprietar' inde, vel al' intereſſat' in eiſdem, ad tractand' & agreand', præd' Major & cur' Alderman' forent & fuer' per actum præd' authorizat' & requiſit' cauſare jur' fore impannellat' in tal' modo

do & forma, prout per actum præd' direct' & appunctuat' fuit, ita quod null' duo jur' præd' sic fore impannellat' venirent ex una & eadem warda, adjudicare & assidere qual' compensation', & satisfaction' in quibuslibet casibus præd' forent adjudicat', & dat' respectivis proprietar', & aliis interessat' in fundis & locis sic extraposit', capiend' & occupand' pro aliquibus usibus vel propositis, ut præfertur, in prosecutione ejusdem actus, secundum tal' eorum respectivos status & interess'. Et ulterius inactitat' fuit, quod pro omnimodis carbonibus, quæ ab & post primum diem Maii, millesimo sexcentesimo & septuagesimo, & ante vicesimum nonum diem Septembris, qui foret in anno Dom' millesimo sexcentesimo octogesimo septimo, forent importat' & adduct' in præd' portum civitat' London, seu rivum Thamesis, infra libertat' civitat' præd' super eundem rivum, solut' foret per viam impositionis superinde, secund' ratas postea mentionat' (videl') pro omnibus tal' carbonibus, qual' ibi importat' & induct' forent ab & post primum diem Maii, millesimo sexcentesimo & septuagesimo, & ante vicesimum quartum diem Junii, millesimo sexcentesimo septuagesimo septimo, solut' foret pro qualibet celdar' seu tonna inde duos solidos ultra impositionem duodecim denar' pro celdar' seu tonna per præd' actum pro re-ædificatione civitat' London appunctuat' solvend', & pro omnibus tal' carbonibus, quæ ibidem importat' & induct' forent ab & post prædict' vicesimum quartum diem Junii, millesimo sexcentesimo septuagesimo septimo, & ante præd' vicesimum nonum diem Septembris, millesimo sexcentesimo octogesimo septimo, solut' forent pro qualibet celdar' sive tonna inde tres solidos; & iidem, vigore actus præd', forent collect', levat' & solut' in tali forma & modo, in omni & quolibet respectu, prout in & per præd' priorem actum fuit limitat' & appunctuat' pro collectione & levatione debit' duodecim denar' pro celdar', sive tonna carbonum impositi' per priorem actum præd', & omnes & quaslibet potestat', authoritat', directiones, & provision' in vel per præd' priorem actum mentionat', vel provis' pro levatione & collectione inde: Omnesq; quidem denar' sic recipiend', super comput' præd' respectivarum impositionum', seu earum ulterius de tempore in tempus forent solut' in receptu Cameræ civitat' London, & abinde forent emanat' & solut' secundum directionem & appunctuation' præd' actus de anno vicesimo secundo supradicto, & non aliter; & præd' Camera civitat' London staret & onerat' foret cum toto resid' denar' præd' ibidem solut', qui non sic emanat' forent & solut'. Et ulterius inactitat' fuit, quod omnes & quælibet summa & summæ monet', quæ levat' foret super reception' separal' & respectivarum impositionum' præd', sive per tal' additional' debit' in casu concealament' inde, prout per præd' priorem actum appunctuat' fuit, foret occupat' & dispositi' modo & forma sequen' (videl') una quarta pars omnium denarior', quæ ab & post præd' primum diem Maii, millesimo sexcentesimo & septuagesimo, & ante præd' vicesimum quartum diem Junii, millesimo sexcentesimo septuagesimo septimo, forent levat', sive solubil' super reception' præd' impositionum' duorum solid' pro qualibet celdar' vel tonna carbonum, seu in casu concealament' inde, ut præfertur, foret occupat' & dispositi' pro & erga satisfaction' pro fundis extrapositi' & occupat' pro amplificatione stratarum, confection' wharfarum & portuum, publicorum mercatorum locorum, & aliorum publicorum usuum, tam in actu ill', quam in actu prærecitat', mentionat', & appunctuat', & quod una medietas omnium denar', qui ab & post vicesimum quartum diem Junii, millesimo sexcentesimo septuagesimo septimo, forent levat' seu solubil' super præd' impositi' trium solid' pro celdar' vel tonna carbonum, de tempore in tempus foret occupat' & dispositi' pro satisfactione pro fundo extrapositi', & occupat', ut præfertur, & tal' al' publicis usibus & propositi', qual' in actu ill', & in actu prærecitat' fuer' mentionat' & appunctuat', prout per eundem actum de anno vicesimo secundo supradicto (inter al') plenius liquet & apparet. Et præd' Attorn' dict' Dom' Regis nunc general', qui, &c. pro eodem Dom' Rege nunc ulterius dicit, quod virtute actus illius iidem Major & Communitas, ac Cives civitat' London præd', ante confectionem & publicationem legis præd, scilicet, primo die Septembris, anno regni dicti Dom' Regis nunc vicesimo sexto supradicto, apud London præd', in parochia & warda præd', habuer' & receper' pro debito & vectigali præd' de duobus solidis pro qualibet celdar' sive tonna carbonum in civitat' London, sive portum ejusdem importat', ingent' denariorum summam ad propositi præd'. Et ulterius idem Attorn' Dom' Regis nunc general', qui, &c. pro eodem Dom' Rege nunc dicit, quod Major & Communitas, ac Cives civitat' London, absque aliquo jure, titulo, sive authoritat' quibuscunque, præmissis præd' non obstantibus, præd' die Jovis, scilicet, præd' decimo septimo die Septembris, anno regni dict' Dom' Regis nunc vicesimo sexto supradict', in eorum Commun' Concilio adtunc tent' in camera Guildhall civitat' London præd', videlicet, in parochia sancti Michaelis Bassishaw London, insimul assemblat', fecer', condider', & publicaver' præd' legem per ipsos de facto inactitat', pro levatione separal' denar' summar' præd', de omnibus subditis ac ligeis Dom' Regis nunc, tam liberis quam non liberis hominibus civitat' præd', & aliis extraneis ad publica mercat' infra civit' præd' tent' acceden' cum victual' & provisionibus suis ibidem vendend', ac easdem separal' denar' summas, sub solo colore & prætextu legis præd' sic per ipsos, pro eorum privato lucro & commodo, illegaliter fact', & absque aliquo alio jure, titulo, sive authoritat' quibuscunque, per præd' spatium septem annorum post præd' decimum septimum diem Septembris, anno vicesimo sexto supradicto prox' sequen', & amplius, apud London præd', in parochia præd', de omnibus dict' Dom' Regis ligeis & subditis ad præd' publica mercata, per totum tempus præd', infra civitat' præd' tent', cum victual' & provisionibus ibidem vendend' accedentibus, exeger' & levaver', & exigi & levari fecer', & denar' ill' ad eorum proprios usus, converterunt & dispossuerunt, in subversion' boni regiminis & gubernation' civitatis præd', & in magnam oppression' & depauperation' omnium dicti Dom' Regis nunc ligeorum, ad mercata præd' cum victualibus & provisionibus suis acceden' & venien', ad grave dampnum & nocumentum omnium ligeorum & subditorum dicti Domini Regis, in augmentation' preciorum omnium victual' & provision' in mercatâ præd' vendit', ac in dicti Domini Regis nunc & coronæ suæ Regiæ exhæredationem manifestam,

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ac contra fiduc' in ipſis, ut corpore corporat' & politic', per Dom' Regem ac leges hujus regni Angl' repoſit', prout præd' Attorn' dict' Dom' Regis nunc generalis pro eodem Dom' Rege nunc ſuperius replicando allegavit; abſque hoc, quod præd' Major & Communitas, ac Cives civitatis London, a tempore cujus contrar' memoria hominum non exiſtit, habuer', ſeu habere conſuever' tolnet', ratas, ſive denar' ſummas per ipſos Majorem & Communitat' ac Cives civitat' præd', ſuperius ſuppoſit' fore per præfat' legem ſive ordination' præd' aſſeſs', & in certitudinem reduct', prout per placitum ipſorum Majoris & Communitat', ac Civium civitat' London præd' ſuperius rejungendo ſupponitur. Et hoc idem Attorn' General' pro eodem Dom' Rege nunc parat' eſt verificare; unde & ex quo iidem Major & Communitas, ac Cives, libertat', privileg' & franchis' præd', fore de ſeipſis corpus corporat' & politicum, ex cauſa præd' forisfecer', idem Attorn' General', ut prius, pro eodem Dom' Rege nunc pet' judicium, & quod præd' Major & Communitas, ac Cives civitat' London præd', de præmiſſis convincantur, ac de libertat', privileg' & franchis' ill' abjudicentur & excludentur, *&c.*

Et quoad placitum præfat' Majoris & Communitat', ac Civium civit' London præd' ſuperius rejungendo placitat', quoad reſid' præd' placiti præfat' Attorn' general' in aſſign' forisfactur', ut præfertur, ſuperius replicando placitat' idem Attorn' dict' Dom' Regis nunc general', proteſtando, quod præd' prorogatio dicti parliamenti per præfat' Dom' Regem fuit pro diverſis neceſſar' & urgentibus cauſis, bonum & utilitatem dicti Dom' Regis & regni ſui concernen', & ſecundum veram & indubitat' prærogativam & poteſtatem dicti Dom' Regis nunc; & per eandem prorogationem profecutio publicæ juſtitiæ regni, & præparationis (Angl' *the making Proviſions)* neceſſar' pro præſervation' dict' Dom' Regis, & ejus ſubditorum Proteſtantium, non recepiſſent obſtructionem (Angl' *Interruption)* prout per petitionem præd' per vota & ſuffragia præfat' Majoris & Communitat', ac Civium civitat' præd' in dicto Communi Concilio aſſemblat', ſic ut præfertur ordinat', falſe & malitioſe allegatur; pro placito tamen idem Attorn' general' pro eodem Dom' Rege nunc dic', quod placitum præfat' Majoris & Communit', ac Civium civitat' London præd' ſuperius rejungendo in ea parte placitat', materiaque in eodem content' minime ſufficien' in lege exiſtunt ad ipſos Majorem & Communit', ac Cives civitat' præd' ad clamand' libertat', privileg', & franchis' præd', fore de ſeipſis corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Commun', ac Civium civ' London præd', ac per idem nomen placit' & implacit', reſp' & reſponderi, ſibi allocand', ſeu adjudicand' manuten'. Quodq; ipſe idem Attorn' gener' ad placitum ill' modo & forma præd' placitat' pro eodem Dom' Reg' nunc neceſſe non habet, nec per legem terræ tenetur aliquo modo reſpondere. Et hoc idem Attorn' dict' Dom' Regis nunc general' pro eodem Dom' Rege nunc parat' eſt verificare. Unde pro defectu ſufficien' placiti ipſorum Majoris & Communitat', ac Civium civitat' præd' in hac parte idem Attorn' dicti Dom' Regis nunc general' pro eodem Dom' Rege nunc, ut prius, pet' judicium, & quod præd' Major & Communitas, ac Cives civitat' London præd' de præmiſſis convincantur, & de libertat', privileg', & franchis' ill' adjudicentur & excludantur, *&c.*

Et præd' Major & Communitas, ac Cives civit' præd', quoad moration' in lege præfat' Attorn' dic' Dom' Regis nunc generalis, quoad præd' placitum ipſor' Major' & Communitat', ac Civium civitat' London ſuperius rejungendo placit', quoad præd' reſid' præd' placiti dic' Attorn' general' in aſſign' forisfactur', ut præfertur, ſuperius replicando placitat', ex quo ipſi ſufficien' materiam in lege in eod' placito ſuo ad ipſos Majorem & Communitat', ac Cives civitat' London ad clamand' præd' libertat', privileg', & franchis' fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Major' & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi per ipſos ſuperius clamat', eis allocand' & adjudicand', manutenend' ſuperius allegaver', quam ipſi parat' ſunt verificare, quam quid' materiam præd' Attorn' dic' Dom' Regis nunc general', pro eodem Dom' Rege non dedicit, nec ad eam aliqualit' reſpond', ſed verification' ill' admittere omnino recuſat, ut prius, pet' judicium. Et quod libertat', privileg', & franchis' ill' eis & ſucceſſoribus ſuis deinceps allocentur & adjudicentur, & quod ipſi, quoad præmiſs' ill', ab hac cur' dimittantur, *&c.*

Et quoad præd' placit' præd' Attorn' Dom' Regis nunc general' pro eod' Dom' Rege, quoad confection' & publication' legis pro levatione denar' de perſon' ad publica mercata infra civit' præd' tent' cum victual' & proviſionibus ibidem vendend' acceden', ac exaction' & levation' hujuſmodi denar' ſuperius fieri ſuppoſit' ſuperius rejungend' placitat', iidem Major & Communitas, ac Cives civit' præd' (ut prius) dicunt, quod Major & Communitas, ac Cives civit' London præd', a tempore cujus contrar' memor' hom' non exiſtit, habuer', & habere conſuever', rationabil' tolnet', ratas, ſive denar' ſummas de omnibus perſon' ad mercat' præd' cum victual' & proviſion' ibidem vendend' tenend' pro ſtallis, ſtationibus, & al' accommodation' per eas pro vendition', expoſitione hujuſmodi victual' & proviſion' in mercat' ill' habit', & de hoc pon' ſe ſuper patriam.

Et præd' Robertus Sawyer Mil', Attorn' dic' Dom' Regis nunc general', qui pro eod' Dom' Rege in hac parte ſequitur, dic', quod placitum præd' præfat' Major' & Communitat', ac Civium civit' London præd' ſuperius repellando placitat', materiaque in eod' content' minus ſufficien' in lege exiſtunt ad ipſos Major' & Communitat', ac Cives civit' præd' ad clamand' libertat', privileg', & franchis' præd', fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Major' & Communitat', ac Civium civitat' London præd', ac per idem nomen placitare & implacitari, reſpondere & reſponderi ſibi allocand' ſeu adjudicand' manutenend', ad quod quidem placitum modo & forma præd' placitat', idem Attorn' dic' Dom' Regis nunc general' neceſſe non habet, nec per legem terræ tenetur aliquo modo reſpondere, pro eo, quod iidem Major & Communitas, ac Cives civit' præd' non oſtender' quanta vel qualia tolnet', ratas, ſive denar' ſummas, iidem Major & Communitas, ac

Cives

Cives civit' London præd', a tempore cujus contrar' memor' hominum non exiſtit', habuer', nec allegaver' quod ipſi unquam habuer' tolnet', rat', ſive denar' ſummas per ipſos ſuperius ſuppoſit' fore per legem ſuam præd' fore reduct' in certitudinem; & hoc idem Attorn' dic' Dom' Regis nunc general' pro eodem Dom' Rege parat' eſt verificare; unde pro defectu ſufficien' placiti præd' in hac parte, idem Attorn' dic' Dom' Regis nunc general' pro eodem Domino Rege, ut prius, pet' judicium, & quod præd' Major' & Communitas, ac Cives civitat' London præd', de præmiſs' præd' in placit' præd' convincantur, & de libertat', privileg', & franchis' ult' ſupradict' penitus excludantur & abjudicentur, &c.

Et præd' Major & Communitas, ac Cives civitat' London præd' petunt licentiam inde interloquend' coram Dom' Rege uſque in octab' ſancti Hilar', ubicunque, &c. & eis conceditur. Idem dies dat' eſt præfat' Attorn' dic' Dom' Regis nunc general', &c. Et præd' Attorn' dic' Dom' Regis nunc general', qui pro eod' Dom' Rege in hac parte ſequitur, quoad placitum præfat' Majoris & Communitat', ac Civium civitat' London præd', quoad libertat', privileg', & franchis' præd' per ipſos ſuperius clamat', videlicet, ipſos habere Vicecom' civit' & com' civit' London, & Vicecom' com' Midd', & nominare & eligere ex ſeipſis duas perſon' fore Vic' civit' præd', & com' ejuſdem civit', & Vic' com' Midd', ac ill' ſic nominat' & elect' præficere & conſtituere Vic' civit' præd', & com' ejuſdem civit', & Vic' com' Midd', ac ut Vic' civit' præd', & com' ejuſdem civit' de execution' & retorn' omnium brevium, billarum, & præceptorum Dom' Regis pro adminiſtratione juſtitiæ infra civit' præd', & com' ejuſdem civit' exequend' & faciend' quæ ad officium Vic' faciend' pertinent, & ad faciend' & exequend' omnia & ſingula alia infra civit' præd', & com' ejuſdem civit' quæ ad officium Vic' faciend' pertinent, ac ut Vic' com' Midd' pro eodem com' deſervitur', ac omnia brevia, billas, & præcept' Dom' Regis infra com' Midd' præd', pro adminiſtratione & executione juſtitiæ ibidem exequend', & retorn' inde faciend' quæ ad officium Vic' faciend' pertinent ſuperius placitat'; necnon quoad placitum præfat' Major' & Communitat', ac Civium civitat' London præd', quoad libertat', privileg', & franchis' per ipſos ſuperius clamat', videlicet, Major dic' civitat', & hujuſmodi Alderman' ejuſdem civitatis, qui officium Majorat' civit' ill' ſuſtinuer', ac inde fuer' dimiſſi, ac tres Alderman' ſenior' civit' præd', qui diutius in offic' Alderman' civit' præd' ſteter', & onus & officium Majorat' civit' præd' non ſuſtinuer', fore Juſtic' Dom' Regis ad pacem infra civit' præd' conſervand', ac ad ſeſſion' pacis & placita coron', ſcilicet, tal' placita coron', qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' legitime tenere poſſent infra eand' civitat' tenend', ac ad omnia felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand' ſuperius placitat', idem Attorn' dic' Dom' Regis nunc general', qui pro eodem Dom' Rege in hac parte ſequitur, petit ulterius licenc' inde interloquend' coram Dom' Rege uſque octab' ſancti Hilarii, & ei conceditur, &c. Idem dies dat' eſt præfat' Majori & Communitat', ac Civibus civitat' London præd', &c. Et quoad materiam in lege, unde tam præd' Attorn' dic' Dom' Regis nunc general', quam præd' Major & Communitas, ac Cives civitat' præd' poſuer' ſe in judic' cur'; ſed quia cur' dic' Dom' Regis nunc hic de judic' ſuo de & ſuper præmiſſis reddend' nondum adviſatur, dies inde dat' eſt tam præfat' Roberto Sawyer Mil', Attorn' dic' Dom' Regis nunc general', qui pro eodem Dom' Rege in hac parte ſequitur, quam præd' Major' & Communitat', ac Civibus civitat' London, &c. coram Dom' Rege in præd' octab' ſancti Hilar', ubicunque, &c. de judic' ſuo inde audiend', eo quod cur' Dom' Regis hic nondum, &c.

Ad quam quidem octab' ſancti Hilar' coram Dom' Rege apud Weſtm', ven' tam præfat' Robertus Sawyer Mil', qui ſequitur, &c. quam præd' Major & Communitas, ac Cives civitat' London præd', per Attorn' ſuum præd'. Et præd' Major & Communitas, ac Cives civitat' London præd', ex quo ipſi ſufficien' materiam in lege in placito ſuo præd' ſuperius repellando placitat' ad ipſos Majorem & Communitat', ac Cives civitat' London ad clamand' libertat', privileg', & franchis', fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi per ipſos ſuperius clamat', eis allocand' & adjudicand' manutenend' ſuperius allegaver', quam ipſi parat' ſunt verificare; quam quidem materiam præd' Attorn' dic' Dom' Regis nunc general' pro eodem Dom' Rege non dedic', nec ad eam aliqualit' reſpond', ſed verification' ill' admittere omnino recuſat, ut prius, pet' judic', & quod libertat', privileg', & franchis' ill' eis & ſucceſſoribus ſuis in perpetuum deinceps allocentur & adjudicentur, & quod ipſi, quoad præmiſs' ill', ab hac cur' dimittantur, &c. Et præd' Attorn' dic' Dom' Regis nunc general', qui pro eodem Dom' Rege in hac parte ſequitur, quoad exit' præd' int' præd' Dom' Regem & præfat' Major' & Communitat', ac Cives civitat' London per patriam triand' ſuperius junct', & quoad libertat', privileg', & franchis' præd' per ipſos ſuperius clamat', videlicet, ipſos habere Vic' civit' & com' civit' London, & Vic' com' Midd', & nominare & eligere ex ſeipſis duas perſon' fore Vic' civit' præd', & Com' ejuſdem civit', ac Vic' com' Midd', ac illas ſic nominat' & elect' præficere & conſtituere Vic' civit' præd' & com' ejuſdem civitat', & Vic' com' Midd', ac ut Vic' civit' præd' & Com' ejuſdem civit' ad execution' & retorn' omnium brevium, billarum, & præceptor' Dom' Regis pro adminiſtratione juſtitiæ infra civit' præd', & com' ejuſdem civit' exequend', & faciend' quæ ad officium Vic' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula al' infra civit' præd' & com' ejuſdem civit', quæ ad officium Vic' faciend' pertinent, ac ut Vic' com' Midd' pro eodem com' deſervitur', ac omnia brevia, billas, & præcept' Dom' Regis infra com' Midd' præd' pro adminiſtratione & executione juſtitiæ ibidem exequend', & retorn' inde faciend' quæ ad officium Vic' faciend' pertinent ſuperius placitat', necnon quod libertat', privileg', & franchis' per ipſos ſuperius clamat', videlicet, Majorem dic' civitat', & hujuſmodi Alderman' ejuſdem civitat', qui officium Majorat' civitat' illius ſuſtinuer', ac inde fuer' dimiſſi, ac tres Alderman' ſen' civitat' præd', qui diutius in officio

Alderman'

Alderman' civit' præd' ſteter', & onus & officium Majorat' civit' præd' non ſuſtinuer', ſore Juſticiar' Dom' Regis ad pacem infra civit' præd' conſervand', ac ad ſeſſion' pacis & placita coron', ſcilicet, tal' placita coron', qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' legitime tenere poſſent infra eandem civit' tenend', ac ad omnia felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand' ſuperius placitat' dic', quod ipſe pro eodem Dom' Rege in ea parte ulterius proſequi non vult verſus præfat' Majorem & Communitat', ac Cives civitat' London præd'.

Ideo cons' quod præfat' Major & Communitas, ac Cives civitat' London præd', quoad exit' int' præd' Dom' Regem, & præfat' Majorem & Communitat', ac Cives civitat' London præd', per patriam triand' ſuperius junct', & quoad libertat', privileg', & franchis' præd' per ipſos ſuperius clamat', videlicet, ipſos habere Vicecom' civit' & com' civit' London, & Vic' com' Midd', & nominare & eligere ex ſeipſis duas perſonas fore Vic' civit' præd' & com' ejuſdem civit', & Vic' com' Midd', ac ill' ſic nominat' & elect' præficere & conſtituere Vic' civit' præd' & com' ejuſdem civit', & Vic' com' Midd', ac, ut Vic' com' civit' præd' & com' ejuſdem, ad execution' & retorn' omnium brevium, billarum, & præceptor' Dom' Regis pro adminiſtratione juſtitiæ infra civit' præd' & com' ejuſdem civit', exequend' & faciend' quæ ad officium Vic' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula al' infra civit' præd', & com' ejuſdem civitat', quæ ad officium Vic' faciend' pertinent, ac ut Vic' com' Midd' pro eodem com' deſervitur', ac omnia brevia, billas, & præcepta Dom' Regis infra com' Midd' præd', pro adminiſtratione & executione juſtitiæ ibidem exequend', & retorn' inde faciend', quæ ad officium Vic' faciend' pertinent ſuperius placitat', necnon quoad libertat', privileg', & franchis' per ipſos ſuperius clamat', videlicet, Majorem dic' civit', & hujuſmodi Alderman' ejuſdem civitat', qui officium Majorat' civit' ill' ſuſtinuer', ac inde fuer' dimiſſi, ac tres Alderman' ſen' civit' præd', qui diutius in offic' Alderman' civitat' præd' ſteter', & onus & officium Majorat' civit' præd' non ſuſtinuer', fore Juſticiar' Dom' Regis ad pacem infra civit' prædict' conſervand', ac ad ſeſſion' pacis & placita coron', ſcilicet, talia placita coron', qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' legitime tenere poſſint infra eandem civit' tenend', ac ad omnia felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand' ſuperius placitat', eant inde ſine die, ſalvo jure Dom' Regis, ſi al', &c. Et quoad dic' ſeparal' materias in lege, unde tam præd' Attorn' dic' Dom' Regis nunc general', quam præd' Major & Communitas, ac Cives civitat' præd', poſuer' ſe in judic' cur', ſed quia cur' dic' Dom' Regis nunc hic de judic' ſuo de & ſuper præmiſs' reddend' nondum adviſatur, dies inde dat' eſt tam præfat' Roberto Sawyer Mil', Attorn' dic' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte ſequitur, quam præd' Major' & Communitat', ac Civibus civitat' London, &c. coram Domino Rege a die Paſchæ in quindecim dies, ubicunque, &c. de judicio ſuo inde audiend', eo quod cur' dic' Domini Regis hic nondum, &c. Ad quem quid' quinden' Paſchæ coram Domino Rege apud Weſtm' ven' tam præfat' Robertus Sawyer Mil', Attorn' dict' Domini Regis nunc general', qui pro eodem Dom' Rege in hac parte ſequitur, quam præfat' Major & Communitas, ac Civit' London præd' per Attorn' ſuum præd', ſed quia cur' dic Domini Regis nunc hic de judicio ſuo de & ſuper præmiſs' reddend' nondum adviſatur, dies inde ulterior dat' eſt tam præfat' Roberto Sawyer Mil', qui ſequitur, &c. quam præfat' Majori & Communitat', ac Civib' civitat' London præd' coram Domino Rege in craſtin' Sanctæ Trinitat', ubicunque, &c. de judicio ſuo ſuperinde audiend', &c. eo quod cur' Domini Regis hic nondum, &c. Ad quod quidem craſtin' Sanctæ Trinitat' coram Domino Rege apud Weſtm' ven' tam præfat' Robertus Sawyer Mil', Attorn' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte ſequitur, quam præd' Major & Communitas, ac Cives civit' London præd' per Attorn' ſuum præd'; & idem Attorn' dic' Domini Regis pro eodem Domino Rege pet' judic' verſus præd' Major & Communitat', ac Cives civit' London præd' in præmiſs' reddend', quod dic' libertat', privileg', & franchis' fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere & reſponderi per ipſos ſuperius clamat', capiantur in manus Domini Regis nunc, ſup' quo, pro eo quod videtur cur' hic, quod præfat' Major & Communitas, ac Cives civit' præd', forisfecer' Domino Regi nunc libertat', privileg', & franchis' præd', ob cauſas in replicatione præfat' Attorn' general' ſuperius ſpecificat'; quodque placita præfat' Majoris & Communitat', ac Civium civitat' London præd' ſuperius rejungendo & repellando in ea parte placitat', materiaque in eiſdem content', minus ſufficien' & invalida in lege exiſtunt ad præcludend' dict' Dom' Regem a forisfactur' præd', aut ad ipſos Majorem & Communitat', ac Cives civit' præd', ad clamand' libertat', privileg', & franchis' præd', ſibi allocand' & adjudicand', manutenend', maturaque deliberatione ſuperinde prius habit'.

Cons' eſt, quod libertat', privileg', & franchis' præd' fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civit' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi, per eoſdem Majorem & Communitat', ac Cives civit' London præd' ſuperius clamat', capiantur & ſeiſiantur in manus Domini Regis, & quod præfat' Major & Communitas, ac Cives civit' London præd', capiantur ad ſatisfaciend' dic' Domino Regi de fine ſuo pro uſurpatione libertat', privileg', & franchis' præd'.

Rex verſus Pilkington[a], *& al' for a* Riot.

Trin. 34. *& Hil.* 34 *&* 35. *Car.* II. *B. R.*

London ſſ. QUod 24 die Junii, anno regni Domini Caroli ſecundi nunc Regis Angl', &c. 34. apud Guildhall civit' London quædam Cur' aſſemblation' civium & liberor' homin' civit' London (communit' vocat' *a Common Hall*) per Johannem Moore, Mil', adtunc & adhuc Majorem civit' London, ſummonit' & convocat' coram eodem J. Moore Mil', Majore civit' præd', legitimo modo tent' fuit tam pro debit' election' Vic' civit' præd' pro execution' Offic' Vic' civit' præd' pro uno anno integro prox' ſequen' poſt vigil' feſti ſancti Michaelis Arch' adtunc & adhuc prox' futur', quam pro election' diverſor' al' officiar' civit' præd', quodq; adtunc & ibidem in Cur' præd' incept' fuit numerare capita (Anglice *to take the Poll*) de electorib' tunc & ibidem præſentib' pro manifeſtatione electionis perſonar' deſervitur' in offic' Vic' civit' præd' pro anno ſuprad', quodq; præd' J. Moore Mil', Major' civit' prædict', poſtea eodem 24 die Junii anno regni dicti Dom' Regis nunc 24 ſuprad' apud Guildhall civit' London' præd' in paroch' ſancti Michaelis Baſſiſhaw London præd' legitimo modo fecit & fieri cauſavit proclamation' pro adjornation' Cur' præd', ſic ut præfertur' tent', & adtunc & ibidem præd' J. Moore Mil', Major' civit' præd' Cur' præd', legitimo modo uſque diem Martis tunc prox' futur', adjornavit apud Guildhall civit' London præd' tenend', & adtunc & ibidem poſt adjornament' præd', ſic ut præfertur, fact' præd', J. Moore Mil', Major civit' London præd' fecit & fieri cauſavit proclamation' publicam pro deceſſion' omnium perſonar' ibidem ex occaſione præd' aſſemblat'. Et ulterius idem Attorn' dicti Domini Regis nunc general' pro eodem Domino Rege dat Cur' hic intelligi & informari, quod Thomas Pilkington nuper de London Ar' & Samuel Shute nuper de London Ar' (tunc Vic' civit' London' præd') Et Henr' Corniſh nuper de London Ar' Ford Dominus Grey de Warke, Thomas Gold nuper de London Mil', Johannes Shorter nuper de London Mil', Thomas Player nuper de London Mil', Willielmus Gulſton nuper de London Mil', Slingsby Bethel nuper de London Ar', Nelthrope nuper de London Ar', Johannes Ayliffe nuper de London Ar', Johannes Ellis nuper de London Ar', Franciſcus Jenks nuper de London Lintear', Robertus Barker nuper de London Gen', Johannes Deagle nuper de London Panuar', Richardus Freeman nuper de London Caſearius, Benjamin Smith nuper de London Gen', Richardus Goodenough nuper de London Gen', R. Kay nuper de London Mercator, Lucy Knightley nuper de London Gen', Johannes Wickham nuper de London Gen', Samuel Swynnock nuper de London Mercator, Joſhua Brooks nuper de London Gen', Jo' Jekyll nuper de London Gen', Dorman Newman nuper de London Gen', T. Rawlinſon nuper de London Gen', T. Carpenter nuper de London Gen', T. Charleton nuper de London Gen', Johannes Jekyll jun' nuper de London Gen', Benj' Alſop nuper de London Gen', M. Meriton nuper de London Gen', Car' Bateman nuper de London Gen', Johannes Trenchard nuper de London Ar', Sim' Miller nuper de London Gen', Jervas Byfield nuper de London Gen', W. Peachy nuper de London Gen', & Richardus Farrington nuper de London Ar', præmiſs' præd' ſatis ſcien', ſed exiſten' perſon' male diſpoſit', & machinan' & intenden' pacem dicti Domini Regis nunc & communem tranquillitat' hujus regni Angl' inquietare, moleſtare, & perturbare, ipſi præd', T. Pilkington & S. Shute, ſub colore officii Vic' civit' London præd', & præd H. Corniſh, Ford' Dominus Grey, T. Gold Mil', J. Shorter Mil', *&c.* poſtea, & poſt adjornament' præd', ſcilt' dicto 24 die Junii anno regni dicti Domini Regis nunc 34 ſuprad', apud paroch' ſancti Michaelis B. London præd', in Guildhall præd' ibidem vi & armis, *&c.* riotoſe, routoſe, illicite, & ſeditioſe, ſeſe cum plur' al' perſon' male diſpoſit', & pacis dicti Domini Regis nunc perturbatorib', ad numer' mille perſonar' eidem Attorn' dicti Domini Regis nunc general' adhuc incognit', aſſemblaver', congregaver' & coadunaver' ad pacem dicti Domini Regis nunc perturband'; & ſic aſſemblat', congregat', & coadunat' exiſten', adtunc & ibidem vi & armis, *&c.* riotoſe, routoſe, & illicite, in & ſuper præd' J. Moore Mil' Major' civit' præd' in pace Dei & dicti Dom' Regis adtunc & ibid' exiſten', inſult' & afraiam fecer', & ipſum Johannem Moore Mil' adtunc & ibid' verberaver', vulneraver', & maletractaver', ita quod de vita ejus maxime deſperabatur: Et poſt adjornament' præd', & proclamation' præd', ſic ut præfertur, per præfat' J. Moore Mil' Major' civit' præd' fact', ipſi præd' T. Pilkington & Samuel Shute, adtunc & ibidem, colore officii ſui Vic' civit' London' præd', & præd' Henr' Corniſh, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', *&c.* cum divers' al' perſon' eidem Attorn' dicti Domini Regis nunc general' adhuc incognit', præfat' T. P. & S. Shute illicite & ſeditioſe auxilian' & aſſiſten' vi & armis, *&c.* riotoſe, routoſe, & illicite, ibidem continuaver' ad capita numerand' (Anglice *to take the Poll*) de perſon' ſic adtunc & ibidem illicite aſſemblat', tanquam & quaſi eædem perſon' licite aſſemblat' fuiſſent pro electione Vic' civit' præd': Et quod præd' T. P. S. Shute, H. Corniſh, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', *&c.* tunc & ibidem illicite, tumultuoſe, & ſeditioſe affirmaver', & quilibet eor' affirmavit, dixit, & alta voce præd' male diſpoſit' perſonis affirmavit, quod præd' Johannes Moore Mil', Major civit' London præd', illicite & injuſte aſſumpſiſſet ſuper ſe libertat' ad adjornand' Cur', quæ ſibi præd' J. Moore non pertinebat; quodque præd' T. Pilkington, S. Shute, H. Corniſh, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', & al' tunc & ibidem præd' illicite & male diſpoſit' perſon', ſic ut præfertur aſſemblat' & congregat', vi & armis, *&c.* riotoſe, routoſe, illicite, & ſeditioſe, per

[a] Vol. III. p. 541. N° 113.

ſpatium trium horar' ad pacem dicti Domini Regis nunc perturband', & riot' præd' committend', excitaver', mover', perſuaver', procuraver', & adtunc & ibidem, per totum tempus prædictum, in paroch' & warda prædicta Guildhall London præd', magnos rumores, clamores, vociferationes terribiles, & inſolitos ſtridores, vi & armis, &c. riotoſe, routoſe, & illicite, tumultuoſe, & ſeditioſe fecer', & fieri cauſaver' & excitaver', in contempt' dicti Domini Regis nunc, legumq; ſuar', paciſque ſuæ perturbation', & violation' manifeſt', ad magn' pericul' incitand' & movend' tumult' & effuſion' quamplurimum ſanguinis ibidem, ad magn' terror', inquietud', & timor' omn' ligeor' ſubdit' dicti Domini Regis, in malum exemplum omn' al' in tali caſu delinquen', & contra pacem dicti Domini Regis nunc, coron' & dignitat' ſuas, &c. Unde idem Attorn' dicti Domini Regis nunc general' pro eodem Domino Rege pet' adviſament' Cur' hic in præmiſs', & debit' legis proceſs' verſus præfat' T. Pilkington, S. Shute, H. Corniſh, Ford Dominum Grey, T. Gold Mil', J. Shorter Mil', &c. in hac parte fieri ad reſpondend' dicto Dom' Regi de & in præmiſs', &c. per quod præcept' fuit Vic' civit' London præd', quod venire fac' eos ad reſpond', &c. Et modo, ſcil', die Mercur' prox' poſt tres ſeptiman' ſanctæ Trin', coram Dom' Rege apud Weſtm', ven' præd' T. Pilkington, S. Shute, & Richardus Goodenough, per Benedict' Brown Attornatum ſuum, & habito auditu information' præd', ſeparatim dicunt, quod ipſi non ſunt inde culp', & de hoc pon' ſe ſeparatim ſuper patriam: Et præd' R. Sawyer Mil', Attorn' Dom' Regis nunc general', qui pro eodem Domino Rege in hac parte ſequitur ſimilit', &c. Et ſuper hoc idem Attorn' dicti Dom' Regis nunc general', pro eodem Domino Rege dicit, & Cur' hic oſtendit, quod Thomas Pilkington & S. Shute Ar', duo defend' ſuperius nominat', Vicecom' civit' London præd' ad præſens exiſtunt, tamen ipſe idem Attorn' dicti Domini Regis nunc general' pro eodem Domino Rege pet' breve Domini Regis præfat' Vic' London dirigend', de venire fac' coram Domino Rege duodecim, &c. ad triand' exit' præd' int' dictum Dominum Regem & partes præd' ſuperius in forma præd' junct': Et quia præd' defend' hoc non dedic', ideo præcept' eſt præfat' Vic' civit' London, quod venire fac' coram Dom' Rege, a die ſancti Michaelis in tres ſeptiman' ubicunque, &c. duodecim, &c. per quos, &c. & qui, &c. ad recogn', &c. quia tam, &c. idem dies dat' eſt tam præfat' R. Sawyer Mil', qui ſequitur, &c. quam præd' T. P. S. S. & R. G. &c. Ad quas quid' tres ſeptiman' ſancti Michaelis coram dicto Domino Rege ven' tam præd' R. Sawyer Mil', qui ſequitur, &c. quam præd' T. P. S. S. & R. G. per Attorn' ſuu' præd': Et Vic' civit' London non miſer' inde breve, ideo ſicut al' ven' inde Jur' coram dicto Dom' Rege in octab' ſancti Hilar' ubicunque, &c. per quos, &c. & qui, &c. ad recog', &c. quia tam, &c. idem dies dat' eſt tam præfat' R. Sawyer Mil', qui ſequitur, &c. quam præd' T. P. S. S. & R. G. &c. ad quas quidem Octab' ſancti Hilar' coram dicto Domino Rege apud Weſtm' ven' tam præfat R. S. Mil', qui ſequitur, &c. quam præd' T. P. S. S. & R. G. per Attorn' ſuum præd', & Ford Dominus Grey, H. Corniſh, T. Gold Mil', J. Shorter Mil', T. Player Mil', &c. per præfat' B. B. Attorn' ſuu' ſimiliter ven', & habito auditu information' præd', ſeparatim dicunt, quod ipſi non ſunt inde culp', & de hoc ſimiliter ſeparatim pon' ſe ſuper patriam. Et præd' R. Sawyer Mil', Attorn' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte ſequitur, ſimiliter, &c. ideo, ſicut al', ven' inde jur' coram dicto Domino Rege in octab' Pur' beatæ Mariæ Virginis, ubicunque, &c. per quos, &c. Et qui nec, &c. ad recogn', &c. quia tam, &c. idem dies dat' eſt tam præfat' R. Sawyer Mil', qui ſequitur, &c. quam præd' T. P. S. S. R. G. Ford Domino Grey, &c. ad quas quidem octab' Pur' beatæ Mariæ Virginis, coram Domino Rege apud Weſtm', ven' tam præfat' R. Sawyer Mil', qui ſequitur, &c. quam præd' T. P. S. S. R. G. Ford Dominus Grey, H. C. T. G. Mil', &c. per Attorn' ſuum præd': Et Vic' civit' London præd' retorn' nomina duodecim jur', quor' nul', &c. ideo præcept' eſt Vic' præd', quod diſtring' eos per omnes terr', &c. & quod de exit', &c. & quod habeant corpora eor' coram dicto Domino Rege a die Paſch' in quindecim ſeptiman', ubicunque, &c. vel coram dilect' & fidel' Domini Regis Edwardo Saunders Mil', Capital' Juſtic' Domini Regis ad placita coram ipſo Rege tenend' aſſign', ſi prius die Martis prox' poſt menſem Paſchæ, apud Guildhall civit' London, per formam ſtatut', &c. ven' pro defectu jur', &c. ideo Vic' habeant corpora, &c. ad recogn' in forma præd', &c. Idem dies dat' eſt tam præfat' R. Sawyer Mil', qui, &c. quam præd' T. P. S. S. R. G. Ford Domino Grey, H. O. T. G. Mil', &c. ad quas quidem quinque ſeptiman' Paſchæ, iſto eodem termino, cor' Domino Rege apud Weſtm', ven' tam' præfat' R. S. Mil', qui ſequitur, &c. quam præd' T. P. S. S. R. G. Ford Dominus Grey, H. C. &c. per Attorn' ſuum præd', & præfat' Capital' Juſtic', coram quo, &c. mis' hic record' ſuum coram eo habit', in hæc verba: Poſtea, die & loco infra content', coram infra nominat' Edwardo Saunders Mil', Capital' Juſtic' dicti Domini Regis infra ſcript', aſſociat' ſibi Edwardo Watts Gen', per formam ſtatut', &c. ven' tam infra nominat' R. Sawyer Mil', Attorn' Domini Regis nunc general', qui ſequitur, &c. quam præd' T. P. S. S. R. G. Ford Dominus Grey, H. C. &c. per Attorn' ſuum infra ſcript': Et jur' jurat', unde infra fit mentio, exact' ven', & in jur' ill' jurat' exiſtunt, & ſuper hoc publica proclamatio pro Domino Rege fact', prout mos eſt, quod ſi aliquis ſit, qui præfat' Capital' Juſtic', aut Servien' dicti Domini Regis ad legem, aut Attornatum dicti Domini Regis generalis, aut jur' præd', de infra content' informare vellet, veniret, & audiretur; & ſuper hoc Georgius Jeffereys Mil' & Bar', ex parte dicti Domini Regis, ad hoc faciend' ſe obtulit, ſuper quo proceſs' eſt per cur' hic ad caption' jur' præd' pro jur' præd' modo comparen', qui ad veritat' de infra content', elect', triat', & jurat' ſuper ſacramentum præd' dicunt, quod præd' T. Gold Mil', J. Brooks, W. Miller, T. Charlton, D. Newman, J. Jekyll jun', B. Alſop, M. Meriton, J. Trenchard, & J. Byfeild, non ſunt culp', nec eor' aliquis culp' eſt de præmiſs' in informatione in recordo præd' mentionat', prout interius placitando allegaver'; & ulterius jur' præd' ſuper ſacramentum ſuum præd' dicunt, quod præd' Thomas Pilkington, S. Shute, Ford Dominus Grey, T. Player Mil', S. Bethell Arm', F. Jenks, J. Deagle, R. Freeman, R. Goodenough, R. Kay, J. Wickham, S. Swynnock, & S. Jekyll ſen', ſunt culp';

culp', & quilibet eor' eſt culp' de præmiſs' in informatione infra ſcript' mentionat', prout per informationem præd' interius verſus eos ſupponitur, ideo, &c.

Rex verſus Walcott[b], *for* High Treaſon.

35 *Car'* II. *O. B.*

GUlielmus Tertius Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, &c. dilect' & fideli noſtro Johanni Holt Militi, Capitali Juſticiario noſtro ad placita coram nobis tenend' aſſign', ſalutem. Quia in recordo & proceſſu, ac etiam in redditione judicii cujuſdam indictamenti verſus Thomam Walcott, nuper de London generoſum modo defunct', pro quibuſdam altis proditionibus perſonam Domini Caroli ſecundi nuper Regis Angliæ tangent' modo indictat' fuit, & ſuperinde per quand' jur' ſuperinde int' præfat' nuper Regem & præfat' Thomam Walcott, capt' coram Juſtic' dict' nuper Regis ad gaolam deliberand' aſſign', convict' exit', & judicium ſuperinde reddit' fuit pro præfat' nuper Rege verſus præfat' Thomam Walcott, ut dicitur, quæ quidem recordum & proceſſum prædict' cauſa erroris intervenient' in curia noſtra coram nobis venire fecimus, & judicium inde in eadem curia noſtra coram nobis reverſatur. Et quia in reverſatione judicii prædict' coram nobis ſuper brev' de error' prædict', error intervenit manifeſtus ad grave dampnum cujuſdam Iſabellæ Dillon viduæ, Comitiſſæ Roſcomon, nuper uxoris Wentworth Dillon Armig', nuper Comitis Roſcomon in regno noſtro Hibernico, ſicut ex querela ſua accepimus, nos errorem, ſi quis fuerit, modo debito corrigi, & eidem Iſabellæ plenam & celerem juſticiam fieri volentes in hac parte:

Vobis mandamus, quod ſi judicium ſuper breve de errore prædict' reverſat' ſit, tum recordum & proceſſum prædicta, cum omnibus ea tangent', nobis in parliamentum noſtrum ad proximam ſeſſionem, viceſimo octavo die inſtantis menſis Julii tenend', diſtincte & aperte mittatis, & hoc breve, ut inſpect' record' & proceſſu prædictis, ulterius inde de aſſenſu Dominorum Spiritualium & Temporalium in eodem parliamento exiſtent', pro errore illo corrigendo fieri fac', quod de jure & ſecundum legem & conſuetudinem regni noſtri Angliæ fuerit faciend'. Teſte Thoma Archiepiſcopo Cantuar', & cæteris Cuſtodibus & Juſticiariis regni, apud Weſtm', ſexto die Julii, anno regni noſtri octavo.

Martin.

Reſpons' Johannis Holt Mil', Capital' Juſticiarii infra nominat'.

Record' & proceſs' unde infra fit mentio, cum omnibus ea tangen', Domino Regi infra nominat' in præſens parliamentum propriis manibus protuli, in quodam record' huic brevi annex', prout interius mihi præcipitur.

J. Holt.

Placita coram Domino Rege apud Weſtm' de termino Paſchæ, anno regni Domini Willielmi tertii nunc Regis Angliæ, &c. *ſeptimo.* Rot. 3.

London ſſ. Dominus Rex mandavit Juſtic' ſuis, per literas ſuas patentes ſub magno ſigillo, ad inquirend' per ſacram' proborum & legalium hominum civitat' London, ac aliis viis, modis, & mediis, quibus melius ſciverint aut poterint de quibuſcunque prodition', miſpriſion' prodition', inſurrection', rebellion', & al' malefactis, offens', & injur' quibuſcunque; necnon Juſtic' ſuis ad gaolam ſuam de Newgate pro civitat' London de priſon' in eadem exiſten' deliberand' aſſign', & eorum cuilibet breve ſuum in hæc verba:

Gulielmus tertius Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, &c. Juſticiar' ſuis per literas ſuas patentes ſub magno ſigillo Angliæ confect' ad inquirend' per ſacram' proborum & legalium hominum civitat' London, ac aliis viis, modis, & mediis, quibus melius ſciverint aut poterint de quibuſcunque prodition', miſpriſion' prodition', inſurrection', rebellion', & al' malefactis, offens', & injur' quibuſcunque, necnon Juſtic' ſuis ad gaolam ſuam de Newgate pro civitat' London, de priſonariis in eadem exiſten' deliberand' aſſign', & eorum cuilibet, ſalutem. Quia in recordo & proceſſu, ac etiam in redditione judicii cujuſdam indictamenti verſus Thomam Walcott nuper de London gen' defunctum, pro quibuſdam altis prodition' perſon' Domini Caroli ſecundi nuper Regis Angliæ tangent', unde indictat' eſt', & ſuperinde per quandam jur' patriæ inter præfat' Dominum nuper Regem, & præfat' Thomam Walcott, capt' coram Juſticiar' dicti Domini Caroli ſecundi nuper Regis Angliæ, &c. ad gaolam prædict' deliberand' aſſign', convict', & judic' ſuperinde reddit' ſit, ut dicitur, error intervenit manifeſtus ad grave dampnum Johannis Walcott gen', filii & hæred' præd' Thomæ, ſicut ex querela ſua accepimus: Nos errorem, ſiquis fuit, modo debito corrigi, & eidem Johanni plenam & celerem juſtitiam fieri volentes in hac parte, vobis mandamus, quod ſi judicium reddit' ſit, tunc record' & proceſs' prædict', cum omnibus ea tangent', nobis, ſub ſigillis veſtris, vel un' veſtrum, diſtincte & aperte mittat', & hoc breve, ita quod ea habeamus a die Paſchæ in tres ſeptiman', ubicunque tunc fuerimus in Anglia, ut inſpect' record' & proceſs' prædict', ulterius inde pro errore illo corrigend' fieri faciamus, quod de jure, & ſecundum legem & conſuetudinem regni noſtri Angliæ fuerit faciend'. Teſte meipſo apud Weſtm' decimo ſeptimo die Martii, anno regni noſtri ſeptimo.

Executio iſtius brevis patet in ſchedula & recordo huic brevi annex'.

Reſpons' Thomæ Lane Mil', Major' civitat' London, ac un' Juſtic' infraſcript' record' & proceſs', unde in brevi ſupradict' fuit mentio, ſequitur in hæc verba.

London ſſ. Memorand', quod per quandam inquiſition' capt' pro ſereniſſimo Domino Rege, apud *Juſtice Hall in the Old Baily, London*, in

[b] Vol. III. p. 600. N°. 115.

parochia

parochia ſancti Sepulchri in warda de Faringdon extra London prædict', die Jovis, ſcilicet, duodecimo die Julii, anno regni Domini noſtri Caroli ſecundi, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defenſor', &c. triceſimo quinto, coram Willielmo Pritchard Mil', Majore civitat' London, Franciſco Pemberton Mil', Capitali Juſtic' Domini Regis de banco, &c. ac aliis ſociis ſuis Juſticiariis dicti Domini Regis, per literas patent' ipſius Domini Regis eiſdem Juſticiar' prænominat', & aliis, ac quibuſcunque quatuor vel plur' eorum, ſub magno ſigillo dict' Domini Regis Angliæ confect', ad inquirend' per ſacrament' proborum & legalium hominum de civ' London, ac aliis viis, modis, & mediis, quibus melius ſcierint aut poterint, tam infra libertat', quam extra, per quas rei veritas melius ſciri poterit, & inquir' de quibuſcunque prodition', miſpriſion' prodition', &c. infra civitat' prædict', tam infra libertat', quam extra, per quoſcunque & qualitercunque habit', fact', perpetrat', ſive commiſs', per quos vel per quæ, cui vel quibus, quando, qualit', & quomodo, & de aliis articulis & circumſtant' præmiſſis, & eorum aliquod vel aliqua qualitercunque concernen' plenius veritat', & ad eadem & al' præmiſſa audiend' & terminand' ſecundum legem & conſuetudinem regni dicti Domini Regis Angliæ aſſignat', per ſacrament' Rich' Alie arm', & aliorum proborum & legalium hominum civitat' London præd', qui adtunc & ibidem jurat' & onerat' exiſtent ad inquirend' pro dict' Domino Rege pro corpore civitat' prædict', extitit præſentat', quod Tho' Walcott nuper de London gen', ut falſus proditor contra illuſtriſſimum & excellentiſſimum principem Dominum noſtrum Carolum ſecund', Dei grat' Angl', Scot', Franc', & Hibern' Regem, & naturalem Dom' ſuum, timorem Dei in corde ſuo non habens, nec debit' ligean' ſuam ponderan', ſed inſtigatione diabolica mot' & ſeduct', dilectionem veram & debitam, & naturalem obedient', quas verus & fidelis ſubdit' dict' Domini Regis erga ipſum Dominum Regem gereret, & de jure gerere tenetur, penitus ſubtrahens, & totis viribus ſuis intenden' pacem & communem tranquillitat' hujus regni Angliæ perturbare, & guerram & rebellion' contra dictum Dominum Regem ſuſcitare & movere, & gubernat' dicti Domini Regis in hoc regno Angliæ ſubvertere, & dict' Dominum Regem a titulo, honore, & regali nomine, coron' imperial' regni ſui Angliæ deponere & deprivare, & dictum Dominum Regem ad mortem & finalem deſtruction' adducere & ponere, ſecundo die Martii, anno regni Domini Caroli ſecundi nunc Regis Angliæ, &c. triceſimo quinto, & diverſis al' diebus & vicibus, tam antea, quam poſtea, apud parochiam ſancti Michaelis Baſſiſhaw, in warda de Baſſiſhaw London, malitioſe & proditorie, cum diverſis aliis proditoribus jur' præd' ignot', conſpiravit, compaſſiavit, imaginat' fuit, & intendebat dictum Dominum Regem, ſupremum Dominum ſuum, non ſolum de Regali ſtatu, titulo, poteſtate, & regimine regni ſui Angliæ deprivare & dejicere, verum etiam eundem Dominum Regem interficere, & ad mortem adducere & ponere, & antiquam gubernat' hujus regni Angliæ mutare, alterare, & penitus ſubvertere, ac ſtragem miſerabilem inter ſubdit' dict' Domini Regis per totum regnum ſuum Angliæ cauſare & procurare, ac inſurrection' & rebellion' contra dict' Dominum Regem movere & ſuſcitare infra hoc regnum Angliæ, & ad eaſdem nefandiſſimas prodition', & proditorias compaſſation', imagination', & propoſita ſua præd' perimplend' & perficiend', idem Thomas Walcott, ut falſus proditor, tunc & ibid', & diverſis aliis diebus & vicibus, tam antea, quam poſtea, malitioſe, proditorie, & adviſate ſe aſſemblabat, conveniebat, & conſultabat cum præd' al' proditoribus jur' prædict' ignot', & cum eiſdem tractabat de & pro eiſdem ſuis proditionibus, & proditoriis compaſſation', imagination', & propoſitis ſuis proſequend', exequend', & perimplend', quodque idem Thomas Walcott, ut falſus proditor, malitioſe, proditorie, & adviſate tunc & ibidem, & diverſis al' diebus & vicibus, tam antea quam poſtea, ſuper ſe aſſumebat, & prædict' aliis proditoribus promittebat ſe fore auxiliant' & aſſiſtent' in execution' prodition', & proditor' compaſſation', imagination', & propoſit' ſua prædict' perimplend' & perficiend', & eaſdem nefandiſſimas prodition', & proditor' compaſſation', imagination', & propoſita ſua prædict' perimplend' & perficiend', idem Thomas Walcott, ut falſus proditor, malitioſe, proditorie, & adviſate tunc & ibidem arma, videlicet, (Anglice, *Blunderbuſſes*) Bumbard' (Anglice *Carbines*) Sclop' (Anglice *Piſtols*) & procurabat & præparabat contra ligeantiæ ſuæ debit', contra pacem dicti Domini nunc, coron', & dignitat' ſuas, &c. necnon contra formam ſtatut' in hujuſmodi caſu edit' & provis', &c. per quod præcept' fuit, videlicet, civitat' prædict', quod non omitt', &c. quin caperent præfat' Thomam Walcott, ſi, &c. ad reſpond', &c. & modo, ſcilicet, ad deliberation' gaolæ dicti Domini Regis de Newgate, tent' pro civitat' London apud Juſtice Hall prædict' in dicta parochia ſancti Sepulchri, in warda de Faringdon extra London prædict', dicto die Jovis, undecimo die Julii, anno triceſimo quinto ſupradict', coram præfat' Willielm' Pritchard Mil', Majore civitat' London, ac aliis ſociis ſuis Juſticiariis dicti Domini Regis ad gaolam ſuam de Newgate de priſon' in ea exiſten' deliberand' aſſign', præfat' Juſtic' dicti Domini Regis prius nominat' per manus ſuas proprias deliberaver' indictament' prædict' hic in cur' de recordo in formam juris terminand', &c. ſuper quo ad iſtam eandem deliberation' gaolæ dict' Domini Regis de Newgate, tent' pro civitat' London præd' apud Juſtice Hall prædict', dicto die Jovis duodecimo die Julii, anno triceſimo quinto ſupradict', coram præfat' Juſtic' ult' nominat', ven' præd' Thomas Walcott, ſub cuſtod' Dudlei North Mil', & Petri Rich arm', Vicecom' civitat' prædict' (in quorum cuſtod' ex cauſa prædicta præantea commiſs' fuit) ad barram hic duct' in propria perſona ſua, qui committitur præfat' Vic' civitat' London, &c. & ſtatim de præmiſſis prædict', in indictament' prædict' ſpecificat', ei ſuperius impoſit' allocut', qualit' ſe vellet inde acquietari, idem Thomas Walcott dicit, quod ipſe non eſt inde culpabil', & inde de bono & malo pon' ſe ſuper patriam. Ideo immediate ven' inde jur', &c. coram præfat' Juſtic' ult' nominat' hic, &c. & jur' jurat' illius per præfat' Vic' ad hoc impanellat', ſcil', &c. exact' vener', qui ad veritat' de præmiſs' dicend' elect', triat', & jurat', dicunt ſuper ſacrament' ſuum, quod prædictus Tho' Walcott eſt culpabil' de alt' prodition' prædict' in indictament' prædict' ſpecificat', ei ſuperius impoſit' modo & forma, prout per indictament' prædict' ſuperius verſus eum ſupponitur, & quod idem Thomas Walcott

Walcott nulla habuit bona ſeu catalla, terras ſive tenementa ad eorum notic'; & ſuper hoc ſtatim quæſit' eſt de præfat' Tho' Walcott, ſi quod pro ſe habeat vel dicere ſciat, quare cur' dict' Domini Regis hic ad judicium & execution' de eo ſuper veredict' prædict' procedere non debeat, qui nihil ulterius dicit præterquam ut prius dixerat, ſuper quo viſis, & per cur' hic plene intellectis omnibus & ſingulis præmiſſis, conſiderat' eſt per cur' hic, quod præd' Tho' Walcott ducatur ad gaolam dicti Domini Regis de Newgate, unde venit, & ibidem ſuper bigam ponatur, & abinde uſque ad furcas de Tyburn trahatur, & ibidem per collum ſuſpendatur, & vivens ad terram proſternatur, & quod ſecreta membra ejus amputentur, & interiora ſua extra ventrem ſuum capiantur, & in ignem ponantur, & ibidem comburantur, & quod caput ejus amputetur, quodque corpus ejus in quatuor partes dividatur, ill' ponantur ubi Dominus Rex ea aſſignare voluit, *&c.* per quod præcept' fuit Vic', quod caperent eum, ſi, *&c.* ad ſatisfaciend', *&c.* & modo, ſcil', die Jovis prox' poſt menſem Paſchæ iſto eodem termino, coram Domino Rege nunc apud Weſtm', ven' quidam Johannes Walcott, filius & hæres prædict' Thomæ Walcott defunct', de alta proditione prædict' convict' & attinct', per Benedict' Browne Attornat' ſuum, & habit' audit' record' prædict', ſuper quo præd' Thomas convict' & attinct' exiſtit, dicit, quod in record' & proceſs' prædict', ac etiam in redditione judicii prædict' manifeſte eſt errat' in hoc, vid', quod apparet per record' prædict', quod judicium reddit' eſt pro dicto Domino nuper Rege, ubi per leges hujus regni Angliæ judicium prædict' pro dicto Thoma Walcott reddi debuiſſet, & in eo manifeſte eſt errat'. Erratum eſt etiam in hoc, viz. quod crimina in & per indictamentum prædict' verſus prædict' Thomam impoſit', per leges hujus regni Angliæ incerte, dubie, & nimis generalit' allegat' exiſtunt, quodque idem indictamentum ſuppoſuit, & eidem Thomæ onerat & imponit crimina diverſimoda, & toto genere inter ſe diſcrepantia, quodque judicium ſuperinde reddit', ſit & exiſtit contrarium legibus Angliæ, & minime pronunciand' vel imponend' pro vel ſuper hujuſmodi crimina, qual' in indictamento prædict' ſupponuntur, & in eo manifeſte eſt errat', unde pet' judicium cur' hic in præmiſs', & quod judic' & attinctur' prædict' ab error' prædict', & al' in recordo & proceſs' prædict' compert' exiſtent', reverſetur, adnulletur, & penitus pro nullo habeatur, & quod ipſe prædict' Johannes Walcott filius & hæres prædict' Thomæ, ad omnia quæ ipſe præd' Johannes, occaſione judicii & attinctur' prædict' amiſit, reſtituatur, & quod cur' hic procedat ad examinationem tam record' & proceſs' prædict', quam materiar' ſuperius pro errore aſſign', *&c.* & quia cur' dicti Domini Regis hic de judicio ſuo de & ſuper præmiſſis reddend' nondum adviſatur, dies inde dat' eſt præfat' Johanni Walcott in ſtatuto quo nunc, *&c.* in cro' ſanctæ Trinitat', coram Domino Rege, ubicunque, *&c.* de judicio ſuo inde audiend', *&c.* ad quod quidem craſt' ſanctæ Trinitat', coram Domino Rege apud Weſtm' ven' prædictus Johannes Walcott per Attornat' ſuum prædict', &, ut prius, petit judicium, & quod judicium & attinctur' prædict', verſus prædict' Thomam Walcott reddit', ab error' prædict', & al' in recordo & proceſs' prædict' compert' & exiſten', reverſetur, adnulletur, & penitus pro nullo habeatur, & quod ipſe prædict' Johannes Walcott, filius & hæres prædict' Thomæ, ad omnia quæ ipſe idem Johannes, occaſione judicii & attinctur' prædict' amiſit, reſtituatur, & quod cur' hic procedat ad examination' tam record' & proceſs' prædict', quam materiarum ſuperius pro errore aſſign', *&c.* *And after many Continuances 'tis entred thus:* Super quo vis', & per cur' hic intellectis omnibus & ſingulis præmiſſis, diligenterque examinat' record' & proceſs' prædict', & err' per prædict' Johannem Walcott ſuperius aſſign', & al' in record' & proceſs' prædict' compert' exiſten', maturaque deliberatione inde prius habita, conſiderat' eſt, quod judicium prædict' ab error' prædict', & al' in record' & proceſs' prædict' compert' exiſten', revocetur, adnulletur, & penitus pro nullo habeatur, & quod prædict' Johannes Walcott, filius & hæres prædicti Thomæ Walcott, ad omnia quæ ipſe occaſione judicii & attinctur' prædict' amiſit, reſtituatur, & quod prædict' Johannes Walcott eat inde ſine die, *&c.* Et ſuper hoc Johannes Trevor Miles, Attorn' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte ſequitur, coram Rege ac proceribus hujus regni Angliæ hoc prædicto parliamento apud Weſtm' in com' Middleſex aſſemblat', in propria perſona ſua ven', & dicit, quod in record' & proceſs', ac etiam in redditione judicii ſuper prædict' priori brevi dicti Domini Regis de errore corrigend', per prædict' Johannem Walcott proſecut' pro revocatione & adnullatione judicii prædict' verſus prædict' Thomam Walcott, ſuper indictamentum prædict', pro alta proditione prædict' reddit', manifeſte eſt erratum in hoc, *viz.* quod ubi per recordum prædict' ſupponitur, quod prædict' Johannes Walcott poſuit loco ſuo quendam Benedict' Browne Attornat' ſuum ad proſequend' prædict' primum breve de errore in & ſuper indictament' prædict' pro alta proditione prædict', quod tamen Benedict' Browne nullum habuit warrant' Attorn' pro eodem Johanne Walcott de recordo affilat', ideo in eo manifeſte eſt errat'. Errat' eſt etiam in hoc, *viz.* quod per record' prædict' apparet quod judicium prædict' pro revocatione & adnullatione judicii prædict' verſus prædict' Thomam Walcott, in forma præd' reddit', redditum fuit pro præd' Johanne Walcott verſus dict' Dominum Regem, ubi per legem terræ hujus regni Angliæ judicium ill' reddi debuiſſet pro dicto Domino Rege verſus eundem Johannem; ideo in eo ſcil' manifeſte eſt errat', & hoc parat' eſt verificare, unde pet' judicium, & quod judic' ill' ab error' prædict', & al' in record' & proceſs' prædict' exiſten', revocetur, adnulletur, & penitus pro nullo habeatur, & quod dictus Dominus Rex, ad quæ omnia ipſe occaſione revocation' & adnullation' judicii prædict' amiſit, reſtituatur, *&c.*

Rex verſus Sidney[c], *for* High Treaſon.

Mich' 35 Car' II. B. R.

The Plea (drawn by Mr. Serjeant Rotheram*) which he offered to the Court.*

PRædict' Algernon Sidney dicit, quod per ſtatut' in parliamento inchoat' & tent' apud Weſtm' octavo die Maii, anno regni Domini Regis nunc decimo tertio, & ibi continuat' uſque triceſimum diem Julii tunc prox' ſequen', & ab eodem triceſimo die Julii adjornatum uſque viceſimum diem Novembris tunc prox' ſequen', intitulatum, *An Act for the Safety and Preſervation of his Majeſty's Perſon and Government againſt Treaſonable and Seditious Practices and Attempts*, inter alia, ordinat' & inactitat' fuit, per autoritatem parliamenti prædicti, quod null' perſona ſive perſonæ, virtute actus prædicti, incurreret aliquas penalitates in actu prædicto mentionat', niſi ipſe vel ipſi proſecut' eſſet vel eſſent infra ſex menſes prox' poſt offens' commiſs', & indict' eſſet ſuperinde infra tres menſes poſt talem proſecutionem, aliquo in ſtatuto prædict' content' in contrarium non obſtante. Et prædictus Algernon ulterius dicit, quod ipſe proſecut' fuit & commiſſus priſonæ Turris de London, pro offens' in indictamento prædict' mentionat', viceſimo ſexto die Junii ultimo præterito, & non antea, & ibidem continuat' priſonar' huc uſque, & quod ipſe prædict' Algernon non fuit indictat' pro aliquo vel aliquibus offens' in indictamento prædict' mentionat', infra tres menſes prox' poſt proſecutionem prædict'. Et hoc prædict' Algernon parat' eſt verificare; unde petit judicium, ſi ipſe prædict' Algernon, quoad aliquod crimen ſive offens' in indictamento prædict' mentionat', quod crimen vel offens' non fuit alta proditio ante confectionem ſtatuti præd', reſpondere debeat, & quoad omnes proditiones, crimina, & offens' in indictamento prædict' mentionata, quæ non fuere vel fuit alta proditio ante confectionem ſtatuti prædict', idem Algernon dicit, quod per ſtatutum in parliamento tento apud Weſtm' in com' Middleſex in feſto ſancti Hilarii, anno regni Domini Edwardi nuper Regis Angliæ tertii, anno regni ſui viceſimo quinto editum, intitulatum, *A Declaration, which Offences ſhall be judged High Treaſon*, inter alia, inactitatum fuit autoritate ejuſdem parliamenti, quod ſi ullus caſus ſuppoſitus eſſe proditio, qui non ſpecificatur in eodem ſtatuto, acciderit coram aliquibus Juſtitiariis, Juſtitiarii moram facient (Anglice *ſhall tarry*) ſine aliquo progreſſu ad judicium (Anglice *going to Judgment*) de prædicta proditione, uſque cauſa monſtretur & declaretur coram Rege & parliamento ſuo. Quodque per ſtatutum in parliamento tent' apud Weſtm' in com' Midd', quinto die Octobris, anno regni Dominæ Mariæ nuper Reginæ Angliæ primo, intitulatum, *A Repeal of ſeveral Treaſons, Felonies, and Præmunires*, inactit' fuit, inter alia, autoritate ejuſdem parliamenti, quod abinde nullum factum vel offens' exiſten' per actum parliamenti, vel ſtatut' fact' proditio per verba ſcript' notationem (Anglice *Cyphering*) fact', aut aliter quocunque capt' habit' cenſus (Anglice *deemed*) vel adjudicat' eſſe alta proditio, niſi tantum tal' quæ declarantur & exprimuntur eſſe proditio in vel per actum parliamenti, vel ſtatut' factum in anno viceſimo quinto regni prænobilis Regis Edwardi tertii tangen' vel concernen' proditiones vel declarationes proditionis, & null' al', nec quod aliquæ pœnæ mortis, penalitates, vel forisfactur' in aliquo modo ſequuntur (Anglice *enſue*) vel ſint alicui peccatori (Anglice *Offender*) vel peccatoribus (Anglice *Offenders*) pro facien' vel committen' aliquam proditionem aliter quam tal' quæ in ſtatuto prædicto facto, in dicto anno viceſimo quinto regni dicti Edwardi Regis ordinat' & provis', aliquo actu vel actus parliamenti, ſtatut', vel ſtatuta ad aliquod tempus antea habit' vel fact' poſt dictum viceſimum quintum annum dicti nuper Regis Edwardi tertii, vel aliquam al' declarationem vel materiam in contrarium aliquo modo non obſtante. Et prædictus Algernon dicit, quod ipſe non eſt culpabilis de aliqua vel aliquibus proditione vel proditionibus in indictamento prædicto mentionat', quæ ſpecificatur vel ſpecificantur in ſtatuto ultimo mentionato modo & forma prout in indictamento prædicto mentionat'. Et de hoc ponit ſe ſuper patriam.

Rex verſus Hampden[d], *for a* Miſdemeanour.

Hil' 36 Car' II. B. R.

Midd' ff. QUod Johannes Hampden nuper de paroch', &c. Gen', exiſten' homo pernitioſus, ſeditioſus, ac perſon' pravæ mentis, necnon impiæ, inquiet', & turbulen' diſpoſition', ac machinans, practicans, & falſo, illicite, & injuſte, malitioſe, turbulent', & ſeditioſe intenden' pacem dict' Dom' Regis nunc, & communem tranquillitatem hujus regni Angl' inquietare, moleſtare, & perturbare, &, quantum in ipſo fuit, ſeditionem infra hoc regn' Angl' ſuſcitare, movere, & pericula procurare, & gubernation' dict' Dom' Regis in hoc regn' Angl' in odium inferre. Quodque præd' J. H. ad nequiſſimas, nefandiſſimas, & ſeditioſas intention' ſuas præd' perimplend' & perficiend', & ad effectum redigend' ult' die Junii, anno regni, &c. 35. & diverſis al' diebus & vicibus, tam antea quam poſtea, vi & armis, &c. apud paroch', &c. illicite, injuſte, malitioſe, & ſeditioſe ſe aſſemblavit, conveniebat, conſultabat, conſpirabat, & confederabat cum diverſis male diſpoſit' ſubdit' dict' Dom' Regis jur' præd' ignot', & cum eiſdem tractabat de eiſdem ſuis nefandis & ſeditioſis compaſſation', imagination', & propoſit' præd' exequend', perimplend', & ad effectum redigend'. Et ulterius præd' J. H. ad nequiſſimas, nefandiſſimas, & ſeditioſas machination', practication', & intention' ſuas perimplend', & ad effectum redigend', adtunc & ibidem, ſcil', ult' die Junii, anno regni, &c. 35. ſuprad', & diverſis al' diebus & vicibus, tam antea, quam poſtea, apud

[c] Vol. III. p. 710. N°. 120.

[d] Vol. III. p. 740. N°. 121.

paroch'

paroch' præd' in com' præd', vi & armis, &c. falſo, illicite, injuſte, malitioſe, & ſeditioſe conſultabat, conſulebat, conſpirabat, & confederabat de inſurrection' infra hoc regn' Angl' habend', & de procuration' & proviſion' armor' & hominum armatorum præparandor' in diverſis locis infra hoc regn' Angl' ad eaſdem nefandiſſimas, nequiſſimas, & ſeditioſas intention', compaſſation', imagination', & propoſita ſua præd' perimplend' & perficiend'. Quodq; præd' J. H. ad nequiſſimas, nefandiſſimas, & ſeditioſas intention' ſuas præd' perimplend' & perficiend', & ad effectum redigend', poſtea (ſcil', dicto ult' die Junii, anno, &c. 35. ſuprad') apud paroch' præd' in com' præd', vi & armis, &c. falſo, illicite, injuſte, nequiſſime, malitioſe, & ſeditioſe conſultabat, agreabat, & conſentiebat, quod quædam perſona, jur' præd' ignot', mitteretur in Scotiam ad invitand' & incitand' diverſos male diſpoſit' ſubdit' dicti Dom' Regis de regn' ſuo Scotiæ ad veniend' in hoc regn' Angl', ad adviſand' & conſultand' cum præfat' J. H. & præfat' al' male diſpoſit' ſubdit' dicti Dom' Regis in hoc regn' Angl', de auxilio & aſſiſtanc' expectand' & ſupplend' e dicto regno Scotiæ, ad eaſdem nequiſſimas, nefandiſſimas, & ſeditioſas intentiones & compaſſation' ſuas præd' perimplend', faciend', & promovend', in contempt' legum hujus regn' Angl' manifeſt', in malum & pernicioſum exemplum omnium al' in tali caſu delinquen', ac contra pacem dict' Dom' Regis nunc, coron', & dignitat' ſuas, &c.

Rex verſus Bradden *and* Speke[e], *for a* Miſdemeanour.

Mich' 35 *Car'* II. *Rot.* 54. *B. R.*

ff. QUod cum Arthur Comes Eſſex duodecimo die Jan', anno, &c. 35. commiſs' fuit priſon' Dom' Regis Turris London, pro quibuſdam alt' prodition' per ipſum perpetrari ſuppoſit', & idem A. Comes Eſſex exiſten' priſonar' in Tur' London' præd', pro alta proditione præd', 13. die Jan', anno regni dict' Dom' Regis 35. ſuprad', Deum præ oculis ſuis non habens, ſed inſtigatione diabolica mot' & ſeduct', apud Tur' London præd' in com' Midd', ſeipſum felonice, & ut felo de ſe, interfecit & murdravit, prout per inquiſition' capt' apud Turr' London præd', in com' Midd' præd', 14. die Julii, anno ſuprad', coram Edwardo Farnham Arm', tunc Coron' dict' Dom' Regis libertat' Turr' London, ſuper viſum corporis præd' A. Com' E. coram Domino Rege de recordo remanen' plenius liquet & apparet. Quidam tamen Laurentius Bradden de Medio Templo London, Gen', & Hugo Speke de Lincoln's-Inn in com' Midd' Gen', præmiſſor' non ignar', ſed machinan' & malitioſe, & ſeditioſe intenden' gubernation' dict' Dom' Regis hujus regn' Angl' in odium, vilipend', & contempt' ducere, 15. die Auguſti, anno regni dict' Dom' Regis nunc 35. ſuprad', & diverſis al' diebus & vicibus, tam antea, quam poſtea, apud paroch', &c. vi & armis, &c. falſo, illicite, malitioſe, & ſeditioſe conſpirabant, & conabantur cauſare ſubdit' dict' Dom' Regis hujus regn' Angl' credere, quod inquiſitio præd' indebite capt' fuit, & quod præd' A. Com' E. per quaſdam perſon' ignot', in quar' cuſtod' fuit, interfect' & murdrat' fuit, & ad malitioſas & ſeditioſas machination' & intention' ſuas præd' perficiend', & ad effectum redigend', iidem L. B. & H. S. apud paroch', &c. dicto 15. die Auguſti, anno 35. ſuprad', falſo, illicite, injuſte, & ſeditioſe conſpiraver' procurare quoſdam falſos teſtes ad proband', quod præd' A. Com' E. non fuit felo de ſe, ſed quod idem A. Com' E. per præd' perſon' ignot' interfect' & murdrat' fuit, & ad perſuadend' al' ſubdit' dict' Dom' Regis credere hoc fore verum, iidem L. B. & H. S. falſo, malitioſe, & ſeditioſe adtunc & ibidem in ſcriptis declaraver', & declarari cauſaver' præfat' L. B. fore perſon', quæ proſequebatur murdrum præd' A. Com' E. in maximum ſcandalum & contempt' gubernation' Dom' Regis hujus regni Angl', in malum exemplum omnium al' in tali caſu delinquen', ac contra pacem dict' Dom' Regis nunc, coron', & dignitat' ſuas, &c. Unde idem Attorn' dict' Dom' Regis nunc general', &c.

Rex verſus Barnardiſton[f], *for a* Miſdemeanour.

Hil' 35 *& 36 Car'* II. *Rot'* 43. *B. R.*

Midd' ff. QUod cum quædam diabolica & proditoria conſpiratio & inſurrectio diverſar' ſeditioſar' & male-diſpoſit' perſonar' ad Dominum noſtrum Carolum ſecundum nunc Regem Angl' murdrand' & interficiend', & leges & gubernationem hujus regn' Angl', ut per leges modo conſtitut' & ſtabilit', ſubvertend' detect' fuiſſet; cumque etiam quidam Willielmus Ruſſel Arm', & diverſæ al' perſon' de conſpiratione & proditione ill' per debitum legis proceſs' fuiſſent triat', convict', & attinct', & pro eiſdem execut'. Ac quidam Algernon Sidney Arm', de conſpiratione & proditione ill' exiſtebat ſimiliter triat' & convict': Cumque ſuper triation' præd' W. R. & A. S. Willielmus Dominus Howard de Eſcrick, teſtis ex parte dict' Dom' Regis ad prodition' & conſpiration' præd' proband' product' fuiſſet, quidam Samuel Barnardiſton nuper de London Bar', exiſtens homo ſeditioſus & pernitioſus, & turbulentæ & inquietæ animæ & converſation', falſo, illicite, malitioſe, nequit', & ſeditioſe machinan' & practican', & intendens dict' Dom' Regem nunc, & gubernationem & regimen ſua, necnon publicam adminiſtrat' juſtic' in hoc regno Angl' in odium, ſcandalum, & vilipendium cum ſubdit' ſuis inducere & inferre, ac diſcordiam & ſeditionem int' dictum Dominum Regem, & ligeos ſubdit' ſuos, & int' eoſdem ſubdit' movere, incitare, & ponere, necnon pacem ejuſdem Dom' Regis, & tranquillitat' hujus regn' Angl' inquietare, moleſtare, & perturbare, & conſpiration' & prodition' præd' concelare, & evident' pro dicto Rege in ea parte vilificare, ſcandalizare, &

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[e] Vol. III. p. 771. N°. 122.

[f] Vol III. p. 845. N°. 123.

deterrere,

deterrere, & ad nequiſſimas, diabolicas, & nefandiſſimas machination', practication', & intentiones ſuas præd' perimplend', perficiend', & ad effectum redigend', 20. die Septembr', anno regn' Dom' Caroli ſecundi nunc Regis Angl', &c. 35. apud paroch' ſancti Michaelis Cornhill, London, vi & armis, &c. falſo, illicite, injuſte, malitioſe, corrupte, & ſeditioſe fecit, compoſuit, & ſcripſit, & fieri, componi, ſcribi, & publicari cauſavit, quoddam falſum, ſcandaloſum, & ſeditioſum libellum, geren' dat' 29. die Novembr', anno Dom' 1683. in quo quidem libello (int' al') content' fuer' hæ falſæ, fictæ, ſcandaloſæ, libelloſæ, malitioſæ, & ſeditioſæ ſententiæ Anglican' ſequen', videlicet, *SIR, The Return of the Duke of* Monmouth *to* Whitehall, *and his being received into extraordinary Favour of his Majeſty, hath made a ſtrange Alteration of Affairs at Court; for thoſe that before ſpake of him very indecently, now court, cringe, and creep to him. His Grace complained to the King of the ſcandalous Miſrepreſentation that was made of him in the* Monday's Gazette, *upon which the Gazetteer was called to an Account for it, who alledg'd for himſelf, that a Perſon of great Quality ſent him in Writing the Words therein recited, commanding him to put them in the* Gazette. *Yeſterday being the laſt Day of the Term, all the Priſoners that were in the* Tower *upon the late ſham Preſbyterian Plot* (conſpiration' & prodition' præd' innuendo) *were diſcharged upon Bail; Mr.* Bradden, *who proſecuted the Murder of the Earl of* Eſſex, *the Information put in againſt him in the King's Bench by Mr. Attorney, for a pretended Subornation,* &c. *was not proſecuted, and his Bail was diſcharged; and the paſſing Sentence upon the Author of* Julian the Apoſtate, *and the Printer of the late Lord* Ruſſel's *Speech, was paſſed over with Silence. Great Applications are made to his Majeſty for the pardoning Mr.* Sidney *in the* Tower (dictum Algernon Sidney, ut præfertur, convict' innuendo) *which is believed will be attained, and that he will be baniſhed. The Lord* Howard (dict' Willielmum Howard innuendo) *appears deſpiſeable in the Eyes of all men; he is under a Guard at* Whitehall, *and (as believed) will be ſent to the* Tower, *for that the Duke of* Monmouth (Jacobum Ducem Monmouth innuendo) *will accuſe him concerning the Teſtimony he hath given,* &c. (evident' ſuper triation' & conviction' præd' W. R. & A. S. per eundem Dominum Howard, ut præfertur, dat' innuendo) *The Papiſts and high Tories are quite down in the Mouth, their Pride is abated, themſelves and their Plot confounded, but their Malice is not aſſwaged. 'Tis generally ſaid the Earl of* Eſſex *was murthered; the brave Lord* Ruſſel (dict' Willielmum Ruſſel, pro conſpiration' præd', ut præfertur, convict', attinct', & execut' innuendo) *is afreſh lamented. The Plot* (conſpiration' & prodition' præd' innuendo) *is loſt here, except you in the Country can find it out amongſt the Addreſſers and Abhorrers. This ſudden turn is an Amazement to all men, and muſt produce ſome ſtrange Event, which a little Time will ſhew.* Ac ad nequiſſimas & nefandiſſimas machination' & intention' ſuas præd' perimplend', perficiend', & ad effectum redigend', idem S. B. Bar' poſtea (ſcil', dict' 20. die Decembris, anno regn' dict' Dom' Regis nunc 35. ſuprad') apud paroch' ſancti Michaelis Cornhill London præd', falſo, illicite, injuſte, malitioſe, corrupte, & ſeditioſe fecit, compoſuit, & ſcripſit, & fieri, componi, ſcribi, & publicari cauſavit, quoddam al' falſum, ſcandaloſum, libelloſum, & ſeditioſum libellum, geren' dat' primo die Decembr', anno Dom' 1683. in quo quidem libello (int' al') content' fuer' hæ falſæ, fictæ, ſcandaloſæ, malitioſæ, libelloſæ, & ſeditioſæ ſententiæ Anglican' ſequen', videlicet, *Dear Sir, I am to anſwer you of 27th and 29th paſt; and truly I cannot but with great Sorrow lament the Loſs of our good Friend, honeſt Sir* John Wright; *but with Patience we muſt ſubmit to the Almighty, who can as well raiſe up Inſtruments to do his Work, as change Hearts, of which we have ſo great an Inſtance in the times of the Duke of* Monmouth (præd' J. Duc' M. innuendo) *that no Age or Hiſtory can parallel. I am now thoroughly ſatisfied, that what was printed in the* Monday's Gazette *is utterly falſe, and you will ſee it ſo declared ſhortly. The King is never pleaſed but when he is with him, hath commanded all the Privy Council to wait on him, and happy is he that hath moſt of his Favour: His Pardon was ſealed and delivered him laſt* Wedneſday; *'tis ſaid, he will be reſtored to be Maſter of the Horſe, and be called into the Council Table, and to all his other Places; and 'tis reported he will be made Captain General of all the Forces, and Lord High Admiral; and he treats all his old Friends, that daily viſit him, with great Civilities; they are all ſatisfied with his Integrity, and, if God ſpares his Life, doubt not but he will be an Inſtrument of much Good to the King and Kingdom: He ſaid publickly, that he knew my Lord* Ruſſel (dict' Willielm' Ruſſel pro conſpiration' & prodition' præd' convict', attinct', & execut' innuendo) *was as loyal a Subject as any in* England, *and that his Majeſty believed the ſame; now I intend ſhortly to wait on him my ſelf. It would make you laugh to ſee how ſtrangely our high Tories and Clergy are mortified, their Countenances ſpeak it; were my Lord* S—— *to be moved for now, it would be readily granted. Sir* George (Georgium Jeffreys Mil' & Bar', Capital' Juſtic' Dom' Regis ad placita in cur' ipſius Dom' Regis coram ipſo Rege tenend' aſſign', adtunc & adhuc exiſten' innuendo) *is grown very humble. 'Tis ſaid, Mr.* Sidney (dictum A. S. innuendo) *is reprieved for forty Days, which bids well.* Ac ad nequiſſimas & nefandiſſimas machination' & intention' ſuas præd' perimplend', perficiend', & ad effectum redigend', idem S. B. poſtea (ſcilicet, dicto 20. die Decembr', anno regn' dict' Dom' Regis nunc 35. ſuprad', apud paroch' ſancti Michaelis Cornhill London præd') falſo, illicite, injuſte, malitioſe, corrupte, & ſeditioſe fecit, compoſuit, & ſcripſit, & fieri, componi, & ſcribi, & publicari cauſavit, quoddam al' falſum, ſcandaloſum, libelloſum, & ſeditioſum libellum, geren' dat' primo die Decembris, anno Dom' 1683. in quo quidem libello (inter al') content' fuer' hæ falſæ, fictæ, ſcandaloſæ, malitioſæ, libelloſæ, & ſeditioſæ ſententiæ Anglican' ſequen', videl', *The late Change here in publick Affairs is ſo great and ſtrange, that we are like Men in a Dream, can hardly believe that we ſee, and fear we are not fit for ſo great a Mercy as the preſent Juncture ſo ſeems to promiſe. The ſham Proteſtant Plot* (conſpiration' & prodition' præd' innuendo) *is quite loſt and confounded. The Earl of* Macklesfield *is bringing Actions of* Scandalum Magnatum *againſt all the Grand Jurymen that indicted him at the laſt Aſſizes; and the ſeveral Gentlemen that were indicted in* Cheſhire *and* Northamptonſhire, *will bring their ſeveral Actions at Law againſt them.* Ac ad nequiſſimas & nefandiſſimas machination' & intention' ſuas præd' ulterius

terius perimplend', perficiend', & ad effectum redigend', idem S. B. Bar' poſtea (ſcilicet, 20. die Decembr', anno regn' Dom' Caroli ſecundi nunc Regis Angl', &c. 35.) apud paroch' ſancti Michaelis Cornhill London præd', falſo, illicite, injuſte, corrupte, & ſeditioſe fecit, compoſuit, & ſcripſit, & fieri, componi, ſcribi, & publicari cauſavit quoddam al' falſum, ſcandaloſum, libelloſum, & ſeditioſum libellum, geren' dat' 4. die Decembr', anno Dom' 1683. in quo quidem libello (int' al') content' fuer' hæ al' falſæ, fictæ, ſcandaloſæ, malitioſæ, libelloſæ, & ſeditioſæ ſententiæ Anglican' ſequen', videl', *Contrary to moſt Mens Expectation, a Warrant is ſigned at laſt for beheading Mr.* Sidney (dict' Algernon Sidney innuendo) *at* Tower-Hill *next* Friday: *Great Endeavours have been uſed to obtain his Pardon, but the contrary Party have carried it, which much daſheth our Hopes; but God ſtill governs.* Ea intentione, ad incitand', movend', & procurand' ſeditionem, malevolent', & diſcord' int' dict' Dom' Regem, & ſubdit' ipſius Dom' Regis hujus regn' Angl', necnon int' ipſos ſubdit', in malum & pernitioſum exemplum omn' al' in tali caſu delinquen', ac contra pacem Dom' Regis nunc, coron', & dignitat' ſuas, &c. Unde, &c.

Rex verſus Roſewell[g], *for* High Treaſon.

Mich' 36 Car' II. *Rot.* 133. *B. R.*

Surry ff. ALias, ſcil' die Martis, ſcil' ſeptimo die Octobris, anno regni Domini noſtri Caroli ſecundi, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defens', &c. triceſimo ſexto. Per quandam inquiſitionem capt' pro ſereniſſimo Domino Rege apud Kingſton ſuper Thames', in comitatu Surr', coram Georgio Com' Berkley, Franciſco Wythens Mil', un' Juſtic' dicti Domini Regis ad placita coram ipſo Rege tenend' aſſign'; Thoma Jenner Mil', un' Servien' dicti Domini Regis ad legem, ac Recordator' civitat' London; Adamo Browne Bar', Franciſco Vincent Bar', Edvardo Evelin Mil' & Bar', Jacobo Clarke Mil', Chriſtophero Buckle Mil', Richardo Heath Servien' ad legem, Petro Rich, & Stephano Harvey Arm', Juſtic' dicti Domini Regis, per literas patentes ipſius Domini Regis eiſdem Juſtic' prænominat', ac quibuſcunque tribus vel pluribus eorum, ſub magno ſigillo dicti Domini Regis Angliæ confect', ad inquirend' per ſacramentum proborum & legalium hominum com' prædict', ac aliis viis, modis, & mediis, quibus melius ſciverint aut poterint tam infra libertat', quam extra, per quos rei veritas melius ſciri poterit, de quibuſcunque proditionibus, miſpriſionibus proditionum, inſurrectionibus, rebellionibus, contrafacturis, tonſur', lotur', falſis fabricationibus, & aliis falſitat' monetæ hujus regni Angliæ, ac aliorum regnorum, ſive dominiorum quorumcunque; ac de quibuſcunque murdris, feloniis, homicid', interfectionibus, burglar', raptibus mulierum, congregationibus ac conventiculis illicitis, verborum prolationibus, coadunationibus, miſpriſionibus, confederationibus, falſis allegantiis, tranſgreſſionibus, riot', rout', retentionibus, eſcapiis, contempt', falſitat', negligent', conceleament', manutenent', oppreſſionibus, cambipartiis, deceptionibus, ac aliis malefactis, offens', & injur' quibuſcunque; necnon acceſſar' eorumdem infra com' prædict', tam infra libertat', quam extra, per quoſcunque & qualitercunque habit', fact', perpetrat', ſive commiſſa, & per quos, vel per quem, cui vel quibus, quando, qualiter, & quomodo; ac de aliis articulis & circumſtantiis, præmiſſa & eorum aliquod vel aliqua qualitercunque concernen', plenius veritat', & ad eaſdem proditiones, & alia præmiſſa audiend' & examinand' aſſign', ſecundum legem & conſuetudinem regni dicti Dom' Regis Angliæ, per ſacramentum duodecim jur' proborum & legalium hominum com' prædict', qui adtunc & ibidem jurat' & onerat' exiſten' ad inquirend' pro dicto Domino Rege, & corpore com' prædict', extitit præſentat'. *Surr. ff.* Juratores, &c. *The whole Indictment, as in the Trial.*

Quod quidem indictamentum Dominus Rex nunc coram eo poſtea, certis de cauſis, venire fecit terminand', &c. Per quod præcept' fuit Vic' com' prædict' non omitt', &c. quin caperet eum, ſi, &c. ad reſpondend', &c. Et modo, ſcil', die Jovis prox' poſt tres ſeptimanas ſancti Michaelis, iſto eodem termino, coram Domino Rege apud Weſtm', venit prædict' Thomas Roſewell, ſub cuſtod' cuſtod' priſon' de le Gatehouſe Weſtminſt', in cujus cuſtod' præantea ex cauſa prædict' commiſs' fuit virtute brevis dicti Domini Regis de Habeas Corpus, ad ſubjiciend' & recipiend' ad barram hic duct' in propria perſon' ſua, qui committitur Marr', &c. Et ſtatim de præmiſſis ei ſuperius impoſit', alloquut' qualiter ſe velit inde acquietari, dicit, quod ipſe in nullo eſt inde culpabilis, & inde de bono & malo ponit ſe ſuper patriam. Ideo ven' inde jur' coram dicto Domino Rege apud Weſtm', die Martis in octab' ſancti Martini, per quos, &c. Et qui, &c. ad recogn', &c. quia, &c. Idem dies dat' eſt præfat' Thomæ Roſewell, ſub cuſtod' præfat' cuſtodis priſon' de le Gatehouſe Weſtm' iterum commiſs', ſalvo cuſtodiend' quouſque, &c. Ad quem quidem diem Martis in octab' ſancti Martini, coram Domino Rege apud Weſtm', venit prædict' Thomas Roſewell ſub cuſtod' præfat' cuſtod' priſon' de le Gatehouſe Weſtm' prædict', virtute brevis Domini Regis de Habeas Corpus, ad ſubjiciend', &c. ad barram hic duct' in propria perſona ſua, qui committitur Marr', &c. Et jur' prædict' per Vic' com' prædict' ad hoc impanellat' exact' ven', qui ad veritatem de præmiſſis dicend' elect', triat' & jurat', dicunt ſuper ſacramentum ſuum, quod prædict' Thomas Roſewell eſt culpabilis de alta proditione prædict', in indictament' prædict' ſpecificat', modo & forma prout per indictament' prædict' ſuperius verſus eum ſupponitur. Et quod idem Tho' Roſewell tempore perpetrationis altæ proditionis prædict', ſeu unquam poſtea, nulla habuit bona ſeu catalla, terras, ſive tenementa, ad notitiam jur' prædict'. Et quia curia dicti Domini Regis hic de judic' ſuo inde reddend' nondum adviſatur, dies inde dat' eſt præfat' Thomæ Roſewell, in ſtatu quo nunc, &c. uſque diem Mercur' prox' poſt octab' Purificationis beatæ Mariæ Virginis coram Domino Rege, ubicunque, &c. de judic' ſuo inde reddend', &c.

[g] Vol. III. p. 909. N°. 128.

ante quem diem dictus Dominus Carolus ſecundus Rex Angliæ, &c. diem ſuum clauſit extremum, & Dominus Jacobus ſecundus ſuper ſe ſuſcepit gubernationem hujus regni Angliæ. Et modo, ſcilicet die Mercur' prox' poſt octab' Purificationis beatæ Mariæ Virginis, iſto eodem termino coram Domino Rege apud Weſtm' venit prædict' Thomas Roſewell in propria perſona ſua, ſub cuſtod' præfat' cuſtodis priſon' de le Gatehouſe Weſtm' prædict', & alloquut' ei ſi quid pro ſe habeat, vel dicere ſciat, quare curia hic ad judic' ſuper indictament' prædict' procedere non debeat, dicit, quod dictus Dominus Carolus ſecundus, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ nuper Rex, fidei defenſor, &c. per literas ſuas patent' ſub magno ſigillo ſuo Angliæ ſigillat', geren' dat' apud Weſtm' viceſimo octavo die Januar', anno regni ſui triceſimo ſexto, de gratia ſua ſpeciali, ac ex certa ſcientia & mero motu ſuis, pardonavit, remiſit, & relaxavit, ac per eaſdem literas patentes, pro ſe, hæred', & ſucceſſor' ſuis pardonabat, remittebat, & relaxabat eidem Thomæ Roſewell, per nomen Thomæ Roſewell nuper de paroch' de Redriffe in com' Surr' Clerico, ſeu quocunque alio nomine vel cognomine, ſeu additione nominis vel cognominis, aut loci, idem T. Roſewell ſciatur, cenſeatur, vocetur, ſive nuncupetur, aut nuper ſciebatur, cenſebatur, vocabatur, ſive nuncupabatur, omnes proditiones quaſcunque, unde præfat' Thomas Roſewell in termino ſancti Michaelis jam ult' elaps', in curia dicti nuper Regis, coram ipſo Rege apud Weſtm' tent', convict' ſive attinct' fuit; ac omnia & ſingula indictament', judicia, convictiones, condemnationes, executiones, impriſonament', punitiones, & omnes alias pœnas & pœnalitat' quæcunque ſuper vel verſus ipſum Thomam Roſewell, de, pro, ſive concernen' præmiſſis, ſeu eorum aliquo habit', fact', reddit', ſive adjudicat', aut in poſterum habend', reddend', faciend', ſive adjudicand', necnon omnia & ſingula utlagar' verſus dictum Thomam Roſewell, ratione ſeu occaſione præmiſſorum, ſeu eorum aliquor' vel alicujus promulgat', ſive in poſterum promulgand', ac omn' & omnimod' fect', querel', forisfactur', impetitiones & demand' quæcunque, quæ dictus nuper Rex verſus ipſum ratione præmiſſorum, ſeu eorum alicujus, habuit, habet, ſeu in futuro habere poterit, aut hæred' ſeu ſucceſſores dicti nuper Regis ullo modo habere poterint in futuro, ſectamque pacis ipſius nuper Regis, quæ ad ipſum nuper Regem verſus præfat' Thomam Roſewell pertinet, ſeu pertinere poteſt occaſione præmiſſorum, ſeu eorum aliquor' vel alicujus; & firmam pacem dicti nuper Regis ei inde dabat & concedebat per eaſdem literas patent', nolens quod idem Thomas Roſewell per Vicecomites, Juſtic', Ballivos, aut alios miniſtros ipſius nuper Regis, hæred', ſeu ſucceſſor' ſuorum, occaſione præmiſſor', ſeu eorum alicujus, moleſtetur, occaſionetur, perturbetur, ſeu in aliquo gravetur; volens quod eædem literæ ſuæ patent', quoad omnia & ſingula præmiſſa ſuperius mentionat', bon', firm', valid', ſufficient', & effectual' in lege ſint & erint, licet crimina & offens' prædict' minus certe ſpecificat' exiſtunt; quodque pardonatio illa in omnibus cur' dicti nuper Regis, & alibi, interpretetur & adjudicetur in beneficentiſſimo ſenſu, pro firmiori exoneratione præfat' Thomæ Roſewell, ac etiam placitetur & allocetur in omnibus cur' dicti nuper Regis, abſque aliquo brevi de allocatione in ea parte prius obtent' ſive obtinend', non obſtant' ſtatut' in parliamento, anno regni dict' nuper Regis decimo tertio fact' & edit', & non obſtante aliquo defect' aut aliquibus defectibus in eiſdem literis patent' content', aut aliquo alio ſtatut', actu, ordinatione, proviſione, proclamatione, ſive reſtrictione, aut aliqua alia re, cauſa, vel materia quacunque in contrar' inde in aliquo non obſtant'. Ita tamen quod dictus Thomas Roſewell tal' bon' & ſuffic' ſecuritat' de ſe bene gerend', a dat' literar' patent' prædict' erga dictum nuper Regem, hæred', & ſucceſſores ſuos, & cunctum populum ſuum inveniat, qual' appunctuat' & limitat' erit per Capital' Juſtic' de cur' præd' pro tempore exiſten'. Et idem Thomas Roſewell profert hic in cur' literas patentes præmiſſa teſtificantes in hæc verba:

Carolus ſecundus, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, &c. omnibus ad quos præſentes literæ noſtræ pervenerint, ſalutem. Sciatis, quod nos de gratia noſtra ſpeciali, ac ex certa ſcientia, & mero motu noſtris, pardonavimus, remiſimus, & relaxavimus, ac per præſentes, pro nobis, hæredibus, & ſucceſſoribus noſtris pardonamus, remittimus, & relaxamus Thomæ Roſewell, nuper de paroch' de Redriffe in com' Surr' Clerico, ſeu quocunque alio nomine vel cognomine, ſeu additione nominis, aut loci, idem Thomas Roſewell ſciatur, cenſeatur, vocetur, ſive nuncupetur, aut nuper ſciebatur, cenſebatur, vocabatur, ſive nuncupabatur, omnes proditiones quaſcunque, unde præfat' Thomas Roſewell, in termino ſancti Michaelis jam ult' elaps', in curia noſtra coram nobis apud Weſtmonaſt' tent', convict' ſive attinct' fuit; ac omnia & ſingula indictamenta, judicia, convictiones, condempnationes, executiones, impriſonamenta, punitiones, & omnes alias pœnas & pœnalitates quaſcunque ſuper vel verſus ipſum Thomam Roſewell, de, pro, ſive concernen' præmiſſis, ſeu eorum aliquibus habit', fact', reddit', ſive adjudicat', aut in poſterum habend', reddend', faciend', ſive adjudicand', nec non omnia & ſingula utlagar' verſus dict' Thomam Roſewell, ratione ſeu occaſione præmiſſorum, ſeu eorum aliquorum vel alicujus promulgat', ſive in poſterum promulgand', ac omnia & omnimod' fect', querel', forisfactur', impetitiones, & demand' quæcunque, quæ nos verſus ipſum ratione præmiſſorum, ſeu eorum alicujus habuimus, habemus, ſeu in futuro habere poterimus, aut hæred' ſeu ſucceſſor' noſtri ullo modo habere poterint in futuro, ſectamque pacis noſtræ, quæ ad nos verſus præfat' Thomam Roſewell pertinent, ſeu pertinere poterint ratione præmiſſorum, ſeu eorum aliquorum vel alicujus; & firmam pacem noſtram ei inde damus & concedimus per præſentes, nolentes quod idem Thomas Roſewell, per Vicecomites, Juſticiar', Ballivos, aut alios miniſtros noſtros, hæredum, ſeu ſucceſſor' noſtrorum, occaſione præmiſſorum, ſeu eorum alicujus, moleſtetur, occaſionetur, ſeu in aliquo gravetur. Volent' quod hæ literæ noſtræ patentes, quoad omnia & ſingula præmiſſa ſuperius mentionat', bonæ, firmæ, valid', ſufficient', & effectual' in lege ſint & erint, licet crimina & offens' prædict' minus certe ſpecificat' exiſtunt, quodque hæc pardonatio noſtra in omnibus curiis noſtris, & alibi, interpretetur & adjudicetur in beneficentiſſimo ſenſu, pro firmiori exoneratione præfat' Thomæ Roſewell, ac etiam placitetur & allocetur in omnibus curiis noſtris abſque aliquo brevi de

allocatione in ea parte prius obtent', ſive obtinend', non obſtante ſtatut' in parliament' anno regni noſtri decimo tertio fact' & edit', & non obſtant' aliquo defect', aut aliquibus defectibus in his literis patentibus content', aut aliquo alio ſtatuto, actu, ordinatione, proviſione, proclamatione, ſive reſtrictione, aut aliqua alia re, cauſa, vel materia quacunque in contrar' inde in aliquo non obſtante; ita tamen, quod dict' Thomas Roſewell tal' bon' & ſufficien' ſecuritat' de ſe bene gerend' ex nunc erga nos, hæred' & ſucceſſores noſtros, & cunctum populum noſtrum inveniat, qual' appunctuat' & limitat' erit per Capital' Juſtic' de curia prædict' pro tempore exiſten'. In cujus rei teſtimonium has literas noſtras fieri fecimus patentes, teſte meipſo apud Weſtmonaſt' viceſimo octavo die Januarii, anno regni noſtri triceſimo ſexto.

Per breve de privato ſigillo, *Barker.*

Super quo vis', & per cur' hic intellect' omnibus & ſingulis præmiſs', cons' eſt per cur' hic, quod prædict' Thomas Roſewell (ſub conditione mentionat' in literis patent' ſuperius recitat') de altis proditionibus prædict' in indictament' prædict' ſuperius ſpecificat' exoneretur, & eat inde ſine die.

On the Back of the Pardon is written as follows:

Iſta Charta placitatur, allocatur, & irrotulatur de record' coram Domino Rege apud Weſtm' termino ſancti Hilar', anno regni Domini Jacobi ſecundi nunc Regis Angl', *&c.* primo.

Rex verſus Hayes[h], *for* High Treaſon.

Mich' 36 Car' II. *B. R.*

London ff. QUod Joſephus Hayes nuper de London mercator, ut falſus proditor contra illuſtriſſimum & excellentiſſimum Principem Dom' Carolum ſecundum, Dei gratia Angl', Scot', Franc', & Hiberniæ Regem, & naturalem Dominum ſuum, timorem Dei in corde ſuo non habens, nec debitum ligeanc' ſuæ ponderans, ſed inſtigatione diabolica mot' & ſeduct', dilection' veram & debitam, & naturalem obedienc', quas verus & fidel' ſubdit' dict' Dom' Reg' erga ipſum Dom' Regem gereret, & de jure gerere tenetur penitus ſubtrahens, & totis viribus ſuis intendens pacem & communem tranquillitat' hujus regni Angl' inquietare, moleſtare, & perturbare, & guerram & rebellion' contra dict' Dom' Regem ſuſcitare & movere, & gubernation' dict' Dom' Reg' in hoc regn' Angl' ſubvertere, & dict' Dom' Regem a titulo, honore, & regali nomine, coron' imperial' regni ſui Angl' deponere, dejicere, & deprivare, & dict' Dom' Regem ad final' deſtruction' adducere & ponere, 32. die Auguſti, anno reg' Dom' Caroli ſecundi nunc Reg' Angl', *&c.* 35. apud paroch' ſancti Mich' Baſſiſhaw, in warda de Baſſiſhaw London, ſatis ſciens, quendam Thomam Armſtrong nuper de London Milit', ut falſum proditor', proditorie conſpiraviſſe & imaginat' fuiſſe mortem & final' deſtruction' dict' Dom' Reg', & pro eadem proditione proditorie fugam feciſſe, ipſe præd' Johannes Hayes poſtea, ſcilicet dicto 31. die Auguſti anno reg' dict' Dom' Regis nunc 35. ſuprad', & diverſis al' diebus & vicibus, tam antea quam poſtea, apud paroch' ſancti Michael' Baſſiſhaw, in warda de Baſſiſhaw London præd', ſcienter, malitioſe, ſeditioſe, & proditorie præd' T. Armſtrong comfortavit, ſuſtinuit, & manutenuit, & præd' J. H. adtunc & ibidem pro comfortatione, ſuſtentatione, & manutentione præd' T. A. ſummam attingen' ad centum & quinquaginta libras legal' monet' Angl', malitioſe, ſeditioſe, & proditorie ſolvit, & ſolvi cauſavit, contra ligeanc' ſuæ debitum, ac contra pacem dict' Dom' Regis nunc, coron', & dignitat' ſuas, *&c.* necnon contra formam ſtatuti, *&c.*

Pritchard *verſus* Papillon[i],

An Action for Falſe Impriſonment.

Paſchæ 36 Car' II. *B. R.*

London ff. WIlhelmus Pritchard Miles, nuper Major civit' prædict', querit' de Thoma Papillon in cuſtod' Mar', *&c.* pro eo videlicet, quod cum duodecimo die Februarii, anno noſtri Domini Caroli ſecundi nunc Regis Angliæ, *&c.* triceſimo quinto, ipſe idem Wilhelmus Pritchard, ac antea, & abinde per ſeparat' menſes ex tunc prox' ſequend' extitit Major civitat' London præd', in officium Majoratus illius debito modo elect', præfect', & jurat', ac ſecundum conſuetudinem civitat' London' prædict', a tempore cujus contrar' memoria hominum non exiſtit, in eadem uſitat' & approbat', officium ſuum Majoratus illius indies intendi debuit, per aſſiduam diligent' ipſius Wilhelmi in regimine civitat' illius, per ipſum ſecundum debitum officii ſui prædict' exequend', & performand' ad honorem & dignitat' ad officium illud ſpectant' & pertinen', prædictus tamen Thomas exiſtens unus de Comitat' civitat' præd', & ſub regimine dicti Wilhelmi, virtute officii ſui prædicti, præmiſſor' non ignarus, ſed machinans, & falſe ac malitioſe invidens felici ſtatui ipſius Wilhelmi in officio ſuo prædict', necnon ipſum Wilhelmum in executione officii illius minus juſte inquietare & diſturbare, prædicto duodecimo die Februarii, anno triceſimo quinto ſupradicto, idem Thomas Papillon, pro vexatione præfat' Wilhelmo adhibend' (eodem Thoma adtunc non habente aliquam legitimam vel probabilem cauſam actionis verſus ipſum Wilhelmum) falſe & malitioſe proſequut' fuit extra cur' dicti Domini Reg' coram ipſo Rege nunc habit', ſcilicet, apud Weſtmon' in com' Middleſex adtunc & adhuc tent' exiſten', quoddam breve ipſius Dom' Reg' de alias Capias

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[h] Vol. III. p. 983. N°. 129.

[i] Vol. III. p. 988. N°. 130.

verſus

verſus ipſum Wilhelmum, per nomen Wilhelmi Pritchard, Militis, adtunc Coronator' civitat' London' præd' direct', per quod quidem breve idem Dominus Rex nunc eidem tunc Coronatori præcepit quod caper' ipſum Wilhelmum Pritchard, ſi invent' foret in civitat' London' præd', & eum ſalvo cuſtodiret, ita quod haberet corpus ejus coram Domino Rege apud Weſtm' die
cur' prox' poſt quindenam Paſchæ ex tunc prox' ſequend', ad reſponden' præfat' Thomæ Papillon, per nomen Thomæ Papillon, Armiger', de placito tranſgres', & quod idem tunc Coronator haberet ibi tunc breve illud. Et prædictus Thomas Papillon, ex ulteriori nequitia & malitia ſua præcogitat' verſus ipſum Wilhelmum, poſtea & ante retorn' brevis prædicti, ſcilicet, viceſimo quarto die Aprilis, anno triceſimo ſupradicto, apud London' præd', videlicet, in parochia ſanctæ Mildredæ Virginis in Pulletria, in warda de Cheap', London, prædictum breve de alias capias cuidam Johanni Brome, Gen', adtunc Coronator' civit' London præd' exiſten', deliberavit exequend', ac adtunc & ibidem apud Wilhelmum adtunc Major' civitat' London' præd', ut præfert', exiſten', prætextu brevis illius præd' corp' ſuum capi & arreſtari, ac in priſona ſub cuſtod' ejuſdem tunc Coronator' per ſpatium ſex horarum, ex tunc prox' ſequen', detineri malitioſe & minus juſte procuravit, in vituperation', derogation', & vilipendium prædicti Wilhelmi & officii Majoratus ipſius Wilhelm' præd', necnon ad damnum, præjudicium, & gravamen ipſius Wilhelmi manifeſt', ubi revera, & de facto prædictus Thomas Papillon, prædicto tempore captionis, arreſtionis, & detentionis ipſius Wilhelm' in priſona ſic, ut præfert' fact', non habuit aliquam juſtam vel probabilem cauſam actionis verſus ipſum Wilhelmum in præmiſſis præd', unde idem Wilhelmus dic' quod ipſe deterioratus eſt, & damnum habet ad valent' decem mille librarum, & inde produc' ſectam, *&c.*

Rex verſus Hampden[k], *for* High Treaſon.

1 *Jac'* II. *O. B.*

Midd' ff. DOminus Rex mandavit Juſtic' ſuis ad inquirend' per ſacram' probor' ac legal' homin' de Com' Midd', ac aliis viis, modis & mediis, quibus melius ſciverint aut poterint, de quibuſcunq; proditionibus, miſpriſionibus proditionibus, inſurrectionibus, rebellionibus, contrafactur', tonſur', lotur', falſis fabricationibus & al' falſitat' monet' hujus regni Angliæ, & al' regnor', ſive dominior' quorumcunque, ac de al' offens' & injur' quibuſcunque, ac Juſtic' ſuis ad gaolam ſuam de Newgate de priſonar' in eadem exiſten', deliberand' aſſign', necnon cuſtod' pacis ſuæ, ac Juſtic' ſuis ad divers' felon', tranſgr', & al' malefacta in eodem Com' perpetrat', audiend' & terminand' aſſign', & eorum cuilibet breve ſuum clauſum, in hæc verba: Jacobus ſecundus, Dei gratia, *&c.* Juſtic' noſtris ad inquirend' per ſacrament' proborum & legalium homin' de Com' Midd', ac aliis viis, modis & mediis, quibus melius ſciverint aut poterint, de quibuſcunque proditionibus, miſpriſionibus prodition', inſurrection', rebellion', contrafactur', tonſur', lotur', falſis fabricationibus, & al' falſitat' monet' hujus regni Angliæ, & al' regnor' ſive dominior' quorumcunque, ac de al' offens' & injur' quibuſcunque, ac Juſtic' noſtris ad gaolam noſtram de Newgate, de priſonar' in eadem exiſten' deliberand' aſſign', necnon cuſtod' pacis noſtræ, ac Juſtic' noſtris ad divers' felon', tranſgr', & al' malefacta in eodem Com' perpetrat', audiend' & terminand' aſſign', & eorum cuilibet, ſalutem. Volen' certis de cauſis record' conviction' Johannis Hampden, Gen', pro quibuſdam altis proditionibus unde coram nobis indictat' eſt, & ſuperinde convict' extitit, ut dicitur, coram nobis per vos mitti, vobis & cuilibet veſtrum mandamus, quod record' præd', cum omnibus illud tangen', adeo plene & integre prout coram vobis jam reſidet, quocunque nomine idem Johannes nuncupetur in eodem, coram nobis ſub ſigill' veſtris, aut unius veſtrum, a die Paſchæ in quindecim dies ubicunque tunc fuerimus in Angl' mittat', ſeu unus veſtrum mittas, una cum hoc brevi, ut ult' inde fieri fac', quod de jure ac ſecundum legem & conſuetud' regni noſtri Angliæ ſore viderimus faciend', T. E. Herbert, Mil', *&c.*

Per Cur' Aſtry.

Quod quidem breve & record' in eodem brevi mentionat', retornat', & certificat' fuit, prout ſequitur: ff. Virtute iſtius brevis mihi & al' direct', record' conviction' infra nominat' Johan'Hampden, Gen', unde in iſto brevi fit mentio, cum omnibus ea tangen', coram Dom' Rege huic brevi annex', mitto prout interius præcipitur: *Reſpons' Roberti Jefferey, Mil', Major' civit' London', ac un' Juſtic' infraſcript'.* Midd' ff. Memorand' quod, ad Seſſion' Oyer & Terminer Dom' Regis, tent' pro Com' Midd' apud Hicks's Hall in St. John's-ſtreet in Com' præd', die Lunæ, ſcil', 7. die Septemb', anno regni Dom' noſtri Jacobi ſecundi, Dei gratia, *&c.* primo, coram W. Smith, Bar', J. Berry, Mil', & al' ſociis ſuis, Juſtic' dicti Dom' Regis, per literas paten' ipſius Dom' Regis eiſdem Juſtic' prænominat', ac quibuſcunque quatuor vel pluribus eor', ſub magno ſigillo dicti Dom' Regis Angliæ confect', ad inquirend' per ſacrament' probor' & legalium homin' Com' Midd' præd', ac omnibus al' viis, modis & mediis, quibus melius ſciverint aut poterint, tam infra libertat' quam extra, per quos rei veritas melius ſcir' poterit, & inquiri de quibuſdam prodition', miſpriſion' prodition', inſurrectionibus, rebellionibus, contrafactur', tonſur', lotur', falſis fabricationibus, & al' falſitat' monet' hujus regni Angliæ, & al' regnor' ſive dominior' quorumcunque, ac de quibuſcunque murdris, felon', homicid', interfection', burglar', raptibus mulierum, congregationibus & conventicul' illicit', verbor' prolationibus & coadunationibus, miſpriſionibus, confederationibus falſis, alleganc', tranſgr', riot', rout', retentionibus, eſcapiis, contempt', oppreſſionibus, ac de al' articulis & offens' in eiſdem literis paten' dicti Dom' Regis ſpecificat', necnon acceſſar' eorundem, infra Com' præd', tam infra libertat' quam extra, per quoſcunque & qualitercunque habit', fact', perpetrat', ſive commiſs', ac de al' articulis & circumſtantiis præmiſs' & eor' aliquo vel alit' qualitercunque concernen' plenius veritat', & ad eaſdem prodi-

[k] Vol. IV. p. 207. N°. 136.

tiones & al' præmiſs' audiend' & terminand', ſecund' legem & conſuetud' hujus regni Angliæ, aſſign', per ſacrament' W. Wood, Ar', & 14 al' probor' & legalium homin' Com' præd', adtunc & ibidem jurat' & onerat' ad inquirend' pro dicto Domino Rege & corpore Com' præd', præſentat' exiſtit, modo & forma ſequen', ſcil', Midd' ſſ. Jur' pro Domino Rege ſuper ſacrament' ſuum præſentant, quod Johannes Hampden, nuper de paroch' ſancti Ægidii in campis in Com' Midd', Gen', ut falſus proditor contra illuſtriſſimum & excellentiſſimum principem Dom' Carolum ſecundum, nuper Regem Angliæ, &c. naturalem Dominum ſuum, timorem Dei in corde ſuo non habens, nec debit' ligeanc' ſuæ ponderans, ſed inſtigatione diabolica mot' & ſeduct', cordialem dilection', & veram, debitam & naturalem obedienc' quas verus & fidel' ſubdit' dicti nuper Dom' Regis erga ipſum nuper Dom' Regem gereret, & de jure gerere tenebatur, penitus ſubtrahens, & machinans, practicans, & totis virib' ſuis intendens pacem & communem tranquillitat' hujus regni Angliæ inquietare, moleſtare, & perturbare, & guerram & rebellion' contra dictum nuper Dom' Regem infra hoc regnum Angliæ ſuſcitare, movere, & procurare, & gubernation' dicti nuper Dom' Regis hujus regni ſui Angliæ ſubvertere, mutare, & alterare, & dictum nuper Dom' Regem a titulo, honore, & regali nomine, & corona imperiali regni ſui Angliæ deponere & deprivare, & dictum nuper Dom' Regem ad mortem & final' deſtruction' adducere & ponere, 20 die Julii, anno regni dicti Dom' Caroli ſecundi, nuper Regis Angliæ, 35 & divers' al' diebus & vicibus, tam antea quam poſtea, apud paroch' ſancti Ægidii in campis in Com' Midd', falſo, malicioſe, diabolice, & proditorie, cum divers' al' falſis rebellibus & proditoribus jur' præd' ignot', conſpiravit, compaſſavit, imaginat' fuit, & intendebat dictum nuper Dominum Regem, tunc ſupremum & naturalem Dom' ſuum, non ſolum de regali ſtatu, titulo, poteſtat', & regimine regni ſui Angliæ deprivare & dejicere, verum etiam eundem nuper Dom' Regem interficere & ad mortem adducere & ponere, & antiquam gubernation' hujus regni Angliæ mutare, alterare, & penitus ſubvertere, & ſtragem miſerabil' inter ſubdit' dicti nuper Dom' Regis per totum regnum ſuum Angliæ cauſare & procurare, & inſurrection' & rebellion' contra dictum nuper Dom' Regem infra hoc regn' Angliæ procurare & auxiliari; & ad eaſdem nequiſſimas, nefandiſſimas, & diabolicas prodition' & proditor' compaſſation', imagination', & propoſita ſua prædict' perimplend', perficiend', & ad effectum redigend', idem Johannes Hampden, ut falſus proditor tunc & ibidem, ſcil', dicto 20 die Julii, anno regni dicti nuper Dom' Regis 35 ſupradict', & divers' al' diebus & vicibus, tam antea quam poſtea, apud parochiam ſancti Ægidii in campis præd' in dicto com' Midd', falſo, illicite, nequiſſime, diabolice, & proditorie, cum Jacobo nuper Duce Monmouth, & divers' al' falſis proditor' jur' præd' ignot', ſe aſſemblabat, congregabat, conſultabat, & conſentiebat ad ſuſcitand' & procurand' divers' magn' denar' ſumm' & ingent' numerum homin' armat', ad guerram & rebellion' contra dictum nuper Dominum Regem infra hoc regn' proditorie levand' & faciend', contra debit' ligeanc' ſuæ, & contra pacem dicti Dom' Regis nunc, coron' & dignitat' ſuas, necnon contra formam ſtatuti in hujuſmodi caſu edit' & provis', &c. Per quod præcept' eſt Vic' com' Midd', quod non omitteret, &c. quin caperet eum ad reſpondend', &c. Ac quod ad deliberation' gaol' dicti Dom' Regis de Newgate tent' pro com' Midd' præd' apud Juſtice-Hall in le Old Baily in ſuburbiis civitat' London', die Mercur', ſcil', 9 die Decembr', anno regni dicti Dom' Regis Jacobi ſecundi nunc Regis Angliæ, &c. primo ſuprad', coram Roberto Jeffereys, Mil', Major' civit' London', Edwardo Herbert, Mil', Capital' Juſtic' dicti Dom' Regis ad placita coram ipſo Rege tenend' aſſign', & al' ſociis ſuis Juſtic' dicti Dom' Regis, ad gaolam ſuam de Newgate de priſonar' in eadem exiſten' deliberand' aſſign', iſta gaolæ deliberatio adjornat' fuit per præfat' Juſtic' dicti Dom' Regis ult' nominat' hic uſque diem craſtin', diem Jovis, ſcil', 10 diem ejuſdem menſis Decembr', anno primo ſuprad', ad horam ſeptimam ante meridiem ejuſdem diei, apud Juſtice Hall præd' tenend', coram præfat' Juſtic' dicti Dom' Regis ult' nominat', ad faciend' ulterius prout cur' ibidem conſideraret, &c. Et ſuper eundem diem Jovis 10 diem ejuſdem menſis Decembr', anno primo ſuprad', iſta gaol' deliberatio tent' fuit per adjorn' præd' pro com' præd', apud Juſtic' Hall præd', coram præfat' Juſtic' dicti Dom' Regis ult' nominat', ac adtunc & ibidem præd' gaol' deliberatio dicti Dom' Regis ulterius adjornat' fuit per præfat' Juſtic' dicti Dom' Regis ult' nominat' ibidem uſque diem craſtin', diem Veneris, ſcil', 11 diem ejuſdem menſis Decembr', anno primo ſuprad', ad horam ſeptimam ante meridiem ejuſdem diei, apud Juſtice Hall præd' tenend', ad faciend' ulterius prout cur' ibidem conſideraret, &c. Ac ad eundem diem Veneris 11 diem ejuſdem menſis Decembr', anno primo ſuprad', deliberatio iſtius gaolæ tent' fuit per adjorn' prædict' pro com' præd', apud Juſtice Hall præd', coram præfat' Juſtic' dicti Dom' Regis ult' nominat', ac adtunc & ibidem præd' deliberatio gaol' dicti Dom' Regis ulterius adjornat' fuit per præfat' Juſtic' dicti Dom' Regis ult' nominat' hic uſque diem Sabbati, ſcil', 19 diem ejuſdem menſis Decembr', anno primo ſuprad', ad horam ſeptimam ante meridiem ejuſdem diei, apud Juſtice Hall præd' tenend' coram præfat' Juſtic' dicti Dom' Regis nunc ult' nominat', ad faciend' ulterius prout cur' ibidem conſideraret, &c. Ac ad eundem diem Sabbati 19 diem ejuſdem menſis Decemb', anno primo ſuprad', deliberatio iſtius gaol' tent' fuit per adjorn' præd' pro com' præd', apud Juſtice Hall præd', coram præfat' Juſtic' dicti Dom' Regis ult' nominat', ac adtunc & ibidem præd' deliberatio gaolæ dicti Dom' Regis ulterius adjornat' fuit per præfat' Juſtic' dicti Dom' Regis ult' nominat', hic uſque diem Mercur', ſcil', 30 diem ejuſdem menſis Decemb', anno primo ſuprad', ad horam ſeptimam ante meridiem ejuſdem diei, apud Juſtice Hall præd', tenend' coram præfat' Juſtic' dicti Dom' Regis ult' nominat', ad faciend' ult' prout cur' ibidem conſideraret, &c. Ac ad eundem diem Mercur', 30 diem ejuſdem menſis Decembr', anno primo ſuprad', deliberatio iſtius gaolæ tent' fuit per adjorn' præd' pro com' præd' apud Juſtice Hall præd', coram præfat' Juſtic' dicti Dom' Regis ult' nominat', & ad eundem diem Mercur' 30 diem ejuſdem menſis Decembr' anno ſuprad', ad dictam deliberation' gaolæ dicti Dom' Regis adtunc tent' per adjornament' præd' pro com' præd', apud Juſtice Hall præd', coram præfat' Juſtic' dicti Dom' Regis ult' nominat', præfat' Juſtic' dicti Dom' Regis per dictas literas paten' ipſius Dom' Regis, ſub magno ſigill' Angl',

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ut præfertur confect', per manus ſuas propr' deliberaver' indictament' præd' hic in cur' de record', in forma juris terminand', &c. Ac ſuperinde ad iſtam eandem deliberat' gaol' dicti Dom' Regis de Newgate tent' per adjorn' præd', pro com' præd', apud Juſtice Hall præd', præd' die Mercur' 30 die ejuſdem menſis Decembr', anno primo ſuprad', coram præfat' Juſtic' dicti Dom' Regis, ad præd' gaolam ipſius Dom' Regis de Newgate præd', de priſonar' in eadem exiſten' deliberand' aſſign', ven' præd' Johannes Hampden ſub cuſtod' Benjamin' Thorowgood, & T. Kinſey, Mil', Vic' com' Midd' præd', in cujus cuſtod' ex cauſa præd' præantea commiſs' fuit, ad barr' hic duct' in propr' perſona ſua, qui committitur præfat' Vic', &c. Et ſtatim de præmiſs' in indictament' præd' ſpecificat' ei ſuperius impoſit', allocut' qualit' ſe velit inde acquietari, idem Johannes Hambden dic' quod ipſe non poteſt dedicere, quin ipſe eſt culpabil' de alta proditione præd' in indictament' præd' ſpec' ei ſuperius impoſit' modo & forma prout per indictament' præd' ſuperius verſus eum ſupponitur, & altam prodition' præd' in indictament' præd' expreſſe cognovit: Et ſtatim quæſit' eſt de præfat' Johanne Hampden, ſi quid pro ſe habeat, vel dicere ſciat, quare cur' hic ad judic' & execution' de eo ſuper conviction' ſuam præd' & cognition' ſuam propr' altæ proditionis præd' in indictament' præd' ſuperius ſpec' procedere non debeat, qui nihil ulterius dic' præterquam ut prius dixerat, ſuper quo vis', & per cur' hic intellectis omnibus & ſingulis præmiſs' cons' eſt per cur' hic, quod præd' Johannes Hampden ducatur ad gaol' dicti Dom' Regis de Newgate unde ven', & ibidem ſuper traham ponatur, & abinde ad locum execution' trahatur, & ibidem per collum ſuum ſuſpendatur, & vivens ad terr' proſternatur, & quod ſecreta membra ſua amputentur, & interiora extra ventrem ſuam capiantur, & in ignem ponantur, & ibidem comburentur, & quod caput ejus amputetur, quodque corpus ejus in quatuor partes dividatur, & quod caput & quarteria ſua ponantur ubi Dominus Rex ea aſſign' voluerit: Et modo, ſcil', die Mercur' prox' poſt quinden' Paſchæ iſto eodem termino, coram Dom' Rege apud Weſtm' ven' præd' Johannes Hampden, juxta formam recognition' per ipſum & pleg' ſuos in hac parte prius cognit' in propr' perſona ſua, qui committitur Mar', &c. & adtunc & ibidem per cur' dicti Dom' Regis hic quæſit' eſt de eodem Johanne Hampden, ſi quid pro ſe habeat, vel dicere ſciat, quare cur' hic ad execution' ſuper judic' præd' in forma præd' reddit' procedere non debeat, qui ſtatim dic' quod dictus Dominus Rex nunc, ex gra' ſua ſpeciali, ac ex certa ſcienc' & mero motu ſuis, per ſuas literas paten' ſub magno ſigillo ſuo Angliæ, geren' dat' apud Weſtm' 19 die Febr', anno regni dicti Dom' Regis nunc ſecundo, pardonavit, remiſit, relaxavit, ac per præſentes pro ſe, hæredibus, & ſucceſſoribus ſuis, pardonavit, remiſit, & relaxavit Johanni Hampden nuper de paroch' ſancti Ægidii in campis in com' Midd', Gen', ſeu quocunque al' nomine vel cognitione, ſeu addition' nominis vel cognitionis aut loci, idem J. ſciatur, cenſeatur, vocetur, ſive nuncupetur, aut nuper ſciebatur, cenſebatur, vocabatur, ſive nuncupabatur, omn' & omnimod' proditiones, miſpriſion' prodition', tranſgr', malefacta, crimina, & offens' quæcunque, per ſe ſolum, ſive cum aliqua al' perſon' vel aliquibus al' perſon' contra dictum Dom' Regem, vel præchariſſimum fratrem ſuum, Carolum ſecund' nuper Regem Angliæ, &c. defunct', ante 35 diem Januar' ult', quandocunque, qualitercunque, ſeu ubicunque fact', commiſs', ſive perpetrat', licet idem J. H. de præmiſs', vel aliquo præmiſs' indictat', arreſtat', appellat', rectat', impetit', attinct', convict', condempnat', utlagat', ſive adjudicat' exiſtit, vel non exiſtit, aut inde indictari, arreſtari, appellari, rectari, impetiri, attingi, convinci, utlagari, condempnari, ſive adjudicari, contigerit in futuro, ac omnia & ſingula indictament', judicia, condempnationes, attinctur', executiones, fines, impriſonament', punition', pœnas mortis, pœnas corporal', & omn' al' pœn' & pœnalitat' quæcunque ſuper vel verſus præd' Johannem H. de, pro, ſive concernen' præmiſs' ſeu eor' aliquo habit', fact', reddit', ſive adjudicat', aut in poſterum habend', fiend', reddend', ſive adjudicand', necnon omnia & ſingula utlagar' verſus dict' J. H. ratione ſive occaſione præmiſs', ſeu eor' aliquor' vel alicujus eor' promulgat', ſive in poſterum promulgand', ac omnia & omnimod' fect', querel', fines, forisfactur', impetitiones, ſeiſuras, proceſs', & demand' quæcunque, quæ dictus Dominus Rex verſus ipſum ratione præmiſs', ſeu eor' alicujus habuit, habet, ſeu in futuro habere poterit, aut hæred' & ſucceſſor' ejus ullo modo habere poterint in futuro, ſectamque pacis ſuæ, quæ ad dict' Dom' Regem verſus præfat' J. H. pertinet, ſeu pertinere poterit, ratione præmiſs', ſeu eor' aliquor' vel alicujus eor', & firmam pacem ſuam ei inde dedit & conceſs' per præſentes: *Et idem* J. H. *profert hic in cur' literas paten' præd' præmiſs' teſtificant', in hæc verba:* Jacobus ſecundus, Dei gra', &c. omnibus ad quos præſentes literæ noſtræ pervenerint, ſalutem. Sciatis quod nos de gra' noſtra ſpecial', ac ex certa ſcienc' & mero motu noſtris pardonavimus, remiſimus, & relaxavimus, ac per præſentes pro nobis, hæred', & ſucceſſor' noſtris pardonamus, remittimus, & relaxamus J. H. de paroch', &c. Gen', ſeu quocunq; al' nomine vel cognitione, ſeu additione nominis vel cognitionis, aut loci idem J. ſciatur, cenſeatur, vocetur, ſive nuncupetur, aut nuper ſciebatur, cenſebatur, vocabatur, vel nuncupabatur, omn' & omnimod' prodition', miſpriſion' prodition', tranſgr', malefacta, crimina, & offens' quæcunque per ſe ſolum, ſive cum aliqua al' perſona, vel aliquibus al' perſonis contra nos vel præchariſſimum fratrem noſtrum Carolum ſecund' nuper Regem Angliæ, &c. defunct', ante 25 diem Januar' jam ult' elaps', quandocunque, qualitercunque, ſeu ubicunque fact', commiſs', ſive perpetrat', licet idem J. H. de præmiſs' vel aliquo præmiſs' indictat', arreſtat', appellat', rectat', impetit', attinct', convict', condempnat', utlagat', ſive adjudicat' exiſtit, vel non exiſtit, aut inde indictari, arreſtari, appellari, rectari, impetiri, attingi, convinci, utlagari, condempnari, ſive adjudicari, contigerit in futuro, ac omnia & ſingula indictament', judic', condempnationes, attinctur', executiones, fines, impriſonament', punition', pœnas mortis, pœnas corporal', & omnia al' pœnas & pœnalitat' quæcunque ſuper vel verſus præd' J. H. de, pro, ſive concernen' præmiſs' ſeu eor' aliquo habit, fact', reddit', ſive adjudicat', aut in poſterum habend', fiend', reddend', ſive adjudicand', necnon omnia & ſingula utlagar' verſus dict' J. H. ratione ſive occaſione præmiſs' ſeu eor' aliquor' vel alicujus eor' promulgat', ſive in poſterum promulgand', ac omn' & omnimod' fect', querel', fines, forisfactur', impetitiones, cenſuras, proceſs', & demand' quæcunq; quæ nos verſus

verſus ipſum ratione præmiſs', ſeu eor' alicujus habuimus, habemus, ſeu in futuro habere poterimus, aut hæred' vel ſucceſſor' noſtri ullo modo habere poterint in futuro, ſectamq; pacis noſtræ, quæ ad nos verſus præfat' J. H. pertinet ſeu pertinere poterit ratione præmiſs' ſeu eor' aliquor', vel alicujus eor' firmam pacem noſtram ei inde damus & concedimus per præſentes, nolentes quod idem J. H. per vicecom', juſticiar', ballivos, aut al' miniſtros noſtros, hæred' ſeu ſucceſſor' noſtror', occaſione præmiſs' ſeu eor' alicujus moleſtetur, occaſionetur, perturbetur, ſeu in aliquo gravetur, volentes quodq; hæ literæ noſtræ paten' (quoad omnia & ſingula præmiſs' ſuperius mentionat') bon', firm', valid', & effectual' in lege ſint & erint, licet crim' & offens' præd' minus certe ſpecificat' exiſt': Quodque hæc pardonatio noſtra in omnibus curiis noſtris & alibi interpretetur & adjudicetur in beneficentiſſimo ſenſu pro firmior' relaxatione, pardonatione, & exoneratione præd' J. H. ac etiam placitetur & allocetur in omnibus cur' noſtris, abſque aliquo brevi de allocatione in ea parte prius obtent' ſeu obtinend', non obſtante aliquo defectu aut aliquibus defectibus in hiis literis patentibus content', aut aliquo ſtatut', act', ordinatione, ſeu proviſione, proclamatione, ſive reſtriction', aut aliqua al' re, cauſa, vel materia quacunq; in contrar' inde in aliquo non obſtante. In cujus rei teſtimon' has literas noſtras fieri fecimus patentes. T. meipſo apud Weſtm', 19 die Feb', anno regni noſtri ſecundo. *Quar' quidem literar' paten' prætextu idem* J. H. *pet' quod ipſe de præmiſs' per cur' hic exoneretur.* Super quo vis' & per cur' hic intellectis omnibus & ſingulis præmiſs' cons' eſt, quod præd' J. H. eat inde ſine die, *&c.* Et poſtea, ſcil', die Lunæ prox' poſt craſtin' aſcenſion' Dom', iſto eodem term', coram Dom' Rege apud Weſtm' ven' præd' J. in propr' perſona ſua, & profert hic in cur' quoddam breve Dom' Regis nunc clauſum, Juſtic' ſuis hic direct', qui ſequitur in hæc verba: Jacobus ſecundus, *&c.* Juſtic' noſtris ad placita coram nob' tenend' aſſign', ſalutem. Quia in record' & proceſs', ac etiam in redditione judic' cujuſdam indictament' coram Juſtic' noſtris ad gaolam noſtram de Newgate de priſonar' in eadem exiſten' deliberand' aſſign', verſus J. H. de paroch', *&c.* in com' Midd', Gen', pro altis proditionibus contra perſon' Dom' Caroli ſecundi nup' Regis Angliæ, fratris noſtri præchariſſimi, unde coram eis nup' attinct' fuit, ut dicitur, error interven' manifeſt', ad grave dampn' ipſius Johannis, ſicut ex querela ſua accepimus: Nos error', ſi quis fuerit, modo debito corrigi, & eidem Johanni plenam & celerem Juſtic' fieri volentes in hac parte, vobis mandamus, quod ſi judic' inde reddit' ſit, tunc viſis & examinat' record' & proceſs' præd', quæ coram nob' certis de cauſis Venire fecimus, & coram vobis jam reſident, ut dicitur, ulterius inde pro errore ill' corrigend' fieri faciatis, quod de jure & ſecund' legem & conſuetud' regni Angl' fuerit faciend'. Teſt' meipſo apud Weſtm' 14 die Maii, anno regni noſtri ſecund'. Et ſup' hoc idem J. H. dic', quod in record' & proceſs' præd', necnon in redditione judicii attinctur' præd' manifeſt' eſt errat' in hoc, videlicet, quod ubi per indictament' præd' mentionatur quod deliberatio gaolæ in recordo judicii, & attinctur' præd' mentionat', tent' fuit pro com' Midd' apud Juſtice Hall in le Old Baily in ſuburbiis civit' London', non apparet per record' præd' quod Juſtice Hall, nec le Old Baily, ſunt in com' Midd', ideo in eo manifeſt' eſt errat'. Erratum eſt etiam in hoc, videlicet, quod indictamentum præd' mentionatur fore capt' 7 die Decemb' in record' præd' mentionat', coram Juſtic' de audiend' & terminand' in recordo præd' mentionat', & per eos fore deliberand' Juſtic' ad gaol' deliberation' in eodem recordo ſpecificat', 30 die Decembr' tunc poſtea in forma juris terminand', ſed non apparet per record' convictionis præd', quod ſeſſio de audiend' & terminand' habuit aliquod adjornament' vel continuation' uſque dictum 30 diem Decembr', ideo in eo manifeſt' eſt errat'. Erratum eſt etiam in hoc, quod verba Vi & armis, *&c.* omittuntur in indictament' præd', ideo in eo manifeſt' eſt errat'. Errat' eſt etiam in hoc, quod conſtat per record' præd', quod proceſs' & judic' præd' ſunt intrat' & recordat' ſup' record' Juſticiar' de audiend' & terminand', & non ſuper record' Juſtic' gaol' deliberand', ideo in eo manifeſt' eſt errat'. Errat' eſt etiam in hoc, videl', quod non apparet per record' præd' per qualem authoritat' Juſtic' ad gaol' deliberation' in record' præd' mentionat', proceſs' & judic' præd' reddider' verſus ipſum præd' J. H. ſup' indictament' præd', ideo in eo manifeſt' eſt errat'. Errat' eſt etiam in hoc, quod ſup' reddition' judic' in record' præd' mentionat' non apparet quis fuit, qui ex parte Dom' Regis pro eodem Dom' Rege pet' judic' ſup' conviction' de materiis in indictament' præd' mentionat', ideo in eo manifeſt' eſt errat'. Erratum eſt etiam in hoc, quod in record' præd' dicitur, quod ad deliberation' gaol' Dom' Regis de Newgate, tent' pro com' Midd' apud Juſtice Hall in le Old Baily in ſuburbiis civit' London', die Mercur', ſcil', 9 die Decembr', coram Juſtic' gaol' deliberation' in eodem record' mentionat', quod iſta gaol' deliberatio adjorn' fuit per præfat' Juſtic', ubi dici debuit adjornat' eſt, & non exprimi via recitationis in tempore præterit', & in alio loco record' mentionat' præd' dicitur, quod iſta gaol' deliberatio tent' fuit, ubi debuit exprimi tent' eſt, & non quod tent' fuit, quia in tenſu præterito eſt mera recitatio tenendi & adjornandi cur' ill', & non poſſitivus actus cur' ill' gaolæ deliberation' de determination' indictament' præd', ideo in eo manifeſt' eſt errat'. Erratum eſt etiam in hoc, videl', quod judic' præd' reddit' eſt pro Domino Rege, ubi reddi debet pro defend', & in eo manifeſt' eſt errat'. Et hoc parat' eſt verificare, unde pet' judic', & quod judic' & attinctur' præd' ob error' præd', & al' in record' & proceſs' præd' apparen' compert' exiſten' revocetur, adnulletur, & penitus pro nullo habeatur, & quod ipſe idem J. H. ad communem & liberam legem hujus regni Angliæ, & ad omnia quæ ipſe occaſione judicii & attinctur' præd' amiſit reſtituatur, & quod ipſe, tam de eadem convictione & attinctur', quam de indictament' præd' per cur' hic dimittatur & exoneretur, & quod cur' hic procedat ad examination' record' & proceſs' præd', *&c.* & quia neceſſar' & expediens eſt, antequam cur' hic in hac parte procedat, quod tenentes terrar' & tenementor', quæ fuer' præd' Johannis 20 die Julii, anno regni dict' Dom' Caroli ſecundi, nup' Regis Angliæ, *&c.* 35. quo die alta proditio præd' fieri ſupponitur, vel unquam poſtea præmuniantur eſſendi, coram dict' Dom' Rege nunc auditur' record' & proceſs præd', ſi, *&c.* ideo præcept' eſt Vic' com' Midd' præd', quod per probos & legales homines de balliva ſua, Scir' fac' ſeparatim tenent' terrar', & tenementor', quæ fuer' præd' Johannis prædict' 20 die Julii, anno regni dicti Dom' Caroli ſecundi nuper Regis Angliæ, *&c.*

35 ſuprad', vel unquam poſtea, quod ſint coram Dom' Rege in craſtino ſanctæ Trinitat', ubicunque, &c. auditur' record' & proceſs' præd', ſi, &c. idem dies dat' eſt præfat' J. Hampden, &c. & ſuper hoc de gratia cur' ſpecial' præd' J. H. traditur in ball' H. A. de, &c. Arm', & W. J. de, &c. uſque ad præfatum terminum, & ſic, &c.

It does not appear by the Precedent, whether the Judgment was reverſed or affirmed, nor is the Report of this Caſe to be found in any of the Reports of that time.

Rex verſus Dom' Delamere[1], *for* High Treaſon.

1 *Jac'* II. *Rot'* 5.

Ceſtr' ſſ. PEr quandam inquiſition' capt' apud Ceſtr', in com' Ceſtr', die Veneris 11. die Decembr', anno regni Domini Jacobi ſecundi, Dei gra' Angl', Scotiæ, Franc', & Hiberniæ Regis, fidei defenſor', &c. primo, coram Edwardo Lutwyche Mil', un' fervien' dicti Dom' Regis ad legem, ac Juſtic' Ceſtr', Johanne Warre Arm', altero Juſtic' Ceſtr', Philippo Egerton Mil', & Petro Shakerley Arm', per literas paten' ejuſdem Domini Regis eis, & aliis, & quibuſcunque trib' vel plur' eor' inde confect', ad inquirend' per ſacramentum probor' & legalium hominum de com' Ceſtr', ac al' viis, mediis, & modis, quibus melius ſciviſſent aut potuiſſent, tam infra libertat', quam extra, per quos rei veritas melius ſciri potuiſſet, & inquiri de quibuſcunque proditionib', miſpriſionib' prodition', inſurrection', rebellion', contrafactur', tonſur', lotur', falſis fabricationib', & al' falſitat' monet' hujus regni Angl', & al' regnor' ſive dominior' quorumcunque, ac de quibuſcunque murdris, felon', homicid', interfection', burglar', raptib' mulier', congregation' & conventicul' illicit', verbor' prolationib', coadunationib', miſpriſionib', confederationib', falſis alleganc', tranſgr', riotis, routis, retentionib', eſcapiis, contempt', falſitat', negligenc', concelament', manutenen', oppreſſionib', cambiparciis, deceptionib', & al' malefactis, offens', & injur' quibuſcunque, necnon acceſſar' eorundem infra com' Ceſtr' præd', tam infra libertat', quam extra, per quoſcunque & qualitercunque habit', fact', commiſs', ſive perpetrat', per quos vel per quem, cui vel quibus, quando, qualit', & quomodo, ac de aliis articulis & circumſtanc' præmiſs', aut eor' quodlibet, ſeu eor' aliquid vel aliqua qualitercunque concernen' plenius veritat', & ad eaſdem prodition' & al' præmiſs' audiend' & terminand' ſecundum legem & conſuetud' regni dicti Domini Regis nunc Angl' aſſign', per ſacrament' 12. jur' probor' & legalium homin' com' Ceſtr' præd', tunc & ibidem jurat' & onerat' ad inquirend' pro dicto Domino Rege, & corpore com' Ceſtr' præd', exiſtit præſentat', quod Henricus Baro de Delamere in com' Ceſtr', ut falſus proditor contra illuſtriſſimum & excellentiſſimum Principem Dominum Jacobum ſecundum, Dei gra' Angl', Scotiæ, Franc', & Hiberniæ Regem, fidei defenſor', naturalem Dominum ſuum, timorem Dei in corde ſuo non habens, nec debit' ligeanc' ſuæ ponderans, ſed inſtigatione diabolica mot' & ſeduct', cordialem dilection', & veram, debit', & naturalem obedienc', quas verus & fidel' ſubdit' dicti Domini Regis erga ipſum Dominum Regem gereret, & de jure gerere tenebatur, penitus ſubtrahens, & machinans, practicans, & totis viribus ſuis intendens pacem & communem tranquillitat' hujus regni Angl' inquietare, moleſtare, & perturbare, & guerram & rebellion' contra dictum Dominum Regem infra hoc regn' Angl' ſuſcitare, movere, & procurare, & gubernation' dicti Domini Regis hujus regni Angl' ſubvertere, mutare, & alterare, & dictum Dominum Regem a titulo, honore, & regali nomine, coron' imperial' regni ſui Angl' deponere & deprivare, & dictum Dominum Regem ad mortem & final' deſtruction' adducere & ponere, 14. die April', anno regni dicti Domini Jacobi ſecundi nunc Regis Angl', &c. primo, ac divers' al' dieb' & vicib', tam antea quam poſtea, apud Mere in com' Ceſtr' præd', falſo, malitioſe, diabolice, & proditorie, cum divers' al' falſis proditorib' & rebellib' jur' præd' ignot', conſpiraviſſet, compaſſaviſſet, & imaginat' fuiſſet, & intendebat dictum Dominum Regem ſupremum, verum & naturalem Dominum ſuum, non ſolum de Regali ſtatu, titulo, poteſtat', & regimine regni ſui Angl' deprivare & dejicere, verumetiam eundem Dominum Regem interficere, & ad mortem adducere & ponere, & antiquam gubernation' hujus regni Angl' mutare, alterare, & penitus ſubvertere, & ſtragem miſerabilem int' ſubdit' dicti Domini Regis per totum regn' Angl' cauſare & procurare, & inſurrection' & rebellion' contra dictum Dominum Regem infra hoc regn' Angl' procurare & auxiliari, & ad eaſdem nefandiſſimas, nequiſſimas, & diabolicas prodition' & proditor' compaſſation', imagination', & propoſita ſua præd' perimplend', perficiend', & ad effectum redigend', idem H. Baro de D. ut falſus proditor adtunc & ibidem, ſcil' dicto 14. die April', anno 1. ſuprad', & divers' al' dieb' & vicib', tam antea, quam poſtea, apud Mere præd' in com' præd', falſo, illicite, nequiſſime, & proditor' cum Carolo Gerard Arm', & al' falſis proditor' jur' præd' ignot', ſe aſſemblabat, congregabat, conſultabat, & agreabat ad ſuſcitand' & procurand' divers' magn' denar' ſum', & ingent' numerum homin' armator' ad guerram & rebellion' contra dictum Dominum Regem infra hoc regn' Angl' levand' & faciend', ac civit' Ceſtr' in com' ejuſdem civit', necnon caſtrum dicti Dom' Regis Ceſtr', apud Ceſtr' in com' Ceſtr' præd', & omnes munition' bellicas (Anglice vocat' *the Magazines*) in eodem caſtro adtunc exiſten' intrare, capere, ſeiſire, & prendere (Anglice *to ſurprize*) & in poſſeſſion' & poteſtat' ſuas obtinere. Ac jur' præd' ulterius ſuper ſacramentum ſuum præd' tunc dixer', quod præd' H. Baro de Delamere poſtea, ſcil' 27. die Maii, anno 1. ſuprad', falſo, illicite, nequiſſime, & proditorie iter feciſſet a civit' London uſque ad Mere præd' in com' Ceſtr' præd', ad prodit' propoſita ſua præd' perimplend' & perficiend', ac quod idem H. Baro de Delamere poſtea, ſcilicet 4. die Junii, anno 1. ſuprad', apud M. præd', in com' Ceſtr' præd', in ulterior' proſecution' præd' illicit', nequiſſimor', & proditor' propoſitor' ſuor', divers' ligeos & ſubdit' dicti Domini Regis, jur' præd' ignot', cum

[1] Vol. IV. p. 210. N°. 137.

eodem H. Baron' de D. & præd' al' falſis proditorib', jur' præd' ignot', falſo, illicite, nequiſſime, & proditorie, in guerra & rebellion' præd', & in proditoriis propoſit' ſuis præd' jungere & adhærere, excitaviſſet, animaviſſet, & perſuaſiſſet contra ligeanciæ ſuæ debit', contra pacem dicti Domini Regis nunc, coron' & dignitat' ſuas, necnon contra formam ſtatuti in hujuſmodi caſu edit' & provis'.

Rex verſus Dominum Mohun, *for the* Murder *of* W. Mountford.

4 *W. & M.*

THis Record is in the Trial [m].

Rex verſus Charnock, *for* High Treaſon.

8 *Gul'* III. *O. B.*

THis Record is in the Trial [n].

Rex verſus Cranburne, Lowick, & al' [o], *for* High Treaſon.

7 *Gul'* III.

Midd' ff. JUratores pro Domino Rege ſuper ſacramentum ſuum præſentant, Quod Chriſtophorus Knightley, nuper de paroch' ſanct' Pauli Covent Garden in com' præd' Generoſus, Robertus Lowick nuper de paroch' ſancti Pauli Covent Garden in com' prædicto Gen', Ambroſius Rookwood nuper de parochia ſancti Pauli Covent Garden in com' prædicto Generoſus, & Carolus Cranburne nuper de parochia ſancti Pauli Covent Garden in com' prædicto Yeoman, timorem Dei in cordibus ſuis non habentes, nec debit' ligeanciæ ſuæ ponderan', ſed inſtigatione diabolica moti & ſeducti, ut falſi proditores contra ſereniſſimum, illuſtriſſimum, clementiſſimum, & excellentiſſimum Principem, Dom' Gulielmum tertium, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, fidei defenſorem, *&c.* ſupremum, verum, legitimum, legalem & indubitatum Dom' ſuum, cordialem dilectionem, ac veram & debitam obedientiam, fidelitatem & ligeanciam, quas quilibet ſubditus dicti Dom' Regis nunc erga ipſum Dominum Regem gereret, & de jure gerere tenetur, ſubtrahentes & penitus extinguere intendentes ac machinantes, & totis ſuis viribus excogitantes, deſignantes, & conſpirantes gubernationem hujus regni Angliæ, ſub ipſo Domino Rege nunc de jure debit', felicit', & optime ſtabilit', omnino ſubvertere, mutare, & alterare, necnon eundem Dom' Regem ad mortem & finalem deſtructionem ponere & adducere, ac ſubditos ſuos fideles, & liberos homines hujus regni Angliæ in ſervitutem intolerabilem & miſerrimam Ludovico Regi Gallico ſubjugare & mancipare, decimo die Februarii, anno regni dict' Dom' Regis nunc ſeptimo, & diverſis aliis diebus & vicibus, tam antea, quam poſtea, apud parochiam ſancti Pauli Covent Garden præd', in com' prædicto, falſo, malitioſe, diabolice, & proditorie compaſſaver', imaginati & machinati fuer', excogitaver', deſignaver', & intendebant dict' Dom' Regem nunc occidere, interficere, & murdrare, ac ſtragem miſerabilem inter fideles ſubditos ipſius Dom' Regis per totum hoc regn' Angliæ facere & cauſare, & ad eaſdem nefandiſſimas, nequiſſimas, & diabolicas proditiones, & proditorias compaſſationes, machinationes, & propoſita ſua prædicta perimplend', perficiend', & ad effectum redigend', ipſi iidem Chriſtophorus Knightley, Robertus Lowick, Ambroſius Rookwood, & Carolus Cranburn, & quamplurimi alii falſi proditores (juratoribus præd' ignot') poſtea, ſcil' eodem decimo die Februarii, anno ſupradict', apud parochiam prædictam, in com' præd', ac diverſis aliis diebus & vicibus, tam antea, quam poſtea, ibidem & alibi in eodem com' falſo & malitioſe, adviſate, clandeſtino, proditorie, ac vi & armis conveniebant, propoſuer', tractaver', conſultaver', conſenſer', & agreaver' ad ipſum Dom' Regem nunc ex inſidiis & dolo percutiend' (Anglice *to aſſaſſinate*) interficiend' & murdrand', & ad execrabilem, horrendam, & deteſtabilem aſſaſſinationem (Anglice *Aſſaſſination*) & interfectionem ill' citius exequend' & perpetrand', poſtea, ſcil' eiſdem die & anno, ac diverſis aliis diebus & vicibus, apud parochiam prædictam, in com' præd', proditorie tractaver', propoſuer', & conſultaver' de viis, modis, & mediis, ac tempore & loco ubi, quando, qualiter, & quomodo dictum Dom' Regem ſic ex inſidiis facilius interficerent, & conſenſer', agreaver', & aſſenſer', quod quadraginta homines equeſtres, aut eo circiter (quorum iidem Chriſtoph' Knightley, Robertus Lowick, Ambroſius Rookwood, & Carolus Cranburne forent quatuor, & quilibet eorum proditorie ſuper ſe ſuſcepit eſſe unum) cum bombardis, ſclopis, & ſclopetis, pulvere bombardico, & globulis plumbeis oneratis, & cum gladiis, enſibus, & aliis armis armat', inſidiati forent & eſſent in ſubſeſſa (Anglice *in Ambuſh*) ad eundem Dom' Regem in rheda ſua (Anglice *his Coach*) exiſten', quando foris iret, invadend'; quodque quidam & competens numerus de hominibus illis ſic armat', in ſatellites (Anglice *the Guards*) ipſius Dom' Regis eum tunc attenden', & ſecum exiſten', aggreſſi forent, & eos expugnarent & devincerent, dum alii eorundem homin' ſic armat' ipſum Dom' Regem percuterent, interficerent, occiderent, & murdrarent, & iidem Chriſtophorus Knightley, Rober-

[m] Vol. IV. p. 506. N°. 149. [n] Vol. IV. p. 553. N°. 150. [o] Vol. IV. p. 686. N. 154.

tus Lowick, Ambros' Rookwood, & Carol' Cranburne, ad prodition', & omnes proditor' intention', deſignation', & machination' ſuas præd' exequend', perpetrand', perimplend', & ad effectum redigend', poſtea (ſcil' prædicto decimo die Februarii, anno 7. ſupradicto, apud paroch' præd' in com' prædict') diverſos equos, & quamplurima arma, bombardas, ſclopos, enſes, & gladios, & al' armamenta, munition', & res bellicoſas, & inſtrumenta militaria, falſo, malitioſe, ſecrete, & proditorie obtinuer', emebant, colleger', & procuraver', ac emi, obtineri, colligi, & procurari cauſaver', ea intent', ad illum in & circa deteſtabil', horrend', & execrabil' aſſaſſinationem, interfectionem, & murdrum dicti Dom' Regis nunc, ut præfertur, utend', occupand' & impendend', & ad eadem præmiſſa tutius & certius exequend', faciend', & perpetrand', præd' Chriſtoph' Knightley, cum quodam Edward' King (nup' de alta proditione in machinando & conſpirando mortem dicti Dom' Regis nunc deb' convict' & attinct') per conſenſum & aſſenſum diverſorum de proditoribus & conſpiratoribus prædictis, dict' 10. die Februarii, anno 7. ſupradict', proditorie ivit & acceſſit ad locum propoſitum, ubi hujuſmodi intenſa aſſaſſinatio, interfectio, & murdrum dicti Dom' Regis ex inſidiis fact', perpetrat', & commiſs' forent, ad vidend', ſpeculand', & obſervand', convenientiam, & aptitudinem ejuſd' loci pro hujuſmodi inſidiis, aſſaſſination', & interfectione ibidem fiend', perpetrand', & committend', ac (loco illo ſic viſo & obſervato) poſtea (ſcil' eiſdem die & anno) obſervationes ſuas inde ſeparalibus de dictis proditor' & conſpirator' retulit & impertivit, videlicet, apud paroch' prædict' in com' prædict'; prædictusq' Carolus Cranburne, eiſdem die & anno, ibidem in ordine ad eand' execrabil', horrend', & deteſtabil' aſſaſſination' & interfection' dicti Dom' Regis per proditores & conſpiratores præd' promptius & magis audaciter exequend', perpetrand', & committend', adviſate, ſcienter, & proditorie tulit & portavit inter diverſos de proditoribus & conſpiratoribus illis prorſum & retrorſum ab aliquibus ad al' eor' catalogum (Angl' *a Liſt*) de nominibus diverſor' homin' de illis, qui deſignat' & appunctuat' fuer' ad eund' Dom' Regem, ſic ut præfertur, ex inſidiis interficiend' & murdrand', contra debit' ligeantiæ ipſor' Chriſtoph' Knightley, Roberti Lowick, Ambr' Rookwood, & Caroli Cranburne, & contra pacem dicti Dom' Regis nunc, coron', & dignitat' ſuas, nec non contra formam ſtatuti in hujuſmodi caſu edit' & provis', *&c.*

Rex verſus Vaughan[p], *for* High Treaſon.

7 *Gul'* III.

JUrat' pro Dom' Rege ſuper ſacram' ſuum præſentant, quod ante & continue uſque ad octav' diem Julii, anno regni Dom' noſtri Willielmi tertii, Dei gratia Angl', Scot', Franc', & Hibern' Regis, fidei defenſor', *&c.* 7. fuit bellum apertum inter Dom' Willielmum nunc Regem Angl', *&c.* & Ludovicum Regem Gallicum, quodque bellum illud eod' 8. die Julii, anno 7. ſupradict', & ſemper poſtea hucuſq' continuat' fuit, & adhuc exiſtit, quodq; per totum tempus præd' dictus Ludovicus Rex Gallicus, & ejus ſubdit', fuer', & adhuc exiſtunt inimici dicti Dom' Regis nunc, ac quod tempore belli illius, & ante prædict' octavum diem Julii, anno ſeptimo ſuprad', dict' Ludovicus Rex Gallicus (int' al') quand' navicul' armat', vocat' *Le Loyal Clencarty* (cujus Tho' Vaughan ſubdit' dicti Dom' Regis nunc Angl', *&c.* ad tunc fuit capitaneus) cum quamplur' ſubdit' Gallicis, inimicis dicti Dom' Regis nunc, ad numerum 15. perſonar' replet', præparavit ad naves ac bona, catall', & denar' dict' Dom' Regis nunc Angl', *&c.* & ſubditor' ſuor' ſuper alto mari, ac infra juriſdict' admiralitatis Angl' modo guerrino capiend' & ſpoliand', & bellum præd' contra dict' Dom' Regem nunc ſuper alto mari, ac infra juriſdiction' admiral' Angl' præd' gerend': Quodque tempore belli præd' inter ipſum Dom' Regem nunc, & præd' Ludovicum Regem Gallicum, Thomas Vaughan nuper de Galloway in regno Hibern' nauta, exiſtens ſubdit' ejuſdem Dom' Regis nunc Angl', *&c.* ut falſus proditor contra eundem Dom' Regem nunc, ſupremum Dom' ſuum, timorem Dei in corde ſuo non habens, nec debit' ligeanc' ſuæ ponderans, ſed inſtigatione diabolica mot' & ſeduct', cordialem dilectionem, ac veram & debitam obedientiam, quas quilibet verus & fidelis ſubdit' dict' Dom' Regis nunc erga ipſum Dom' Regem de jure gerere tenetur, penitus ſubtrahens, ac machinans & intendens, quantum in ſe fuit, bellum prædict' contra dictum Dom' Regem nunc proſequi & auxiliari, idem Thomas Vaughan dicto 8. die Julii, anno regni dict' Dom' Regis nunc 7. ſupradicto, vi & armis, *&c.* ſuper alto mari in quodam loco circa 14. leucas a Deal diſtante, ac infra juriſdiction' admiral' Angl', ſeipſum præfat' Thomam Vaughan ut militem (Angl' *a Soldier*) ad bellum præd' contra dict' Dom' Regem nunc gerend' & proſequend', in ſervitium ipſius præfat' Ludovici Regis Gallici, in navicul' armat' præd', vocat' *Le Loyal Clencarty*, falſo, malitioſe, nequiſſime, & proditorie poſuit; & quod ipſe idem Tho' Vaughan in navicul' armat' præd', vocat' *Le Loyal Clencarty*, ad tunc & ibidem ſic exiſten', vi & armis, *&c.* ad tunc & ibidem ſuper alto mari præd', ac infra juriſdiction' admiralitatis Angl' præd', dictis inimicis dicti Dom' Regis nunc, in dicta navicula armata, vocat' *Le Loyal Clencarty*, adtunc & ibidem ſcilicet exiſten', falſo, malitioſe, nequiſſime, & proditorie fuit adhærens, auxilians, & comfortans; & quod præd' Tho' Vaughan in execution' & performatione adhæſionis, auxiliationis, & comfortationis ſuæ præd' poſtea, ſcil' dicto 8. die Julii, anno ſupradict', ibidem ſuper alto mari præd', ac infra juriſdiction' admiralitat' Angliæ, ſimul cum dictis inimicis dicti Dom' Regis nunc, in navicul' armat' præd', vocat' *Le Loyal Clencarty*, adtunc & ibidem exiſten', ad quamplur' locos maritimos in eadem navicul' armat', vocat' *Le Loyal Clencarty*, in exploratione (Anglice *Cruiſing*) ea intentione, ad prædand' naves, bon', catall', & denar' ejuſdem Dom' Regis, & ſubditor' ſuor', ſuper alto mari præd', ac infra juriſdiction' præd', vi & armis, *&c.* malitioſe, nequiſſime, & proditorie navigavit, contra ligeanc' ſuæ debitum, contra pacem dicti Dom' Regis nunc, coron' & dignitat' ſuas, *&c.* necnon contra formam ſtatut' in hujuſmodi caſu edit' & provis', *&c.*

Et jur' præd' pro dicto Dom' Rege ſuper ſacram' ſuum præd' ulterius præſent', quod præd' T. Vaughan, ut falſus proditor contra dict' Dom' Regem nunc Angl', *&c.* ſuprem' Dom' ſuum ulterius machinans, practicans, & tota vi ſua intendens pacem & communem tranquillitat' hujus regni Angl' perturbare, & guerram & rebellion' contra dict' Dom' Regem ſuper alto mari præd', ac infra juriſdiction' admiralitat' Angl' ſuſcitare, movere, & procurare, & dict'

[p] Vol. V. p. 17. N°. 159.

Dom' Regem a titulo, honore, & regali nomine, coron' imperial' regni ſui Angl', & dominior' ſuor' ſuper alto mari præd' deponere & deprivare, & ſtragem miſerabilem ſubditor' ejuſdem Dom' Regis nunc hujus regni ſui Angl' ſuper alto mari, ac infra juriſdiction' admiral' Angl' præd' navigan', cauſare & procurare, præd' 8. die Julii, anno regni dicti Dom' Regis nunc 7. ſuprad', ſuper alto mari, circa 14. leucas a Deal diſtante, ac infra dominium coron' Angl', & infra juriſdiction' admiralitat' Angl', falſo, malitioſe, diabolice, & proditorie, vi & armis, *&c.* cum quamplur' al' falſis rebellib' & proditorib', jur' præd' ignot', guerram contra dict' Dom' Regem nunc paravit, ordinavit, levavit, & geſſit; & quod idem Thomas Vaughan, in executione & performatione guerræ & proditionis ſuæ præd' ad tunc & ibidem, ſcil' præd' octavo die Julii, anno 7. ſuprad', ſuper alto mari, circa 14. leucas a Deal diſtante, ac infra juriſdiction' admiralitat' Angl', in dicta navicul' armat', vocat' *Le Loyal Clencarty*, vi & armis, *&c.* cum quamplur' aliis falſis rebellib' & proditoribus, jur' præd' ignot', ad numerum 15. perſonar', modo guerrino armat' & arraiat', viz. tormentis, & al' armis, tam invaſivis, quam defenſivis, vi & armis, *&c.* falſo, malitioſe, & proditorie, adtunc & ibidem congregat' & aſſemblat' exiſten', ſeipſum ſimil' armat' & arraiat', malitioſe, proditor', & aperte aſſemblavit & conjunxit; & quod præd' T. Vaughan adtunc & ibid' in dicta navicul' armat', vocat' *Le Loyal Clencarty*, cum dictis al' falſis rebellibus & proditorib' (ſicut præfertur) aſſemblat' exiſten', poſtea, ſcil' dicto 8. die Julii, anno 7. ſupradict', ſuper alto mari præd', ac infra domin' coron' Angliæ, & infra juriſdiction' admiralitat' Angl' præd', ſimul cum dictis al' rebell' & proditorib', in navicul' armat' præd', vocat' *Le Loyal Clencarty*, ad tunc & ibidem, ad quamplur' locos maritimos in eadem navicul' armat', vocat' *Le Loyal Clencarty*, in exploration' (Angl' *cruiſing*) ea intentione ad prædand', ſpoliand', & aſportand' naves, bon', catall', & denar' dicti Dom' Regis, & ſubdit' ſuor' ſuper alto mari præd', ac infra juriſdiction' prædict', vi & armis, *&c.* malitioſe, nequiſſime, & proditorie navigavit, contra ligeanc' ſuæ debit', contra pacem dicti Dom' Regis nunc, coron' & dignitat' ſuas, *&c.* necnon contra formam ſtatut' in hujuſmodi caſu edit' & provis', *&c.*

Rex verſus Com' Warwick & *Dom'* Mohun, *for the* Murder *of* R. Coote.

11 *Gul.* III.

THis Record is in the Trial [q].

Regina verſus Fuller [r], *for a* Cheat.

1 *Annæ.*

London ſſ. QUod Willielmus Fuller nuper de, *&c.* primo die Januarii, anno regni Dom' Willielmi tertii nuper Regis Angl', *&c.* 13. apud London in paroch' beatæ Mariæ de Arcubus, in warda de Cheap, exiſtens impoſtor & communis mendax, & perſona malorum nominis, famæ, & reputationis, falſo, malitioſe, nequit', & ſeditioſe machinans, practicans, & intendens dict' Dom' Willielmum tertium nuper Regem Angl', & ſubdit' ſuos falſo & illicite deludere, decipere, & defraudare, & diſcordia inter eundem nuper Regem, & quamplur' proceres, magnates hujus regni Angliæ, & magnos officiarios & miniſtros fiduciat' per dictum nuper Regem in negotiis ſuis concernen' regimen & gubernation' dicti regni ſui Angliæ, & al' ligeos & fidel' ſubdit' dicti regni Angliæ movere, excitare, & ſuſcitare, ac etiam proceres, magnates hujus regni Angliæ, & magnos officiarios & miniſtros dicti nuper Regis per ipſum, ut præfertur, fiduciat', & al' ligeos & fidel' ſubdit' ſuos, in maximum odium, contempt', & vilipendium cum eodem nuper Dom' Rege inducere & inferre, ad divers' denar' ſummas ab eodem Dom' nuper Rege callide, ſubdole, fraudulent', & deceptive acquirere & obtinere, ipſe idem Willielmus Fuller, præd' primo die Januarii, anno regni dicti Dom' nuper Regis 13. apud London præd', in parochia & warda præd', ad nequiſſimas machination', practication', & intention' ſuas præd' perimplend', perficiend', & ad effectum redigend', de diverſis officiariis & al' ſubditis dicti nuper Regis Willielmi tertii, & de reſponſione (Anglice *Correſpondency*) inter eos & Jacobum ſecundum nuper Regem Angl', dum idem nuper Rex Jacobus ſecundus apud quendam locum vocat' *St. Germains*, in regno Franciæ reſidebat, falſo pretens' fuiſſe habit', ac de diverſis denar' ſummis per dictum Jacobum ſecund' nuper Regem Angliæ, in regno Franciæ, in hoc regnum Angl' diſtribuend' inter diverſos ſubdit' dicti nuper Regis Willielmi tertii falſo prætens' fore miſs' quoddam falſum, fictum, ſcandaloſum, & defamatorium libellum, intitulat' *Original Letters of the late King's* (dictum Jacobum ſecundum nuper Regem innuendo) *and others, to his greateſt Friends in* England, *with the Depoſitions of* Thomas Jones *and* Thomas Witherington, *Eſquires, proving the Corruption lately practiſed to ruin this Nation*, adtunc & ibidem falſo, illicite, nequit', injuſte, malitioſe, ſcandaloſe, & deceptive compoſuit, ſcripſit, & impreſſit, & imprimi cauſavit, in quo quidem falſo, ficto, ſcandaloſo, & defamator' libello continetur (inter alia) ut ſequitur, videl', Thomas Jones *Eſquire depoſeth, That he being at* St. Germain's (præd' locum vocat' St. Germains in regno Franc' innuendo) *the Court of the late King* James (præd' Jacobum ſecund' nup' Regem Angl', *&c.* innuendo) *in* France, *&c.* Et idem Attorn' dict' Dominæ Reginæ nunc general', pro ead' Dom' Regin' ulterius dat' cur' hic intelligi & informari, quod prædict' Willielmus Fuller, præd' primo die Januarii, anno 13. ſupradict', apud London præd', in parochia & warda præd', ad nequiſſimas machinationes, practication', & intentiones ſuas prædict' ulterius perficiend', perimplend', & ad effectum redigend', de diverſis officiariis & al' ſubdit' dicti nuper Regis Willielmi tertii, & de ficta reſponſione (Anglice *Correſpondence*) inter eos & Jacobum ſecundum nuper Regem Angliæ, dum idem nuper Rex Jacobus ſecundus in regno Franciæ reſidebat, falſo pretens' fuiſſe habit', ac de diverſis denariis ſummis per dict' Jacobum ſecundum, nuper Regem Angliæ, a regno Franciæ in hoc regnum Angliæ diſtribuend' inter diverſos ſubdit' dicti nuper Regis Willielmi tertii pretens' fore miſs', quoddam al' falſum, fictum, ſcandalos', & defamator' libellum, intitulat' (int' al') *Twenty ſix Depoſitions of Perſons of*

[q] Vol. V. p. 138. N°. 161.

[r] Vol. V. p. 445.

Quality

Quality and Worth, adtunc & ibid' falſo, illicite, nequit', injuſte, malitioſe, ſcandaloſe, & deceptive compoſuit, ſcripſit, impreſſit, & imprimi cauſavit, in quo quidem falſo, fićto, ſcandaloſo, & defamatorio libello continetur, int' al', ut ſequitur, videl', *Mr.* Jones *has alſo made Oath, that he paid* 5000 l. *more by the late King's Order* (ordin' dićti Dom' Jacobi ſecundi, nuper Regis Angliæ, iterum inuend') *&c.* Et quod prædićtus Willielmus Fuller poſtea, ſcil' dićto 1. die Januarii, anno regni dićti Dom' Willielmi tertii, nuper Regis Angliæ, *&c.* 13. ſupradićt', dićtos falſos, fićtos, ſcandaloſos, & defamatorios libellos, abſque aliqua legali authoritate, vi & armis, *&c.* apud London præd', in parochia & warda prædićt', illicite & injuſte publicavit, utteravit, & pro veritate affirmavit, ubi revera & in facto præd' Thomas Jones nunquam ſuper ſacrament' ſuum depoſuit prout in prædićt' falſo, fićto, ſcandaloſo, & defamator' libello ſuperius mentionat' continetur, ac ubi revera & in facto, omnia & ſingula præd' ſcandalos' defamator' libell' content' & ſuperius ſpecificat' fuer' & ſunt falſa, fićta, & veritati omnino contrar', in magnum ſcandal', præjudic', & abuſion' dićti Dom' Willielmi tertii, nuper Regis Angliæ, *&c.* & magnor' officiarior' & miniſtror' dićti nuper Regis Willielmi tertii per ipſum, ut præfertur, fiduciat', & alior' ligeor' & ſubditor' ejuſd' nuper Regis, in malum exemplum omnium alior' in hujuſmodi caſu delinquen', ac contra pacem dićti nuper Dom' Regis Willielmi tertii, coron' & dignitat' ſuas, *&c.*

Rex verſus Hathaway[s], *for a* Cheat.

Surr' ſſ. MEmorand', quod Edwardus Northey, Ar', Attorn' Dom' Regis nunc general', qui pro eodem Dom' Rege in hac parte ſequitur, in propria perſona venit hic in curia dićti Dom' Regis, coram ipſo Rege apud Weſtm', die Jovis prox' poſt tres ſeptimanas ſancti Michaelis iſto eod' term', & pro eod' Dom' Rege dat cur' hic intelligi & informari, quod quidam Richardus Hathaway, nuper de Southwark in com' Surr', Laborer, exiſtens perſona malor' nominis & famæ, & impoſtor, & machinans & malitioſe intendens quandam Saram Morduck, ux' cujuſdam Edwardi Morduck de Southwark in com' præd', Waterman, fœminam per totum vitæ ſuæ tempus exiſten' honeſtam & piam, & non Sagam (Anglice *a Witch*) nec Magiam (Anglice *Witchcraft*) Incantamentum (Anglice *Inchantment*) Incantamentum (Anglice *Charm*) Faſcinationem (Anglice *Sorcery*) unquam exercen', in periculo vitæ ſuæ amiſſionis inducere, 11. die Febr', anno regni dićti Dom' Regis nunc 12. apud Southwark præd' in com' præd', in præſentia & auditu diverſarum perſonarum, falſo, malitioſe, diabolice, & ſcient', & ut falſus impoſtor prætendebat & aſſerebat ſeipſum per eand' Saram fuiſſe faſcinatum (Anglice *bewitched*) occaſione prætens' faſcination' illius non poſſe edere, ac per magnum tempus, ſcil' per ſpatium decem ſeptimanar' jejunaſſe, ac diverſis morbis adtunc & ibid' affici, & quod ipſe per ipſius Richardi extractionem ſanguinis ejuſd' Saræ per ſcalpationem a prætens' faſcinatione præd' liberat' foret, quodq; præd' Richard' adtunc & ibid', vi & armis, eandem Saram ſcalpſit, & ſanguinem ipſius Saræ tunc & ibid' per ſcalption' ill' extraxit, & ſuperinde præd' Richard' adtunc & ibid' falſo, malitioſe, & ſcient' aſſeruit ſeipſum a morbis ill', per extraction' ſanguinis præd', liberari, ubi revera & in facto præd' Richard' nunquam faſcinat' fuit, & non jejunaſſet per ſpatium præd', nec per aliquod magnum tempus, & ubi revera & in facto præd' Richard' adtunc & ibid' bene ſciebat ſeipſum minime faſcinatum fuiſſe per eand' Saram, in maximum dićti Dom' Regis nunc, legumq; ſuarum contemptum, & vilipend', in valde malum & pernicioſum exemplum alior' in hujuſmodi caſu delinquentium, & contra pacem ejuſd' Dom' Regis, coron' & dignitat' ſuas, *&c.* Unde idem Attorn' dićti Dom' Regis nunc general' pro eod' Dom' Rege, pet' adviſamentum cur' hic in præmiſſis, & debitum legis proceſſum verſus præfat' Richard' Hathaway in hac parte fieri ad reſpondend' dićto Dom' Regi de & in præmiſſis, *&c.*

Regina verſus Hathaway[t], *for an* Aſſault.

2 *Annæ.*

Surr' ſſ. MEmorand', *&c.* quod quidam Richard' Hathaway, nuper de Southwark in com' Surr', Laborer, Thomas Wellyn, & al', cum diverſis al' perſonis eidem Attorn' general' ignotis, 25 die Septemb', anno regni dićti Dom' Regis nunc 12. apud Southwark prædićt', in com' præd', vi & armis, *&c.* illicite, riotoſe, & routoſe ſeſe aſſemblaver', & magnam affraiam & riotam adtunc & ibid' fecer', & ſic aſſemblat' exiſten', vi & armis, *&c.* adtunc & ibidem, in & ſuper quandam Saram Morduck, uxor' cujuſdam Edwardi Morduck, nuper de eadem, Waterman, adtunc & ſemper antea ibid' exiſten', fœmin' honeſtam, & non Sagam, nec unquam Magiam (Anglice *Witchcraft*) Incantamentum (Anglice *Inchantment*) Incantamentum (Anglice *Charm*) Faſcination' (Anglice *Sorcery*) exercen', in pace Dei, & dićti Dom' Regis adtunc & ibidem exiſten', inſult' fecer', & ſub iniquo prætextu, contra legem, tentand' an præd' Sara adtunc fuit Saga, eod' Richardo adtunc & ibidem falſo, nequit', ſcien', & malitioſe prætenden' & afferen' ſeipſum per eand' Saram faſcinatum fuiſſe, ubi revera ipſe præd' Richardus nullo modo unquam faſcinat' fuit, & adtunc & ibid' bene ſciebat ſeipſum minime faſcinat' fuiſſe vel eſſe, ipſam Saram, adtunc & ibid' verberav', ſcalpſer', vulneraver', & maletractaver', ita quod de vita ejus maxime deſperabatur, & alia enormia eidem Saræ adtunc & ibid' intuler', ad grave dampnum ipſius Saræ, in contempt' dićti Dom' Regis nunc, & contra pacem coron' & dignitat' ſuas, *&c.* Et idem Attorn' dićti Dom' Regis nunc general' ulterius dat cur' hic intelligi & informari, Quod præd' Richard', & al', *&c.* cum divers' al' perſon' eid' Attorn' general' ignotis, 11 die Febr', anno regni dićti Dom' Regis nunc 12 ſuprad', apud Southwark præd', in com' præd', vi & armis, *&c.* riotoſe, routoſe, & illicite ſeſe aſſemblaver', & magnam affraiam & riotam adtunc & ibid' fecer', & ſic aſſemblat' exiſten', vi & armis, *&c.* adtunc & ibid' in & ſuper præd' Saram, in pace Dei & dićti Dom' Regis adtunc & ibid' exiſten', inſult' fecer', & ipſam Saram adtunc & ibid' verberaver', ſcalpſer', vulneraver', & maletractaver', ita quod de vita ejus maxime deſperabatur, & al' enormia eidem Saræ adtunc & ibid' intuler', ad grave dampnum ipſius Saræ, in contempt' dićti Dom' Regis nunc, & contra pacem coron' & dignitat' ſuas. Et idem Attorn' dićti Dom' Regis nunc general' ulterius dat cur' hic intelligi & informari, quod præd'

[s] Vol. V. p. 486.

[t] Vol. V. p. 508.

Richardus, & al', &c. cum diverſis al' perſon' eidem Attorn' general' ignotis, poſtea, ſcil' præd' 11 die Febr', anno 12 ult' ſuprad', apud Southwark præd' in com' præd', vi & armis, &c. adtunc & ibid' in & ſuper præd' Saram inſult' fecer', & ipſam Saram adtunc & ibid' verberaver', ſcalpſer', vulneraver', & maletractaver', ita quod de vita ejus deſperabatur, & alia enormia eidem Saræ adtunc & ibid' intuler', ad grave dampnum ipſius Saræ, in contempt' dicti Dom' Regis nunc, & contra pacem dicti Dom' Regis nunc, coron' & dignitat' ſuas, &c. Unde idem Attorn' dicti Dom' Regis nunc general', pro eodem Dom' Rege, pet' adviſamentum cur' hic in præmiſſis, & debitum legis proceſſum verſus præfat' Richardum, & al', &c. in hac parte fieri ad reſpondend' dicto Dom' Regi de & in præmiſſis, &c.

Regina verſus Bouchier[u], *for* High Treaſon.

2 *Annæ.*

Suſſex' ſſ. JUR' pro Dom' Regina ſuper ſacram' ſuum præſentant, quod Jacobus Bouchier, nuper de London', Gen', qui fuit ſubdit' Dom' Gulielmi tertii, nuper Regis Angl', Scot', Franc', & Hibern', & modo exiſtit ſubdit' excellentiſſimæ Principis Dom' Annæ, nunc Reginæ Angl', Scot', Franc', & Hibern', poſt 11 diem Decem', anno Dom' 1688, ſcil' 1 die Aug', anno Dom' 1689, fuit in regno Hiberniæ, & poſtea & antea 3 diem Decemb', anno Dom' 1697, ſcil' 1 die Decemb', anno Dom' 1694 præd' Jacob' Bouchier voluntarie ibat in regnum Franciæ ſine licentia a Dom' Willielmo tertio, nup' Rege Angliæ, vel a Dom' Maria, nup' Regina Angliæ, & quod præd' Jacob' Bouchier præd', 3 die Decemb', anno Dom' 1697, non fuit infra dominia Dom' Willielmi tertii, nuper Regis Angliæ, &c. quodq; idem Jacob' Bouchier, timorem Dei in corde ſuo non habens, & debit' ligeantiæ ſuæ erga dictam Dom' Annam nunc Regin' Angliæ, &c. ſupremam, veram, legitimam, legalem, & indubitat' Dom' ſuam minime ponderans, & ut falſus proditor contra eand' Dom' Annam nunc Regin' Angliæ, &c. poſt 14 diem Januar', anno Dom' 1697, ſcil' 10 die Decemb', anno regni Dom' Annæ nunc Reginæ Angliæ, &c. 2, proditorie redivit & veniebat in hoc regnum Angliæ, ſcil', apud Eaſt Bourne in com' Suſſex', ſine licentia a dicto Dom' Gulielmo tertio, nuper Rege Angliæ, &c. ſub privato ſigillo ejuſdem nuper Regis, vel a dicta Dom' Anna, Regina nunc, ſub privato ſigillo ejuſdem Dom' Reginæ nunc obtent', contra ligeantiæ ſuæ debit', & contra formam ſtatuti in hujuſmodi caſu nuper edit' & provis', ac contra pacem, &c.

Regina verſus Lindſay[x], *for* High Treaſon.

Midd' ſſ. JUR' pro Dom' Regina ſuper ſacram' ſuum præſentant, quod David Lindſay, nuper de London, Gen', qui fuit ſubdit' Dom' Willielmi tertii, nuper Regis Angl', Scot', Franc', & Hibern', & modo exiſtit ſubdit' excellent' Principis Dom' Annæ, nunc Reginæ Angl', Scot', Franc', & Hibern', poſt 11 diem Decem', anno Dom' 1688, ſcil' 26 die Martii, anno Dom' 1689, fuit in regno Angliæ, ſcil' apud paroch' ſancti Martini in campis in com' Middleſex', & poſtea & ante 3 diem Decemb', anno Dom' 1697, ſcil' 1 die Octobr', anno Dom' 1696, præd' David Lindſay voluntarie ibat in regnum Franciæ, ſine licentia a Dom' Willielmo tertio, nup' Rege Angliæ, vel a Dom' Maria, nuper Regina Angliæ, & quod prædict' David Lindſay, præd' 3 die Decemb', anno Dom' 1697, non fuit infra dominia Dom' Willielmi tertii, nup' Regis Angliæ, &c. quodque idem David Lindſay, timorem Dei in corde ſuo non habens, & debit' ligeantiæ ſuæ erga dictam Dom' Annam nunc Regin' Angliæ, &c. ſupremam, veram, legitimam, legalem, & indubitat' Dom' ſuam, minime ponderans, & ut falſus proditor contra eandem Dom' Annam, nunc Regin' Angliæ, &c. poſt 14 diem Januar', anno Dom' 1697, ſcil' 10 die Decemb', anno regni Dom' Annæ nunc Reginæ Angliæ, &c. 2, proditorie redivit & veniebat in hoc regnum Angliæ, ſcil' apud præd' paroch' ſancti Martini in campis in com' Midd', ſine licentia a dicto Dom' Willielmo tertio, nup' Rege Angl', &c. ſub privat' ſigil' ejuſd' nup' Reg', vel a dicta Dom' Anna, Reg' nunc, ſub privat' ſigil' ejuſd' Dom' Reg' nunc obtent', contra ligeant' ſuæ debit', & contra form' ſtatuti in hujuſmodi caſu edit' & provis', ac contra pacem dicti Dom' Reginæ nunc, coron' & dignitat' ſuas, &c.

Dominus Rex verſus Coke & Woodburne[y].

Suffolk ſſ. JUR' pro Dom' Rege ſuper ſacrament' ſuum præſentant, quod Johan' Woodburne, nuper de Burgo de Bury Sancti Edmundi in com' Suff', Lab', & Arundel Coke, alias Cooke, nuper de Burgo præd', Arm', poſt 24 diem Junii, anno Dom' 1721, ſcil' 1 die Januar', anno regni Dom' Georgii nunc Regis Magnæ Britan', &c. 8, machinantes quendam Edw' Criſpe, Gen', adtunc & adhuc exiſten' ſubdit' dicti Dom' Regis nunc, mahemare & deformare, apud Burg' præd' in com' præd', vi & armis, &c. in & ſuper præd' Edw' Criſpe, in pace Dei, & dicti Dom' Regis adtunc & ibid' exiſten', ex propoſito (Anglice *on purpoſe*) ac ex malitiis ſuis præcogitat', & per inſidias (Anglice *by lying in wait*) illicite & felonice inſult' fecer'. Et quod præd' Johan' Woodburne cum quadam Secure (Anglice *a Bill*) valor' un' denar', quam ipſe idem Johan' in manu ſua dextra adtunc & ibid' habuit & tenuit, naſum præfat' Edw' Criſpe ex propoſito ac ex malitia ſua præcogitat', & per inſidias, adtunc & ibid' illicite & felonice fidit (Anglice *did ſlit*) cum intention' ad eund' Edward' Criſpe ita faciendo modo præd' mahemand' & deformand'. Quodque præd' Arundel, tempore felon' præd', per præfat' Johan' Woodburne, modo & forma præd', illicite & felonice commiſs' & perpetrat', ſcil' eod' 1 die Januar', anno 8 ſuprad', apud Burg' præd' in com' præd', ex propoſito ac ex malitia ſua præcogitat', & per inſidias, illicite & felonice fuit præſens, auxilians, & abettans præfat' Johan' Woodburne ad felon' præd', in forma præd', felonice committend' & perpetrand'. Et ſic Jur' præd' dicunt ſuper ſacrament' ſuum præd', quod præd' Johan' Woodburne, & Arundel, dicto 1 die Januar', anno 8 ſupradict', apud Burg' præd' in com' præd', vi & armis, &c. ex propoſito ac ex malitiis ſuis præcogitat', & per inſidias, felon' præd' in form' præd', illicite & felonice commiſer' & perpetraver', & uterque eor' commiſit & perpetravit, contra pacem dicti Dom' Regis nunc, coron' & dignitat' ſuas, necnon contra form' ſtat' in hujuſm' caſu edit' & provis'.

[u] Vol. V. p. 510. [x] Vol. V. p. 512. [y] Vol. VI. p. 212.

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N. B. The Numeral Letters denote the Volume; the Figures the Pages of each. Thoſe Figures to which the Letter *M* is prefix'd, refer only to the Earl of *Macclesfield*'s Trial in the laſt Volume.

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